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Staff: Sarah Carvill - SC
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Hearing Date: 4/10/2019

STAFF REPORT: CDP HEARING

Application Number: 3-18-0841

Applicant: Santa Cruz Port District

Project Location: Along the western (upcoast) edge of the Santa Cruz Harbor between the Entrance Channel and the Lower Harbor, at the Atlantic Avenue street end (at 616 Atlantic Avenue), and over the Harbor waters in the City of Santa Cruz.

Project Description: Construct 150 feet of steel sheet pile harbor wall directly in front of the existing, failing sheet pile harbor wall; demolish and reconstruct an existing restaurant and associated dining deck.

Staff Recommendation: Approval with Conditions.

SUMMARY OF STAFF RECOMMENDATION

The Santa Cruz Port District has requested approval of a coastal development permit (CDP) to replace an existing, failing harbor wall the forms part of the western edge of the Santa Cruz Harbor (Harbor), as well as demolition of the overwater building that was formerly the site of Aldo's Restaurant, a wood-pile supported structure which has a partial foundation on the failing harbor wall. The proposed project would also involve reconstruction of a restaurant in the same footprint, along with an expanded outdoor dining deck, all over Harbor waters.

The Harbor is a commercial fishing/small craft harbor in the City of Santa Cruz with berths for approximately 920 vessels used for commercial fishing and recreation. The failing harbor wall dates to the construction of the Harbor in the early 1960s, and consists of 150 feet of uncoated

steel sheet piles, concrete pile caps, and tie rods connecting the harbor wall to buried concrete anchors. The harbor wall structure supports the West Jetty¹ accessway, which provides the only vehicle access to the West Jetty for emergency and maintenance purposes, and which enjoys heavy public use as a major access point to the jetty and the Seabright Beach unit of Twin Lakes State Beach. The proposed harbor wall project is necessary to protect that access, as well as the aforementioned recreational boating and commercial fishing uses which the Harbor generally serves, and to remediate the existing public safety hazard posed by the loss of structural integrity of the existing harbor wall.

The Aldo's Restaurant business was originally established as a bait and tackle shop and has existed on the site in some form since at least 1972. In its present configuration, the site consists of a 1,615-square-foot structure with a 1,379-square-foot outdoor dining deck extending over the Harbor waters on the eastern side of the building. Adjacent to the north side of the restaurant building is a 1,930-square-foot public pier. The failure of the harbor wall resulted in the closure of both Aldo's Restaurant and the adjacent public pier under emergency CDP (ECDP G-3-16-0056) in 2016. The Applicant is also requesting to authorize the closures that were done pursuant to ECDP G-3-16-0056, as is required for follow-up of an ECDP.

The proposed project includes construction of a new restaurant building in the same footprint as the existing structure, and would allow expansion of the restaurant's outdoor dining deck. The project also includes a new public access walkway around the outer perimeter of the dining deck and new wheelchair-accessible public restrooms (open for public use during the restaurant's hours of operation). The project is conditioned to require these improvements, as well as other improvements to the West Jetty accessway, the public pier, and the Atlantic Avenue street end to clarify that these are public access areas and to make them more visually inviting to the public, including as a means of offsetting project-related public access impacts. The project is also conditioned to ensure that the Applicant takes all appropriate measures to protect water quality and marine resources during construction, and assumes responsibility for the risks associated with development in a hazard-prone coastal area.

As conditioned, the project is consistent with the Coastal Act, and staff recommends **approval** of the CDP. The motion is found on page 4 below.

¹ The West Jetty is the upcoast jetty given the orientation of the Harbor in relation to the shoreline along the Monterey Bay, where one is essentially looking due south when one looks directly offshore at the Harbor.

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EXHIBITS

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Exhibit 2 – Project Vicinity Diagram

Exhibit 3 – Harbor Wall Project Plans

Exhibit 4 – Restaurant Conceptual Plans

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Exhibit 6 – Emergency CDP G-3-16-0056

