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STAFF REPORT: CDP AMENDMENT

Application Number: P-77-0579-A3

Applicant: Hamid Rafiei, A & G, LLC

Project Location: La Costanera Restaurant located seaward of Highway 1 and fronting Montara State Beach at 8150 Cabrillo Highway in the unincorporated Montara area of San Mateo County

Project Description: Request to authorize use of an existing ocean-fronting restaurant patio (with wind screen and two fire pits) after-the-fact; install path lighting in the restaurant parking lots; and construct a new roof over an existing outdoor work/trash area.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The Applicant is requesting an amendment to coastal development permit (CDP) P-77-0579, which originally permitted construction of the restaurant at this location in 1977, to authorize use of an ocean-fronting patio with a wind screen and two fire pits after-the-fact; install path lighting in the restaurant parking lots; and construct a new roof over an existing outdoor work/trash area, all at La Costanera Restaurant, located at 8150 Cabrillo Highway, in the unincorporated Montara area of San Mateo County. The existing 189-seat restaurant is situated just seaward of Highway 1 on a coastal bluff above Montara State Beach. State Park lands surround the restaurant site on three sides (north, south and west), including a formal public parking lot immediately downcoast that provides dedicated State Beach parking.

Due to the fairly rural nature of this section of the coast and limited public transit opportunities, this area is primarily accessed through use of private vehicles. Therefore, provision and maintenance of adequate parking facilities is critical for both restaurant patrons and beach goers to Montara State Beach, which is very popular. The original CDP approval found that the subject restaurant, proposed with only 53 parking spaces for a nearly 200-seat restaurant, would not provide adequate parking on site. The CDP addressed such insufficient restaurant parking and resultant impacts to public access by relying on ‘reciprocal’ use of both the public (i.e., State Parks’ parking lot just downcoast of the restaurant) and private parking lots (i.e., the restaurant’s parking lots) as generally agreed upon at the time by the County, the property owners and State Parks, and by restricting restaurant hours of operation to after 5:00 p.m. only (i.e., essentially dinner service only). In other words, the restaurant was specifically required to allow public use of its parking lots for general beach public access, with the idea being that such beach access would wind down as restaurant activities were starting up in the evening, and that there would be enough parking for all given such timing and spacing.

In the past, the restaurant has violated these terms of the original CDP and created further impediments to public beach access parking, including via prohibiting use of the restaurant parking lot by beach goers when such public parking use is required under the base CDP. Recently, the restaurant has also violated the terms of the original CDP through intensification of restaurant use by, among other things, increasing the square footage of the restaurant, exceeding the allowed capacity, and opening prior to 5:00 p.m.. In March 2017 these violations were mostly resolved through Commission-issued Consent Cease and Desist Order CCC-17-CD-01 and Consent Administrative Penalty CCC-17-AP-01 (together the “Consent Orders”). However, the Consent Orders did not authorize the unpermitted ocean-fronting patio or address the coastal resource impacts, including to public access, associated with authorization and use of the unpermitted ocean-fronting patio. Rather, the Consent Orders directed the Applicant to apply for such authorization after the fact (ATF), and the application today is for that purpose (as well as other restaurant improvements related to lighting and roof work). If the subject CDP amendment application is denied, the Applicant will be required to remove the patio, windscreen, and masonry firepits and restore the area. If the subject application is approved, the Applicant will be required to comply with the conditions of this CDP.

The Applicant asserts that there will not be additional impacts to public access from ATF patio authorization as they are not proposing to otherwise intensify restaurant use since the total number of seats in the restaurant overall, including the 27 seats proposed on the patio, would not change (i.e., seats would be redistributed, and not increased above 189). However, the Commission has already evaluated and rejected this claim. The Commission’s findings for Consent Orders state: “the patios in their current state have impacted and continue to impact public access by increasing capacity of the restaurant and thereby increasing parking demand for the limited spaces in this location of the coast.” Furthermore, the facts show that the patio would intensify the restaurant use. First, it is clear that the additional patio square footage (almost 1,300 square feet of space) will increase the intensity of restaurant use by providing additional space for restaurant activities overall, whether it be an area where restaurant patrons can wait for a table or simply take in the view while standing rather than sitting; regardless of the total number of seats. Second, although the Applicant is currently stating that they will not operate the restaurant in excess of the permitted capacity, the enforcement history of the site shows that there

is a possibility if not a likelihood that the extra seating capacity may be used by the current or future owners in a manner that results in unauthorized additional restaurant capacity if not conditioned. Third, even without the patio, the history of the site indicates that there is still inadequate parking on site to meet LCP parking requirements and spillover to the public parking lots is inevitable, as was recognized in the original CDP. Unless adequately mitigated, any expansion of use of the restaurant, as is proposed here, would have significant public access impacts. The public access impacts that would result from authorizing the unpermitted lower patio have not been addressed by the Consent Orders or any other approval, and therefore require mitigation, as discussed further below.

The parking situation at Montara State Beach near this site has reached what some might call an uneasy equilibrium with both public and private use of the State Beach parking lot to the south and the restaurant's lots, as well as public and private use of a dirt, informal parking area on State Parks' property to the north (connected to the restaurant's parking lot). This equilibrium has been frustrated by parking-related violations in the past (including the restaurant disallowing public use of the restaurant parking lot when such use is required to be allowed by the base CDP), and is clearly easily affected by even small changes. Therefore, in staff's view, the proposed authorization of the patio would result in an adverse impact on public access by increasing restaurant intensity of use in a manner that would serve to further displace public parking users in an area where public parking demand is high, and in an important area that provides significant and popular lower cost visitor-serving recreational opportunities, including nearby trails and beach access. Thus, as proposed, the project is inconsistent with the Coastal Act requirements that access be maximized, provided, and protected, and inconsistent with LCP parking requirements.

Fortunately, there are opportunities to appropriately offset such impacts nearby in a manner that should ensure the public is not unduly burdened by the restaurant's proposed ATF project. Specifically, the existing dirt, informal parking area on State Parks lands, directly north and adjacent to the site, could be improved for formal public access parking, which would help to offset the impacts from the project by increasing public parking opportunities in the immediate area. Staff has extensively conferred with State Parks and County staff, and both agree that such an improvement would be appropriate and they are supportive. Thus, this CDP amendment is conditioned to require the Applicant to either improve the adjacent State Parks' informal parking area with 20 formal public parking spaces, or to pay an in lieu mitigation fee to State Parks to construct and maintain the improvements. In addition, staff recommends special conditions to address potential bird strike, water quality, habitat, visual, coastal hazard, and other related coastal issues. With respect to coastal hazards specifically, because the project is located in a hazardous area already protected by existing armoring, this approval requires the Applicant's acknowledgment of the hazards present onsite, to assume the risks of such hazards, and to waive the right to construct further shoreline armoring for the development specifically authorized through this CDP amendment.

As conditioned, the proposed amendment would be consistent with LCP habitat, water quality, public view, archeological, and coastal hazards policies, and the public access and recreation policies of both the LCP and the Coastal Act. Staff recommends approval with conditions, and the motion is found on page 5 below.

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APPENDICES

- Appendix A – CDP P-77-0579 Standard and Special Conditions, as amended
- Appendix B – Substantive File Documents
- Appendix C – Staff Contacts with Agencies and Groups

EXHIBITS

- [Exhibit 1](#): Location Map
- [Exhibit 2](#): Vicinity and Site Photos
- [Exhibit 3](#): Project Plans
- [Exhibit 4](#): CDP P-77-0579
- [Exhibit 5](#): Consent Order CCC-17-CD-01
- [Exhibit 6](#): CCC-17-CD-01 Restoration Plan
- [Exhibit 7](#): County Use Permit No. UP 20-77
- [Exhibit 8](#): Required Public Beach Access Parking Lot Improvements

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, approve a conditioned CDP amendment 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 amendment 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 Amendment Number P-77-0579-A3 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP Amendment:** The Commission hereby approves the coastal development permit amendment on the grounds that the development as amended and subject to conditions will be in conformity with the policies of the San Mateo County Local Coastal Program and the access and recreation policies of the Coastal Act. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.*

II. STANDARD CONDITIONS¹

This permit amendment is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit as amended is not valid and development shall not commence until a copy of the amended permit, signed by the Permittee or authorized agent, acknowledging receipt of the amended permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 3. 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.
- 4. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

¹ Appendix A identifies all conditions as approved by the Commission in its original CDP action, as well as the conditions applied here through P-77-0579-A3. Thus, together, Appendix A identifies all conditions applicable to CDP P-77-0579 as amended through -A3.

III. SPECIAL CONDITIONS²

This permit amendment is granted subject to the following special conditions:

6. Revised Final Plans. WITHIN 90 DAYS OF COMMISSION APPROVAL OF THIS CDP AMENDMENT (i.e., by December 12, 2018), the Permittee shall submit two full-size sets of Revised Final Plans (in both hard copy and PDF/electronic formats) to the Executive Director for review and written approval. The Revised Final Plans shall be in substantial conformance with the plans submitted to the Coastal Commission ((1) dated November 27, 2017 and dated received in the Commission's North Central Coast District Office on December 21, 2017 consisting of Plan Sheets A2.1, A2.2, and A2.3 respectively entitled *First Floor Plan & Foundation Details; Second Floor Plan, Foundation and Framing Plans;* and *Upper Level Floor Plan and Electrical Plan;* and (2) dated August 18, 2017 and dated received in the Commission's North Central Coast District Office on June 14, 2018 consisting of Plan Sheets 6.0 and 6.1 respectively entitled *Schematic Lighting Plan and Lighting Specifications*) except that they shall be revised and supplemented to comply with the following requirements:

- (a) **Patio.** The patio shall be no more than 1,276 square feet in size and shall not be expanded.
- (b) **Seating Capacity.** The seating layout for the restaurant (including all interior and exterior spaces, including the patio) shall be identified, and the total number of available seats shall not exceed 189.
- (c) **Bird Strike Avoidance.** All windscreens and any other exterior window/windscreen surfaces shall be treated so as to prevent bird strikes (e.g., frosted or partially-frosted or other visually permeable barriers (e.g., bird strike-specific decals) that are designed to prevent bird strikes).
- (d) **Signs.** All restaurant-related signs and all signs identified in Special Conditions 6 and 7 shall be clearly identified (including via the location, materials, design, and text), and shall be sited and designed so as to avoid adversely impacting public views and site character. Public access signs shall include the California Coastal Trail (for trails) and California Coastal Commission emblems and recognition of the Coastal Commission's role in providing public access at this location.
- (e) **Lighting.** All lighting fixtures that lead to exterior illumination shall be clearly identified on the plans, and all such fixtures shall be sited and designed to limit exterior lighting to the minimum necessary to provide for restaurant serving operations and public safety, including parking lot access. Lights shall be required to be turned off when the restaurant is not in operation, other than the minimum necessary for public safety purposes. All lighting fixtures shall be sited and designed to avoid glare and light spillover to the vicinity, including Highway 1 and the beach area below the restaurant, as much as

² Again, see also Appendix A which identifies all conditions as approved by the Commission in its original CDP action, as well as the conditions applied here through P-77-0579-A3. Note that P-77-0579-A3 special conditions start at number 6 for future ease of reference (since the original CDP had conditions 1 through 5).

feasible, and all exterior lights shall be as low profile and downward-directed as feasible. Exterior lights directed towards the beach and ocean shall be prohibited.

