

**CALIFORNIA COASTAL COMMISSION**

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Go to original staff report

# Th9a/Th9b

**Prepared April 10, 2013 for April 11, 2013 Hearing**

**To:** Commissioners and Interested Persons  
**From:** Madeline Cavalieri, District Manager  
Laurel Kellner, Coastal Planner  
**Subject:** **STAFF REPORT ADDENDUM for Th9a and Th9b**  
**CDP Applications 2-08-013 and 2-10-030 (Porto Bodega)**

The purpose of this addendum is to modify the staff recommendation for the above-referenced item. In the time since the staff report was distributed, staff received comments on the item questioning the relationship of the project to potentially larger projects that may follow at the site, including related to the need for more robust noticing and public participation related to such larger projects, and specific LCP requirements related to the Porto Bodega Area. This addendum adds the comments received (see attached) as Exhibit 6 of the staff report (Exhibit 6 – Comments Received), inserts a new Section J on page 36 of the staff report, and rennumbers existing Section J (California Environmental Quality Act (CEQA)) as Section K. The new Section J is as follows:

## **J. Response to Comments**

The Commission received comments raising questions about the connection of the proposed project to future development at the site. The comments allude to a larger development plan for the site that could be forthcoming, suggest that it is inappropriate to consider the currently proposed project without considering the larger project that allegedly would follow, and suggest that greater notice to facilitate local public participation is required. The comments appear to be focused on prior development ideas and scoping for the site that were preliminarily discussed with the County but never officially submitted approximately five years ago. That project would have greatly expanded the marina, potentially adding houseboats, slips, and landside improvements. That project, however, never came to fruition, including because preliminary analysis suggested that such larger scale intensification in the Porto Bodega area appeared to be problematic for a number of reasons, including due to geologic hazard constraints and because it would have extended out into eelgrass beds offshore. Instead, the Applicant decided to pursue the project that is currently before the Commission. This project proposes fairly minor renovation and expansion of the boat docks, pedestrian ramps, bait shop, and Sandpiper restaurant, as described in this report. The Commission is not aware of any additional plans for development at this time, and the County concurs (personal communication between Commission coastal planner Laurel Kellner and Sonoma County staff Cynthia Demidovich on April 10, 2013). If it were clear that the current proposed development was a part of or a precursor to some type of larger scale project, then it would be appropriate to understand the relationship of the current

proposed project to that project, and it would be appropriate to consider facilitating expanded public review (e.g., holding hearings in a more local to Bodega Bay venue). However, that is not the case here, and the Commission's consideration of this proposed project in this report and through a hearing in Santa Barbara is appropriate, including in terms of adequately facilitating public participation.

Finally, the Commission received comments indicating that a Porto Bodega Study/master plan is required to be developed under the LCP prior to considering this proposed project. The comments appear to be related to the LCP text specific to the Porto Bodega area that states:

*Porto Bodega. Porto Bodega is a commercial dock and trailer housing area designated fishing commercial. It is located on the San Andreas fault and the geology of the site is not stable. A special study of Porto Bodega is being conducted to determine future potential uses of the site, taking into account geologic and seismic problems. (From LCP page 191.)*

and

*Require completion of the Porto Bodega Study prior to any land use changes in the area. (From LCP page 197.)*

The LCP requirement thus describes the need for a study to identify potential future uses in light of geologic and seismic issues that apply to the site, and indicates that such study is required before there is a change in land use. It appears that the intent of the LCP study requirement is to address a situation where there is a proposal to change land uses, and to make sure that such change is understood in terms of the geological and seismic hazards that affect development here. That is not the case in this application. In this application, the proposed project does not involve land use changes at Porto Bodega, but rather reflects renovation of facilities for land uses and development that have historically been present at this site. Thus, the study requirement isn't triggered in this case. In addition, the purpose of the study is to address geologic and seismic issues at the site, and in this case, site specific geological studies have been conducted, and the project, as proposed and conditioned, incorporates measures to minimize and mitigate the hazards at the site, including geological and seismic hazards. Finally, because the project is located in the Commission's original coastal permit jurisdiction, the Coastal Act is the standard of review, and the LCP is used as non-binding guidance.

In conclusion, there is no doubt that the Porto Bodega area is a special location for nearby residents as well as visitors. The proposed project in this case is a relatively minor renovation and expansion designed to help facilitate Coastal Act priority uses, including recreational fishing and boating and visitor-serving facilities, in an area where these facilities have long existed. The Commission agrees with comments that indicate that master planning and further efforts to facilitate public involvement and participation (including more local hearing venues) would be appropriate if the current proposed development was a part of or a precursor to some type of larger scale project, but that is not the case here. Instead, the proposed project would appropriately renovate and enhance Coastal Act priority facilities that would improve fishing, boating, and public recreational opportunities at Porto Bodega.

Th9a:Th9b

April 8, 2013

To: California Coastal Commission Staff  
Fax (415) 904-5400

Dear California Coastal Commission Staff,

My name is Susan Moon and I am a liaison for ORCA (Organization of Regional Coastal Advocates).

I am sending ex parte communications via email regarding April 2013 California Coastal Commission meeting agenda items to Commissioners McClure, Garcia and Kinsey today April 8, 2013.

Per ex part rules I am hereby copying communications to staff at the same time.

Thank you,

*Susan Moon*

Susan Moon  
PO Box 1076  
Point Arena, CA 95468

Attached: April 8, 2013 emails to commissioners McClure, Garcia and Kinsey

April 8, 2013 ex parte communication from ORCA (5 pages) sent  
attached to above emails to commissioners McClure, Garcia and  
Kinsey

Faxed including this page and <sup>fax</sup>cover page: 10 pages  
^

Th 9a: 1h 9b

April 8, 2013

Dear Commissioner Kinsey,

My name is Susan Moon and I am a liaison for ORCA (Organization of Regional Coastal Advocates).

Please allow me to update you as to the actions ORCA is taking regarding the upcoming April California Coastal Commission meeting. There are four projects that we are communicating to you about today, which are discussed in the attached pages.

I have copied this communication to Coastal Commission staff. You are welcome to contact me with any questions at (707) 882-2677.

Thank you,  
Susan Moon

Cc.: California Coastal Commission staff, by fax  
Commissioner McClure  
Commissioner Garcia

Attached: April 8, 2013 ex parte communication from ORCA (5 pages)



Th 9a; Th 9b

April 8, 2013

ORCA Ex parte

Th.9.a. & Th.9.b / Continue

On the issue of items #Th.9.a. Application No. 2-10-030 (Porto Bodega Marina & RV Park, Sonoma Co.) and #Th.9.b. Application No. 2-08-013 (Porto Bodega LP, Sonoma Co.) ORCA is speaking for Norma Jellison.

Staff is recommending approval with conditions.

We are asking for a continuance until the Porto Bodega Study for the area is completed, as specified in the LCP.

1. We strongly oppose staff's combining these projects that have not had adequate public notice or public participation to allow the local community to be advised of the larger development plan for this property. No Specific Plan exists for the 15.2 acre parcel and Adjacent Marina and RV Park despite incremental projects being processed by the County for over 2 years all with Waivers of Public Hearings. Applicant has a master plan in mind for the entire property and has discussed same with County staff since at least 2005. Rather than proceed with a Specific Plan and associated CEQA analysis, County has processed Use Permits/Administrative Design Reviews for incremental aspects of the master plan, often under guise of correcting illegal additions.

2. The Commission should not participate in processing pieces of a larger project that lacks full analysis and lacks meaningful public participation. The staff report cites 4 studies: a biological report dated 2007, a Phase II Environmental Site Assessment dated 2007, Eelgrass and Habitat Survey dated 2007, and a Geotechnical Report dated 2009. These are all evidence that plans have been in process for some time for this property. These reports were not done just for the current projects but to lay the ground for the larger development planned for Porto Bodega.

3. The Commission should require full disclosure of the larger development proposed by this applicant and should refuse to process individual projects without the public participation process assured under the State's Coastal Act. Staff report references LCP specific recommendations for the Porto Bodega area - one example "Require completion of the Porto Bodega Study prior to any land use changes in the area." A Porto Bodega Study has not been released. This study should be completed before any additional incremental aspects of intensifying development in this area are allowed to proceed. Public awareness of what is contemplated for this area of Bodega Bay at a minimum is mandatory under the public participation guarantees of the Coastal Act.

Th 9a; Th 9b

April 8, 2013

Dear Commissioner McClure,

My name is Susan Moon and I am a liaison for ORCA (Organization of Regional Coastal Advocates).

Please allow me to update you as to the actions ORCA is taking regarding the upcoming April California Coastal Commission meeting. There are four projects that we are communicating to you about today, which are discussed in the attached pages.

I have copied this communication to Coastal Commission staff. You are welcome to contact me with any questions at (707) 882-2677.

Thank you,  
Susan Moon

Cc.: California Coastal Commission staff, by fax  
Vice Chair Kinsey  
Commissioner Garcia

Attached: April 8, 2013 ex parte communication from ORCA (5 pages)

Th 9a:Th 9b

April 8, 2013

Dear Commissioner Garcia,

My name is Susan Moon and I am a liaison for ORCA (Organization of Regional Coastal Advocates).

Please allow me to update you as to the actions ORCA is taking regarding the upcoming April California Coastal Commission meeting. There are four projects that we are communicating to you about today, which are discussed in the attached pages.

I have copied this communication to Coastal Commission staff. You are welcome to contact me with any questions at (707) 882-2677.

Thank you,  
Susan Moon

Cc.: California Coastal Commission staff, by fax  
Vice Chair Kinsey  
Commissioner McClure

Attached: April 8, 2013 ex parte communication from ORCA (5 pages)

Th 9a; Th 9b

April 8, 2013 ORCA Ex parte Th.9.c. / Approve w/ modified conditions

On the issue of item #Th.9.c. Application No. A-2-MAR-10-22 (Magee & Brader, Marin Co.) ORCA is speaking for Nancy Okada.

Staff is recommending approval with conditions.

We are asking that the distillery not be allowed because of impacts to coastal resources, and that the development be clustered on the southern part of the property to minimize impacts to ESHA and visual resources.

1. We commend staff, applicants and advocates for a much-improved project proposal that includes stronger protections for ESHA, wetlands and water quality for Marshall and Tomales Bay.

2. We strongly oppose any brandy distillery on subject parcel:

An industrial distillery violates neighborhood community character: no industrial facilities are currently located in Tomales Bay's watershed SWRCB has determined TB wetlands are currently impaired with nitrogen and pathogens. The Bay was selected in 2002 as a Wetland of International Significance by the 1971 Ramsar Convention, which recognizes 2100 fragile wetlands worldwide in danger of loss.

Distillery produces toxic wastewater and sludge that could debase Tomales Bay's fragile coastal and marine resources. The state Water Board has not as yet evaluated the possible harmful impacts of this commercial facility and waste stream for this industrial facility must be better specified (LCP 22.045.04).

A distillery (75 feet from Marconi Cove) will impact State Park camping facility directly across the highway.

Distillery alcohol-fed fires are massive and explosive: almost all 30+ distilleries in California are located for solid policy and safety reasons in urban areas (usually in industrial parks) with well-established urban water and sewer services. Flashpoint/ignition point for brandy ethanol is 78 degrees. Specialized foam is required immediately upon ignition of ethanol vapors. Foam is highly toxic to all living things and firefighters require special haz-mat suits. All fire services in Tomales Bay for Marshall are at least 20 minutes away down winding two-lane Highway One -- the Bay's only major access road in and out.

Removing the distillery from the project proposal in no way compromises current or future agricultural production potential on parcel. In fact removing this industrialization enhances ag production.

3. CCC should move all project buildings to 12 acre Alternative Site (southern portion of parcel) to fully avoid ESHA, blue-line stream and wetlands altogether including avoiding historic coursing water and drainage problems on remainder of property. The project as sited violates following Marin Unit II LCP chapters: 22.56.130 (Water Quality); 22.57.024 (Erosion Control); 22.56.130 (ESHA, Streams & Wetlands); 22.37.036 (Agricultural Productivity); 22.57.035 (Clustering Development); 22.57.033 (Conditional Uses); 22.57.035(1) (Existing Roads and Services); and finally 22.56.130 (Visual Resources).

Th9a : Th9b

From: NORMA JELLISON <normalj@sonic.net>

Date: Mon, Apr 8, 2013 at 5:51 PM

Subject: Ex Parte for CCC Agenda Items Th9a and Th9b Porto Bodega Bodega Bay

To: Zimmerccc@gmail.com

Dear Commissioner:

I request that you take the following action with regard to Items Th9a and Th9b on the April 11 Commission agenda.

Continue the items and approval of these two Coastal Development Permits for a minimum of 150 days until a Porto Bodega Study (aka Master Plan/Specific Plan) can be completed, along with the appropriate level of environmental analysis.

The certified Sonoma County LUP calls for a Porto Bodega Study (Section 7, Land Use, No. 27: **"Require completion of the Porto Bodega Study prior to any land use changes in the area."**). The proposed intensification of land use triggers the requirement for a master plan.

In the ensuing 10+ years following certification of the LUP, no Porto Bodega Study has been forthcoming. Furthermore, counter to the full public participation tenets of the Coastal Act and CEQA, the citizenry of Bodega Bay have never been engaged in any public participation effort for this critical bayside area.

Although there is evidence that a master plan exists for this area of Bodega Bay, the County denies its existence and instead processes Use Permits and Administrative Design Review with Waivers of Public Hearing, thereby further eliminating all public participation.

Rather than perpetuating incremental development, even after-the-fact permitting, I ask that the Commission concur that these CDPs result in an intensification of land use and these projects do require the County to undertake this long overdue study before the Commission can issue any CDP as required by our LUP.

Furthermore, there was once again inadequate public notice of this proposed action. A notice tacked on a building at the project site and an agenda item on a CCC meeting agenda (if you receive the agenda) 200 miles away from the project site does not engender community knowledge of or participation in the transitioning of this area into an intensified development with major implications for a community of 900 residents.

Coastal and marine resources deserve careful land use planning and full public participation in those decisions.

Sincerely,

Norma Jellison  
P O Box 1636  
Bodega Bay CA 94923

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# Th9a & Th9b

Staff: L.Kellner - SF  
Staff Report: 3/29/2013  
Hearing Date: 4/11/2013

## COMBINED STAFF REPORT FOR CDP APPLICATIONS 2-08-013 AND 2-10-030

**Application Numbers:** 2-08-013 (Porto Bodega Dock Replacement) and 2-10-030 (Sandpiper Renovation)

**Applicant:** Porto Bodega LP

**Project Location:** 1500 Bay Flat Road (APN 100-070-020) and 1355 Bay Flat Road (APN 100-080-002) Bodega Bay, Sonoma County.

**Project Description:** **2-08-013:** Replacement of floating docks and three access ramps at the private marina. A portion of this work is after the fact.  
**2-10-030:** Repair and expansion of the Sandpiper Restaurant and the adjacent bait shop building, including the creation of an outdoor covered patio area with outdoor seating and additional parking.