Exhibit 7 – West Jetty Walk Project Brochure

I. MOTION AND RESOLUTION

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

***Motion:** I move that the Commission **approve** Coastal Development Permit Number 3-18-0841 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number 3-18-0841 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Approved Project.** This CDP authorizes: (a) demolition of the existing Aldo’s Restaurant building and outdoor dining deck, removal of four pilings beneath the public pier, and installation of a new sheet pile harbor wall in front of the existing, failing harbor wall, as specifically described in the proposed harbor wall project plans (titled “Santa Cruz Port District Aldo’s Seawall Replacement,” prepared by MME, dated June 20, 2018, and dated received in the Commission’s Central Coast District Office on August 23, 2018 – see **Exhibit 3**); (b) construction of a new restaurant building and dining deck as specifically described in the proposed restaurant conceptual plans (prepared by Thacher and Thompson Architects, dated March 4, 2019, and dated received in the Commission’s Central Coast District Office on March 14, 2019 – see **Exhibit 4**); and (c) public access improvements as described in **Special Conditions 2 and 3**, all as modified by and only if consistent with the terms and conditions of this CDP. Minor adjustments to these approved project parameters that do not require a CDP amendment or a new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.
- 2. Accessway Improvement Plans.** NO LATER THAN THREE MONTHS FOLLOWING COMMENCEMENT OF HARBOR WALL CONSTRUCTION, the Permittee shall submit two full-size sets of Revised Accessway Improvement Plans to the Executive Director for review and written approval. The Revised Accessway Improvement Plans shall be in substantial conformance with the proposed harbor wall project plans (titled “Santa Cruz Port District Aldo’s Seawall Replacement,” prepared by MME, dated June 20, 2018, and dated received in the Commission’s Central Coast District Office on August 23, 2018 – see **Exhibit 3**) and the proposed restaurant conceptual plans (prepared by Thacher and Thompson Architects, dated March 4, 2019, and dated received in the Commission’s Central Coast District Office on March 14, 2019 – see **Exhibit 4**) except that they shall be revised and supplemented to comply with the following requirements:

 - a. Accessway Improvements.** The Permittee shall improve the area between the Atlantic Avenue end of the pedestrian walkway to the Lower Harbor parking area (located on the inland/north side of the Atlantic Avenue street end) and the southern/seaward limit of the new public access deck (seaward of the restaurant) where it intersects the West Jetty accessway in order to provide clear and continuous pedestrian access in this area, including adjacent to the proposed harbor wall, in a manner designed to maximize public use and enjoyment, as well as to maximize coastal resource protection, including in terms of the public viewshed associated with this area. All such improvements that are located within the City of Santa Cruz’s right-of-way associated with the Atlantic Avenue street end (including but not limited to potential reconfiguration of parking in this area to enhance the area as described above) shall include evidence of consultation with and concurrence from the City. The Permittee shall remove non-essential fixtures and screen

essential fixtures in this area (e.g., the concrete pad on the west side of the West Jetty accessway at the foot of the bluff, etc.), and shall include native landscaping designed to help identify the accessway area and to soften its harder edges (and also consistent with all landscaping requirements identified in **Special Condition 3(k)**). The Permittee's proposal shall also include improvement of the walkway along this entire length of this area to as wide as possible, with a coordinated design theme on the walkway ground surface (e.g., distinctive pavers, upgraded pavement, sidewalk stencils, etc.), including so that this pedestrian area is continuous, inviting, and clearly distinguishable from the public roadway.

- b. Public Access and Wayfinding Signs.** The Permittee shall identify all signs and any other project elements that will be used to provide wayfinding assistance to the public or to otherwise identify public access areas. Sign details showing the location, materials, design, and text of all public wayfinding and access signs shall be provided. Public access signs for the West Jetty accessway shall be placed on the southwest side of the restaurant and at the Atlantic Avenue street end. The signs shall be designed so as to provide clear information without impacting public views and site character. All directional signs shall include the Commission's access program "feet" logo and the California Coastal Trail emblem.
- c. Public Trash Receptacle.** The Permittee shall install and maintain at least one public trash bin and at least one public recycling bin along the West Jetty accessway.
- d. Bicycle Parking.** A bicycle parking rack for at least 6 bicycles shall be placed in the project vicinity in a location designed to maximize its public utility but where its use by cyclists does not physically or visually obstruct the West Jetty accessway or other public access, or degrade public views otherwise.
- e. Public Pier.** The public pier at the foot of the Atlantic Avenue street end shall be reopened to full public use, and the Permittee shall install and maintain three six-foot-long wooden benches for public use at the seaward end of the pier.
- f. Improvements Installed.** All accessway improvements in the approved Revised Accessway Improvement Plans shall be constructed and available for public use as soon as possible but in no event later than Memorial Day of 2021 (i.e., May 31, 2021).

The Revised Accessway Improvement Plans shall be submitted with evidence of review and approval by the City of Santa Cruz. All requirements above and all requirements of the approved Revised Accessway Improvement Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Revised Accessway Improvement Plans. Minor adjustments to the above parameters that do not require a CDP amendment or a new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

3. Restaurant Plans. AT LEAST SIX MONTHS PRIOR TO COMMENCEMENT OF

RESTAURANT CONSTRUCTION, the Permittee shall submit two full-size sets of Final Restaurant Project Plans to the Executive Director for review and written approval. The Final Restaurant Project Plans shall be in substantial conformance with the proposed restaurant conceptual plans (prepared by Thacher and Thompson Architects, dated March 4, 2019, and dated received in the Commission's Central Coast District Office on March 14, 2019 – see **Exhibit 4**) except that they shall be revised and supplemented to comply with the following requirements:

- a. Restaurant Footprint.** The restaurant footprint shall not exceed the footprint of the former Aldo's Restaurant, except to provide for the construction of wheelchair-accessible public restrooms that shall be accessible from the exterior of the restaurant structure and open to the public during restaurant business hours. Footprint expansion to accommodate public restrooms shall not encroach upon the accessway on the west side of the restaurant structure (see **Special Condition 2**) and shall be sited and designed to maximize their utility relative to the perimeter public access deck (see below). The restaurant may have a second story provided such second story does not result in significant adverse public view impacts, and provided that it does not exceed 35 feet in overall height at the maximum, including utilities and appurtenances.
- b. Restaurant Dining Deck.** The restaurant dining deck may be expanded over the water to the east and to the south of the former dining deck area provided that (i) the pilings supporting such dining deck and the required perimeter public access deck (see below) do not extend to within twelve feet of the western (inland) edge of the existing floating dock; (ii) the pilings and the decks do not impede use of the inland side of the floating dock for small craft; and (iii) the finished decks do not extend more than 35 feet south from the southern edge of the location of the former dining deck. The restaurant dining deck may be outfitted with a retractable screen, however any such screening is only allowed if it is sited and designed to avoid significant impacts to public views.
- c. Restaurant Trash/Recycling Receptacles.** All restaurant trash and recycling receptacles shall be fully enclosed within an appropriate storage area, either within the interior of the restaurant building or separate from it. Any separate trash enclosure shall conform to the general style of the restaurant and shall not adversely affect the accessway and public pier adjacent to the restaurant (see **Special Condition 2**) or the perimeter public access deck (see below), including in terms of potential physical obstructions and public views. Such trash/recycling receptacles shall be emptied by hand-trucking to Port District dumpsters located in the "A" dock area and immediately returned to their storage area thereafter. Under no circumstances shall trash bins be left out of their designated storage area and in public access areas. The Plans shall identify all parameters for addressing such trash and recycling (including schedules for emptying, cleaning, etc.).
- d. Restaurant Wash Down.** Any restaurant washdown areas shall be located outside of the accessway area on the west side of the restaurant structure and the public pier adjacent to the restaurant (see **Special Condition 2**) and outside the perimeter public access deck (see below) (and preferably contained within the restaurant building itself), shall include a plumbed connection to the sanitary sewer, and shall be sited and designed to minimize

coastal resource impacts as much as possible otherwise.

- e. **Pilings and Substructure.** The Plans shall identify all pilings and all other structural substructure elements to be installed and/or used in association with the restaurant replacement, restaurant dining deck expansion, and perimeter public access deck. All wood piling and substructure materials, preservatives, and coatings shall be clearly described on the Plans, and shall be consistent with the requirements of the Commission's standard best management practices (BMPs) for use of treated wood. Measures proposed to minimize the hydro-acoustic noise impacts of any piling driving shall be described on the Plans, and shall be in substantial conformance with the measures proposed by the Permittee to minimize the hydro-acoustic noise impacts associated with the driving of sheet piles for the replacement of the harbor wall.
- f. **Mechanical and Utility Screening.** All mechanical equipment on the second story or roof of the new restaurant structure shall be contained within or recessed into the roof and/or screened to protect public views to the maximum possible degree, and all utilities shall be installed underground and/or under the restaurant/decking.
- g. **Public Pier/Deck Use.** Use of the public pier located inland of the restaurant and restaurant dining deck (see **Exhibit 2**) and/or use of the perimeter public access deck (see below) for restaurant purposes shall be prohibited.
- h. **Perimeter Public Access Deck.** The Permittee shall provide a minimum ten-foot-wide perimeter public access deck around the perimeter of the restaurant dining deck that shall seamlessly connect the south side of the existing public pier to the West Jetty accessway, providing public access around the entire seaward perimeter of the dining deck, and shall be divided from the outdoor restaurant seating area by a railing or other appropriate barrier designed to maximize public use and enjoyment of the perimeter public access deck (e.g., landscaping in a planter box, continuous bench, etc.). At a minimum, public access signs consistent with all requirements of **Special Condition 2(b)** above for the new ten-foot-wide lateral accessway shall be placed on the northwest corner of the public pier, at the perimeter public access deck's junction with the public pier, and at the perimeter public access deck's junction with the West Jetty accessway (see **Exhibit 2**). In addition, at least one interpretive panel (describing the Harbor and/or related information) shall be provided at an appropriate location designed to facilitate public use and enjoyment.
- i. **ADA Accessible Restaurant Parking.** Any accessible parking spaces necessary to meet ADA requirements for the restaurant shall be identified, and shall be positioned in a manner that avoids significant adverse impacts to the accessway and public pier adjacent to the restaurant (see **Special Condition 2**) and the perimeter public access deck (see above). Such parking spaces shall be provided on Port District property unless the City authorizes the spaces to be provided on City property, and provided any such spaces on City property do not adversely affect public parking and other public use of such City property. Ultimately, ADA parking for the restaurant shall be provided in the southwestern parking area of the Lower Harbor once the existing pedestrian walkway

connecting that parking area with the Atlantic Avenue street end is replaced with an ADA-compliant walkway, and thus any ADA spaces located in other areas shall only be allowed on a temporary basis until that is achieved.