- (f) **Drainage.** Drainage shall not be directed to the beach or bluffs, but shall instead be directed to inland drainage facilities capable of accepting such drainage. All areas subject to washing activities (e.g., mat washing, etc.) shall be connected to the sanitary sewer system.

All requirements above and all requirements of the approved Revised Final Plans shall be enforceable components of this CDP. The Permittee shall undertake development in conformance with this condition and the approved Revised Final Plans unless the Commission amends this CDP to change the approved Revised Final Plans or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

- 7. **Public Access Requirements.** By acceptance of this amended CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, to all of the following:
 - (a) **Public Parking and Vehicle Access.** At a minimum, all parking spaces within the Permittee's two parking lots shall be available for general public access parking 24 hours a day, seven days a week. In addition, at all times, vehicular access through the restaurant's north parking lot shall be provided to and from the State Parks' parking area immediately north of Permittee's northern lot (see also Special Condition 8 below).
 - (b) **No Public Access Disruption.** Permittee shall not undertake or allow any development, actions, and/or uses within the public use areas, including all pedestrian and vehicle access areas, throughout the property (including parking access as described above and in Special Condition 8, and all access areas identified in the approved *Restoration Plan and Coastal Access Improvements for La Costanera Restaurant* dated March 13, 2018 (see **Exhibit 6**)) that disrupt or degrade public access, including areas set aside for private uses, any use of the parking lot in a way that could dissuade public use, and placing or allowing barriers to public access (such as planters, temporary structures, private use signs, fences, barriers, ropes, etc.) to remain, all of which shall be prohibited. All public use areas, including public pedestrian and vehicle use areas, shall be maintained in a manner that maximizes public use and enjoyment.
 - (c) **Public Access Use Hours.** Public access to all public use areas on the property, including for pedestrian and vehicle access and parking in the Permittee's parking lots, shall be open and available for free public access 24 hours a day, seven days a week.
 - (d) **Public Access Areas and Amenities Maintained.** All of the public access areas, including all pedestrian and vehicle access areas, and including all improvements and amenities associated with them shall be constructed in a structurally sound manner and maintained in their approved state consistent with the terms and conditions of this CDP and the approved *Restoration Plan and Coastal Access Improvements for La Costanera Restaurant* dated March 13, 2018 (see **Exhibit 6**), including through ongoing repair,

maintenance, or, if necessary to respond to shoreline erosion or other conditions, relocation.

(e) **Signs.** Informational and directional signage that implement the terms of this Special Condition shall be provided at appropriate locations (see also Special Condition 6). The signs shall be designed so as to provide clear information without adversely impacting public views and site character. No new signage or modifications to the existing signage shall be installed or performed unless the Executive Director determines in writing that such new signage or modifications are consistent with this CDP amendment, or unless the new signage or modifications to existing signage are approved through a separate CDP amendment application.

8. Public Access Parking Mitigation. WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS CDP AMENDMENT (i.e., by November 12, 2018), the Permittee shall submit a Parking Mitigation Plan (PMP) to the Executive Director for review and approval, to construct additional parking spaces for access to Montara State Beach as mitigation for impacts to public beach access parking through Option 1 or 2 outlined below. PRIOR TO ANY USE OF THE PATIO, the Permittee shall demonstrate, to the satisfaction of the Executive Director, that the parking improvements have been constructed and are available for public use and that the PMP has been fully implemented. The authorization to use the patio granted through this CDP amendment is contingent upon the continuing availability of the parking improvements required pursuant to this condition. Any use of the patio, including by patrons, lessees, or persons contracting with the restaurant, prior to the Executive Director's determination that this condition has been satisfied, or at a time when the Executive Director determines that the herein required parking improvements are not available to the public, shall constitute a knowing and intentional violation of CDP P-77-0579 and the public access and recreation provisions of the Coastal Act and the San Mateo County LCP.

(a) **Option 1 - Public Parking Improvements.** The Permittee shall improve the existing undeveloped parking area owned by State Parks located to the north and adjacent to the northern paved restaurant parking lot for at least 20 public access parking spaces. The PMP shall include evidence that the Permittee has obtained all necessary authorizations, including but not limited to any approvals from San Mateo County and any necessary authorizations from State Parks. Such parking improvements shall be substantially consistent with the plans entitled *Grading and Drainage Plans, New Parking Lot, 8150 Cabrillo HWY, Montara, CA, 94037*, dated October 1, 2013 ([Exhibit 8](#)), and shall include: appropriate drainage features, native landscaping (including that sufficient to help provide screening and/or partial screening of the parking lot and parked vehicles as seen from Highway 1 and coastal trails as much as feasible), and all-weather surfacing; at least 20 public parking spaces; either a separate connection from Highway 1 or a direct connection through the northern paved restaurant parking lot; appropriate connections to the required public access amenities on the property, including those amenities required by the terms and conditions of this CDP and the approved *Restoration Plan and Coastal Access Improvements for La Costanera Restaurant* dated March 13, 2018 (see [Exhibit 6](#)); avoidance of sensitive archaeological and paleontological resources as described in detail in an Archaeological Survey Report (ASR) and a report on paleontological

resources; consult with State Parks Archaeologist/Cultural Resources Program Manager; and informational and directional signage that implement the terms of this Special Condition at appropriate locations (see also Special Condition 6). All signs shall be designed so as to provide clear information without adversely impacting public views and site character. The final parking configuration and all construction activities shall avoid impacts to nearby sensitive habitats, fossils, and archaeological resources to the extent feasible.

The improved parking lot shall be used only for general public access parking for Montara State Beach, and restaurant parking in the improved lot shall be prohibited at all times. The improved parking lot shall be available for general public access 24 hours a day, seven days a week. In addition, at all times, vehicular access through the restaurant's north parking lot shall be provided to and from the improved parking lot unless a separate connection to Highway 1 is provided.

The Permittee shall maintain and repair the improved lot for as long as a restaurant remains in operation at the site. All of the public parking improvements shall be constructed in a structurally sound manner and maintained in their approved state consistent with the terms and conditions of this CDP amendment including through ongoing repair, maintenance, or relocation (if necessary to respond to shoreline erosion) of all public parking improvements. The PMP shall demonstrate compliance with all of the above requirements.

(b) Option 2 - Public Access In-lieu Mitigation Fee. Alternatively, the Permittee shall pay for the construction of the required parking improvements by State Parks (or an organization acceptable to the Executive Director as described below), as follows: The PMP shall provide that Permittee shall provide funding for the purpose of (1) upgrading the existing undeveloped parking area owned by State Parks located to the north and directly adjacent to the northern paved restaurant parking lot as identified in Option 1, or (2) upgrading or providing for other public access parking for Montara State Beach as near as possible to the Option 1 site, by depositing the required funds into an interest bearing account held by State Parks and submitting evidence, in a form and content acceptable to the Executive Director, that the required funds have been provided. The PMP shall provide clear information demonstrating that the funding is adequate to meet the terms of this condition. In all cases, the requirements of Option 1 shall adhere to any such parking facilities, including the maintenance and repair requirements, and the PMP shall include provisions demonstrating how these requirements will be satisfied. All interest earned on the fee will be payable to the account. Any use of the fee and accrued interest shall be subject to Executive Director review and written approval. If State Parks determines in writing that it is unable to use the funds for parking improvements for Montara State Beach, or any portion of the mitigation fee remains after five years, the funds or remaining funds shall be donated to the Coastal Conservancy, or other organization acceptable to the Executive Director, for the purpose of public recreational parking and related improvements as close as possible to Montara State Beach. The PMP shall demonstrate compliance with all of the above requirements.

9. Restaurant Hours and Capacity. The restaurant is not allowed to open for business, or

allow any parties contracted with the restaurant to use the property for any private uses, before 5:00 p.m. The Permittee shall ensure that the restaurant does not at any time serve more patrons than the authorized capacity of the restaurant, as identified on the final approved plans pursuant to Special Condition 6, including by ensuring that all employees comply with the requirements of the CDP and ensuring that all lessees or private parties comply with, and that any contracts include and are consistent with, all special conditions of this CDP Amendment, including Special Conditions 7, 8, and 9 regarding public access requirements and restaurant hours and capacity.

10. Archaeological Resources. In the event that any article of historical or cultural significance is encountered, all activity that could damage or destroy these resources must cease and the Executive Director and the Native American Heritage Commission must be notified so that the articles may be suitably protected or flagged for future research. An archaeological monitor qualified by the California Office of Historic Preservation standards and/or the Native American Heritage Commission shall be consulted in order to examine the site and obtain recommendations for subsequent measures for the protection and disposition of significant artifacts. Mitigation measures shall be developed and submitted to the Executive Director for review and approval that address and proportionately offset the impacts of the project on archaeological resources prior to recommencement of construction activity.

11. Coastal Hazards Risk. By acceptance of this amended CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, to all of the following:

- (a) **Coastal Hazards.** That the site is subject to coastal 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, landslides, bluff and geologic instability, bluff retreat, liquefaction and the interaction of same.
- (b) **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such hazards in connection with this permitted development.
- (c) **Armoring Waiver.** Other than existing legally established armoring, to waive any rights that the Permittee may have to construct shoreline armoring (including but not limited to additional or augmented seawalls, revetments, retaining walls, gabion baskets, tie backs, caissons, piers, groins, etc.) to protect the permitted development, including rights that may exist under Coastal Act Section 30235, the San Mateo County Local Coastal Program, or any other applicable laws.
- (d) **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such coastal hazards.
- (e) **Indemnification.** To indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the development 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 such coastal hazards.

(f) Property Owners Responsible. That any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.

12. Public Rights. The Coastal Commission’s approval of this CDP amendment shall not constitute a waiver of any public rights that may exist on the property. The Permittee shall not use this CDP amendment as evidence of a waiver of any public rights that may exist on the property now or in the future.

13. Future Permitting. Any and all future proposed development at and/or directly related to the site or this CDP amendment shall require a new CDP or a CDP amendment through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required.