**Staff Recommendations:** Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATIONS

This staff report is a combined staff report for two CDP applications. In CDP application 2-08-013, the Applicant proposes the replacement of floating docks and three access ramps at the Porto Bodega private marina. A portion of this work is being proposed after the fact (ATF) (2-08-013). This ATF part of the project is located on private property in and directly adjacent to

the waters of Bodega Bay, Sonoma County. In CDP application 2-10-030, the Applicant also proposes the repair and expansion of the Sandpiper Restaurant and the adjoining bait shop building, including the creation of an outdoor covered patio area with outdoor seating and parking (2-10-030). This part of the project is located on a separate privately owned parcel to the south, also adjacent to Bodega Bay. Both of the project sites are subject to development constraints due to shoreline hazards and flooding, as well as the presence of sensitive marine habitat both onsite and extending offsite.

The Sandpiper restaurant building and the bait shop building were originally constructed prior to the Coastal Act and its predecessor statute. The proposed project for this CDP application would be a renovation and expansion of the restaurant and bait shop buildings to serve as a restaurant. The proposed project for the second CDP application includes the replacement of floating docks and three access ramps at the Porto Bodega Marina, which has served for decades as a private visitor-serving operation with recreational boating and fishing facilities.

In general, although privately owned, the proposed projects would renovate and enhance Coastal Act priority recreational and visitor-serving uses that would improve fishing, boating, and recreational opportunities along the Bodega Bay shoreline. Located adjacent to the Porto Bodega fishing and boating facility, the Sandpiper restaurant provides a unique setting for such a small-scale, visitor serving use. At the same time, however, these same unique site attributes associated with the project raise Coastal Act issues. Specifically, the site is subject to shoreline flooding and other hazards that raise the issue of the need for shoreline protective devices to provide protection from such hazards. As a result, only as conditioned can the projects be found consistent with the Coastal Act.

In order to comply with the applicable requirements of the Chapter 3 policies of the Coastal Act, staff recommends special conditions necessary to avoid or mitigate all significant adverse environmental effects in and adjacent to Bodega Bay to the greatest extent feasible. Such conditions are necessary to find each of the proposed developments consistent with the applicable policies of the Coastal Act. The modified approvable projects require all work to be constructed in a way so as to minimize marine resource and shoreline impacts. Other related mitigations are included to protect coastal resources and minimize coastal hazards at the site.

As conditioned, staff believes that the proposed visitor-serving and recreational developments will provide water-oriented visitor serving and recreational opportunities at a location that has been used for decades for these purposes but will do so in a manner consistent with the Coastal Act. Thus, staff recommends that the Commission approve both of the coastal development permits subject to the recommended conditions. The motions for each of the two CDP applications are found on page 3 below.

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### EXHIBITS

- Exhibit 1 – Project Locations Photo and Map
- Exhibit 2 – Public Access and County Property
- Exhibit 3 – Location Photos
- Exhibit 4 – Bayshore Vicinity Photo
- Exhibit 5 – Project Plans and Photos

## I. MOTIONS AND RESOLUTIONS FOR CDP 2-08-013 AND CDP 2-10-30

### A. MOTION AND RESOLUTION FOR CDP APPLICATION 2-08-013

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed developments. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:*** *I move that the Commission approve Coastal Development Permit Number 2-08-013 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:*** *The Commission hereby approves Coastal Development Permit Number 2-08-013 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Chapter Three policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been*



*incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## **B. MOTION AND RESOLUTION FOR CDP APPLICATION 2-10-030**

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number 2-10-030 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number and 2-10-030 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Chapter Three policies of the Coastal Act. Approval of the permits complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## **II. STANDARD CONDITIONS FOR CDP 2-08-013 AND CDP 2-10-030**

Both permits are granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual,

and it is the intention of the Commission and the Permittees to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

#### A. PERMIT 2-08-013 IS GRANTED SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS:

1. **Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:
  - a. **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on public access and visual resources as well as to maintain best management practices (BMPs) to protect sensitive coastal dune and riparian resources on-site and in the surrounding area, including by using inland areas for staging and storing construction equipment and materials, as feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
  - b. **Construction Methods and Timing.** The plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from sensitive resources and public recreational use areas (including using unobtrusive fencing (or equivalent measures) to delineate construction areas). All work shall take place during daylight hours and all lighting of sensitive habitat is prohibited.
  - c. **BMPs.** The plan shall clearly identify all BMPs to be implemented during construction and their location. Such plans shall contain provisions for specifically identifying and protecting all natural drainage swales (with sand bag barriers, filter fabric fences, straw bale filters, etc.) to prevent construction-related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into Bodega Bay or the Pacific Ocean. Silt fences, straw wattles, or equivalent measures shall be installed at the perimeter of all construction areas. At a minimum, such plans shall also include provisions for stockpiling and covering of graded materials, temporary stormwater detention facilities, revegetation as necessary, and restricting grading and earthmoving during the rainy weather. The plan shall indicate that: (a) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all de-watering operations shall include filtration mechanisms; (b) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event,

such wash water shall not be allowed to enter any natural drainage; (c) concrete rinsates shall be collected and they shall not be allowed to enter any natural drainage areas; (d) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather); and (e) all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day. Particular care shall be exercised to prevent foreign materials from entering the Bay. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or cleaning up improperly contained foreign materials.

- d. **Construction Site Documents.** The plan shall provide that copies of the signed coastal development permit and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- e. **Construction Coordinator.** The plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.
- f. **Notification.** The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

Minor adjustments to the above construction requirements may be allowed by the Executive Director in the approved Construction Plan if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this coastal development permit. The Permittee shall undertake construction in accordance with the requirements of this CDP and the approved Construction Plan.

2. **Public Rights.** By acceptance of this coastal development permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that the Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist in the vicinity of the project site, and that the Permittee shall not use this permit as evidence of a waiver of any public rights that exist in the vicinity of the project site.
3. **Tsunami Safety Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Tsunami Safety Plan to the Executive Director for review and approval. The Tsunami Safety Plan shall clearly describe the manner in which hazards associated with tsunamis will be addressed, including demonstrating that:  
(a) the existence of the threat of tsunamis from both distant and local sources will be adequately communicated to all guests; (b) information will be made available regarding personal safety measures to be undertaken in the event of a potential tsunami event in the area; (c) efforts will be provided to assist physically less mobile guests in seeking evacuation from the site during a potential tsunami event; and (d) staff have been adequately trained to carry out the safety plan. The Tsunami Safety Plan shall at a minimum include the following:
  - a. **Sonoma County Coordination.** The plan shall be prepared in cooperation with the Sonoma County Department of Emergency Services, and shall be in general conformance with any area-wide tsunami safety plan that has been prepared for this section of the coast.
  - b. **Tsunami Information.** The plan shall detail the posting of placards, flyers, or other materials at conspicuous locations at the site, explaining tsunami risks, the need for evacuation if strong earthquake motion is felt or alarms are sounded, and the location of evacuation routes.
  - c. **Tsunami Evacuation Assistance.** The plan shall detail the efforts to be undertaken by staff to assist the evacuation of physically less mobile persons during a tsunami event.
  - d. **Staff Training.** The plan shall detail the instruction to be provided to all employees to assure that the Tsunami Safety Plan is effectively implemented.
  - e. All requirements above and all requirements of the approved Tsunami Safety Plan shall be enforceable components of this coastal development permit. The Permittee shall manage tsunami risk in accordance with the requirements of this CDP and the approved Tsunami Safety Plan.
4. **Assumption of Risk.** By acceptance of this coastal development permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:
  - a. **Natural Hazards.** That the site is subject to natural hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, tidal scour, coastal flooding, and the interaction of same;

- b. **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from the above-identified hazards in connection with this permitted development;
  - c. **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from the above-identified hazards;
  - d. **Indemnification.** To indemnify and hold harmless the Coastal Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to the above-identified hazards; and
  - e. **Property Owner Responsible.** That any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.
- 5. Future Development Restrictions.** By acceptance of this permit, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns that this permit is only for the development described in CDP 2-08-013. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(b) shall not apply to the development governed by CDP 2-08-013. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to CDP 2-08-013 from the Commission.
- 6. Condition Compliance. WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION,** or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement or any other aspect of the permit and its conditions may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
- 7. Other Agency Approval. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the approved project have been granted by the County of Sonoma, California State Lands Commission, California Department of Parks and Recreation, California Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service. Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.
- 8. Final Revised Eelgrass monitoring and Mitigation Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AND COMMENCEMENT OF AUTHORIZED DEVELOPMENT BELOW THE HIGH TIDE LINE,** the applicant shall submit, for the

review and written approval of the Executive Director, a final revised eelgrass monitoring and mitigation plan prepared by a qualified biologist or ecologist. The final plan must include provisions for all of the following:

- a.** A pre-construction eelgrass survey shall be completed during the months of May through August during periods of low tides only. The pre-construction survey shall be completed prior to the beginning of construction below the high tide line and shall be valid for 60 days or until the next period of active growth if construction takes place after the end of the active growth period. The survey shall be in substantial conformance with survey recommendations in “Recommendations Concerning Surveys for Assessing Impacts to Eelgrass,” of the Draft California Eelgrass Mitigation Policy prepared by the National Marine Fisheries Service (NMFS), Southwest Region dated December 7, 2011 (published in the Federal Register March 9, 2012).
- b.** Direct and indirect impacts to eelgrass plants shall be avoided to the maximum extent feasible.
- c.** A post-construction eelgrass survey shall be completed within the first 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period. The survey shall be in substantial conformance with survey recommendations in “Recommendations Concerning Surveys for Assessing Impacts to Eelgrass,” of the Draft California Eelgrass Mitigation Policy prepared by NMFS, Southwest Region dated December 7, 2011.
- d.** Density and extent of vegetative cover shall be estimated at control areas during pre-construction surveys, post-construction surveys, and during annual monitoring. Changes in density and extent of vegetated cover of the surveyed control areas shall be used to account for natural variability of eelgrass growth in interpreting site survey results. Selection of an appropriate control site shall be performed in consultation with staff from the Department of Fish and Game, NMFS, and the Coastal Commission.
- e.** The post-construction survey shall document adverse impacts to eelgrass plants. Adverse impacts to eelgrass shall be measured as the difference between the pre-construction and post-construction estimates of eelgrass cover and density within and adjacent to the remediation areas.
- f.** If post-construction survey results demonstrate to the satisfaction of the Executive Director that eelgrass densities have not decreased and there has been no loss of extent of vegetated cover, then no further monitoring or mitigation is required.
- g.** If post-construction survey results indicate any decrease in eelgrass density or cover in eelgrass beds or patches within and adjacent to the remediation areas, then an eelgrass mitigation and monitoring plan shall be prepared and submitted for the review and approval of the Executive Director. The mitigation methods, the location of the mitigation sites, and the monitoring plan shall be in substantial conformance with the recommendations in “Recommended Measures for Eelgrass Impact Mitigation,” of the

Draft California Eelgrass Mitigation Policy prepared by NMFS, Southwest Region dated December 7, 2011 and shall provide for the following:

- 1) The plans shall provide for an initial transplant area to impact area ratio of 4.82 to 1.
- 2) Within three years of completion of transplanting, the eelgrass mitigation site shall have a minimum of 40% of the coverage of eelgrass and 20% of the density of the control site over an area not less than 1.2 times the area of impact.
- 3) The plan shall provide for mitigation site identification, planting methods, monitoring methods, and schedule. Specific success and monitoring criteria are as follows:
  - i. A minimum of 40% of the coverage of eelgrass and 20% of the density of the control site over an area not less than 1.2 times the area of impact in the first year;
  - ii. A minimum of 85% of the coverage of eelgrass and 70% of the density of the control site over an area not less than 1.2 times the area of impact in the second year;
  - iii. A minimum 100% of the coverage of eelgrass and 85% of the density of the control site over an area not less than 1.2 times the area of impact in years three through five.
- h.** Monitoring methods shall include mapping and random sampling of the eelgrass areas using a sampling size adequate to obtain representative data for the entire mitigation area and control area determine bed size, percent cover, and shoot density.
- i.** A detailed monitoring schedule shall be provided that indicates when each of the required monitoring events will be completed. Monitoring reports shall be provided to the Executive Director, DFG, and NMFS by December 31 of the year in which they are conducted;
- j.** If the impacted eelgrass areas have not met the recovery standard in subsection (c) in five years, the permittee shall submit an application for an amendment to coastal development permit 2-08-013 proposing additional mitigation to ensure all performance criteria are satisfied consistent with all terms and conditions of this permit.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

**B. PERMIT 2-10-30 IS GRANTED SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS:**

- 1. Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittees shall submit two full-size sets of Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be in substantial conformance with the plans submitted to the Coastal Commission (dated October 19, 2011 and titled Existing and Proposed Sandpiper Building Footprint) except that they shall be revised and supplemented to comply with the following requirements:
  - a. **Setbacks.** Consistent with the applicant's proposed project description, the development on parcel designated APN 100-080-002 shall be set back 25 feet from the immediate vicinity of the fault trenches and set back 50 feet along the continued strike of the fault.
  - b. **Parking.** On-site parking of at least 29 spaces shall be provided consistent with County requirements.
  - c. **Design.** The plans shall clearly identify all measures that will be applied to ensure that the project design, including all structures and including all other project elements (e.g., lighting, landscaping, railings, etc.) reduces the appearance of bulk and mass and blends with the surrounding natural environment. At a minimum, exterior materials shall appear natural and non-reflective, including through the use of wood, stone, brick, and earth tone colors. Plans shall clearly identify all structural elements, materials, and finishes (including through site plans and elevations, materials palettes and representative photos, product brochures, etc.).
  - d. **Structural Stability.** The structure shall be designed to withstand coastal hazards, including but not limited to liquefaction, flooding, and potential tsunami runup. Foundation piles shall be limited in size, scale, and number to that required for support and structural stability. The structure shall be supported by end-bearing piles set into unweathered bedrock. Supplemental plans shall be provided that clearly identify all measures to be taken to ensure that the foundation pilings are adequate to provide necessary support and structural stability in light of coastal hazards. The Permittee shall also demonstrate that the pilings are embedded to a sufficient depth in non-liquefiable materials and provide calculations demonstrating a factor of safety against liquefaction of 1.5 pursuant to the guidelines of the Division of Mines and Geology, Special Publication 117.
  - e. **Post-Construction Drainage.** Final Plans shall provide for a post-construction drainage system designed to filter and treat (i.e., designed to remove typical urban runoff pollutants) the volume of runoff produced from each and every storm and/or precipitation event up to and including the 85th percentile 24-hour runoff event for volume-based BMPs and/or the 85th percentile, 1-hour runoff event (with an appropriate safety factor) for flow-based BMPs, prior to discharge. All drainage system components shall be consistent with the following:



- 1) The drainage system and its individual components (such as drop inlets and filtration mechanisms) shall be sized according to the specifications identified in the California Storm Water Best Management Practice Municipal Handbook (California Storm Water Management Task Force, March 1993).
- 2) All development shall incorporate Low Impact Development (LID) BMP strategies and techniques (e.g., limiting impervious surfacing, maximizing infiltration in BMP design, reducing the hydraulic connectivity of impervious surfaces, directing runoff to vegetated areas, etc.) as much as possible.
- 3) The drainage system shall include natural biologic filtration components, such as vegetated filter strips and grassy swales that are vegetated with native plant species capable of active filtration and treatment (e.g., rushes), as much as possible. If grades require, check-dams may be used in such biologic filters.
- 4) The drainage system shall include at least one engineered filtration unit to which all drainage shall be directed prior to any discharge. The engineered filtration unit(s) shall be specifically designed to remove, at a minimum, potential vehicular contaminants, and shall include media designed to remove such contaminants.
- 5) All drainage system elements shall be permanently operated and maintained. At a minimum:
  - a. All filtration/treatment components shall be inspected to determine if they need to be cleaned out or repaired at the following minimum frequencies: prior to October 15th each year; prior to April 15th each year; and during each month that it rains between November 1st and April 1st. Clean-out and repairs (if necessary) shall be done as part of these inspections. At a minimum, all filtration/treatment components must be cleaned prior to the onset of the storm season, no later than October 15th of each year; and (2) Debris and other water pollutants removed from filter device(s) during clean-out shall be contained and disposed of in a proper manner.
- 6) The restaurant shall be designed to minimize runoff of oil and grease, solvents, phosphates, and suspended solids to the storm drain system. Equipment washing/steam cleaning areas will be equipped with a grease trap, and properly connected to a sanitary sewer. If the wash area is to be located outdoors, it shall be covered, paved, have secondary containment, and be connected to the sanitary sewer. Dumpster areas shall be covered and have secondary containment.