- j. Other Restaurant Parking.** Dedicated restaurant parking shall be provided in the Lower Harbor parking area consistent with the requirements of the certified Harbor Development Plan, including in terms of providing adequate spaces to accommodate all restaurant use.
- k. Landscaping.** The Plans shall include landscape and irrigation parameters that shall identify all plant materials (size, species, quantity, etc.), all irrigation systems, and all proposed maintenance measures. All plant materials shall be native and non-invasive species selected to be complimentary with the mix of native species in the project vicinity, prevent the spread of exotic invasive plant species, and avoid contamination of the local native plant community gene pool. Landscaping on both sides of the jetty accessway within the restaurant area shall be provided, and shall be sited and designed to soften the appearance of the western side of the restaurant and harmonize with its design (see also landscaping requirements associated with the accessway above in **Special Condition 2(a)**). All landscaped areas shall be continuously maintained by the Permittee; all plant material shall be continuously maintained in a litter-free, weed-free, and healthy growing condition, and shall be replaced as necessary to maintain compliance with this CDP. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a ‘noxious weed’ by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist.
- l. Restaurant Signage.** All restaurant signage shall be clearly identified on the Plans, and shall include details showing the location, materials, design, and text of all such signage. The signs shall be designed so as to provide clear information without impacting public views and site character as much as possible.
- m. Construction Parameters.** Any proposed changes to the approved Construction Plan (see **Special Condition 5**) specific to restaurant and related development shall be provided.
- n. Overall Siting and Design.** The restaurant, restaurant dining deck, the perimeter access deck, and all related development shall be sited and designed to blend seamlessly into the Harbor aesthetic and the natural environment as much as possible, and to protect public views as much as possible, including through articulated and visually appealing architecture; use of natural materials and earth-tone colors; thoughtful placement of accessory structures, restaurant tables and chairs, and related development; and other appropriate measures. All materials and finishes shall be clearly described, including through photos, samples, brochures, and other means necessary to allow measurement of compliance with these overall siting and design requirements.

- o. Expiration of authorization.** If Final Restaurant Project Plans are not submitted within two years from the date of CDP issuance, the authorization to construct the restaurant provided by this CDP shall expire. The Executive Director may extend the deadline for submission of Final Restaurant Project Plans if such extension is requested in writing by the Permittee at least one month prior to said deadline and if the Executive Director deems such extension appropriate.

The Final Restaurant Project Plans shall be submitted with evidence of review and approval by the City of Santa Cruz, including copies of all required permits and/or authorizations from the City of Santa Cruz and all required review under the California Environmental Quality Act (CEQA). All requirements above and all requirements of the approved Final Restaurant Project Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Final Restaurant Project Plans. Minor adjustments to the above parameters that do not require a CDP amendment or a new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- 4. Public Access Management Plan.** AT LEAST SIX MONTHS PRIOR TO COMMENCEMENT OF RESTAURANT CONSTRUCTION AND NOT LATER THAN SIX MONTHS FOLLOWING COMPLETION OF HARBOR WALL CONSTRUCTION, the Permittee shall submit two sets of a Public Access Management Plan (Management Plan) to the Executive Director for review and written approval. The Management Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public access to the public access areas of the site as described in this special condition and **Special Conditions 2 and 3**. The Management Plan shall at a minimum include and provide for all of the following:
 - a. Public Access Areas and Amenities.** The Management Plan shall clearly identify (and depict on a site plan) all existing and required public access areas and amenities, including the public pier, the Atlantic Avenue street end, the West Jetty accessway, the new ten-foot-wide perimeter public access deck, and other public access amenities and improvements described herein and in **Special Conditions 2 and 3**.
 - b. Public Access Use Parameters.** All parameters for use of the public pier, the Atlantic Avenue street end, the West Jetty accessway, the new ten-foot-wide perimeter public access deck, and all other access areas, improvements and amenities shall be clearly identified. All such public access areas, improvements, and amenities shall be publicly available for general public pedestrian and other public access consistent with the terms and conditions of this CDP.
 - c. No Public Access Disruption.** Development and uses associated with the Management Plan's public access areas and amenities that disrupt and/or degrade public access (including areas set aside for private uses and barriers to public access such furniture, planters, temporary structures, private use signs, ropes, etc.) shall be prohibited, with the

exception of restaurant deliveries and related loading/unloading activities that are done as expeditiously as possible in a manner that minimizes impacts to coastal resources, including public access. The Management Plan shall describe in detail the limitations within which restaurant delivery and loading activities must be carried out, including where vehicles can be stationed, for how long, and during what times of the day. All public use areas, improvements, and amenities shall be maintained consistent with the approved Management Plan in a manner that maximizes public use and enjoyment.