14. Deed Restriction. WITHIN 180 DAYS OF COMMISSION APPROVAL OF THIS CDP AMENDMENT (i.e., by March 12, 2019), the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the parcel(s) governed by this CDP P-77-0579 as amended a deed restriction (“Deed Restriction”), in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to CDP P-77-0579 as amended, the California Coastal Commission has authorized development on the subject property subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the conditions of CDP P-77-0579 as amended as covenants, conditions and restrictions on the use and enjoyment of the property. The Deed Restriction shall include a legal description of the entire parcel or parcels governed by CDP P-77-0579 as amended. The Deed Restriction shall also indicate that, in the event of an extinguishment or termination of the Deed Restriction for any reason, the terms and conditions of CDP P-77-0579 as amended shall continue to restrict the use and enjoyment of the subject property so long as either CDP P-77-0579 as amended or development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION, PERMIT HISTORY, AND DESCRIPTION

Project Location

The proposed project is located on a property comprised of multiple parcels (APNs 036-046-050; 036-046-400; 036-046-310; 036-046-390; and 036-046-380) that is currently developed with a 189-seat restaurant and two associated parking lots, at 8150 Cabrillo Highway in Montara, an unincorporated area of San Mateo County. The project site is located west of Highway 1 on the coastal bluff above Montara State Beach (see [Exhibits 1 and 2](#)). Public land, including Montara State Beach, which is operated by the California Department of Parks and Recreation, is located immediately to the north, south, and west of the property, essentially surrounding the site other than its Highway 1 frontage. Inland of Highway 1 from the site is some limited residential

development, as well as open space and more rural areas further inland from that and to the north. The site is located at a popular visitor destination, namely Montara State Beach, which provides the public with great opportunities to enjoy this portion of the California Coast. These include the California Coastal Trail along the blufftop, the sandy Montara Beach below, and the open waters of the Pacific Ocean. Grey whales are often observed offshore of Montara Beach, making this an ideal whale watching location for the public. Given its location near San Francisco and the greater Bay Area, Montara State Beach is heavily used and so are the public access areas of the site.

Montara State Beach includes two developed parking lots, one about a half mile north of the site and another located immediately to the south (see [Exhibit 2](#)). A dirt, informal parking area on State Parks property immediately adjacent to the northern restaurant parking lot is also used for public parking. There is also some public parking along the Highway itself, but it is more limited. In addition, the restaurant parking lots are also available for public parking based on the requirements of the original CDP approval (see also below).

Opportunities for pedestrian access in the vicinity of the project site include a lateral accessway along the bluff seaward of the restaurant that connects the northern and southern restaurant parking lots (a portion of the California Coastal Trail), and a vertical access stairway connected to the blufftop trail that provides direct access to Montara State Beach adjacent to the restaurant. The vertical access stairway was required as mitigation for rip-rap that lines the bluffs fronting the restaurant, placed under County CDPs 83-67³ and 20-77.⁴ Public access to Montara State Beach is also available via the State Parks public parking lot roughly a half-mile to the north of the site.⁵

Permit and Enforcement History

The Coastal Commission approved CDP P-77-0579 in July 1977,⁶ which authorized the remodel of a pre-existing motel and 260-seat restaurant into the existing 189-seat restaurant, as well as parking lot improvements and landscaping (see [Exhibit 4](#)). The Commission found in the original CDP approval that despite the reduction in restaurant capacity from 260 to 189 seats, the new restaurant and bar, proposed with only 53 parking spaces, would not provide adequate parking. To address the inadequate parking and potential conflicts between parking for public access and restaurant users in the surrounding Montara State Beach area, the CDP relied on ‘reciprocal use’ of both the public (i.e., State Parks’ parking lot just downcoast of the restaurant)

³ Issued by the County on February 27, 1984.

⁴ San Mateo County CDP 83-67 (as amended by UP 20-77) allowed for the placement of rip-rap along 460 linear feet of bluffs roughly fronting the restaurant site, as well as reconstruction of the parking lots and installation of associated storm drainage infrastructure. Note that, according to the County, the rip-rap has been modified over time without a permit. The County is requiring the property owner to prepare a plan to address all unpermitted rip-rap and to perform necessary repairs. The Commission’s consideration of this CDP amendment is in no way any type of agreement to any unpermitted rip-rap or associated future permitting thereto, and shall be without prejudice as to the Commission’s ability to address such unpermitted rip-rap or associated future permitting under the Coastal Act and the LCP independent of this CDP amendment action.

⁵ State Parks is in the process of making improvements to this parking lot, including amenities for public viewing and accessibility pursuant the Americans with Disabilities Act of 1990 (ADA).

⁶ Prior to certification of San Mateo County’s Local Coastal Program in 1981.

and private (i.e., the restaurant's parking lots) parking lots as generally agreed upon at the time by the County, the property owners and State Parks, and by restricting restaurant hours of operation to after 5:00 p.m. In other words, the restaurant was specifically required to allow public use of its parking lots for general beach public access, with the idea being that such beach access would wind down as restaurant activities were starting up in the evening, and that there would be enough parking for all given such timing and spacing. This reciprocal shared parking arrangement anticipated that overflow beach parking would use the two restaurant lots during the day and overflow restaurant parking would use the adjacent beach parking lot to the south in the evenings.

The property owners pursued amendments to CDP P-77-0579 in both 1981 and 1987, but neither resulted in an amended permit. The 1981 amendment (P-77-0579-A1) application proposed restaurant day use on Sundays, and the 1987 amendment application proposed to prohibit public access parking in the northern restaurant lot with a sign and barrier until 5:00 p.m. in order to reserve the lot for restaurant patrons only, and to also (as previously requested in 1981) allow day use on Sundays starting at 10:00 a.m.. The Commission denied the 1981 amendment request for day use on May 11, 1981. The Commission found the proposed amendment to be inconsistent with the original CDP requirements that restricted restaurant use to evening hours to mitigate for public parking impacts, and found that the project would reduce the parking available to the public, would directly conflict with the original reciprocal parking agreement with the County and State Parks, and would be inconsistent with Coastal Act Section 30252, which requires maintenance of public access to the coast by providing adequate parking facilities, and Section 30210, which requires that development not interfere with the public's right of access to the sea. With respect to the second proposed amendment in 1987 (P-77-0579-A2), the property owner withdrew the amendment request prior to any Commission action because it did not have County approval to increase business hours, which was required before the Commission could take action on the request to extend the restaurant hours. Ultimately, such County approval was not granted and the application was subsequently withdrawn.

In the past, the restaurant has violated the terms of the original CDP and created further impediments to public beach access parking, including via prohibiting use of the restaurant parking lot by beach goers when such public parking use is required under the base CDP. Recently, the restaurant has also violated the terms of the original CDP and created further impediments to public beach parking through intensification of restaurant use, including by increasing the square footage of the restaurant, exceeding the allowed capacity, opening the restaurant prior to 5 p.m., and discouraging public parking on the property through erection of signs and use of unpermitted valet parking, all inconsistent with the CDP. Unpermitted development also included: 1) construction of two patios, an upper 850 square-foot patio and a lower 1,276 square-foot ocean fronting patio; placement of glass windscreens around the perimeter of the patios; construction of three raised, masonry fire pits; placement of fill; and construction of a retaining wall; 2) operation of the restaurant prior to 5:00 p.m.; and 3) exceedance of the 189 person capacity for the restaurant by serving in excess of 300 people at one time.

In March 2017 these violations were addressed through Commission-issued Consent Cease and Desist Order CCC-17-CD-01 and Consent Administrative Penalty CCC-17-AP-01 (together the

“Consent Orders”) (see [Exhibit 5](#)). The Consent Orders require, among other things, that the Applicant: 1) cease and desist from conducting any further unpermitted development on the parcel; 2) cease use of the restaurant prior to 5:00 p.m.; 3) remove the upper patio and associated development, and re-establish the site’s original grade and vegetate the area with native landscaping; and 4) either remove or request after-the-fact approval of the lower patio, glass windscreen and two masonry fire pits on the patio and comply with the requirements imposed by the Commission in the subject CDP amendment if the application is approved, or remove the lower patio pursuant to an approved removal plan if the application is denied.

The Consent Orders also required additional public access improvements to be developed at the project site, including improvements to the existing vertical access stairway; extension and improvements to the California Coastal Trail from the Montara State Beach public parking lot immediately south of the property and extending across the property to State Parks land at the northwest boundary of the property; three public viewing areas; and public access signage along the trail, on Highway 1 and in the parking lots pursuant to the approved *Restoration Plan and Coastal Access Improvements for La Costanera Restaurant* dated March 13, 2018 ([Exhibit 6](#)).

It is important to note that the requirements of the Consent Orders, including the penalties imposed for violating the public access provisions of the Coastal Act and the public access mitigation measures required pursuant to the Consent Orders, addressed only the historic impacts caused by the unpermitted development. The Consent Orders did not address the impacts to public access that will result from the after-the-fact authorization and continued use of the lower patio moving forward. Therefore the Consent Orders and their requirements are separate and distinct from the impacts of the proposed development, and the proposed development requires additional evaluation and mitigation, as is further discussed in Section C, below.

The Applicant was issued a Use Permit Amendment and Design Review Permit from San Mateo County in September 2017 (see [Exhibit 7](#)) that legalized use of the previously-unpermitted 1,276 square-foot lower patio; and permitted installation of the public access improvements pursuant to the requirements of the Commission-issued Consent Orders, including trail improvements, public viewing areas, and landscaping; installation of downward-directed path lighting in the parking lots; and the construction of new roofing over the 1,118-square-foot outdoor work/trash area.

Project Description

The proposed amendment request (P-77-0579-A3) seeks after-the-fact authorization for the construction of a 1,276 square-foot lower outdoor patio for restaurant seating and use without changing the total number of seats allowed by CDP P-77-0579 (and the County’s recently-amended Use Permit UP 20-77). The Applicant is also seeking authorization to install lighting to improve safety and security comprised of twenty-three, 24-inch tall, downward-directed light bollards, including seven in the restaurant’s south parking lot, thirteen in the north parking lot, and three along the western coastal trail/pathway; and to construct an addition to the roof that extends over the existing 1,118 square-foot outdoor work/trash area (see [Exhibit 3](#)).

B. STANDARD OF REVIEW

The original permit was approved prior to the certification of San Mateo County’s Local Coastal Program (LCP) and was subject to review under the Coastal Act. The property is currently

located within an area governed by the certified San Mateo County LCP. Further, the property is located between the first public road (in this location Highway 1) and the sea; therefore, the standard of review for the proposed project is the San Mateo County LCP and the public access and recreation policies of the Coastal Act.