All requirements above and all requirements of the approved Revised Project Plans shall be enforceable components of this coastal development permit. The Permittees shall undertake development in accordance with the requirements of this CDP and the approved Revised Project Plans.

**2. Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:

- a. Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on public access and visual resources as well as to maintain best management practices (BMPs) to protect sensitive coastal dune and riparian resources on-site and in the surrounding area, including by using inland areas for staging and storing construction equipment and materials, as feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
- b. Construction Methods and Timing.** The plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from sensitive resources and public recreational use areas (including using unobtrusive fencing (or equivalent measures) to delineate construction areas). All work shall take place during daylight hours and all lighting of sensitive habitat is prohibited.
- c. BMPs.** The plan shall clearly identify all BMPs to be implemented during construction and their location. Such plans shall contain provisions for specifically identifying and protecting all natural drainage swales (with sand bag barriers, filter fabric fences, straw bale filters, etc.) to prevent construction-related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into Bodega Bay or the Pacific Ocean. Silt fences, straw wattles, or equivalent measures shall be installed at the perimeter of all construction areas. At a minimum, such plans shall also include provisions for stockpiling and covering of graded materials, temporary stormwater detention facilities, revegetation as necessary, and restricting grading and earthmoving during the rainy weather. The plan shall indicate that: (a) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all de-watering operations shall include filtration mechanisms; (b) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage; (c) concrete rinsates shall be collected and they shall not be allowed to

enter any natural drainage areas; (d) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather); and (e) all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day. Particular care shall be exercised to prevent foreign materials from entering the Bay. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or cleaning up improperly contained foreign materials.

- d. Construction Site Documents.** The plan shall provide that copies of the signed coastal development permit and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- e. Construction Coordinator.** The plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.
- f. Notification.** The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this coastal development permit. The Permittee shall undertake construction in accordance with the requirements of this CDP and the approved Construction Plan.

3. **Public Rights.** By acceptance of this coastal development permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that the Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist in the vicinity of the project site, and that the Permittee shall not use this permit as evidence of a waiver of any public rights that exist in the vicinity of the project site.
4. **No Future Protective Devices.** By acceptance of this permit, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns, that:
  - a. **Permit Intent.** The intent of this permit is to allow for the approved project to be constructed and used consistent with the terms and conditions of this permit for only as long as it remains safe for occupancy and use without additional bluff or shoreline protective structures or measures beyond ordinary repair and/or maintenance to protect the approved development from natural hazards;
  - b. **Additional Measures Prohibited.** No bluff or shoreline protective structures, including but not limited to additional or augmented piers (including additional revetments, breakwaters, or seawalls), shall be constructed to protect the development approved by this permit in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides or other natural hazards in the future;
  - c. **Section 30235 Waiver.** The Permittees waive, on behalf of themselves and all successors and assigns, any rights to construct shoreline/hazards protective structures that may exist pursuant to Public Resources Code Section 30235;
  - d. **Removal.** The Permittees further agree that they shall remove the development authorized by the CDP if any government agency has ordered that the structures are not to be used due to any of the natural hazards identified above. In the event that portions of the development fall to the Bay before they are removed, the landowner shall remove all recoverable debris associated with the development from the Bay and lawfully dispose of the material in an approved disposal site. Prior to removal, the Permittees shall submit two copies of a Removal Plan to the Executive Director for review and approval. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect Coastal Act resources.
5. **Tsunami Safety Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Tsunami Safety Plan to the Executive Director for review and approval. The Tsunami Safety Plan shall clearly describe the manner in which hazards associated with tsunamis will be addressed, including demonstrating that: (a) the existence of the threat of tsunamis from both distant and local sources will be adequately communicated to all guests; (b) information will be made available regarding personal safety measures to be undertaken in the event of a potential tsunami event in the area; (c) efforts will be provided to assist physically less

mobile guests in seeking evacuation from the site during a potential tsunami event; and (d) staff have been adequately trained to carry out the safety plan. The Tsunami Safety Plan shall be substantially in conformance with the Revised Project Plans (see Special Condition 1), and shall at a minimum include the following:

- a. **Sonoma County Coordination.** The plan shall be prepared in cooperation with the Sonoma County Department of Emergency Services, and shall be in general conformance with any area-wide tsunami safety plan that has been prepared for this section of the coast.
  - b. **Tsunami Information.** The plan shall detail the posting of placards, flyers, or other materials at conspicuous locations throughout the site, explaining tsunami risks, the need for evacuation if strong earthquake motion is felt or alarms are sounded, and the location of evacuation routes.
  - c. **Tsunami Evacuation Assistance.** The plan shall detail the efforts to be undertaken by staff to assist the evacuation of physically less mobile persons during a tsunami event.
  - d. **Staff Training.** The plan shall detail the instruction to be provided to all employees to assure that the Tsunami Safety Plan is effectively implemented.
  - e. All requirements above and all requirements of the approved Tsunami Safety Plan shall be enforceable components of this coastal development permit. The Permittee shall manage tsunami risk in accordance with the requirements of this CDP and the approved Tsunami Safety Plan.
6. **Assumption of Risk.** By acceptance of this coastal development permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:
- a. **Natural Hazards.** That the site is subject to natural hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and the interaction of same;
  - b. **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from the above-identified hazards in connection with this permitted development;
  - c. **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from the above-identified hazards;
  - d. **Indemnification.** To indemnify and hold harmless the Coastal Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to the above-identified hazards; and

e. **Property Owner Responsible.** That any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.

**7. Future Development Restrictions.** By acceptance of this permit, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns that this permit is only for the development described in CDP 2-10-030. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(b) shall not apply to the development governed by CDP 2-10-030. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to CDP 2-10-030 from the Commission.

**8. Other Agency Approval. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the approved project have been granted by the County of Sonoma, California State Lands Commission, California Department of Parks and Recreation, California Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service. Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

#### **IV. COASTAL DEVELOPMENT PERMIT DETERMINATION**

The Coastal Commission retains permitting jurisdiction over historic tidelands, including the property that is the subject of these permit applications. As a result, the standard of review for the proposed projects is the Coastal Act, although the certified Sonoma County LCP can provide non-binding guidance.

##### **A. PROJECT LOCATION**

The proposed projects are situated within the 15.24-acre Porto Bodega Marina and RV Park, at Bodega Bay, Sonoma County. This area is in split jurisdiction between the Coastal Commission and the County of Sonoma. The specific project sites are located in Coastal Commission original jurisdiction, in and adjacent to Bodega Bay at 1355 and 1500 Bay Flat Road. The sites are currently developed with parking, residences, offices, restrooms, a bait and tackle shop and a former restaurant. See project location photo and map in **Exhibit 1**. Separate parcels at 580, 1510, and 1400 Bay Flat Road are also owned by the Applicant, who is the owner of the Marina and RV Park. These parcels are developed with a boat storage area, paths, roads, and parking. One parcel, 1510 Bay Flat Road, appears undeveloped. The Sonoma County LCP notes that Porto Bodega provides affordable housing and that in 1979, 34 existing dwelling units and 14 additional RV hookups existed on site.

Between the two project parcels is a County-owned peninsula extending into Bodega Bay. A public easement extends from Eastshore Road to the County-owned peninsula to provide public access. The peninsula provides public boating and recreational opportunities, housing the Bodega Bay Sport Fishing Center and docks. The area supports public parking, views of the bay, and dock access via a pedestrian ramp.

The State Lands Commission determined that the project sites are landward of the ordinary high water mark (OHWM) and thus they are not on state lands and do not require a lease. Nor is the project site imbued with a public trust easement, as it is located within Rancho Bodega Ranchos, including Rancho Bodega, were confirmed into private ownership and patented by the federal government. The State is precluded from asserting that it acquired sovereign title interest by virtue of its admission to the United States in 1850 pursuant to the holdings in *Summa Corporation v. California*, 466 U.S. 198 (1984). Thus, State Lands does not have a leasing interest at the site nor does the public retain a public trust easement.

In general, the upland terrain at the site is relatively flat with the exception of a sand dune hill on the north side of the property, next to Highway One. Johnson Gulch emerges from two large culverts at the center of the site, next to Eastshore Road where it flows under a bridge and discharges onto the tidal flat. The developed part of the property is devoid of natural vegetation, but vegetation does occur on the undeveloped areas of the property, including the shoreline and tidelands, and within the Johnson Gulch channel. Ornamental plants grow around the existing buildings and there is a stand of eucalyptus trees growing on the sand dune hill. The steep bluff on the east side of the property is densely vegetated with evergreen trees and undergrowth.<sup>1</sup>

The main entrance to Porto Bodega lies at the end of Eastshore Road west of Highway One. Eastshore Road extends roughly north to south between the trailer/mobile home park and the boat storage yard. It ends at a point which includes the shared entrance to the Marina, RV Park and trailer/mobile home park to the west, the old Sandpiper restaurant site located across a small bridge to the east, and the County's boat parking area and loading dock to the south. A public access easement extends from Eastshore Road to the County Property Peninsula (See **Exhibit 2 – Public Access and County Property**). Direct access to Porto Bodega from Highway One is prevented by a steep bluff that lies along the property's highway frontage.<sup>2</sup>

The Sandpiper and Bait Shop buildings site (APN 100-080-002) is located at 1355 Bay Flat Road on a parcel which is bisected between the Coastal Commission original jurisdiction and the County of Sonoma's jurisdiction. It is a 2.7 acre site to the southeast of the marina, adjacent to the coastal waters of Bodega Bay. See **Exhibit 3 - Location Photos**. The project sites are accessed from Bay Flat Road by an existing gravel and asphalt one-way circular driveway. The property is improved with three single family dwellings (718, 485, 1,242 square feet in size), two mobile homes, a 705 square foot restroom/ storage building, and a dilapidated commercial fishing pier (See **Exhibit 4 – Bayshore Vicinity Photo**). Inland of the restaurant site is a vegetated slope, which separates the parcel from Highway One.

The 9.93 acre Marina and RV Park (APN 100-070-020) is located to the west of the Sandpiper

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<sup>1</sup> Porto Bodega Existing Condition. Prepared by Andy Gustavson. Landmark Planning and Permit Services. October 26, 2005.

<sup>2</sup> Ibid.

and Bait Shop buildings. This parcel is located primarily within the Coastal Commission's jurisdiction and encompasses the project site for the dock and ramp replacement project. The site of the dock and ramp replacement is located in the coastal waters of Bodega Bay. Sensitive eelgrass communities have been found in and near the project area. Adjacent to the project site, a dilapidated concrete boat ramp, accessible to the public, extends into the waters of the bay. It is not usable for launching larger craft, but can be used for launching canoes or kayaks. Bayward of the marina is a dry spit of land owned by the County of Sonoma. Inland of the dock and ramp replacement site is the RV Park, bordered by residences on the northwestern portion. Mobile homes are clustered at the northeastern portion of the parcel, which is bordered by Bay Flat Road. Eastshore Road, leading into the Sandpiper and Bait Shop site, borders the eastern side of the parcel.

The project sites are designated Fishing Commercial (CF) by the Sonoma County Local Coastal Plan. This district is designed to create areas for resource support facilities for the commercial fishing industry. The allowed uses are fish buying and selling facilities, fishing supply stores, including bait and tackle stores, warehouses for storage of fishing gear, boats, and trailers and other light industrial and non-residential uses, including restaurants. The Local Coastal Plan Land Use Section VII-67 defines Bodega Bay as the largest general commercial center on the south Sonoma Coast. The project sites are located in Porto Bodega as defined in Section VII-67 in the Local Coastal Plan (LCP). Porto Bodega is considered a commercial fishing dock, and also provides housing in a designated fishing commercial district.

## **B. PROJECT DESCRIPTIONS**

### **Dock and Ramp Replacement**

The Applicant proposes the replacement of an existing floating portion of the docks and three dock access ramps at the marina portion of the property. A portion of this work is after the fact, as an estimated 44% of the replacement has already occurred. The Applicant proposes to replace 2188 lineal feet of floating docks. This includes 1,216 lineal feet on the northern side of the marina and after-the-fact approval of 972 lineal feet replaced on the southern side. The former docks were approximately 4 feet wide. The replacement docks will be approximately 5 feet wide, resulting in 10,940 square feet of dock area. The project includes completely replacing three pedestrian access ramps located above the water at Gates 2, 3, and 5. The replacement ramps, made of new wooden materials, will be slightly larger to conform to County building codes. The existing ramps will be hoisted ashore by mechanical equipment and laid within the construction area, over 300 yards from the waterline to be dismantled and disposed. The replacement ramps will be assembled in the dismantle/assembly area over 300 yards from the waterline and loaded onto a truck, brought to the water line and lifted by mechanized equipment and placed in the location of the former ramps. See proposed project plans and photos in **Exhibit 5**.

### **Restaurant and Bait Shop Expansion**

The Applicant also proposes renovations and additions to the old Sandpiper restaurant building and the bait shop building. One hundred and fifty (150) square feet would be added to the Sandpiper building towards the northeast. The bait shop building will be expanded by 348 square feet to the east and 136 square feet to the west. The project includes the creation of a covered patio between the existing Sandpiper and bait shop structures. The proposed patio is intended for outdoor seating and is 1,872 square feet. Non-structural exterior patio walls will be built around



the patio area. There is no increase to the height of existing structures (including the modified signs). The project proposes 20-24 parking spaces to the north and south of the structures, which includes some existing parking.

### **C. DEVELOPMENT HISTORY**

According to available information, the site was originally developed with structures prior to CDP requirements. Over the years, development has also occurred on the site without permits. On the Marina and RV Park parcel, portions of the wooden docks and ramps were replaced in 2007, including new flotation devices as well as new electrical conduit (without electrical wire in the new conduit at the time work was stopped). The Applicant is seeking to resolve the outstanding violations recorded in 2007 for the unpermitted work on the ramps and the partial replacement of the floating docks through CDP application 2-08-013. On the Sandpiper parcel, the Applicant has abated previous violations cited by the County of Sonoma by demolishing unpermitted development. Thus all outstanding violations on the property have already been addressed, or will be addressed by this permit.