- d. **Public Access Use Hours.** All public access areas, improvements, and amenities except the restrooms shall be available to the general public free of charge 24 hours a day.
- e. **Availability of Public Access Amenities.** All public access areas, improvements, and amenities in the approved Revised Accessway Improvement Plans (see **Special Condition 2**) shall be constructed and available for public use as soon as possible but in no event later than Memorial Day of 2021 (i.e., May 31, 2021). All public access areas, improvements, and amenities associated with the approved restaurant portion of the project (see **Special Condition 3**) shall be constructed and available for public use as soon as possible, but in all cases prior to the opening of the restaurant.
- f. **Public Access Areas and Amenities Maintained.** All of the public access areas, improvements, and amenities associated with the approved project shall be constructed in a structurally sound manner and maintained in their approved state consistent with the terms and conditions of this CDP, including through ongoing repair, maintenance, or relocation (if necessary to respond to shoreline erosion and/or hazards) of all public access improvements. Prior to any modification, movement, or replacement of access improvements, the Permittee shall obtain an amendment to this CDP to authorize such development, unless the Executive Director determines that an amendment is not legally necessary. Public use areas shall be maintained consistent with the approved Public Access Management Plan and in a manner that maximizes public use and enjoyment.

The Public Access Management Plan shall be submitted with evidence of review and approval by the City of Santa Cruz. All requirements above and all requirements of the approved Public Access Management Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Public Access Management Plan, which shall govern all general public access to the areas affected by this CDP pursuant to this CDP. Minor adjustments to the above parameters that do not require a CDP amendment or a new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- 5. **Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include the following:
 - a. **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan

view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on public access, including public parking and public views, and other coastal resources, including by using, as feasible, inland and other areas (such as in the Lower Harbor parking area) for staging and storing construction equipment and materials.

- b. Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separate from public recreational use areas (including using unobtrusive fencing or equivalent measures to delineate construction areas), and including verification that equipment operation and equipment and material storage will not, to the maximum extent feasible, significantly degrade public views or marine resources during construction. Construction and staging zones shall be limited to the minimum area required to implement the approved project. The Plans shall limit construction activities to avoid coastal resource impacts as much as possible.
- c. Construction Timing.** Construction during weekends and/or outside of daylight hours (i.e., one-hour before sunrise to one hour after sunset), and/or lighting of the work area area, is prohibited, unless due to extenuating circumstances the Executive Director authorizes such work.
- d. Construction BMPs.** The Construction Plan shall also identify the type and location of erosion control/water quality best management practices that will be implemented during construction to protect coastal resources, including at a minimum the following:

 - i. Runoff Protection.** Silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from entering into storm drains and/or ocean waters, or onto other resource areas.
 - ii. Equipment BMPs.** Construction equipment inspection and maintenance, and equipment washing, refueling, and servicing shall take place at least 50 feet inland from ocean waters on an existing hard surface area (e.g., road or parking area) or an area where collection of materials is facilitated.
 - iii. Good Housekeeping.** The construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the project site, etc.).
 - iv. Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.

- e. **Construction Site Documents.** The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- f. **Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that his/her contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number and an email that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and all actions taken in response shall be summarized and provided to the Executive Director on at least a weekly basis.
- g. **Construction Specifications.** All construction specifications and materials shall include appropriate penalty provisions that require remediation for any work done inconsistent with the terms and conditions of this CDP.
- h. **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction of the harbor wall, at least three working days in advance of commencement of construction of the restaurant, immediately upon completion of construction of the harbor wall, and immediately upon completion of construction of the restaurant.
- i. **Public Access During Construction.** At least a 10-foot-wide public accessway area shall be provided at all times during construction between the Atlantic Avenue end of the pedestrian walkway to the Lower Harbor parking area (located on the inland/north side of the Atlantic Avenue street end) and the southern/seaward limit of the new public access deck (seaward of the restaurant) where it intersects the West Jetty accessway, with allowances for temporary entry/exit of large equipment and delivery of materials with traffic control. The Permittee shall place one sign at the southern end of the accessway directing cyclists and pedestrians to the Harbor and one sign at the northern end of the accessway directing cyclists and pedestrians to the beach, jetty, and lighthouse. The Plans shall include all details associated with said signs. These signs shall remain in place until construction is completed and access at the site is restored in accordance with these special conditions.