C. PUBLIC ACCESS AND RECREATION

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed project site is located seaward of the first through public road (Highway 1) and therefore subject to Section 30604(c) requirements. Coastal Act Sections 30210 through 30224 and 30252 specifically protect public access and recreation and especially lower cost recreation and visitor facilities, as follows:

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 30212.5. *Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

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 30222. *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

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

In addition, Coastal Act Section 30252 specifically identifies the need to assure adequate parking for public access to the coast, stating:

Section 30252. *The location and amount of new development should maintain and enhance public access to the coast by... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.*

San Mateo County's certified LCP also requires the protection and provision of public access to and along the shoreline and on bluffs, and requires provision and maintenance of adequate parking facilities for shoreline access areas, including the following LCP policies:

LCP Policy 10.17 Lateral Access (Shoreline Destinations) With Coastal Bluffs

- a. *Provide access for the general public between the mean high tide line and the base of the bluff where there is adequate room for public use.*
- b. *Because of scenic or recreational value, provide a pathway with a right-of-way at least 25 feet in width, which allows feasible unobstructed public access along the top of the bluff when no public access will be provided to the area between the mean high tide line and the base of the bluff because of safety and/or other considerations, and/or when the Site Specific Recommendations for Shoreline Destinations (Table 10.6) requires one.*
- c. *Require bluff top setbacks, based upon site specific geologic and erosion conditions, to ensure safe and continued use.*

LCP Policy 10.20 Posting

Clearly post new or improved public access areas.

LCP Policy 10.22 Parking

- a. *Continue the use of existing official off-street parking facilities for shoreline access areas in order to maintain existing parking levels and to confine negative impacts to areas already disturbed. ...*
- c. *Use the following criteria when developing or relocating new off-street parking facilities for shoreline access areas:*
 - (1) *Base the amount of parking on the level of public use appropriate for a site's size, environmental sensitivity, and amount of land suitable for parking.*
 - (2) *Give preference to sites which are now used informally for shoreline access parking. However, do not establish the following as permanent sites for parking: (a) emergency pullouts needed for highway safety, (b) visually prominent sites where landscaping would not significantly screen the parking from view, (c) visually prominent sites where landscape screening would block ocean views, and (d) sites in or adjacent to sensitive habitats.*

- (3) *Locate new parking facilities on sites where it is possible to blend them into the landscape or screen them by topography or vegetation.*
- (4) *Prohibit the development of sandy beaches. ...*
- d. *New commercial or industrial parking facilities of ten or more spaces within 1/4-mile radius of an established shoreline access area shall designate and post 20% of the total spaces for beach user parking between 10:00 a.m. and 4:00 p.m.*
- e. *Provide trails linking parking facilities to nearby shoreline destinations that do not have existing parking facilities because such facilities would be inconsistent with other parking policies. ...*

LCP Section 6119 Parking Spaces Required

The number of off-street parking spaces required: ... [For] Establishments for the Sale of and Consumption (on the premises) of Alcoholic Beverages, Food, or Refreshments – 1 [parking space] for each 3 seats or stools.

LCP Section 6120 Exceptions

In cases of practical difficulties and unusual hardship, the Planning Commission may after proper hearings recommend exceptions to the foregoing [LCP Section 6119] requirements. Application for an exception shall be made and an exception may be issued under the same procedure as that specified in Chapter 25 of this Part for the granting of a variance, except that no public hearing need be held thereon and the findings of the Planning Commission need include only that establishment, maintenance and/or conducting of the off-street parking facilities as proposed are as nearly in compliance with the requirements set forth in Section 6119 hereof as are reasonably possible. ...

Analysis

The Coastal Act calls for the provision of maximum public access and recreation, consistent with the protection of natural resource areas from overuse, and protects and prioritizes oceanfront land suitable for recreational, visitor-serving, and water-oriented recreational uses to be developed with such uses (including Sections 30210, 30211, 30220, 30221, 30222, 30223, 30250(c), 30253(e)). It also protects and encourages the provision and protection of lower cost visitor and recreational facilities (Section 30213). Finally, the Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply *provide* access to and along the coast, and not enough to simply *protect* access; rather such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction to projects along the California coast that raise public access issues, like this one.

Similarly, the LCP protects public access along the coast within San Mateo County. LCP policies on public access require blufftop setbacks for new development to ensure safe and continued use of lateral access, posting for new or improved public access areas, and the continued use of existing off-street parking facilities for shoreline access areas in order to maintain existing parking levels and to confine negative impacts to already disturbed areas. The LCP also requires at least one parking space to be provided for every three seats or stools for establishments selling food or alcohol (such as the subject restaurant in this case). Exceptions to such minimum parking

requirements are allowed subject to certain findings in cases where there are practical difficulties or unusual hardship in meeting such minimum standards, including where a finding can be made that the off-street parking facilities as conditioned are as nearly in compliance with the requirements as are reasonably possible.

The original CDP set the hours of the restaurant at “between 5:00 p.m. and normal closing time,” which is currently 9:00 p.m. on Sundays and Tuesday through Thursday, and 10:00 p.m. Fridays and Saturdays, to address the inadequate parking proposed for the restaurant,⁷ and to offset/reduce its impact on the public’s ability to access Montara State Beach. Similarly, that CDP relied on a ‘reciprocal’ parking arrangement (agreed to at the time by the property owners, State Parks, and the County) to assure adequate parking for both restaurant and public access uses overall, and to assure that public parking for beach access would not be negatively impacted by restaurant parking needs. In other words, the restaurant was specifically required to allow public use of its parking lots for general beach public access, with the idea being that such beach access would wind down as restaurant activities were starting up in the evening, and that there would be enough parking for all given such timing and spacing. Even with these requirements in place, the restaurant’s 5 p.m. opening time means that it opens before sunset for most of the year, and opens approximately three and a half hours before sunset during the summertime when beach use is at its highest. Thus, even when the restaurant is operating consistent with its CDP requirements, there is an impact on the public’s ability to access the beach during daylight hours, including to park and watch the coastal sunset. Further, the history of the site indicates that there is still inadequate parking on site to meet LCP parking requirements and spillover to the public parking lots is inevitable, as was recognized in the original CDP. As such, even the baseline restaurant parking demand and hours of operation have had an adverse impact on public’s ability to park and access the coast over the years, even when the restaurant has been in compliance with its hourly restrictions and other parking requirements. In addition, it appears clear that the only way to satisfy the various parking demand and needs at the site (absent reducing the even currently permitted level of intensity and use of the restaurant) is through the continued shared use of the restaurant parking lots and the developed State Parks’ parking lot immediately downcoast of the restaurant.

The Applicant constructed the patio without obtaining the required CDP or CDP amendment sometime after June 2007, and the patios have been used to serve restaurant patrons for regular

⁷ The original CDP found the parking provided to be inadequate using a standard formula of 1 parking space per 2.5 seats (i.e., 75 spaces were required but only 53 spaces were provided, a deficit of 22 parking spaces). The current LCP standard is at least 1 parking space per 3 seats (i.e., thus 63 spaces are now required versus the 53 spaces provided in the restaurant’s parking lots). In both cases, the standards applied are generally on the low side for restaurant uses, and they presume that each car arrives with 3 passengers, and do not account for any employee parking. Parking requirements in other nearby LCPs would require the Applicant to provide significantly more parking. For example, under the City of Santa Cruz LCP, at least 94 parking spaces would be required for a comparably sized restaurant. And under the Santa Cruz County LCP at least 113 parking spaces would be required for a comparably sized restaurant. Perhaps even more on-point given the rural nature of the Montara State Beach stretch of coast where urban transit and other alternatives are not available to restaurant users, Marin County, which is a more rural stretch of coast than Santa Cruz County/City, would require at least 168 spaces for a comparably-sized restaurant. That is almost two and a half times the minimum of 63 parking spaces required under the San Mateo County LCP. In all cases, the restaurant use is simply under-parked, which is particularly critical in an area like this where its remoteness essentially requires users to arrive via a private car.

restaurant and bar service thereafter. In early 2017, the Commission, through issuance of the Consent Orders, and the County, through issuance of a Use Permit Amendment, required the usage of the patios to cease until a CDP is obtained. The proposed CDP amendment would authorize construction and ongoing use of the patio. Outdoor patios associated with restaurants, particularly in coastal areas, are not unusual. Such dining features provide restaurant patrons an opportunity to enjoy an outdoor setting and coastal views while dining. However, as described above, public parking is very limited in the vicinity of the project site, and was already constrained even prior to the construction of the patio area. Relatedly, public access to the beach is constrained in this area not only due to a lack of available public parking but by very limited public transit. The public primarily accesses Montara State Beach and this portion of the coast within San Mateo County through private vehicle use. Whenever parking demand for access to the beach exceeds the available public parking supply, such as during peak summer beach use periods, public access is adversely impacted along this stretch of coastline, potentially discouraging visitors to the beach due to lack of available parking.

The addition of the patio, including over 1,276 square feet of new restaurant capacity with seating for approximately 19-27 guests,⁸ provides significant, new, additional area for restaurant and bar service and for patrons waiting to be served, expanding the capacity of the restaurant. The expansion of the restaurant increases the number of restaurant patrons that can be hosted during restaurant hours at one time, thus the demand for parking in the area is increased and spillover to the public lots and areas along Highway 1 from the restaurant parking is inevitable. As such, the new patio increases the capacity and intensity of use of the restaurant, increasing the need for restaurant parking without providing any additional parking facilities to meet the additional demand, and thereby reducing parking that would otherwise be available in the vicinity for public beach goers, inconsistent with the Coastal Act and with LCP Policy 10.22(a), as well as the terms and conditions of the base CDP. In addition, authorization of the patio would result in an adverse impact on public access by displacing public parking that serves public recreational uses, including nearby trails and beach access, inconsistent with the Coastal Act's requirements that access be maximized, provided, and protected.

The Applicant asserts that it is not proposing to intensify restaurant use as the total number of seats in the restaurant, including the proposed patio seats (see [Exhibit 3](#)), will not change and will remain at 189 seats total. Although this claim has already been reviewed and rejected by the Commission (see findings for the Consent Orders at [Exhibit 5](#)),⁹ for the sake of clarity the claim is analyzed again here. It is clear that the additional patio square footage (almost 1,300 square feet of space) will increase the intensity of restaurant use by providing additional space for restaurant activities overall, whether it be an area where restaurant patrons can wait for a table or simply take in the view without seats, regardless of the total number of seats. Further, even without increasing the total amount of seating, there is still inadequate parking on site to meet LCP parking requirements, which require one space for every three seats. Specifically, the LCP

⁸ Although current plans show 19 seats on the patio, the Applicant's project seating plan, submitted to the Commission in February 2015 and dated July 2010, proposed 27 outdoor seats, demonstrating a potential to accommodate more than 19 seats in this area.

⁹ Note that the Commission's findings for Consent Orders state: "the patios in their current state have impacted and continue to impact public access by increasing capacity of the restaurant and thereby increasing parking demand for the limited spaces in this location of the coast."

would require that at least 63 parking spaces be provided (i.e., 1 space for every 3 seats), but the restaurant lots only provide 53 parking spaces, which is inconsistent with the requirements of LCP Section 6119 for a 189-seat restaurant. Furthermore, as described above, those 53 spaces are also *already allotted to public use* by virtue of the requirements of the base CDP, so even if the Applicant were to be able to find an additional 10 parking spaces, the site would still be significantly under-parked because the spaces are also allotted to the public. Exacerbating the situation is the fact that the LCP's minimum standards for restaurant parking are already on the low side,¹⁰ and thus the intensification of use raises significant Coastal Act and LCP consistency issues.