#### **Coastal Commission CDP History**

The Coastal Commission has reviewed previous development at the site including maintenance dredging and dredging marine slips (permit application numbers: 199-80, 2-82-024, 1-87-130); dock, pilings, and breakwater repair and maintenance (permit application numbers: 2-83-033, 2-85-012, 1-87-130, 2-09-015); new docks (permit application number: 1-89-180), restroom and shower installation (permit application number: 1-90-018); and RV Park development and expansion (permit application numbers: 1-89-248 and 1-98-077).

### **D. HAZARDS**

#### **Applicable Policies**

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid the need for landform altering protective measures in the future. Section 30253 provides, in applicable part:

*Section 30253. New development shall do all of the following:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Although not the standard of review, the Sonoma County LCP can provide relevant guidance. The LCP designates the project site as “Sensitive and Hazardous Lands.”

*Sensitive and Hazardous Lands.* *Bodega Bay is built on the San Andreas fault zone and is subject to major seismic activity. The surface geology of much of the area is unstable. Sand*

*dunes, riparian habitats and wetlands are among the sensitive areas found in Bodega Bay. Development must be carefully located to avoid disturbance of such areas.*

*A sensitive and hazardous designation means development is prohibited unless the specific project proposed on such lands can be undertaken without adversely affecting or disturbing sensitive natural resources, is engineered to minimize risk of geologic hazards, and meets the requirements of local ordinances and state and federal regulations. Waterfront lots west of Highway 1 are so designated because of geologic instability, visual sensitivity, and recreation potential. Other designated sensitive and hazardous areas include undeveloped dunes land and beach deposits west of Eastshore Road, and a riparian corridor and freshwater marsh east of the junction of Eastshore and Bay Flat Roads. Although existing subdivided lots west of Eastshore Road are recognized and are not designated sensitive and hazardous, no further land divisions for residential use are proposed in this area.*

Specifically, the LCP notes that Porto Bodega is located in geological unstable area.

*Porto Bodega. Porto Bodega is a commercial dock and trailer housing area designated fishing commercial. It is located on the San Andreas Fault and the geology of the site is not stable. A special study of Porto Bodega is being conducted to determine future potential uses of the site, taking into account geologic and seismic problems.*

Furthermore, the LCP offers specific recommendations for the Porto Bodega area and Sensitive and Hazardous lands.

*Land Use Recommendations for Bodega Bay*

*18. Prohibit development on Sensitive and Hazardous lands unless the project can be accomplished according to criteria specified in the preceding Sensitive and Hazardous Areas discussion.*

*19. Prohibit further residential land divisions west of Eastside Road due to the unstable nature of the area's surface and bedrock geology.*

...

*27. Require completion of the Porto Bodega Study prior to any land use changes in the area.*

...

*29. Consider requiring intersection improvements at Highway 1 and Eastside and/or Bay Flat Roads in conjunction with development along Eastside Road.*

## **Analysis**

### *Geotechnical Reports*

Several geotechnical reports have been prepared for this site over the years. Most recently, the Applicant provided a geotechnical engineering report prepared by BACE Geotechnical

Engineers (BACE) dated October 1, 2009<sup>3</sup> addressing fault rupture and setback, 100-year flood elevation and, evaluating the site's tsunami hazards. The report recommended adhering to fault setbacks, including a 25-foot setback in the immediate vicinity of the fault trenches where the fault was accurately located, and a 50 foot setback along the continued strike of the fault where it is concealed. To mitigate the concern of liquefaction, the report recommended that the structures be supported on cast-in-place drilled piers penetrating the underlying supporting bedrock. Driven pre-cast or concrete filled pipe piles were suggested as potential alternatives. The report suggested that the new foundations would likely be installed within the existing buildings without demolition, and also suggested that connection elements between the piers and existing foundation should be designed. The report recommended piers at a minimum of 24 inches in diameter and spaced no closer than three pier diameters, center to center. Additionally, it recommended that the piers penetrate a minimum of ten feet into bedrock or drilling refusal.

### *Site Characteristics*

As previously described, the project site is located in an area subject to a combination of natural hazards due to its location in and adjacent to the waters of Bodega Bay and within the active San Andreas Fault Zone (north coast segment) which runs directly through the Bay. The active Point Reyes fault is located approximately 10 miles southwest of the site and the active Rodgers Creek Fault is located approximately 20 miles northeast of the site. Future large magnitude earthquakes originating on these or other nearby faults are expected to cause strong ground shaking at the site.<sup>4</sup> The portions of the site which are not inundated by Bay waters are mostly covered by fill. The 2009 geotechnical investigation by BACE provided a subsurface profile of the site and characterized most of the Porto Bodega Development as being artificial fill over bay mud. Test borings at the Sandpiper restaurant and Bait Shop Buildings indicate that the site is underlain by approximately 4 inches to 21 feet of weak, very loose fill and native soils that are highly permeable, at times saturated by high ground water conditions and liquefiable.<sup>5</sup> Another report prepared for the area found the fill material consists of sand with some minor clay from dredge spoils with debris. The fill appears to have been pushed, dumped, or pumped into place with little or no ground preparation.<sup>6</sup> The portions of the site that are not within Bay waters are approximately five feet above mean sea level<sup>7</sup> and are separated from the waters of the bay by revetments and a low-lying gradual slope vegetated by iceplant. Boring tests submitted by the Applicant indicate that hard bedrock was found at a depth of ten feet at a boring site to the northeast of the Sandpiper restaurant. At two boring sites towards the east and the south of the bait shop building, bedrock was found at approximately 21.5 feet and 24 feet.<sup>8</sup>

The Applicant's 2009 geotechnical report describes anticipated flood elevations at the site over the next 75 years using an estimated sea level rise of 45.6 inches, or 3.8 feet, over that

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<sup>3</sup> Geotechnical Investigation – Porto Bodega Sandpiper Restaurant and Bait Shop Buildings. Report# 12172.1. Prepared by BACE Geotechnical Engineers. October 1, 2009.

<sup>4</sup> Geotechnical Investigation – Porto Bodega Sandpiper Restaurant and Bait Shop Buildings. Report# 12172.1. Prepared by BACE Geotechnical Engineers. October 1, 2009.

<sup>5</sup> Ibid.

<sup>6</sup> Phase II Environmental Site Assessment. Porto Bodega Marina and RV Park. 1500 Bay Flat Road, Bodega Bay, California. Prepared by Versar. Versar Project Number 110272.0006.015. May 11, 2007.

<sup>7</sup> Ibid. Source cites the USGS 7.5 minute series topographic map of Bodega Head, California Quadrangle, 1972.

<sup>8</sup> Geotechnical Investigation – Porto Bodega Sandpiper Restaurant and Bait Shop Buildings. Report# 12172.1. Prepared by BACE Geotechnical Engineers. October 1, 2009.

timeframe, citing the State of California Sea-Level Rise Interim Guidance Document.<sup>9</sup> The report indicates that a significant portion of the projected rise will occur toward the end of the economic lifespan of the structures. High tide levels at an average of 3.8 feet higher than 2009 levels could overtop the fill slope bordering the harbor during a combination of severe storm and high tide events.

Review of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), Sonoma County, California and incorporated areas, Panel 810 of 1150, Map Number 06097C081 OE, dated December 2, 2008 indicates that the southwest side of the restaurant and bait shop buildings are located on or just adjacent to Zone VE -- the 1% annual chance floodplain boundary. Zone VE is a coastal area with a 1% or greater chance of flooding and an additional hazard associated with storm waves. The Sandpiper parcel is designated EL 15. These areas have a 26% chance of flooding over the life of a 30-year mortgage. The marina parcel is designated Zone AE with EL 9 on the FIRM.

Clearly, the site is subject to significant risks. Although the Applicant's analysis determined that the shoreline near the site appears to be in near-equilibrium state, it did not consider future expected changes, including due to expected sea level rise. Changes due to sea level rise may be especially significant at this site due to its location in and adjacent to Bodega Bay, as well as its low elevation.

### **Coastal Flooding**

The proposed Sandpiper restaurant project is not designed to avoid and minimize risks from coastal flooding, including from sea level rise, as required by the Coastal Act. However, conditions can be imposed to reduce these risks. First, the proposed project would not be able to withstand future flooding and wave run-up conditions because of its proximity to the bay and its low elevation. However, future risk to the site due to sea level rise or other factors can be mitigated through a requirement to remove the proposed structures when they are no longer safe to occupy, and with a prohibition on future shoreline protection. Therefore, Special Condition 4 of 2-10-030 requires such removal to occur and prohibits future shoreline protection. For purposes of this condition, the structures would be considered unsafe when any government agency has ordered that the structures are not to be used or occupied due to any of the hazards at the site. As such, although long-term stability cannot be assured, as conditioned, new development would not require additional, more substantial protective measures in the future inconsistent with the provisions of section 30253, because it would be removed when it is in danger, as opposed to being further protected, and therefore, with respect to wave run-up and related coastal hazards, the project, as conditioned, would be consistent with Coastal Act Section 30253.

### **Tsunamis**

The site is also subject to hazards due to tsunami inundation. The CalEMA tsunami inundation maps indicate that the site would be inundated by tsunami flooding.<sup>10</sup> To minimize these risks,

<sup>9</sup> Coastal and Ocean Working Group of the California Climate Action Team, *State of California Sea-Level Rise Interim Guidance Document*, October 2010.

<sup>10</sup> California Geological Survey. State of California Department of Conservation. Official Statewide Tsunami Inundation Maps - Coordinated by CalEMA. Online. Accessed March 11, 2013. Available: [http://www.conservaion.ca.gov/cgs/geologic\\_hazards/Tsunami/Inundation\\_Maps/Sonoma/Documents/Tsunami\\_Inundation\\_BodegaHead\\_Quad.pdf](http://www.conservaion.ca.gov/cgs/geologic_hazards/Tsunami/Inundation_Maps/Sonoma/Documents/Tsunami_Inundation_BodegaHead_Quad.pdf)

the Commission's geologist and engineer recommend that appropriate warning signs be placed at the project site to alert guests to the hazards present and give appropriate instructions for evacuation during strong earthquake events. They further recommend that the Applicant be required to work with the County of Sonoma to ensure that visitors are aware of any tsunami warning systems (e.g., alert sirens, strong motion alarms) that may be put in place.

To assure that the proposed new development minimizes risks to life and property in areas of high geologic hazard due to tsunami inundation, the Commission attaches Special Condition 3 to CDP 2-08-013 and Special Condition 5 to CDP 2-10-030. This special condition (Tsunami Safety Plan) requires that prior to issuance of the coastal development permit, that the Applicant submit for the review and approval of the Executive Director, a tsunami safety plan. The plan would detail tsunami hazard response materials to be provided to restaurant guests including hazard zone maps, evacuation routes, and include a summary of local warning plans by the Sonoma County Department of Emergency Services.

In addition, Special Condition 1 of 2-10-030 requires the Sandpiper projects to be designed to withstand potential tsunami run-up. Thus, as conditioned, the proposed project would be designed so as to minimize risks to life and property from tsunami inundation consistent with the Coastal Act.

### **Liquefaction**

The site is also subject to liquefaction hazards. Liquefaction is a process by which sediments below the water table temporarily lose strength and behave as a viscous liquid rather than a solid, reducing the bearing strength of the soil. When liquefaction is accompanied by some form of ground displacement or ground failure it can be destructive to the built environment. Adverse effects of liquefaction to structures can take many forms, including lateral spreading of foundations, uneven building settlement, and increased lateral pressure on retaining walls. Buildings subjected to liquefaction-related damages can shift, tilt, or be displaced off of their foundations.

Special Condition 1 of permit 2-10-030 requires the Applicant to found the entire restaurant structure on end-bearing piles set into unweathered bedrock. A foundation system would provide protection against damage due to liquefaction of the soils overlying the bedrock, appropriately mitigating and minimizing the liquefaction hazard with respect to the principal structures. This special condition ensures these proposed measures would be carried out by requiring the Applicant to submit final foundation plans for the review and approval of the Executive Director that include provisions for constructing site structures on end-bearing piles set into unweathered bedrock. Finally, in recognition of liquefaction and other geological hazards, the developments are proposed to be set back 25 feet from the immediate vicinity of the fault trenches and 50 feet along the continued strike of the fault.

As the development has been proposed and conditioned to provide a foundation designed to withstand potential ground settlement and dislocation associated with soil liquefaction, the approved restaurant structures will be located so as to minimize risks to life and property from liquefaction, as required by Section 30253 of the Coastal Act.

### **Long-Term Stability, Maintenance, and Risk**

Coastal Act Section 30253 requires the project to assure long-term stability and structural integrity, minimize future risk, and avoid additional, more substantial protective measures in the future. For the proposed project, the main Section 30253 concern is assuring long-term stability. This is particularly critical given the dynamic shoreline environment within which the proposed project would be placed. In this case, because assuring long-stability through project design is not possible, as described above, the project has been conditioned for removal of the structures when they are no longer safe to inhabit.

In terms of recognizing and assuming the hazard risks for shoreline development, the Commission's experience in evaluating proposed developments in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see Special Condition 6 of CDP 2-10-030 and Special Condition 4 of CDP 2-08-013).

As noted above, natural disaster could result in destruction or partial destruction of the proposed restaurant development. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the shore or on an adjacent property. Therefore, the Commission attaches Special Condition 4 to permit 2-10-030, which requires the landowner to accept sole responsibility for the removal of any structural debris resulting from coastal hazards that impact the site, and requires that the landowner agree to remove the structures should the threat from coastal hazards reach the point where a government agency has ordered that the structure not be used or occupied.

### **Conclusion**

The project is located in an area of natural hazard. Anticipated flood elevations at the site over the next 75 years, incorporating sea level rise will impact the structures during their economic life. Special Conditions 3, 4, and 5 of CDP 2-08-013 and Special Conditions 1,4, 5, 6 and 7 of CDP 2-10-030 address natural hazards and modify each project so that it can be found consistent with Coastal Act Section 30253.

## **E. BIOLOGICAL AND MARINE RESOURCES**

### **Applicable Policies**

Coastal Act Section 30230 requires that marine resources be maintained, enhanced and restored. New development must not interfere with the biological productivity of coastal waters or the continuance of healthy populations of marine species. Coastal Act Section 30230 states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Coastal Act Section 30233 requires that development in wetlands shall not adversely impact their functional capacity and shall be permitted when there is no feasible less environmentally damaging alternative and feasible mitigation measures have been applied. Coastal Act Section 30233 states, in relevant part:

*The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged depths on existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

## **Sonoma County LCP**

Although not the standard of review in this case, the certified Sonoma County Local Coastal Program can offer non-binding guidance. The LCP designates Bodega Harbor as an area of high natural resource value, combined with intensive activities of commercial and sport fishing, passive recreation, and educational institutions. The natural resources include a salt marsh which is rare on the northern California coast and which would benefit from restorative measures; tidal mud flats; and freshwater-brackish water on the west side and north end of the harbor. The LCP specifically calls out the Bodega Harbor Tideflats in the Environmental Resources Section.

New development near sensitive habitat areas in the coastal zone of Sonoma County is required to be sited and designed to prevent impacts which may degrade these areas. The LCP restricts construction of new structures between 100 and 300 feet of existing wetlands unless an environment assessment finds the wetland would not be affected by construction of the structure.