The Construction Plan shall be submitted with evidence of review and approval by the City of Santa Cruz. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Construction Plan. Minor adjustments to the above parameters that do not require a CDP amendment or a new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

6. **Coastal Hazards Risk.** By acceptance of this 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, tsunami, tidal scour, coastal flooding, landslides, bluff and geologic instability, bluff retreat, liquefaction and the interaction of same, many of which may worsen with future sea level rise.
 - 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 coastal hazards in connection with this permitted development.
 - c. **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such coastal hazards.
 - d. **Indemnification.** To indemnify and hold harmless the Coastal Commission, its officers, agents, and employees with respect to the Commission's approval of the 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.
 - e. **Permittee Responsibility.** That any adverse effects to property caused by the permitted development shall be fully the responsibility of the Permittee.
7. **Future Permitting.** Any and all future proposed development at and/or directly related to this project, this project area, and/or this CDP shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required.
8. **Other Authorizations.** PRIOR TO CONSTRUCTION, the Permittee shall provide to the Executive Director written documentation of authorizations from the City of Santa Cruz, the California State Lands Commission, the U.S. Army Corps of Engineers, and the Central Coast Regional Water Quality Control Board, or evidence that no such authorizations are required. If required authorizations for the restaurant portion of the project (see **Special Condition 3**) are not available prior to commencement of construction of the harbor wall portion of the project, such authorizations may be provided at a later date as long as they are

provided prior to commencement of construction of the restaurant portion of the project. The Permittee shall inform the Executive Director of any changes to any component of the project required by any other authorizing agency. Any such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this CDP, unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

Harbor Background

The Santa Cruz Harbor (Harbor) is a commercial fishing/small craft harbor in the City of Santa Cruz, at the northern end of Monterey Bay. Its ocean entrance is located about a half-mile downcoast of the San Lorenzo River mouth, where two jetties divide the upcoast Seabright Beach unit of Twin Lakes State Beach from the downcoast Harbor Beach and Twin Lakes State Beach proper, and it fronts the waters of the Monterey Bay National Marine Sanctuary (Sanctuary). The two jetties that form the Harbor's entrance channel provide year-round access to the Monterey Bay and Pacific Ocean. The jetties and the outer portion of the Harbor were constructed between April 1962 and January 1964, and the facility was ultimately expanded inland (into the upper portion of the former Woods Lagoon) into its current configuration in 1972. The Harbor is divided into the Upper or North Harbor inland of the Murray Street Bridge, and the Lower or South Harbor nearest the ocean and seaward of the Bridge. The western (upcoast) boundary of the Lower Harbor inland of the jetty is made up of a series of sheet pile harbor walls backfilled with material originally dredged from the lagoon in the early 1970s.

The Harbor now provides berths for approximately 920 boats, including dory ties and end-tie space. In addition to these berthing facilities, the Harbor provides public amenities such as boat servicing operations, a public boat launch, restrooms and small craft docks, restaurants and shops, a public access trail that circumnavigates the Harbor, about three acres of sandy beach on the downcoast side of the jetties (i.e., Harbor Beach), and over 1,000 parking spaces that support Harbor-related uses. Overall, the Harbor facilitates ocean-related functions such as boat launching, berthing for commercial vessels and recreational boats, boat repair areas, marine-related retail/commercial businesses, sailing programs, a yacht club, and boat sales. The majority of boat use at the Harbor is for recreational purposes, as opposed to commercial fishing, although a vibrant commercial fishing community operates out of the Harbor.

The section of harbor wall that is the subject of this CDP application is the southern/seaward-most of the harbor walls that were originally constructed in the 1960s along the upcoast side of the Lower Harbor from the northern/inland terminus of the West Jetty to the Murray Street Bridge. It consists of 150 feet of uncoated steel sheet piles, concrete pile caps, and tie rods connecting the retaining wall to buried concrete anchors (often referred to as "deadman" anchors).

See **Exhibit 1** for a location map and **Exhibit 2** for an aerial view of the project area showing key project components and public access features in the project vicinity. See **Exhibit 5** for photos of the project site.

Aldo's Restaurant Background

The Aldo's Restaurant building is located on the western (upcoast) side of the Harbor, approximately at the transition point between the Lower Harbor and the entrance channel.² The building dates to at least 1972 and was originally established as a bait and tackle shop and boat rental business. It received its first CDP (CDP P-1665) in 1976 to authorize expansion of the original building to allow for a take-out food service and the construction of a deck over Harbor waters. That CDP was amended in 1978 to allow expansion of the building and the deck for a full-service restaurant and combined outdoor seating and public access area (CDP P-01-76-1665).³ In 1985, CDP 3-85-016 was approved, allowing a 1,155-square-foot addition to the restaurant, including an oyster bar. An amendment to that CDP in 2007 (CDP 3-85-016-A1) allowed the restaurant to use a 15-foot-by-51-foot section of the adjacent public pier for restaurant seating, subject to re-review by the Executive Director after a five-year period (i.e., by December 31, 2012).⁴ Both the bait and tackle shop and the oyster bar were no longer in operation by 2007, so the amendment eliminated those uses from the project description, and required the installation of public access signage and benches on the public pier to ensure that visitors understood they could access the pier without going to Aldo's Restaurant.⁵