Again, even without the patio, the history of the site indicates that there is still inadequate parking on site to meet LCP parking requirements and spillover to the public parking lots is inevitable, as was recognized in the original CDP. The parking situation at Montara State Beach near this site has reached what some might call an uneasy balance with both public and private use of the State Beach parking lot to the south and the restaurant's lots, as well as public and private use of an informal parking area on State Parks' property to the north (abutting the restaurant's northern parking lot). This has been further frustrated by parking-related violations in the past (including the restaurant disallowing public use of the restaurant parking lot when such use is required to be allowed by the base CDP). Therefore, the proposed authorization of the patio would result in an adverse impact on public access by increasing the intensity of use of the restaurant in a manner that would serve to further displace public parking users in an area where public parking demand is high, and in an important area that provides significant and popular lower-cost, visitor-serving, recreational opportunities, including nearby trails and beach access. Thus, as proposed, the project is inconsistent with the Coastal Act requirements that access be maximized, provided, and protected, and with LCP parking requirements.

Therefore, the proposed project is only approvable if adequate mitigation can be provided to offset the impacts to public access that will result from use of the patio, if authorized. Ideally, the mitigation would be in the form of providing additional public parking supply, and also further enhancing public access facilities in the area. Fortunately, there are opportunities to appropriately offset such impacts nearby in a manner that should ensure the public is not unduly burdened by the restaurant's patio expansion project. Most notably, there is a dirt area on State Parks' property adjacent to and directly north of the northern restaurant parking lot that is currently used informally by both the restaurant users and the public for parking, and which is accessed through the restaurant parking lot. Improvements to this informal parking area are needed and are generally supported by State Parks. Such improvements to the dirt parking area, including grading, drainage and landscaping, were actually proposed by the Applicant when they applied to the County in 2014 (to allow restaurant service during the day on Sundays) as mitigation for impacts to public parking from that proposal. Improving this parking area would provide approximately 20 public parking spaces. Adding 20 more formalized public parking spaces would sufficiently offset the impact caused by restaurant intensification of use as a result of patio authorization, provided these parking spaces are made available only for the public and not

¹⁰ As indicated above, the requirement for 63 parking spaces for a restaurant of this size is a fairly low standard with respect to parking requirements of other nearby LCPs that would require as many as two and a half parking spaces for a restaurant of this size, particularly a restaurant like this that is in a more rural area lacking robust transit and other available alternatives to the private vehicle.

restaurant use.¹¹ It would also improve off-street parking facilities in the area with a new formalized parking lot in an area already used informally for shoreline access consistent with LCP Policy 10.22. Parking in the vicinity of the project site is constrained by the geographic setting as well as limited on and off-street parking in general for both local residents and visitors to the area. The combination of the existing required reciprocal use of the restaurant parking lots and the State Parks' southern parking lot, and the existing required limitation on restaurant hours (i.e., only allowed to be open from 5 p.m. on), when coupled with the above-described parking lot improvement mitigation for the new patio's impacts on public access, should render the proposed project as nearly in compliance with the requirements as are reasonably possible while not displacing public access parking, consistent with the standard expressed by LCP Section 6120 for sites with practical parking difficulties. Both State Parks and County staff have expressed support for the parking lot improvement mitigation identified here given the historic CDP context and background for the site, and as a means of allowing the Applicant its desired expansion.

The Applicant has instead proposed to enter into an agreement with State Parks to improve and share in the use of this northern dirt lot as well as provide additional public access amenities on the restaurant's property (e.g., telescopes, animal-safe trash enclosure, pet station with debris basket and bag dispenser, and an additional bench). However, shared use of the improved lot would not remedy the parking conflicts and would not provide any additional public parking benefit to mitigate for the impacts to public parking from intensified use of the restaurant. Further, while the amenities would benefit the public use and enjoyment of the area, they would not serve to address the parking issues which affect the public's ability to visit this section of the coast.

Thus, **Special Condition 8** requires that the Applicant mitigate impacts to public access due to its proposed patio expansion and increased restaurant intensification of use overall by either developing and maintaining the 20-space parking lot solely for public use or providing money to State Parks to do the same.¹² The public will benefit from upgrades to this unimproved, informal parking area, and requiring it to be used only for the public effectively offsets project impacts. State Parks indicates such a project will "greatly improve the utility" of that parking area.¹³ This mitigation is also consistent with that which has been required by the Commission in similar cases statewide. For example, in a recent Venice case, the Commission recently found that expansion of a restaurant without provisions for adequate parking in an area where public parking demand exceeds supply was inconsistent with the Coastal Act public access policies, and required conditions to address such impacts, including that parking be provided off-site and limiting use of the expanded area to after 5 p.m. when parking demand was deemed to be lower there (see A-5-VEN-15-0038, Dunes Development LLC). Further, to assure that the project does

¹¹ This is already required by virtue of the County's approval for the patio, where County permit UP 20-77 condition 12 explicitly prohibits restaurant use of that parking area.

¹² Although not determinative of the necessary funding for the mitigation identified, State Parks has indicated that the very recent State Parks project to improve and formalize (e.g., paving, striping, drainage, etc.) a separate unpaved Montara State Beach parking area located about a half mile to the north of the project site cost \$560,000 to develop the 39-space lot and related amenities (e.g., trails, picnic benches, etc.).

¹³ Personal communication from Chris Spohrer, District Superintendent, California Department of Parks and Recreation - Santa Cruz District, June 26, 2018.

not unacceptably impact public access to the beach, parking areas, and public access amenities in the area, including those required under the Consent Orders, **Special Conditions 6 and 7** also require appropriate signage; assurances that the public's access shall not be disrupted and is maintained; and that the public has a right to park in the restaurant lots and use all on-site public access amenities at all times. And **Special Condition 9** reiterates and continues to impose the restaurant capacity and hours of operation requirements of the base CDP to protect public coastal access. Specifically, the restaurant is not allowed to open for business, or allow any parties contracted with the restaurant to use the property for any private uses, before 5:00 p.m., and the maximum allowed capacity is limited to 189 seats (see also **Special Condition 6**).

This CDP amendment is conditioned to ensure that any impacts to public access due to the authorization and use of the proposed patio development are avoided, reduced, and, where ultimately unavoidable, mitigated. The project as conditioned is therefore in conformity with the applicable access and recreation policies of the Coastal Act and the San Mateo County LCP.

D. PUBLIC VIEWS

The San Mateo County LCP contains a number of policies to protect visual resources and special communities such as:

LCP Policy 8.4b Cliffs and Bluffs

Set back bluff top development and landscaping from the bluff edge (i.e., decks, patios, structures, trees, shrubs, etc.) sufficiently far to ensure it is not visually obtrusive when viewed from the shoreline except in highly developed areas where adjoining development is nearer the bluff edge, or in special cases where a public facility is required to serve the public safety, health, and welfare.

LCP Policy 8.12c General Regulations

Locate and design new development and landscaping so that ocean views are not blocked from public viewing points such as public roads and publicly-owned lands.

LCP Policy 8.13 Special Design Guidelines for Coastal Communities

The following special design guidelines supplement the design criteria in the Community Design Manual:

a. Montara-Moss Beach-El Granada

- (1) Design structures which fit the topography of the site and do not require extensive cutting, grading, or filling for construction.*
- (2) Employ the use of natural materials and colors which blend with the vegetative cover of the site.*
- (3) Use pitched, rather than flat, roofs which are surfaced with non-reflective materials except for the employment of solar energy devices.*
- (4) Design structures which are in scale with the character of their setting and blend rather than dominate or distract from the overall view of the urban scape.*

- (5) *To the extent feasible, design development to minimize the blocking of views to or along the ocean shoreline from Highway 1 and other public viewpoints between Highway 1 and the sea. Public viewpoints include coastal roads, roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches. This provision shall not apply in areas west of Denniston Creek zoned either Coastside Commercial Recreation or Waterfront. ...*

LCP Policy 8.32 Regulation of Scenic Corridors in Urban Areas

- a. *Apply the regulations of the Design Review (DR) Zoning Ordinance.*
- b. *Apply the design criteria of the Community Design Manual.*
- c. *Apply specific design guidelines for Montara, Moss Beach, El Granada, Princeton-by-the-Sea, Miramar, San Gregorio, and Pescadero as set forth in Urban Design Policies of the LCP.*

Analysis

The project site is located on a coastal bluff overlooking Montara State Beach within the Cabrillo Highway (Highway 1) County Scenic Corridor. Residential development, open space, and agricultural areas can be found to the east of the project site inland of the Highway, but the restaurant is the only significant structure along the entire stretch of Montara State Beach. The physical setting immediately adjacent to the restaurant along the coast in this area has retained a more natural quality and character. Views to the west of the site include a portion of the California Coastal Trail, vegetated blufftop, sandy Montara Beach below, and the open waters of the Pacific Ocean. The LCP provides policies for the protection of visual resources and community character within the Coastal Zone, including requirements that development be setback from the bluff edge so it is not visually obtrusive when viewed from the shoreline, and that development be sited and designed to not impact ocean views from Highway 1 and other public viewing locations. In addition, the LCP provides design guidelines for new development in Montara to assure that the community character is preserved.

The proposed patio is attached to the rear or backside of the existing restaurant structure, fronting the ocean. It does not substantially increase the mass of the restaurant or block ocean views as viewed from Highway 1, consistent with the LCP. The patio is visible from Montara State Beach and the ocean; however, its color and the building materials blend with the existing restaurant structure, including the clear (glass/plexiglass) windscreens that function to block the wind. As such, the proposed patio doesn't add bulk or mass to the restaurant structure when viewed from the beach below, it blends with the surrounding development and is setback behind the Coastal Trail, preserving views along the shoreline and from public viewing locations consistent with the visual resource protection policies of the LCP.

The Applicant indicates that the proposed light bollards are necessary to ensure the public and restaurant patrons' safety at night when traversing the parking lots. While the proposed lighting results in a minimal visual impact as designed, being a rural, coastal beach setting, the character of this area is especially unique and protected and any development beyond the existing state has the potential to impact the viewshed in a way that is inconsistent with LCP policies that require

preservation of coastal views, including nighttime coastal views.¹⁴ In addition, the proposed lighting design could produce light impacts to surrounding areas at night and impact nighttime views.

In order to assure consistency with the LCP visual resource protection policies, **Special Condition 6** requires that all lighting fixtures be designed to avoid glare and light spillover to the vicinity, including Highway 1 and the beach area below the restaurant. All exterior lights are required to be low-profile (minimal) and downward-directed; and exterior lights directed towards the beach and ocean are prohibited. Lights shall be required to be turned off when the restaurant is not in operation, other than the minimum necessary for public safety purposes (which would appear not to include lighting of the parking lot areas at night at a minimum). In order to assure consistency with LCP policies that require new development to be sited and designed so as not to block ocean views from public viewing points, and require structures that are in scale with the character of their setting, **Special Condition 6** also limits the patio size and capacity, requires visually unobtrusive glass screens, and limits lighting options. The project as conditioned will ensure that significant visual impacts are avoided, and appropriate mitigations applied, including so there is no spillage or excessive lighting on the blufftop that will result in impacts to the beach below. Further, the public access parking mitigation required by **Special Condition 8** shall include native landscaping to ensure that the development blends with the surrounding coastal landscape. Thus, the proposed project as conditioned is consistent with San Mateo County LCP policies that require the protection of visual resources.