## **Analysis**

### *Biological Reports*

The Applicant has provided a biological report prepared by WRA Environmental Consultants, dated October 2, 2007. Approximately 18 acres of eelgrass were found at and around the site. The most extensive eelgrass bed covers the majority of the western portion of the site, ranging in density from approximately 4 to 80 stems per square meter. Smaller eelgrass beds were present in the eastern portion of the site, ranging in density between approximately 3 and 80 stems per square meter.<sup>11</sup> Approximately 0.3 acres of tidal wetlands were also observed at the site. These tidal wetland areas were dominated by pickleweed (*Salicornia virginica*) and marsh jaumea (*Jaumea carnosa*). In addition, much of the shoreline in the surrounding area is comprised of riprap and does not support tidal marsh vegetation. Offshore portions near the project area are comprised of tideflats and open water, areas that have been designated as sensitive by the Sonoma County LCP. Upland areas above the tidal wetlands and high tide line are developed and do not contain sensitive habitats as defined in the LCP or Coastal Act.

The proposed project involves development in the waters and on the shoreline of Bodega Bay, which has the potential to adversely impact marine and land resources, including sensitive habitat, wetlands, and water quality. The shallow waters and wetlands of Bodega Bay provide habitat and food sources for marine flora and fauna, which make use of both the aquatic and terrestrial environments provided in this area of the Bay.

### **Eelgrass Beds**

Eelgrass (*Zostera marina*) is a marine plant that grows in clear, well-lit, shallow coastal waters and provides shelter and spawning habitat for fish and invertebrates. It is widely recognized as one of the most productive and valuable habitats in shallow marine environments. The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act set forth Essential Fish Habitat provisions to identify and protect important habitats of federally managed marine and anadromous fish species. Eelgrass beds are considered a Special Aquatic Site by the U.S. Army Corps of Engineers (ACOE), CDFG, USFWS, and NOAA Fisheries. Eelgrass habitat

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<sup>11</sup> "Eelgrass and habitat survey at Porto Bodega, Bodega Bay, California." Prepared by WRA Environmental Consultants. October 2, 2007.



is regulated under Section 404 of the Clean Water Act and is considered Essential Fish Habitat by NOAA Fisheries.

Though portions of the bay still contain fairly large eelgrass beds, the area of the proposed dock replacement project, within the marina, does not contain extensive eelgrass. In addition, development in and along Bodega Bay has resulted in changes to the historic extent of eelgrass along these shores. The waterfront area has been heavily used by commercial and recreational fishing boats for decades. As a result, fringing eelgrass beds and benthic environments that once existed have become fragmented and only remnant patches of eelgrass beds exist in areas where favorable ambient conditions prevail to support growth. Eelgrass thrives in a very narrow range of environmental conditions including shallow water with minimal turbidity and a mud or sandy substrate with good exposure to sunlight (i.e., minimal shading). Healthy eelgrass beds thrive where there is little development or disturbance of shallow (i.e., less than 10-foot) intertidal areas. Water clarity is good and adequate sunlight is available to support colonization and retention of eelgrass. In contrast, in many instances around the Bay, structures such as buildings, piers, and docks have encroached into this shallow intertidal zone and the eelgrass has retreated.

Several eelgrass beds totaling approximately 18 acres were found in the vicinity of the proposed docks and ramps. The proposed floating docks and pedestrian ramps would avoid these significant eelgrass patches. Other existing eelgrass bed areas in the project vicinity could also potentially be impacted by construction activities and/or by the shading of sunlight from the new development.

With respect to Coastal Act policy requirements, marine resources must be protected and restored (Section 30230). New fill within the marine environment may be approved for limited uses, provided that the proposed development is the least environmentally damaging alternative and all feasible mitigation measures have been applied to minimize adverse impact to the marine environment (Section 30233). New development must also be consistent with all other applicable marine resource protection policies. As noted above, the proposed project includes a request for new fill to support recreational and commercial boating facilities and public access to the Bay.

As proposed, the private dock and boat facilities that would be replaced are designed to minimize impacts on existing eelgrass. In addition, as discussed below, Special Condition 1 of CDP 2-08-013 and Special Condition 2 of CDP 2-10-030 require each project to adhere to construction best management practices which will reduce the potential for increased turbidity and other water quality issues that could adversely impact eelgrass beds. The proposal includes retaining the floating docks and ramps with only a minor expansion, as compared to their current configuration. Finally, the proposed design will avoid the existing larger eelgrass beds that are located west of the site. However, there is a potential for adverse impacts to eelgrass, through an increase in shading and/or through adverse impacts due to construction activities.

Therefore, in addition to avoidance measures, to mitigate for all construction impacts, the Applicant will be required to survey the eelgrass beds in the vicinity of the project both before and after construction, and annually thereafter for 3 years. Remedial measures may be necessary to proportionally offset any uncompensated reduction and to ensure that eelgrass impacts are properly mitigated. For projects concerning eelgrass, the Commission has begun referencing the December 7, 2011 NOAA-Fisheries Draft California Eelgrass Mitigation Policy explained further below.

To address potential eelgrass impacts associated with the proposed remediation project, the Applicant must prepare an eelgrass monitoring plan (Special Condition 8 of CDP 2-08-013 ), which generally describes the pre- and post-construction monitoring and contingency mitigation plan for eelgrass in the event that eelgrass is impacted by the proposed project. The Commission's staff ecologist, Dr. John Dixon has indicated that the required plan should use the standards, protocols, and other specifications for eelgrass surveys, mitigation, and monitoring in conformance with the provisions of December 7, 2011 NOAA-Fisheries Draft California Eelgrass Mitigation Policy. The draft policy was published in the Federal Register on March 9, 2012, and contains minimum requirements the Commission considers necessary for the protection of eelgrass habitat within on-site tidal wetlands. The NOAA-Fisheries draft policy provides suitable guidelines for conducting eelgrass surveys, assessing eelgrass impacts, and developing eelgrass mitigation plans consistent with the requirements of Sections 30230, 30231, and 30233 that the project maintain, increase, and enhance the biological productivity and functional capacity of the habitat. Since its publication, the Commission has required adherence to certain provisions of the draft policy for CDP applications on the North Coast with potential eelgrass impacts (e.g., CDP Nos. 1-12-004 and 1-10-035-A).

Therefore, Special Condition 8 of CDP 2-08-013 requires the Applicant to submit an eelgrass mitigation and monitoring plan for the Executive Director's review and approval and commencement of authorized development below the high tide line. The final plan must include provisions for, in part, the following: (1) a pre-construction eelgrass survey to be completed during the months of May through August in substantial conformance with survey recommendations in "Recommendations Concerning Surveys for Assessing Impacts to Eelgrass," of the Draft California Eelgrass Mitigation Policy prepared by the National Marine Fisheries Service (NMFS), Southwest Region dated December 7, 2011 (published in the Federal Register March 9, 2012); (2) a post-construction eelgrass survey to be completed within the first 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period; (3) if post-construction survey results indicate any decrease in eelgrass density or cover in eelgrass beds or patches within and adjacent to the remediation areas, then an eelgrass mitigation and monitoring plan is to be prepared and submitted for the review and approval of the Executive Director; (4) the mitigation methods, the location of the mitigation sites, and the monitoring plan are to be in substantial conformance with the recommendations in Appendix D, "Recommended Measures for Eelgrass Impact Mitigation," of the Draft California Eelgrass Mitigation Policy prepared by NMFS, Southwest Region dated December 7, 2011, including, in part, (a) an initial transplant area to impact area ratio of 4.82 to 1; and (b) within three years of completion of transplanting, the eelgrass mitigation site must have a minimum of 40% of the coverage of eelgrass and 20% of the density of the reference site over an area not less than 1.2 times the area of impact; (5) a detailed monitoring schedule; and (6) if the impacted eelgrass areas have not met the recovery standard in five years, the permittee shall submit an application for an amendment to CDP 2-08-013 proposing additional mitigation to ensure all performance criteria are satisfied consistent with all terms and conditions of this permit.

The requirements of the special condition differ from the NOAA-Fisheries draft policy in that Special Condition 8 requires mitigation for impacts to eelgrass habitat totaling less than 10 square meters in size whereas the NOAA-Fisheries draft policy does not necessarily require mitigation for such smaller amount of eelgrass habitat impact. The Commission finds that even

the loss of eelgrass habitat less than 10 square meters in size still constitutes a significant adverse impact and the Commission has consistently required eelgrass mitigation for even the loss of small amounts of eelgrass. The NOAA Fisheries' standard relates to whether the loss of a certain amount of habitat would jeopardize the continued existence of certain threatened and endangered species like salmon. Eelgrass habitat is protected only in relation to the need to sufficiently protect habitat for endangered or threatened species to prevent jeopardizing the continued existence of the targeted species. Therefore, some impacts to eelgrass habitat that do not threaten the targeted threatened or endangered species are acceptable under the NOAA-Fisheries draft policy. The Coastal Act includes different standards for the protection of eelgrass habitat. Sections 30230, 30231, and 30233 of the Coastal Act require that approved wetland dredging and filling projects provide "feasible mitigation to minimize adverse environmental effects" and that development maintain "the biological productivity and quality of coastal waters, estuaries, and wetlands." The Coastal Act protects the entire wetland habitat, not just endangered species, and mitigation for eelgrass impacts of less than 10 square meters is still necessary to find that adverse environmental effects will be minimized and biological productivity maintained.

In sum, the proposed fill associated with the replacement of the commercial boating facilities is an allowable use under Coastal Act Section 30233. While the proposed replacement may result in the loss of a small amount of eelgrass, the proposed replacement project is the least environmentally damaging alternative. Finally, Special Conditions are attached that will ensure restoration and enhancement is carried out, such that feasible mitigation measures are provided to minimize the adverse effects of the replacement project on eelgrass. The project, as conditioned, is therefore consistent with Sections 30230 and 30233 of the Coastal Act.

### **Water Quality**

With respect to water quality, marine resources must be protected and restored (Section 30230). New development within the marine environment may be approved for limited uses, provided that the proposed development is the least environmentally damaging alternative and all feasible mitigation measures have been applied to minimize adverse impacts to the marine environment (Section 30233). New development must also be consistent with all other applicable marine resource protection policies. Coastal Act Section 30230 also requires the maintenance, enhancement, and, where feasible, the restoration of marine resources. In addition, biological productivity and water quality are protected through Coastal Act Section 30231. Section 30233 allows for development that does not adversely impact the functional capacity of wetlands. Section 30233 also requires that there is no feasible less environmentally damaging alternative and that feasible mitigation measures are applied.

The project sites are located immediately adjacent to and in the waters of Bodega Bay, as well as the riparian corridor that separates the northern parcel from the southern parcel. The proposed construction activities associated with the development could lead to adverse impacts on coastal waters and Bay resources, including drainage and runoff from the project that could potentially result in adverse impacts on Bodega Bay water quality. In particular, those activities include the removal and replacement of existing structures, including the docks and ramps. The project requires work over and adjacent to shallow coastal waters, which could lead to potential adverse water quality impacts.

Best management practices are proposed by the Applicant to minimize impacts from restaurant renovation and from the dock and ramp removal and replacement, including such measures as

debris control and chemical leaching prevention. In addition to the proposed measures, impacts to water quality during construction can readily be minimized through the development and implementation of a construction plan that, at a minimum, includes identification of all construction and staging areas, all construction methods and timing, and all construction BMPs (i.e., silt fences, straw wattles, washing/refueling areas, spill containment measures, site cleanup procedures, waste disposal, etc.), including those designed to prevent release of construction-related materials, liquids, soil, and debris into the Bay. Special Condition 1 of CDP 2-08-013 and Special Condition 2 of CDP 2-10-030 require the Applicant to implement specific mitigation measures regarding material containment, installation procedures, construction staging, and debris disposal during all activities which impact the bay and intertidal mudflats. These mitigation measures and construction BMPs include, at a minimum, that heavy-duty netting shall be installed beneath all work areas to collect construction discards and that a containment boom must be placed into the Bay to capture all debris that falls into the water; the netting and boom shall be cleaned daily or as often as necessary to prevent accumulation of debris; and all wastes shall be disposed of in the appropriate manner. The BMPs identified above are typical requirements for work over and into the Bay, and are adequate to satisfy the requirements of Coastal Act Section 30231 (see Special Condition 1 of CDP 2-08-013 and Special Condition 2 of CDP 2-10-030).

To ensure maximum public notification and good construction relations, the CDP and the construction plan must also be kept on site and all persons involved in construction briefed on the content and requirements of them, and a construction coordinator must be designated and be available to answer questions and also investigate complaints and take remediation action if necessary 24 hours per day for the duration of the project (see Special Condition 1 of CDP 2-08-013 and Special Condition 2 of CDP 2-10-030).

In addition, because the proposed Sandpiper project, including the parking lot and restaurant, has the potential to cause adverse impacts to water quality from pollutants in storm water runoff, Special Condition 1 of CDP 2-10-030 requires the site to be designed with a drainage system that can filter and treat runoff to reduce pollutants that could adversely impact water quality. In addition, this special condition requires the restaurant to be designed to minimize runoff of oil and grease, solvents, phosphates, and suspended solids to the storm drain system. Equipment washing/steam cleaning areas must be equipped with a grease trap, and properly connected to a sanitary sewer. If the washout area is to be located outdoors, it must be covered, paved, have secondary containment, and be connected to the sanitary sewer. Dumpster areas will be covered and have secondary containment.

## **Conclusion**

The floating docks and ramps support a private recreational boating facility which is an allowed use for the existing fill in the bay. The proposed project is mostly an in-kind replacement of the existing structures, and therefore new fill will be minimized. As conditioned, the Commission concludes that there are no feasible less environmentally damaging alternatives to the approved project, and that it appropriately protects coastal waters, water quality, and marine resources as directed by Sections 30230 and 30231 of the Coastal Act. Required conditions include all relevant authorizations; final project plans for the structures, including the restaurant and bait shop buildings, and outdoor patio and seating; pre and post-construction BMPs; and mitigations for potential impacts and disturbance to the marine environment. With the inclusion of mitigation

measures designed to prevent adverse impacts from construction activities, and to protect resources of the marine environment, the project conforms to the marine resource protection requirements of Coastal Act Sections 30230 and 30231, and 30233(a).

## **F. PUBLIC ACCESS AND RECREATION**

### **Applicable Policies**

Coastal Act Sections 30210 through 30224 specifically protect public access and recreational opportunities, including visitor-serving resources. In particular:

***Section 30210:** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211:** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30212(a):** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with the public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

*Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 2 of Article XV of the California Constitution.*

***Section 30213.** Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

***Section 30220.** Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

***Section 30221.** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

***Section 30223.** Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

***Section 30224:** Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching*

*facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

Finally, the Coastal Act protects special communities that are popular visitor destinations, like Bodega Bay. Coastal Act Section 30253(5) states that:

*Section 30253(5). Where appropriate, protect special communities and neighborhoods, which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

*Section 30604(c). Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).*

### **Sonoma County LCP**

The certified LCP also includes policies protecting public access and visitor-serving uses. It protects oceanfront land for open space and recreation. The LCP section on Shoreline Access cites Coastal Act Sections 30212(a) and 30604 (as stated above).