In its present configuration, the Aldo's Restaurant building is a 1,615-square-foot, partially-overwater structure with a 1,379-square-foot overwater deck intended for public-private dual use on the eastern side of the building. The 1,930 square-foot public pier is located just inland of this area, and a 10-to-15-foot-wide (and wider in places) accessway ("the West Jetty accessway") runs along the upcoast/western side of the restaurant, providing access from the Atlantic Avenue street end area and the Harbor's trails to the West Jetty and Seabright Beach. The restaurant building is mostly an overwater structure built on a wood pile supported deck, but it also has a partial foundation on the ground above the damaged sheet pile harbor wall. See **Exhibit 5** for photos of the site and of the West Jetty accessway.

By 2015, holes had developed in the sheet pile harbor wall below the restaurant building due to severe corrosion, leading to the loss of fill material and the formation of voids behind the wall. The Commission granted the Applicant authorization to patch the holes and fill the voids with grout (via CDP waiver 3-15-0854-W) but, about a year later, a sinkhole appeared in front of the restaurant's entrance, indicating further weakening of the harbor wall and a general loss of structural integrity that rendered the Aldo's Restaurant building unsafe for use. The restaurant, its deck, and the public pier were closed under an emergency CDP (ECDP) (ECDP G-3-16-0056) in 2016 to protect public safety and reduce the likelihood of total or partial collapse of all

² The Entrance Channel is the area between the Harbor's two jetties.

³ Despite the dual public-private use parameters, the restaurant operators ultimately did not allow non-restaurant patrons to use the expanded deck area, and only allowed restaurant patrons to use this area, inconsistent with the CDP and without CDP authorization, until the restaurant was closed in 2016.

⁴ The required re-review never occurred, and the temporary arrangement authorizing such use of the public pier thus terminated in 2012. Despite such authorization termination, the restaurant operators continued to use that area, as well as almost all of the public pier at times, for restaurant use without CDP authorization until the restaurant was closed in 2016.

⁵ The benches are not currently in place, but it is not clear whether they were removed in conjunction with or prior to the closure of the public pier.

four structures (i.e., harbor wall, restaurant, restaurant deck, and public pier). At least one other sinkhole is known to exist in the project area as a result of the degradation of the harbor wall, and another sinkhole is suspected to have formed under the restaurant building. Aldo's Restaurant now operates a full-service restaurant with outdoor table service out of a temporary mobile trailer located in the Lower Harbor about 500 feet inland from the project location.

Proposed Project

The Santa Cruz Port District proposes to demolish the structure that formerly housed Aldo's Restaurant and replace the failing sheet pile harbor wall beneath the building, and then construct a new replacement restaurant and deck in the same general location of the existing restaurant structure (see **Exhibits 3 and 4** for project plans).

The Port District proposes to abandon the existing harbor wall in place and install a new sheet pile harbor wall in front of and parallel to the existing harbor wall, which would extend about two feet farther into Harbor waters. The new harbor wall would be tied back and anchored consistent with the design of the existing wall, and the gap between the two walls would be backfilled with 280 cubic yards (cy) of ¾-inch crushed rock.

The existing restaurant structure would be demolished to facilitate the replacement of the harbor wall. In its place, the Applicant proposes to construct a new restaurant building in the same footprint as the existing structure, as well as new men's and women's ADA-accessible public restrooms on the southern side of the restaurant. The proposed restrooms would include wheelchair-accessible stalls and be accessible both from inside the restaurant and from the exterior of the building for general public use. The Applicant additionally proposes an expanded dining deck that would extend an additional 17 feet east relative to the existing dining deck and 35 feet south of the existing (and proposed) southern limit of the restaurant structure,⁶ the dining area of which would be covered by a retractable awning. The expanded dining deck would afford space for both the new public restrooms and a proposed eight-foot-wide public walkway connecting the existing public pier (which would be reopened following completion of the new harbor wall) to the West Jetty accessway by way of the dining deck's perimeter.

The public pier would be partially deconstructed to allow construction access to the section of the harbor wall located beneath it. The Applicant proposes to remove the four wood piles underpinning the public pier that are closest to the retaining wall, as well as approximately 500 square feet of framing and decking comprising the portion of the public pier that is closest to the harbor wall. The public pier would be functionally restored after the completion of the replacement harbor wall, but the Applicant proposes to engineer the new harbor wall so that it supports the segment of the pier that now rests on the four piles proposed for removal. As such, the piles themselves would not be replaced.

⁶ Note that the proposed public restrooms would be constructed on the expanded area of the restaurant dining deck. See **Exhibit 4** for proposed restaurant conceptual plans.