E. MARINE AND OTHER BIOLOGICAL RESOURCES

The San Mateo County LCP provides for the protection of sensitive habitats including marine habitats located offshore of the project site, and requires implementation of project design and source control best management practices to protect coastal water quality as follows:

LCP Policy 7.3 Protection of Sensitive Habitats

- a. *Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.*
- b. *Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.*

LCP Policy 7.22 Designation of Marine and Estuarine Habitats

Designate all areas containing marine and estuarine habitats as requiring protection, specifically including but not limited to: Fitzgerald Marine Reserve, San Gregorio Estuary, Pescadero Marsh, Pigeon Point, Franklin Point, Año Nuevo Point, and Año Nuevo Island Reserve.

LCP Policy 1.35 All New Land Use Development and Activities Shall Protect Coastal Water Quality Among Other Ways By:

¹⁴ Note that in the past restaurant operators used unpermitted large flood lights to light up the beach and the ocean, and these lights were part of the aforementioned enforcement case.

- a. *Implementing appropriate site design and source control best management practices (BMPs). Site design BMPs are land use or site planning practices that aim to prevent runoff pollution by reducing the potential soil erosion or contact of runoff with pollutants. Source control BMPs are structural or non-structural practices that minimize the contact between pollutants and runoff...*
- e. *Minimizing the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers, streams, and lakes)...*

Analysis

The LCP provides for the protection of sensitive habitats and marine resources. Specifically, LCP Policy 7.3 prohibits land use or development that will result in significant adverse impacts to sensitive habitat areas and LCP Policy 7.22 designates all areas that contain marine habitat as areas that require protection. Finally, LCP Policy 1.35 requires the protection of coastal water quality through implementation of project design and source control best management practices to prevent polluted runoff and minimize the introduction of such pollutants into coastal waters.

The project site is located on a blufftop overlooking Montara State Beach. The outdoor patio is located on the portion of the blufftop between the restaurant building and the ocean. Montara State Beach is a coarse-grained, sandy beach adjacent to ocean waters that are part of two state-designated Marine Protected Areas, Montara State Marine Reserve and Pillar Point Marine Conservation Area. The area offshore of the project site is a dynamic ecosystem that provides habitat for diverse species, such as many species of rockfish, including blue, canary, and vermilion rockfish, black oystercatchers, and green anemone.¹⁵ Wren-tits, song sparrows, and shore birds nest in the coastal scrub along the beach. Resident bird species found in the area include mallard ducks, black phoebes, American coots, warblers, and hawks. Migrating cinnamon teal and buffleheads also stop to rest at Montara Beach and the vicinity as part of their migration.¹⁶

The proposed project could potentially result in adverse impacts to water quality and marine life, particularly if runoff from the site is not properly retained onsite and properly filtered and treated. Specifically, the existing uncovered outdoor work/trash area can discharge contaminated runoff to the storm drain located in the south parking lot, eventually depositing pollutants onto Montara Beach. The Applicant and County determined that on-site drainage patterns, where trash is stored outdoors and upslope of the storm drain, contributed significantly to a discharge problem from the site.¹⁷ The new proposed roof extension over the outdoor trash area has been designed to allow rain water runoff to be directed to the storm drain separate from the restaurant's polluted trash drippings and mop water, which will be directed to the sanitary sewer drain. Further, the patio drains connect to the existing sanitary sewer system and will prevent additional discharge to the beach and ocean waters. Therefore, as designed and conditioned pursuant to **Special Condition 6**, the proposed project would prevent polluted runoff and minimize the introduction of such pollutants into coastal waters consistent with LCP water

¹⁵ See, for example <https://www.coastsidestateparks.org/montara-state-beach>.

¹⁶ See, for example <https://www.thatsmypark.org/parks-and-beaches/montara-state-beach/>.

¹⁷ See San Mateo County staff report for PLN2015-00297 (amendment to Use Permit UP 20-77) dated September 27, 2017.

quality and sensitive habitat protection policies.

The proposed patio includes clear (glass/plexiglass) windscreens around its perimeter which have the potential to injure or harm migratory and shore birds. Therefore, **Special Condition 6** also requires that the windscreens include design features such as decals or frosting to prevent the occurrence of bird-strikes at this location consistent with LCP sensitive habitat protection policies. Further, the public access parking mitigation required by **Special Condition 8** requires that the dirt lot, currently used informally for parking, be constructed with proper grading, drainage features and native landscaping to minimize erosion of the bluff, improve the treatment of runoff, and provide habitat benefits. As conditioned, the project is consistent with the San Mateo County LCP policies that protect marine resources, offshore habitat, and water quality.

F. ARCHAEOLOGICAL RESOURCES

The San Mateo County LCP protects archaeological resources, stating:

LCP Policy 1.25 Protection of Archaeological/Paleontological Resources

Protection of Archaeological/Paleontological Resources Based on County Archaeology/Paleontology Sensitivity Maps, determine whether or not sites proposed for new development are located within areas containing potential archaeological/paleontological resources. Prior to approval of development proposed in sensitive areas, require that a mitigation plan, adequate to protect the resource and prepared by a qualified archaeologist/ paleontologist be submitted for review and approval and implemented as part of the project.

11.18 Sensitive Habitats

a. Conduct studies by a qualified person agreed by the County and the applicant during the planning and design phases of facilities located within or near sensitive habitats and archaeological/paleontological resources to determine the least disruptive locations for improvements and the methods of construction.

These studies should consider the appropriate intensity of use, improvements and management to protect the resources and reduce or mitigate impacts.

b. Provide improvements and management adequate to protect sensitive habitats. These may include, but are not limited to, the following: (1) informative displays, brochures, and signs to minimize public intrusion and impact, (2) organized tours of sensitive areas, (3) landscaped buffers or fences, and (4) staff to maintain improvements and manage the use of sensitive habitats.

c. Provide setbacks from bluff edges adequate to protect the public, based on local geology and erosion rates and consistent with the Hazards Component.

The project site is an area that has been identified in the past as being archeologically sensitive, namely the low-lying areas along Montara State Beach and below Montara Mountain to the northeast. There is also a known archaeological site to the north of the unimproved informal parking area on State Parks property which is separated from the parking area by a fence. There

is also a potential for paleontological resources/fossils in the project vicinity.¹⁸ Although there is no evidence in the current application materials of paleontological and archeological resources being present in either the patio area or the dirt parking area to the north, due to the sensitive resources in the vicinity and adjacent to the site, it is appropriate to protect against any inadvertent impacts to such resources. No specific paleontological or archeological mitigation measures are proposed as part of the proposed project. As such, the potential exists for possible impacts to archaeological and paleontological resources, which can be reduced through reasonable and feasible mitigation measures. Thus, **Special Condition 8** requires that the final parking configuration of the improved dirt parking area and all associated construction activities shall avoid impacts to nearby sensitive habitats and archaeological and paleontological resources to the extent feasible as described in detail in an Archaeological Survey Report and a report on paleontological resources. Further, **Special Condition 10** requires that if cultural resources are discovered, the Applicant is required to cease work and prepare a plan that identifies measures to be undertaken to determine the significance of the find, which will reviewed by the Executive Director. If significant, an additional plan is to be prepared by a qualified professional that details methods to protect the resource(s). As conditioned, the project is consistent with the San Mateo County LCP policies that protect archaeological resources.

G. COASTAL HAZARDS

The San Mateo County LCP requires that new development on coastal bluffs and along the shoreline be sited and designed to assure long-term stability and structural integrity, and to minimize risk to life and property. The following LCP policies are applicable:

LCP Policy 9.8 Regulation of Development on Coastal Bluff Tops

- a. *Permit bluff and cliff top development only if design and setback provisions are adequate to assure stability and structural integrity for the expected economic life span of the development (at least 50 years) and if the development (including storm runoff, foot traffic, grading, irrigation, and septic tanks) will neither create nor contribute significantly to erosion problems or geologic instability of the site or surrounding area. ...*
- d. *Prohibit land divisions or new structures that would require the need for bluff protection work.*

LCP Policy 9.11 Shoreline Development

Locate new development (with the exception of coastal-dependent uses or public recreation facilities) in areas where beach erosion hazards are minimal and where no additional shoreline protection is needed.

Analysis

LCP Policies 9.8 and 9.11 require that new development along the shoreline and on coastal bluffs be sited and designed to assure stability and structural integrity over the life of the development, not contribute to erosion or instability of the site of surrounding area, and not

¹⁸ Personal communication from Mark Hylkema, Archaeologist – Cultural Resources Program Manager, California Department of Parks and Recreation - Santa Cruz District, August 27, 2018

require the need for shoreline protection in the future. The Commission recognizes that there is a certain amount of risk involved in development that is located at the shoreline edge and that can be directly subject to erosion, violent storms, large waves, flooding, earthquakes, and other geologic and coastal hazards. These risks can be exacerbated by such factors as sea level rise and localized geography that can focus storm energy at particular stretches of coastline. Specifically, the proposed patio development is located on a coastal blufftop, one already fronted by shoreline protection in the form of rip-rap that the County authorized for placement in 1984 under CDP 83-67 and an amendment to Use Permit UP 20-77. As such, it is evident that the proposed project site is susceptible to bluff erosion and coastal hazards. The patio has been developed on a relatively stable site, landward of the existing coastal trail away from the bluff edge, and is adequately setback to avoid the need for armoring to protect it over its lifetime (even though the existing permitted shoreline protection affords it some protection).¹⁹ **Special Condition 6** ensures that armoring cannot be pursued to protect the patio, but rather that it will be required to be relocated or removed if threatened in such a way as to require armoring. Patio drains connect to the existing sanitary sewer system so drainage will not exacerbate the existing erosion of the bluff. Further, the public access parking mitigation required by **Special Condition 8** requires that the dirt area currently used informally for parking, be constructed with proper grading, drainage features and native landscaping that will control runoff and maintain bluff stability.

However, although the project is sited and designed to limit geologic risks, such as erosion, they cannot be eliminated entirely, and this fact must be recognized and liabilities assumed by the Applicant accordingly. Specifically, the Commission's experience in evaluating proposed coastal developments in areas subject to hazards such as the blufftop location of the proposed project 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 tens and hundreds of 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. Further, proposed new development can only be authorized provided no future armoring/shoreline protective devices will be constructed for its protection. Accordingly, this approval is conditioned for the applicant to assume all risks for conducting development at this location through **Special Condition 11** which requires the Applicant to acknowledge the hazards present onsite, to assume the risks of such hazards, to waive any rights that may exist to pursue or construct further shoreline armoring for the development specifically authorized through this CDP amendment, and to claim liability for the coastal hazards present. As conditioned, the project is consistent with the San Mateo County LCP coastal hazards policies.