### **Analysis**

The public access and recreation policies of the Coastal Act and the LCP require public recreational access opportunities to be maximized, including visitor-serving facilities, especially lower cost visitor facilities and water-oriented activities, and protect areas at and near the shoreline for these purposes. As previously described, the proposed projects are located in, and would renovate, a privately owned commercial fishing and recreation area. As discussed above, because the project sites are located within Rancho Bodega, they were confirmed into private ownership by the federal government and the State is precluded from asserting either a sovereign or public trust interest in the property. Although located on private property, the Porto Bodega Marina and RV park have provided recreational opportunities for many decades.

Adjacent to the project sites, the docks at the western side of the Marina's entrance to the bay are located over County-owned tidelands. In addition, the ramp and docks located on the County-owned peninsula situated between the two project parcels provide public boating and recreational opportunities. The County-owned peninsula houses the Bodega Bay Sport Fishing Center and allows for public parking, views of the bay, and dock access via a pedestrian ramp. (See Exhibit 2). The County has confirmed that neither of the proposed projects is located within these County Tideland Areas. Therefore, these adjacent public access areas would not be adversely affected by the proposed projects. (See Exhibit 2). Further, other existing public access to the shoreline would also remain unaffected by the proposed projects, including: (1) a public access easement across a portion of the applicant's property; (2) East Shore Road; and (3) Bay Flat Road. (See Exhibit 2). The above-identified publicly owned easement and fee title areas are also likely to be renovated in the near future and such renovations can include signage further highlighting their public availability. To ensure these areas remain protected, Special Condition 2 of CDP 2-08-013 and Special Condition 3 of 2-10-030 expressly acknowledge that neither of these approvals shall be construed as a waiver of any public rights that exist in the vicinity of the

project sites and that the Permittee shall not use either of the CDPs as evidence of a waiver of any public rights that exist in the vicinity of the project sites.

Although the project site is located between the first public road and the sea, the development does not adversely affect public access. The replacement and renovation of the proposed developments do not result in a barrier to public coastal access. Furthermore, the development does not significantly change the nature or intensity of use of the site and thus does not create any new demand for public access or otherwise create any additional burdens on public access.

Given the immediately adjacent public access easement and recreational amenities and the fact that the proposed developments, which themselves are visitor serving and water-oriented recreational facilities, do not create additional demand for public access, the proposed projects can be found consistent with the public access policies of the Coastal Act.

### **Conclusion**

As proposed, the project would support and expand recreational and visitor-serving uses on Bodega Bay with the replacement of dilapidated docks and ramps and re-establishment of a restaurant in the former Sandpiper restaurant and bait shop buildings. The proposed projects provide water-oriented visitor-serving recreational opportunities at this important site along Bodega Bay. As such, the projects can be found consistent with the Coastal Act policies discussed in this finding.

## **G. VISUAL AND SCENIC RESOURCES**

### **Applicable Policies**

Coastal Act Section 30251 Scenic and visual qualities states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall ... restore and enhance visual quality in visually degraded areas...*

The Sonoma LCP offers additional guidance on visual and scenic resources:

*Bodega Bay is a vital coastal village, with a range of services and employment. The scale and character of Bodega Bay is worthy of protection.*

*Design Compatibility with Natural Features. New development should respect the natural setting. Except for Bodega Bay, and other historic areas, construction materials, colors, and architectural features should be carefully chosen to blend with landscape features of the site so that structures and nature compliment one another and development has a minimum impact on the site.*

*Building Scale. An issue closely related to integration of structural design with the physical conditions of the site is that of scale, the relationship of the size of the structure to its surrounding features, both natural and man-made.*

### *Commercial Design*

*"...it would be appropriate for new commercial construction to reflect the nautical character of the harbor with wooden buildings of simple design."*

Furthermore, the LCP states:

- 1. New structures proposed within a scenic view shed area shall, to the maximum extent feasible, be designed and sited to preserve existing views of the ocean and shoreline as viewed from scenic corridor routes.*
- 2. New structures proposed within a scenic view shed area shall, to the maximum extent feasible, be screened from scenic corridor route view by existing topography and vegetation.*
- 3. Development authorized within scenic view shed areas shall be subject to the condition that neither topography nor vegetation shall be altered or removed if doing so would expose the development to view from any scenic corridor route.*
- ...
- 6. Development proposed upon a parcel mapped in more than one view shed rating category shall, whenever feasible, be located within the area with the lowest view rating.*

## **Analysis**

The proposed project is located in a scenic area in Bodega Bay. The Coastal Act requires the scenic and visual qualities of coastal areas to be considered and protected as a resource of public importance. The LCP also prohibits development that will significantly degrade the scenic qualities of major view views and vista points. The LCP prevents development from obstructing views of the shoreline from coastal roads, vista points, recreation areas, and beaches. Lastly, the LCP notes that commercial buildings in Bodega Bay are predominately single story wood structures with gable roofs. The proposed restoration of the single-story Sandpiper and bait shop buildings has the potential to offer visual and community character benefits and restore and enhance visual quality in a visually degraded area consistent with requirements of the Coastal Act and the LCP. To ensure visual resources are enhanced, Special Condition 1 of 2-10-030 requires the project to minimize the appearance of bulk and mass and blend the structures with the surrounding natural environment. As conditioned, the project can be found consistent with the visual resource and community character policies of the Coastal Act.

## **H. OTHER AGENCY APPROVALS**

Special Condition 7 of CDP 2-08-013 and Special Condition 8 of CDP 2-10-030 require the Applicant to provide all relevant authorizations from Sonoma County, US Army Corps of Engineers, State Lands Commission, California Department of Fish and Wildlife, and National Marine Fisheries Service or evidence that permits, authorizations, leases or other approvals from these agencies are not necessary.

## **I. VIOLATION**

Development including, but not limited to, unpermitted staging of ramp repair and unpermitted replacement of floating docks has taken place without benefit of a coastal development permit.



Given the presence of unpermitted development on the property for which mitigation has not yet been implemented, Special Condition 6 of CDP 2-08-013 requires that within 180 days of the Commission's approval of this permit, the Applicant shall comply with any special conditions that must be completed prior to issuance of this permit. Although development has taken place prior to submission of these permit applications, consideration of the applications by the Commission has been based solely upon the policies of Chapter 3 of the Coastal Act. Commission review and action on these permits does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of any development undertaken on the subject sites without a coastal permit, or that all aspects of the violation have been fully resolved.

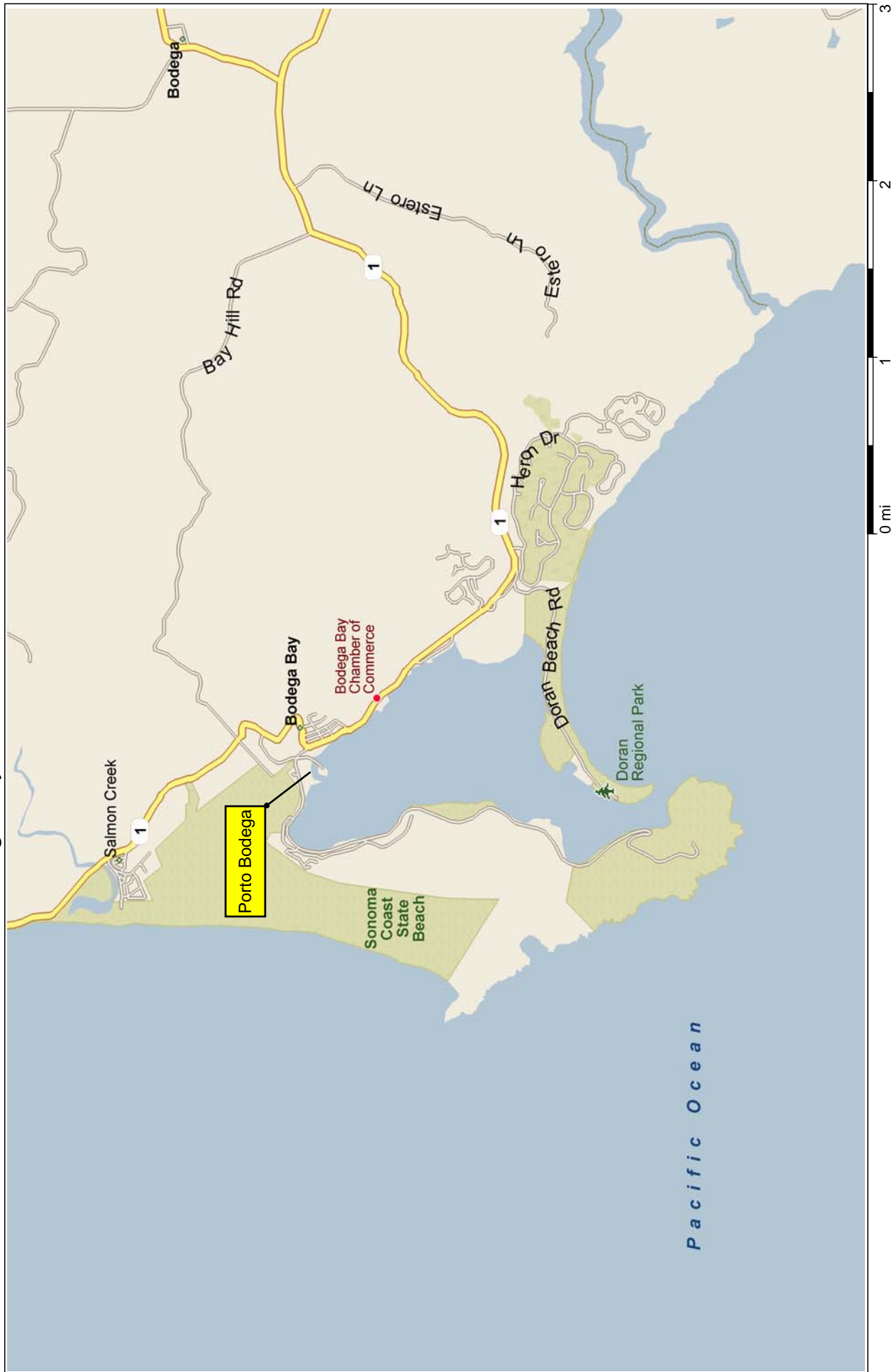
## **J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The County of Sonoma, acting as lead agency, found the projects were categorically exempt from environmental review pursuant to CEQA Section 15301(Class 1), a minor alteration to an existing structure, and Section 15303 (Class 3(c)), the conversion of an existing structure to a restaurant not exceeding 2,500 square feet. The Coastal Commission's review and analysis of permit applications has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues associated with the proposed projects, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this permit will the proposed projects avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed projects, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed projects will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

# Bodega Bay, California, United States











**SITE PHOTOGRAPH A**

Looking southeast at Sandpiper Restaurant and Bodega Harbor, 7/30/09.



**SITE PHOTOGRAPH B**

Looking North at Bait Shop, 7/30/09.



Test Boring B-1



**BACE Geotechnical**  
a division of  
Brunsing Associates, Inc.  
(707) 528-6108

Job No.: 12172.1  
Appr.: **EEO**  
Date: 10/01/09

**SITE PHOTOGRAPHS A and B**  
**PORTO BODEGA - SANDPIPER AND BAIT SHOP**  
1410 Bay Flat Road  
Bodega Bay, California

**PLATE** Exhibit 3  
2-08-013 & 2-10-030  
(Porto Bodega LP)  
Location Photos  
Page 1 of 2





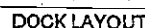










Notes :

4. APPROVED BY ALL FEMALE SADDLEMAKERS

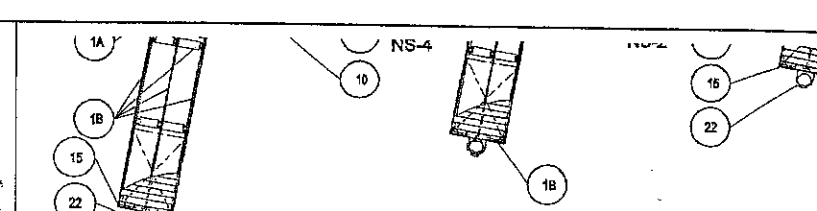
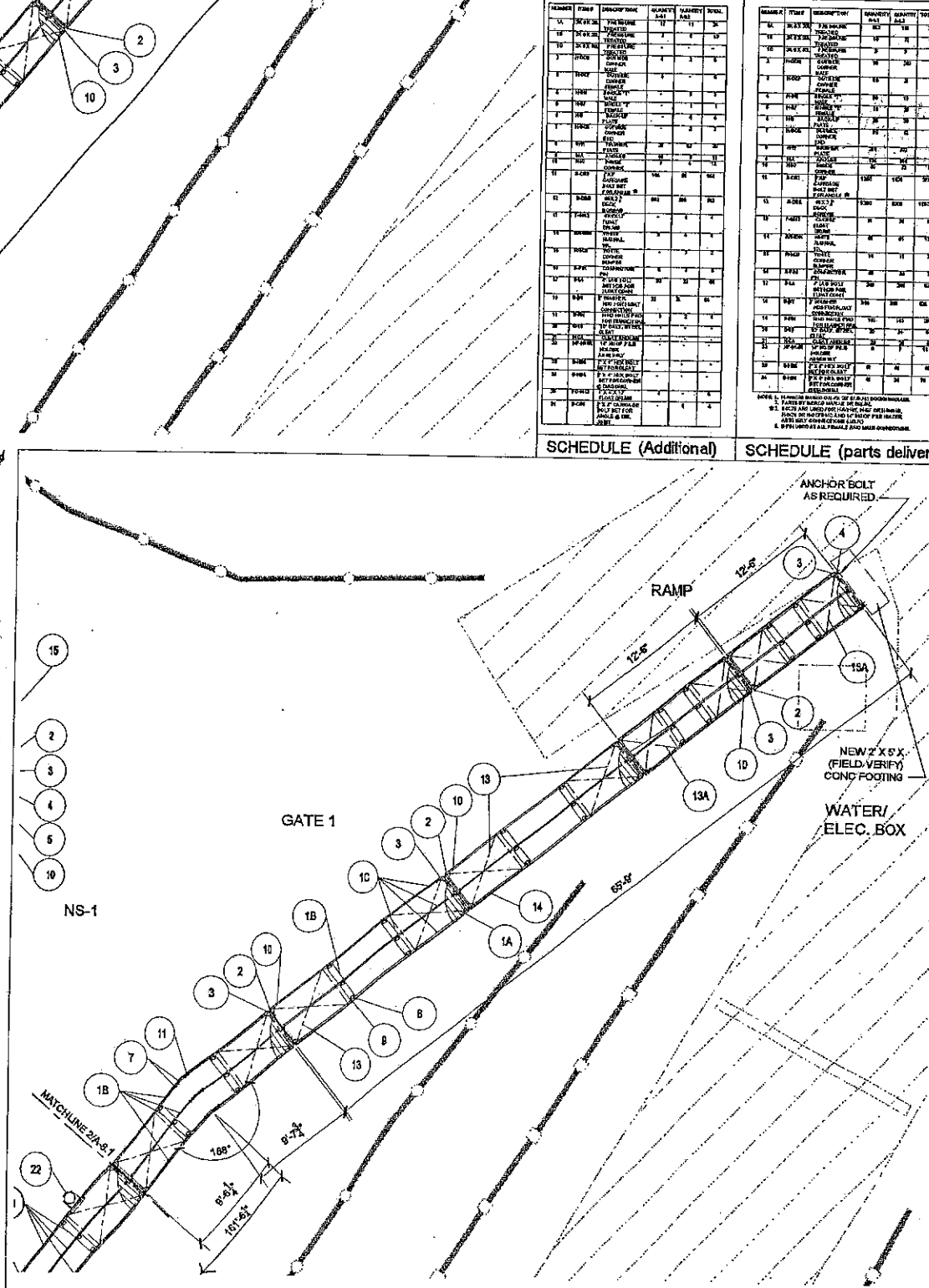
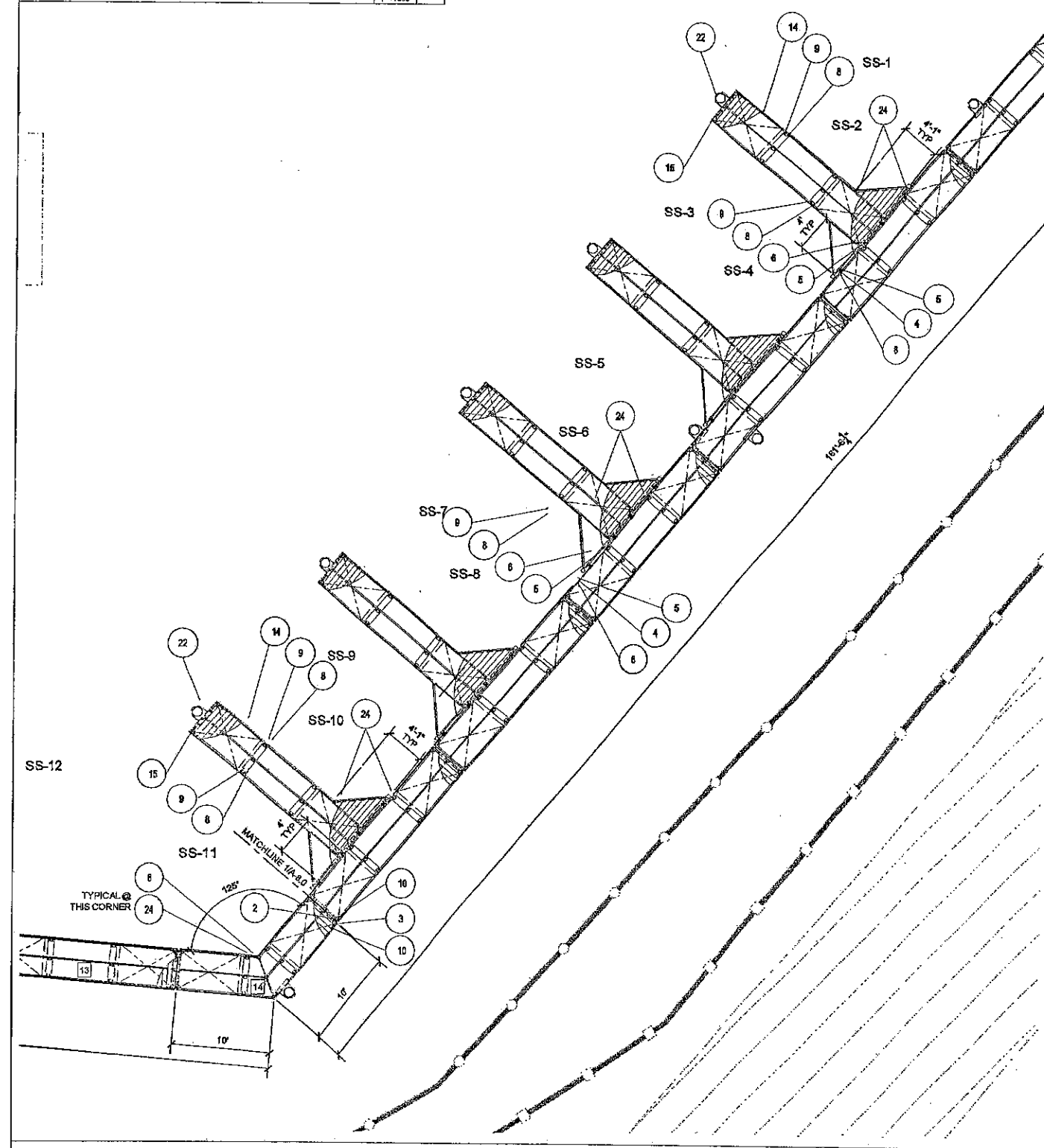
SCHEDULE (ADDITIONAL PARTS)	SCHEDULE (PARTS DE
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1500 BAY FLAT ROAD  
BODEGA BAY, CA 94923

Checked By \_\_\_\_\_

A-8.0

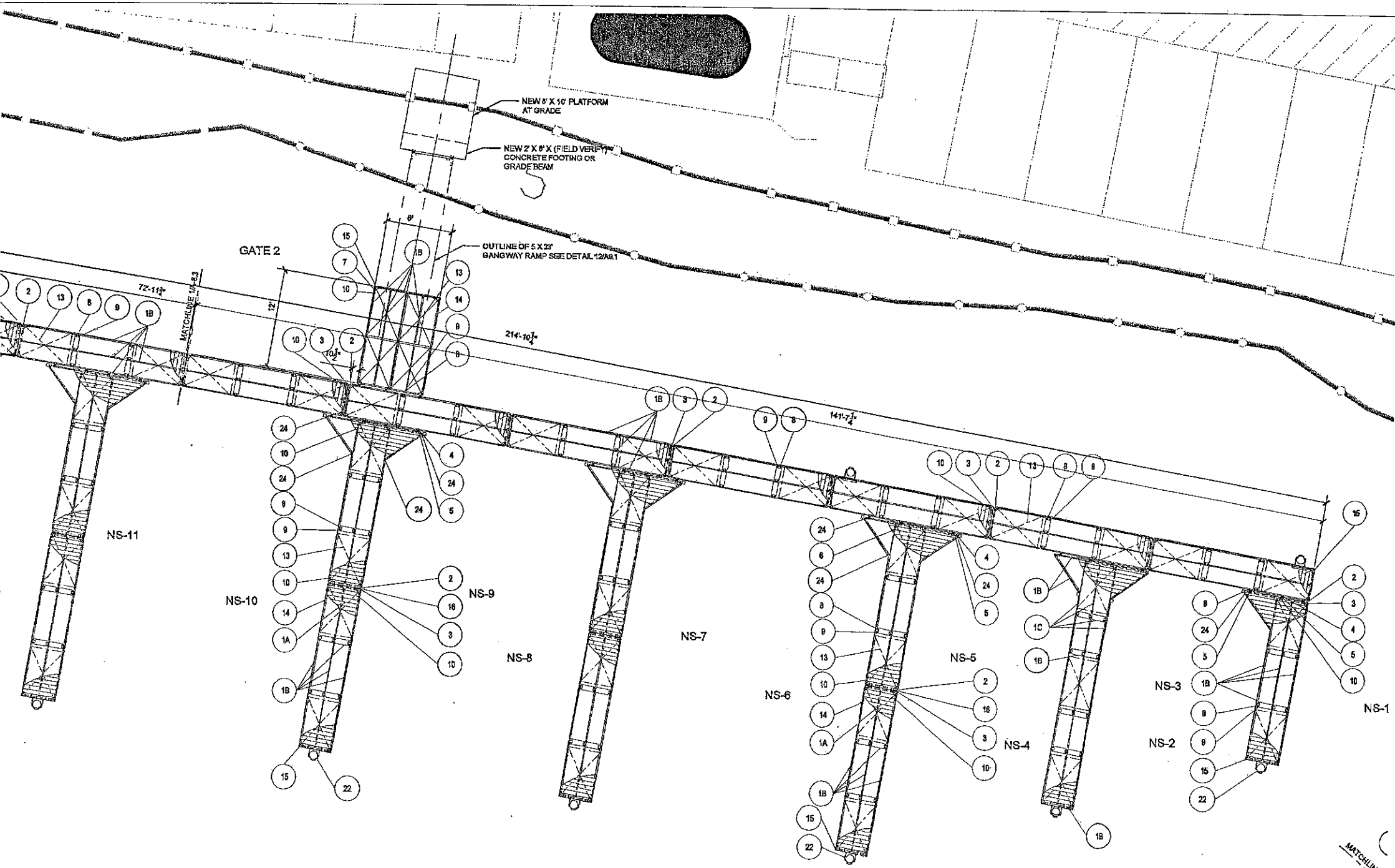
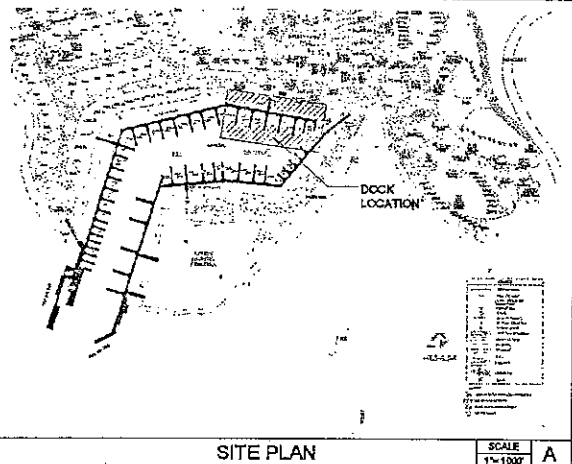
Exhibit 5  
2-08-013 & 2-10-030  
(Porto Bodega LP)  
Project plans and photos  
Page 2 of 14

[illegible][illegible]

**PORTO BODEGA**  
1500 BAY FLAT ROAD  
BODEGA BAY, CA 94923

KEY PLAN
ZONE AREA
FACILITY
PORTO BODEGA
SHEET TITLE
SOUTH BOAT RAMP PLAN

Job No.	Date
Location	Drawing No.
Scale	A-8.1
AS NOTED	
Drawn By	
Checked By	



ITEM NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
1	STEEL PLATE	10	sq ft	1.50	15.00
2	STEEL PLATE	20	sq ft	1.50	30.00
3	STEEL PLATE	30	sq ft	1.50	45.00
4	STEEL PLATE	40	sq ft	1.50	60.00
5	STEEL PLATE	50	sq ft	1.50	75.00
6	STEEL PLATE	60	sq ft	1.50	90.00
7	STEEL PLATE	70	sq ft	1.50	105.00
8	STEEL PLATE	80	sq ft	1.50	120.00
9	STEEL PLATE	90	sq ft	1.50	135.00
10	STEEL PLATE	100	sq ft	1.50	150.00

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
11	STEEL PLATE	110	sq ft	1.50	165.00
12	STEEL PLATE	120	sq ft	1.50	180.00
13	STEEL PLATE	130	sq ft	1.50	195.00
14	STEEL PLATE	140	sq ft	1.50	210.00
15	STEEL PLATE	150	sq ft	1.50	225.00
16	STEEL PLATE	160	sq ft	1.50	240.00
17	STEEL PLATE	170	sq ft	1.50	255.00
18	STEEL PLATE	180	sq ft	1.50	270.00
19	STEEL PLATE	190	sq ft	1.50	285.00
20	STEEL PLATE	200	sq ft	1.50	300.00

Revision	No.	Date	By	Description
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Notes:

**PORTO BODEGA**  
1500 BAY FLAT ROAD  
BODEGA BAY, CA 94923

KEY PLAN  
ZONE AREA  
FACILITY  
**PORTO BODEGA**  
SHEET TITLE  
**NORTH BOAT RAMP PLAN**

Job No.  
Drawing No.  
Scale  
AS NOTED  
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Drawn by  
Checked by  
Date







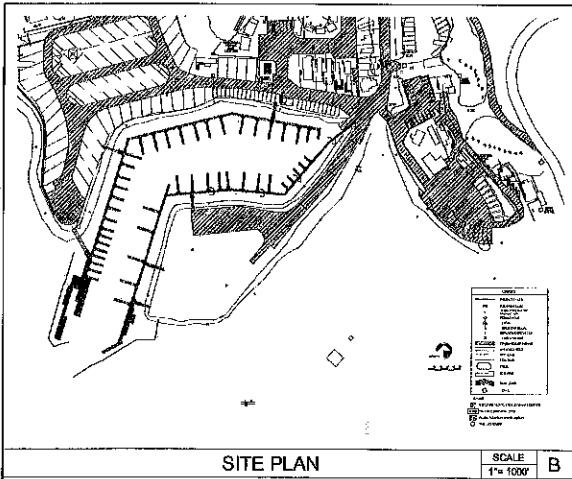




Notes :

1401 BAY FLAT ROAD  
BODEGA BAY, CA 94923

Job No.			Date		
Location			Drawing No.		
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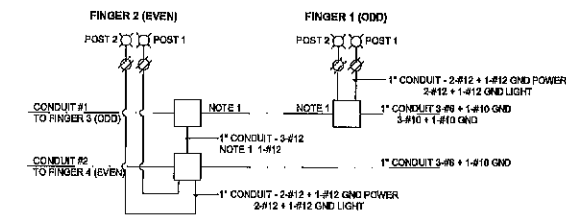
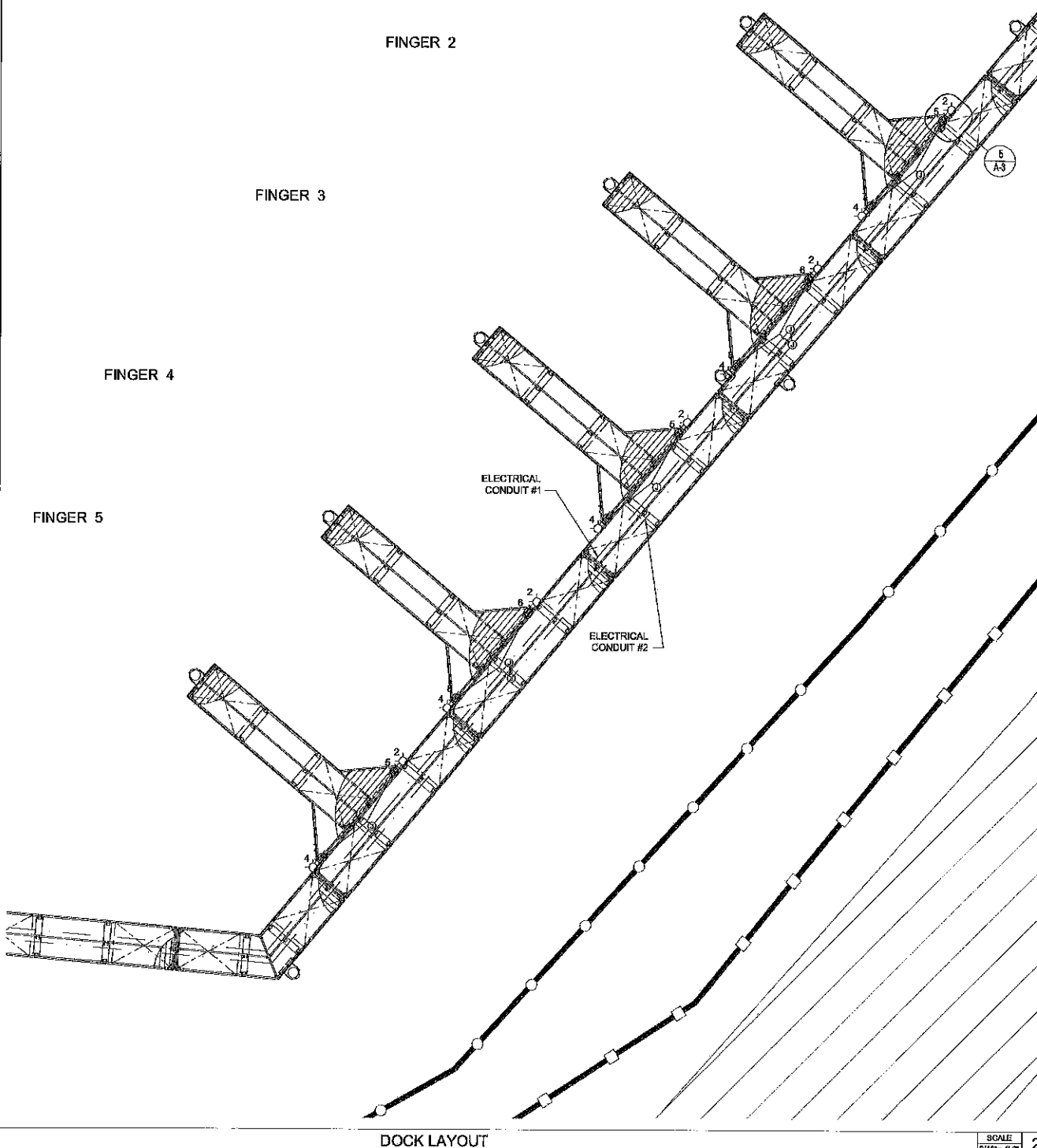
FINGER 1