¹⁹ The original rip-rap at the base of the bluff along the property's boundary with the beach was installed under San Mateo County CDP 83-67 (as amended by UP 20-77). However, according to the County the rip-rap has been modified over time without a permit. The County is requiring the property owner to prepare a plan to address all unpermitted rip-rap and to perform necessary repairs. The Commission's approval of this CDP is in no way any type of agreement to any unpermitted rip-rap or associated future permitting thereto, and shall be without prejudice as to the Commission's ability to address such unpermitted rip-rap or associated future permitting under the Coastal Act and the LCP independent of this CDP amendment action.

H. VIOLATION FINDING

As described in this report, there is an extensive history of Coastal Act violations at La Costanera including, but not limited to, the unpermitted installation of two patios; glass windscreens around the perimeter of the patios; three raised masonry fire pits; placement of fill; and construction of a retaining wall associated with the patios (the subject of this CDP amendment). The subject unpermitted development was undertaken in violation of the terms and conditions of CDP P-77-0579, the Coastal Act, and the San Mateo County's LCP. In March 2017 the Commission issued Consent Cease and Desist Order No. CCC-17-CD-01 and Consent Administrative Penalty No. CCC-17-AP-01 (the "Consent Orders"). Through the Consent Orders, the Commission ordered, and the Applicant agreed to, among other things: 1) cease and desist from conducting any further unpermitted development on the property; 2) cease use of the restaurant prior to 5:00 p.m.; 3) remove the "upper" 850 square-foot patio and associated development and return the impacted area to original grade and install native landscaping in this location; 4) request after-the-fact approval of the lower, 1,276 square-foot patio, glass windscreen and masonry fire pits on the patio (the subject CDP amendment application) and remove that development if the application is denied by the Commission; and 5) resolve their civil liabilities for violating the Coastal Act by paying a monetary penalty and by constructing public access improvements on the property, including new public access signage, a new public viewing area, and new pedestrian improvements on and near the property to enhance California Coastal Trail offerings here.

The signage, viewing area, and pedestrian improvements required through the Consent Orders were required by the Commission to address the historic impacts of the unpermitted development on public access. These requirements are separate and distinct from the mitigation needed to address the future public access impacts associated with the authorization for the installation and continued use of the unpermitted lower patio, which is discussed elsewhere in this report. If the Commission approves the subject CDP amendment, the Consent Orders require the Applicant to comply with all of the requirements of the amended CDP. If the Commission denies the subject CDP amendment, the Consent Orders require the Applicant to remove the patio, windscreen, and fire pits pursuant to a removal plan approved by the Executive Director. In either case, the Commission's action on this application will result in resolution of the aforementioned upper patio-related violations on the subject property going forward.

Pursuant to the Consent Orders, any violation of the Consent Orders, including any violation of this CDP, as amended, or any attempts to interfere with the public's ability to park on the property or adjacent publicly owned property, or to limit or interfere with public use of state property or access to Montara State Beach, will result in the Applicant being liable for payment of stipulated penalties. Additionally, pursuant to the Consent Orders, any violations of the Consent Orders resulting from the use of the Property at hours that are not consistent with the hours authorized by CDP P-77-579 as amended, or from the use of the Property in excess of the restaurant capacity authorized by CDP P-77-579 as amended, shall result in the Applicant being liable for additional stipulated penalties in the amount of \$10,000 per day per violation. Additionally, any violation of the special conditions of this amended CDP that are designed to prevent impacts to public access also constitute a violation of the public access provisions of the Coastal Act and are subject to separate liability under Section 30821.

Finally, as identified earlier in this report, San Mateo County CDP 83-67 (as amended by UP 20-77) allowed for the placement of rip-rap along 460 linear feet of bluffs roughly fronting the restaurant site, as well as reconstruction of the parking lots and installation of associated storm drainage infrastructure. Note that, according to the County, the rip-rap has been modified over time without a permit. The County is requiring the property owner to prepare a plan to address all unpermitted rip-rap and to perform necessary repairs. The Commission's consideration of this CDP amendment is in no way any type of agreement to any unpermitted rip-rap or associated future permitting thereto, and shall be without prejudice as to the Commission's ability to address such unpermitted rip-rap or associated future permitting under the Coastal Act and the LCP independent of this CDP amendment action.

Although unpermitted development has taken place prior to submittal of this CDP amendment application, consideration of this application by the Commission is based solely upon the policies of the San Mateo County LCP and the public access and recreation policies of the Coastal Act. Commission review and action on this CDP amendment 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 development, other than the development addressed herein, undertaken on the subject site without a CDP. In fact, approval of this CDP amendment is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this CDP as amended, the Coastal Act, the Consent Orders, and the LCP - including the public access and recreation policies of the Coastal Act. In order to ensure that the unpermitted development component of this application is resolved in a timely manner, the subject CDP amendment will issue upon Commission approval and, in addition to standing requirements, the timing on several conditions is relative to the date of Commission action (e.g., **Special Condition 1** (Revised Final Plans) is required to be fulfilled within 90 days of Commission action). In any case, failure to comply with the terms and conditions of this CDP as amended may result in the imposition of stipulated penalties pursuant to Section 6.3 of the Consent Orders and/or institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. The proposed development is only consistent with the Coastal Act and the San Mateo County LCP as conditioned by this approval.

I. OTHER

Future Permitting

It is the Commission's intent that jurisdiction over coastal permitting at this site remain with the Commission, given its approval of the underlying base CDP being amended in this case, as well as the underlying issues that ultimately necessitated the Consent Orders. Thus, any and all future proposed development at and/or directly related to the site or this CDP amendment shall require a new CDP or a CDP amendment through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required. See **Special Condition 8**.

Future Notice

The terms and conditions of this CDP amendment approval are meant to be perpetual. In order to inform future owners of the requirements of the CDP, as amended, and add a level of legal implementation of this fact, this approval is conditioned for a deed restriction designed to record the project conditions against the affected property. See **Special Condition 9**.

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP and CDP amendment 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 that the activity may have on the environment.

San Mateo County, acting as lead agency, determined on September 27, 2017 that the project qualifies for a Categorical Exemption under Class 1 of the CEQA Guidelines related to minor modification of an existing private structure, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA. The preceding CDP amendment findings discuss the relevant coastal resource issues with the proposal, and the CDP amendment conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above, which are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project 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)

APPENDIX A – CDP P-77-0579 CONDITIONS

Appendix A identifies all conditions as approved by the Commission in its original CDP action, as well as the conditions applied here through P-77-0579-A3. Thus, together, Appendix A identifies all conditions applicable to CDP P-77-0579 as amended through -A3.

CDP P-77-0579 Conditions

1. Prior to the commencement of construction, applicant shall submit a geologic report, prepared for the site, by a qualified Soils Engineer or Geologist, to staff review and approval. Surface rupture potential during seismic activity shall specifically be discussed in the report and mitigation plans, if any are required, shall be prepared and implemented.
2. In order to assure adequate parking accommodations both for the restaurant and adjacent public beach, the hours of operation of the restaurant/bar shall be limited to that period between 5:00 pm and normal closing time.
3. Free, public access thru the site to the adjacent public beach shall be maintained and improved as per final plans to be submitted to staff for review and approval.
4. Applicant shall submit, for staff review and approval, final plans for all signs and lights to be erected on the site.
5. Applicant shall submit final elevations, material samples and colors to staff for review and approval. Elevations shall indicate that the maximum height and ground coverage of the remodeled building do not exceed that of the existing structure.

CDP Amendment P-77-0579-A3 Conditions

Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit as amended is not valid and development shall not commence until a copy of the amended permit, signed by the Permittee or authorized agent, acknowledging receipt of the amended permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **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.
4. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

Special Conditions

6. **Revised Final Plans.** WITHIN 90 DAYS OF COMMISSION APPROVAL OF THIS CDP

AMENDMENT (i.e., by December 12, 2018), the Permittee shall submit two full-size sets of Revised Final Plans (in both hard copy and PDF/electronic formats) to the Executive Director for review and written approval. The Revised Final Plans shall be in substantial conformance with the plans submitted to the Coastal Commission ((1) dated November 27, 2017 and dated received in the Commission's North Central Coast District Office on December 21, 2017 consisting of Plan Sheets A2.1, A2.2, and A2.3 respectively entitled *First Floor Plan & Foundation Details; Second Floor Plan, Foundation and Framing Plans;* and *Upper Level Floor Plan and Electrical Plan;* and (2) dated August 18, 2017 and dated received in the Commission's North Central Coast District Office on June 14, 2018 consisting of Plan Sheets 6.0 and 6.1 respectively entitled *Schematic Lighting Plan* and *Lighting Specifications*) except that they shall be revised and supplemented to comply with the following requirements:

- (a) **Patio.** The patio shall be no more than 1,276 square feet in size and shall not be expanded.
- (b) **Seating Capacity.** The seating layout for the restaurant (including all interior and exterior spaces, including the patio) shall be identified, and the total number of available seats shall not exceed 189.
- (c) **Bird Strike Avoidance.** All windscreens and any other exterior window/windscreen surfaces shall be treated so as to prevent bird strikes (e.g., frosted or partially-frosted or other visually permeable barriers (e.g., bird strike-specific decals) that are designed to prevent bird strikes).
- (d) **Signs.** All restaurant-related signs and all signs identified in Special Conditions 7 and 8 shall be clearly identified (including via the location, materials, design, and text), and shall be sited and designed so as to avoid adversely impacting public views and site character. Public access signs shall include the California Coastal Trail (for trails) and California Coastal Commission emblems and recognition of the Coastal Commission's role in providing public access at this location.
- (e) **Lighting.** All lighting fixtures that lead to exterior illumination shall be clearly identified on the plans, and all such fixtures shall be sited and designed to limit exterior lighting to the minimum necessary to provide for restaurant serving operations and public safety, including parking lot access. Lights shall be required to be turned off when the restaurant is not in operation, other than the minimum necessary for public safety purposes. All lighting fixtures shall be sited and designed to avoid glare and light spillover to the vicinity, including Highway 1 and the beach area below the restaurant, as much as feasible, and all exterior lights shall be as low profile and downward-directed as feasible. Exterior lights directed towards the beach and ocean shall be prohibited.
- (f) **Drainage.** Drainage shall not be directed to the beach or bluffs, but shall instead be directed to inland drainage facilities capable of accepting such drainage. All areas subject to washing activities (e.g., mat washing, etc.) shall be connected to the sanitary sewer system.