FINGER 2

FINGER 3

FINGER 4

FINGER 5



NOTES:  
1) ALL BOXES TO BE 70 CUBIC-INCH MINIMUM

PANELBOARD:				LP1:									
VOLTAGE, PHASE & WIRE:				240/120		VAC		1PH,3W		LOCATION:		OUTDOORS	
BUS SIZE (COPPER):				200		AMPS				ENCLOSURE:		NEMA-3R	
MAIN BREAKER SIZE:				70		AMPS				MOUNTING:		RACK	
BREAKER TYPE:				BOLT ON						A/C / BRACING:		10K	
										FED FROM:			
CIRCUIT #	LOAD DESCRIPTION	# OF OUTLETS @ LAMPPOST	BREAKER AMP	KVA		KVA		BREAKER AMP	# OF OUTLETS @ LAMPPOST	LOAD DESCRIPTION	CIRCUIT #		
				A	B	A	B						
1	MAIN INCOMMER		70			0.3		20	13	LIGHTS @ 25 W/LIGHT	2		
3			70			0.3		20	13	LIGHTS @ 25 W/LIGHT	4		
5	RECEPTACLES CIRCUIT #1	7	20	1.8		1.6		20	6	RECEPTACLES CIRCUIT #3	16		
7	RECEPTACLES CIRCUIT #2	7	20		1.8		1.6	20	6	RECEPTACLES CIRCUIT #4	18		
9	SPACE		20	1.8		1.8		20	1	RECEPTACLES AT PANEL LP1	10		
11	SPACE		20		1.8		1	20	1	TIMER FOR LIGHTS	12		
13	SPACE									SPACE	14		
15	SPACE									SPACE	16		
17	SPACE									SPACE	18		
19	SPACE									SPACE	20		
21	SPACE									SPACE	22		
SUBTOTALS				3.2	3.2	3.6	2.9						
NOTES:		KVA A PHASE = 6.7 KVA B PHASE = 6.1  TOTAL KVA = 12.8				AMPS A PHASE = 66.8 AMPS B PHASE = 50.8							











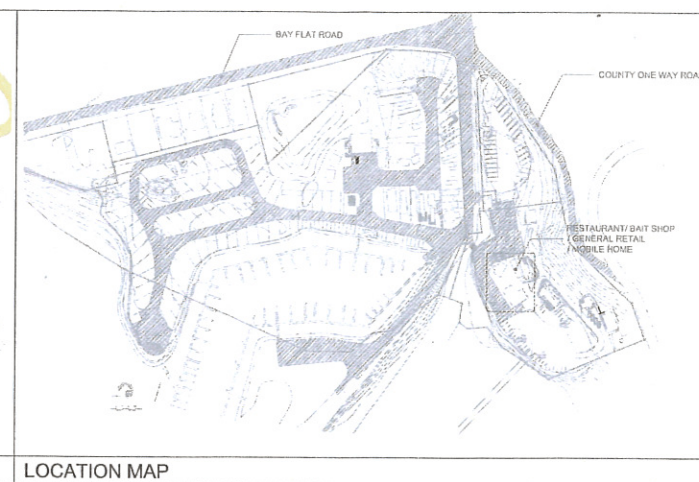
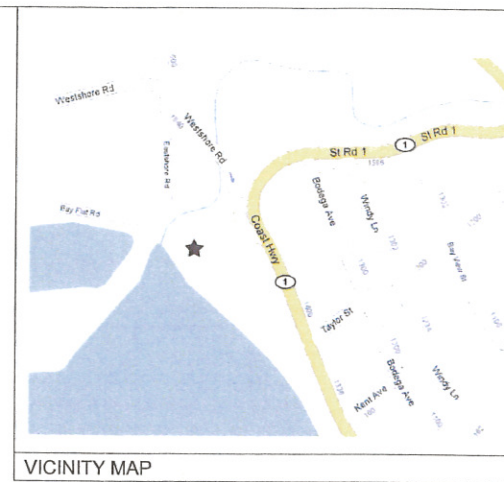


Proposed Expansion Area







[illegible]

Notes :
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# PORTO BODEGA

1401 BAY FLAT ROAD  
BODEGA BAY, CA 94923

KEY PLAN
ZONE AREA

	FACILITY
--	----------

PORTO BODEGA

SHEET TITLE

EXISTING & PROPOSED  
SANDPIPER  
BUILDING FOOT PRINT

Job No.	Date 10-19-2011
Location	Drawing No.
Scale AS NOTED	A-1.1
Drawn By	
Checked By	

Th9a:Th9b

April 8, 2013

To: California Coastal Commission Staff  
Fax (415) 904-5400

Dear California Coastal Commission Staff,

My name is Susan Moon and I am a liaison for ORCA (Organization of Regional Coastal Advocates).

I am sending ex parte communications via email regarding April 2013 California Coastal Commission meeting agenda items to Commissioners McClure, Garcia and Kinsey today April 8, 2013.

Per ex part rules I am hereby copying communications to staff at the same time.

Thank you,

*Susan Moon*

Susan Moon  
PO Box 1076  
Point Arena, CA 95468

Attached: April 8, 2013 emails to commissioners McClure, Garcia and Kinsey

April 8, 2013 ex parte communication from ORCA (5 pages) sent  
attached to above emails to commissioners McClure, Garcia and  
Kinsey

Faxed including this page and <sup>fax</sup> cover page: 10 pages  
^

Th 9a:1496

April 8, 2013

Dear Commissioner Kinsey,

My name is Susan Moon and I am a liaison for ORCA (Organization of Regional Coastal Advocates).

Please allow me to update you as to the actions ORCA is taking regarding the upcoming April California Coastal Commission meeting. There are four projects that we are communicating to you about today, which are discussed in the attached pages.

I have copied this communication to Coastal Commission staff. You are welcome to contact me with any questions at (707) 882-2677.

Thank you,  
Susan Moon

Cc.: California Coastal Commission staff, by fax  
Commissioner McClure  
Commissioner Garcia

Attached: April 8, 2013 ex parte communication from ORCA (5 pages)

Th 9a; Th 9b

April 8, 2013

ORCA Ex parte

Th.9.a. & Th.9.b / Continue

On the issue of items #Th.9.a. Application No. 2-10-030 (Porto Bodega Marina & RV Park, Sonoma Co.) and #Th.9.b. Application No. 2-08-013 (Porto Bodega LP, Sonoma Co.) ORCA is speaking for Norma Jellison.

Staff is recommending approval with conditions.

We are asking for a continuance until the Porto Bodega Study for the area is completed, as specified in the LCP.

1. We strongly oppose staff's combining these projects that have not had adequate public notice or public participation to allow the local community to be advised of the larger development plan for this property. No Specific Plan exists for the 15.2 acre parcel and Adjacent Marina and RV Park despite incremental projects being processed by the County for over 2 years all with Waivers of Public Hearings. Applicant has a master plan in mind for the entire property and has discussed same with County staff since at least 2005. Rather than proceed with a Specific Plan and associated CEQA analysis, County has processed Use Permits/Administrative Design Reviews for incremental aspects of the master plan, often under guise of correcting illegal additions.

2. The Commission should not participate in processing pieces of a larger project that lacks full analysis and lacks meaningful public participation. The staff report cites 4 studies: a biological report dated 2007, a Phase II Environmental Site Assessment dated 2007, Eelgrass and Habitat Survey dated 2007, and a Geotechnical Report dated 2009. These are all evidence that plans have been in process for some time for this property. These reports were not done just for the current projects but to lay the ground for the larger development planned for Porto Bodega.

3. The Commission should require full disclosure of the larger development proposed by this applicant and should refuse to process individual projects without the public participation process assured under the State's Coastal Act. Staff report references LCP specific recommendations for the Porto Bodega area - one example "Require completion of the Porto Bodega Study prior to any land use changes in the area." A Porto Bodega Study has not been released. This study should be completed before any additional incremental aspects of intensifying development in this area are allowed to proceed. Public awareness of what is contemplated for this area of Bodega Bay at a minimum is mandatory under the public participation guarantees of the Coastal Act.



Th 9a; Th 9b

April 8, 2013

Dear Commissioner McClure,

My name is Susan Moon and I am a liaison for ORCA (Organization of Regional Coastal Advocates).

Please allow me to update you as to the actions ORCA is taking regarding the upcoming April California Coastal Commission meeting. There are four projects that we are communicating to you about today, which are discussed in the attached pages.

I have copied this communication to Coastal Commission staff. You are welcome to contact me with any questions at (707) 882-2677.

Thank you,  
Susan Moon

Cc.: California Coastal Commission staff, by fax  
Vice Chair Kinsey  
Commissioner Garcia

Attached: April 8, 2013 ex parte communication from ORCA (5 pages)

Th 9a:Th 9b

April 8, 2013

Dear Commissioner Garcia,

My name is Susan Moon and I am a liaison for ORCA (Organization of Regional Coastal Advocates).

Please allow me to update you as to the actions ORCA is taking regarding the upcoming April California Coastal Commission meeting. There are four projects that we are communicating to you about today, which are discussed in the attached pages.

I have copied this communication to Coastal Commission staff. You are welcome to contact me with any questions at (707) 882-2677.

Thank you,  
Susan Moon

Cc.: California Coastal Commission staff, by fax  
Vice Chair Kinsey  
Commissioner McClure

Attached: April 8, 2013 ex parte communication from ORCA (5 pages)

Th 9a; Th 9b

April 8, 2013 ORCA Ex parte Th.9.c. / Approve w/ modified conditions

On the issue of item #Th.9.c. Application No. A-2-MAR-10-22 (Magee & Brader, Marin Co.) ORCA is speaking for Nancy Okada.

Staff is recommending approval with conditions.

We are asking that the distillery not be allowed because of impacts to coastal resources, and that the development be clustered on the southern part of the property to minimize impacts to ESHA and visual resources.

1. We commend staff, applicants and advocates for a much-improved project proposal that includes stronger protections for ESHA, wetlands and water quality for Marshall and Tomales Bay.

2. We strongly oppose any brandy distillery on subject parcel:

An industrial distillery violates neighborhood community character: no industrial facilities are currently located in Tomales Bay's watershed SWRCB has determined TB wetlands are currently impaired with nitrogen and pathogens. The Bay was selected in 2002 as a Wetland of International Significance by the 1971 Ramsar Convention, which recognizes 2100 fragile wetlands worldwide in danger of loss.

Distillery produces toxic wastewater and sludge that could debase Tomales Bay's fragile coastal and marine resources. The state Water Board has not as yet evaluated the possible harmful impacts of this commercial facility and waste stream for this industrial facility must be better specified (LCP 22.045.04).

A distillery (75 feet from Marconi Cove) will impact State Park camping facility directly across the highway.

Distillery alcohol-fed fires are massive and explosive: almost all 30+ distilleries in California are located for solid policy and safety reasons in urban areas (usually in industrial parks) with well-established urban water and sewer services. Flashpoint/ignition point for brandy ethanol is 78 degrees. Specialized foam is required immediately upon ignition of ethanol vapors. Foam is highly toxic to all living things and firefighters require special haz-mat suits. All fire services in Tomales Bay for Marshall are at least 20 minutes away down winding two-lane Highway One — the Bay's only major access road in and out.

Removing the distillery from the project proposal in no way compromises current or future agricultural production potential on parcel. In fact removing this industrialization enhances ag production.

3. CCC should move all project buildings to 12 acre Alternative Site (southern portion of parcel) to fully avoid ESHA, blue-line stream and wetlands altogether including avoiding historic coursing water and drainage problems on remainder of property. The project as sited violates following Marin Unit II LCP chapters: 22.56.130 (Water Quality); 22.57.024 (Erosion Control); 22.56.130 (ESHA, Streams & Wetlands); 22.37.036 (Agricultural Productivity); 22.57.035 (Clustering Development); 22.57.033 (Conditional Uses); 22.57.035(1) (Existing Roads and Services); and finally 22.56.130 (Visual Resources).

Th9a : Th9b

From: NORMA JELLISON <normalj@sonic.net>

Date: Mon, Apr 8, 2013 at 5:51 PM

Subject: Ex Parte for CCC Agenda Items Th9a and Th9b Porto Bodega Bodega Bay

To: [Zimmerccc@gmail.com](mailto:Zimmerccc@gmail.com)

Dear Commissioner:

I request that you take the following action with regard to Items Th9a and Th9b on the April 11 Commission agenda.

Continue the items and approval of these two Coastal Development Permits for a minimum of 150 days until a Porto Bodega Study (aka Master Plan/Specific Plan) can be completed, along with the appropriate level of environmental analysis.

The certified Sonoma County LUP calls for a Porto Bodega Study (Section 7, Land Use, No. 27: **"Require completion of the Porto Bodega Study prior to any land use changes in the area."**). The proposed intensification of land use triggers the requirement for a master plan.

In the ensuing 10+ years following certification of the LUP, no Porto Bodega Study has been forthcoming. Furthermore, counter to the full public participation tenets of the Coastal Act and CEQA, the citizenry of Bodega Bay have never been engaged in any public participation effort for this critical bayside area.

Although there is evidence that a master plan exists for this area of Bodega Bay, the County denies its existence and instead processes Use Permits and Administrative Design Review with Waivers of Public Hearing, thereby further eliminating all public participation.

Rather than perpetuating incremental development, even after-the-fact permitting, I ask that the Commission concur that these CDPs result in an intensification of land use and these projects do require the County to undertake this long overdue study before the Commission can issue any CDP as required by our LUP.

Furthermore, there was once again inadequate public notice of this proposed action. A notice tacked on a building at the project site and an agenda item on a CCC meeting agenda (if you receive the agenda) 200 miles away from the project site does not engender community knowledge of or participation in the transitioning of this area into an intensified development with major implications for a community of 900 residents.

Coastal and marine resources deserve careful land use planning and full public participation in those decisions.

Sincerely,

Norma Jellison  
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