All requirements above and all requirements of the approved Revised Final Plans shall be enforceable components of this CDP. The Permittee shall undertake development in conformance with this condition and the approved Revised Final Plans unless the Commission amends this CDP to change the approved Revised Final Plans or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

7. **Public Access Requirements.** By acceptance of this amended CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, to all of the following:
 - (a) **Public Parking and Vehicle Access.** At a minimum, all parking spaces within the Permittee's two parking lots shall be available for general public access parking 24 hours a day, seven days a week. In addition, at all times, vehicular access through the restaurant's north parking lot shall be provided to and from the State Parks' parking area immediately north of Permittee's northern lot (see also Special Condition 8 below).
 - (b) **No Public Access Disruption.** Permittee shall not undertake or allow any development, actions, and/or uses within the public use areas, including all pedestrian and vehicle access areas, throughout the property (including parking access as described above and in Special Condition 8, and all access areas identified in the approved *Restoration Plan and Coastal Access Improvements for La Costanera Restaurant* dated March 13, 2018 (see [Exhibit 6](#))) that disrupt or degrade public access, including areas set aside for private uses, any use of the parking lot in a way that could dissuade public use, and placing or allowing barriers to public access (such as planters, temporary structures, private use signs, fences, barriers, ropes, etc.) to remain, all of which shall be prohibited. All public use areas, including public pedestrian and vehicle use areas, shall be maintained in a manner that maximizes public use and enjoyment.
 - (c) **Public Access Use Hours.** Public access to all public use areas on the property, including for pedestrian and vehicle access and parking in the Permittee's parking lots, shall be open and available for free public access 24 hours a day, seven days a week.
 - (d) **Public Access Areas and Amenities Maintained.** All of the public access areas, including all pedestrian and vehicle access areas, and including all improvements and amenities associated with them shall be constructed in a structurally sound manner and maintained in their approved state consistent with the terms and conditions of this CDP and the approved *Restoration Plan and Coastal Access Improvements for La Costanera Restaurant* dated March 13, 2018 (see [Exhibit 6](#)), including through ongoing repair, maintenance, or, if necessary to respond to shoreline erosion or other conditions, relocation.
 - (e) **Signs.** Informational and directional signage that implement the terms of this Special Condition shall be provided at appropriate locations (see also Special Condition 6). The signs shall be designed so as to provide clear information without adversely impacting public views and site character. No new signage or modifications to the existing signage shall be installed or performed unless the Executive Director determines in writing that

such new signage or modifications are consistent with this CDP amendment, or unless the new signage or modifications to existing signage are approved through a separate CDP amendment application.

- 8. Public Access Parking Mitigation.** WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS CDP AMENDMENT (i.e., by November 12, 2018), the Permittee shall submit a Parking Mitigation Plan (PMP) to the Executive Director for review and approval, to construct additional parking spaces for access to Montara State Beach as mitigation for impacts to public beach access parking through Option 1 or 2 outlined below. PRIOR TO ANY USE OF THE PATIO, the Permittee shall demonstrate, to the satisfaction of the Executive Director, that the parking improvements have been constructed and are available for public use and that the PMP has been fully implemented. The authorization to use the patio granted through this CDP amendment is contingent upon the continuing availability of the parking improvements required pursuant to this condition. Any use of the patio, including by patrons, lessees, or persons contracting with the restaurant, prior to the Executive Director's determination that this condition has been satisfied, or at a time when the Executive Director determines that the herein required parking improvements are not available to the public, shall constitute a knowing and intentional violation of CDP P-77-0579 and the public access and recreation provisions of the Coastal Act and the San Mateo County LCP.

- (a) Option 1 - Public Parking Improvements.** The Permittee shall improve the existing undeveloped parking area owned by State Parks located to the north and adjacent to the northern paved restaurant parking lot for at least 20 public access parking spaces. The PMP shall include evidence that the Permittee has obtained all necessary authorizations, including but not limited to any approvals from San Mateo County and any necessary authorizations from State Parks. Such parking improvements shall be substantially consistent with the plans entitled *Grading and Drainage Plans, New Parking Lot, 8150 Cabrillo HWY, Montara, CA, 94037*, dated October 1, 2013 ([Exhibit 8](#)), and shall include: appropriate drainage features, native landscaping (including that sufficient to help provide screening and/or partial screening of the parking lot and parked vehicles as seen from Highway 1 and coastal trails as much as feasible), and all-weather surfacing; at least 20 public parking spaces; either a separate connection from Highway 1 or a direct connection through the northern paved restaurant parking lot; appropriate connections to the required public access amenities on the property, including those amenities required by the terms and conditions of this CDP and the approved *Restoration Plan and Coastal Access Improvements for La Costanera Restaurant* dated March 13, 2018 (see [Exhibit 6](#)); avoidance of sensitive archaeological and paleontological resources as described in detail in an Archaeological Survey Report (ASR) and a report on paleontological resources; consult with State Parks Archaeologist/Cultural Resources Program Manager; and informational and directional signage that implement the terms of this Special Condition at appropriate locations (see also Special Condition 1). All signs shall be designed so as to provide clear information without adversely impacting public views and site character. The final parking configuration and all construction activities shall avoid impacts to nearby sensitive habitats, fossils, and archaeological resources to the extent feasible.

The improved parking lot shall be used only for general public access parking for Montara State Beach, and restaurant parking in the improved lot shall be prohibited at all times. The improved parking lot shall be available for general public access 24 hours a day, seven days a week. In addition, at all times, vehicular access through the restaurant's north parking lot shall be provided to and from the improved parking lot unless a separate connection to Highway 1 is provided.

The Permittee shall maintain and repair the improved lot for as long as a restaurant remains in operation at the site. All of the public parking improvements shall be constructed in a structurally sound manner and maintained in their approved state consistent with the terms and conditions of this CDP amendment including through ongoing repair, maintenance, or relocation (if necessary to respond to shoreline erosion) of all public parking improvements. The PMP shall demonstrate compliance with all of the above requirements.

(b) Option 2 - Public Access In-lieu Mitigation Fee. Alternatively, the Permittee shall pay for the construction of the required parking improvements by State Parks (or an organization acceptable to the Executive Director as described below), as follows: The PMP shall provide that Permittee shall provide funding for the purpose of (1) upgrading the existing undeveloped parking area owned by State Parks located to the north and directly adjacent to the northern paved restaurant parking lot as identified in Option 1, or (2) upgrading or providing for other public access parking for Montara State Beach as near as possible to the Option 1 site, by depositing the required funds into an interest bearing account held by State Parks and submitting evidence, in a form and content acceptable to the Executive Director, that the required funds have been provided. The PMP shall provide clear information demonstrating that the funding is adequate to meet the terms of this condition. In all cases, the requirements of Option 1 shall adhere to any such parking facilities, including the maintenance and repair requirements, and the PMP shall include provisions demonstrating how these requirements will be satisfied. All interest earned on the fee will be payable to the account. Any use of the fee and accrued interest shall be subject to Executive Director review and written approval. If State Parks determines in writing that it is unable to use the funds for parking improvements for Montara State Beach, or any portion of the mitigation fee remains after five years, the funds or remaining funds shall be donated to the Coastal Conservancy, or other organization acceptable to the Executive Director, for the purpose of public recreational parking and related improvements as close as possible to Montara State Beach. The PMP shall demonstrate compliance with all of the above requirements.

9. Restaurant Hours and Capacity. The restaurant is not allowed to open for business, or allow any parties contracted with the restaurant to use the property for any private uses, before 5:00 p.m. The Permittee shall ensure that the restaurant does not at any time serve more patrons than the authorized capacity of the restaurant, as identified on the final approved plans pursuant to Special Condition 1, including by ensuring that all employees comply with the requirements of the CDP and ensuring that all lessees or private parties comply with, and that any contracts include and are consistent with, all Special Conditions of this CDP Amendment, including Special Conditions 7, 8, and 9 regarding public access

requirements and restaurant hours and capacity.

10. Archaeological Resources. In the event that any article of historical or cultural significance is encountered, all activity that could damage or destroy these resources must cease and the Executive Director and the Native American Heritage Commission must be notified so that the articles may be suitably protected or flagged for future research. An archaeological monitor qualified by the California Office of Historic Preservation standards and/or the Native American Heritage Commission shall be consulted in order to examine the site and obtain recommendations for subsequent measures for the protection and disposition of significant artifacts. Mitigation measures shall be developed and submitted to the Executive Director for review and approval that address and proportionately offset the impacts of the project on archaeological resources prior to recommencement of construction activity.

11. Coastal Hazards Risk. By acceptance of this amended CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, to all of the following:

(a) **Coastal Hazards.** That the site is subject to coastal 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, landslides, bluff and geologic instability, bluff retreat, liquefaction and the interaction of same.

(b) **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such hazards in connection with this permitted development.

(c) **Armoring Waiver.** Other than existing legally established armoring, to waive any rights that the Permittee may have to construct shoreline armoring (including but not limited to additional or augmented seawalls, revetments, retaining walls, gabion baskets, tie backs, caissons, piers, groins, etc.) to protect the permitted development, including rights that may exist under Coastal Act Section 30235, the San Mateo County Local Coastal Program, or any other applicable laws.

(d) **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such coastal hazards.

(e) **Indemnification.** To indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the development 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 such coastal hazards.

(f) **Property Owners Responsible.** That any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.

12. Public Rights. The Coastal Commission's approval of this CDP amendment shall not constitute a waiver of any public rights that may exist on the property. The Permittee shall

not use this CDP amendment as evidence of a waiver of any public rights that may exist on the property now or in the future.

13. Future Permitting. Any and all future proposed development at and/or directly related to the site or this CDP amendment shall require a new CDP or a CDP amendment through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required.

14. Deed Restriction. WITHIN 180 DAYS OF COMMISSION APPROVAL OF THIS CDP AMENDMENT (i.e., by March 12, 2019), the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the parcel(s) governed by this CDP P-77-0579 as amended a deed restriction (“Deed Restriction”), in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to CDP P-77-0579 as amended, the California Coastal Commission has authorized development on the subject property subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the conditions of CDP P-77-0579 as amended as covenants, conditions and restrictions on the use and enjoyment of the property. The Deed Restriction shall include a legal description of the entire parcel or parcels governed by CDP P-77-0579 as amended. The Deed Restriction shall also indicate that, in the event of an extinguishment or termination of the Deed Restriction for any reason, the terms and conditions of CDP P-77-0579 as amended shall continue to restrict the use and enjoyment of the subject property so long as either CDP P-77-0579 as amended or development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

APPENDIX B – SUBSTANTIVE FILE DOCUMENTS

- CDP P-77-0579, and amendments -A1, -A2, and -A3 Administrative Files
- San Mateo County Local Coastal Program
- County Use Permit UP 20-77 approved June 1977

APPENDIX C – STAFF CONTACTS WITH AGENCIES AND GROUPS

- Applicants and Applicant’s Representatives
- San Mateo County Planning and Building Department
- California Department of Parks and Recreation