The project would also require removal of about 55 cy of rock riprap from the West Jetty in order to access the southernmost reach of the existing harbor wall.⁷ Most of the riprap would be returned to its present location at the end of the construction period, but about five cy of riprap would be displaced by the new wall and therefore not replaced.

All construction would be completed using land-based equipment. As part of the proposed project, the Applicant also requests that this CDP authorize the closure of Aldo's Restaurant and the public pier that was done pursuant to emergency CDP G-3-16-0056 as is required for follow-up to an ECDP (see **Exhibit 6**).

B. STANDARD OF REVIEW

In this case, the boundary between the Coastal Commission's retained CDP jurisdiction and the CDP jurisdiction of the City of Santa Cruz is the harbor wall itself, so its replacement and all other proposed development spans the two jurisdictions, with most of the development located in the Commission's jurisdiction.

If a CDP for a particular proposed development is needed from both the Commission and a local government with a certified Local Coastal Program (LCP), Coastal Act Section 30601.3 allows the Commission to act on a single consolidated CDP (with the policies of Chapter 3 of the Coastal Act as the standard of review, and the certified LCP to be used as guidance), if the Commission, the local government, and the applicant agree to such consolidation and public participation will not be substantially impaired by review consolidation.

Both the Applicant and the City have requested consolidated CDP review for this project. Consolidated review will not impair public participation in any way.⁸

Thus, the standard of review for this consolidated CDP application is the policies of Chapter 3 of the Coastal Act, with the certified LCP being used as guidance.

C. COASTAL HAZARDS

Coastal Act Section 30235 addresses the use of shoreline protective devices:

Section 30235. Retentions, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing

⁷ The West Jetty is contiguous with the existing harbor wall, so it is not possible to access the southern end of the wall and construct a new wall without disturbing jetty riprap. The replacement of the riprap after project completion would serve to restore the jetty to its pre-project state.

⁸ The portion of the project that has the potential for local controversy appears to be the restaurant replacement. As discussed below, **Special Condition 3** would require the Applicant to obtain all other relevant permits and permissions from the City before constructing a new replacement restaurant, which in this case would include a City Design Permit and a City Special Use Permit, both of which require public hearings. Additionally, this CDP application will be considered by the Coastal Commission at a Central Coast District hearing in Salinas in Monterey County, relatively close to the project location.

structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

The Coastal Act defines coastal-dependent uses as follows:

Section 30101. *“Coastal-dependent development or use” means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.*

Coastal Act Section 30234 addresses commercial fishing and recreational boating facilities:

Section 30234. *Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

Coastal Act Section 30253 addresses the need for new development to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures along the shoreline as part of the new development or in the future. Section 30253 provides, in part:

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

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

The LCP (which is guidance) tracks the requirements of the Coastal Act with respect to armoring of shoreline structures generally. The HDP does not address the harbor walls but does provide the following with respect to flood hazards:

HDP Policy 1.9. *Development will be in accordance with FEMA floor hazard regulations.*

Consistency Analysis

Proposed Harbor Wall

Coastal Act Section 30235 acknowledges that structural or “hard” methods that alter natural shoreline processes, including harbor channels, are only compelled approval when required for coastal-dependent uses (as defined in Coastal Act Section 30101), or to protect existing structures or public beaches in danger of erosion (subject to the requirement that adverse impacts to local shoreline sand supply are mitigated or eliminated).

The Santa Cruz Harbor is one of only six harbors located along the Central Coast, and is the primary recreational port in Monterey Bay. As noted above in the “Project Description,” the Harbor supports both commercial fishing vessels and recreational boating, provides coastal-dependent public amenities (e.g., a public boat launch, hand launch facilities, fish cleaning stations), and hosts various coastal-dependent and coastal-related commercial uses (e.g., boat servicing operations, sailing and rowing programs, a yacht club, and kayak and stand-up paddle board rentals). The proposed (as well as the existing) harbor wall is thus part of a waterfront that has been heavily developed to provide for coastal-dependent uses, including commercial fishing and recreational boating, and thus meets the definition of “coastal-dependent” in Coastal Act Section 30101. The fact that Coastal Act Section 30234 *requires* that facilities that serve commercial fishing and recreational boating industries, such as the Santa Cruz Harbor, be protected and upgraded further substantiates the conclusion that the existing and proposed harbor wall protect a coastal dependent use (i.e., the Harbor itself).

In this case, the Applicant proposes to replace a sheet pile harbor wall fronting the waters of the Santa Cruz Harbor. (**Special Condition 1** identifies the replacement of the harbor wall, including demolition of the existing structures required to accomplish it, the construction of a replacement restaurant and dining deck, and the construction of all specified public access improvements as the approved project.) The entire upcoast side of the Lower Harbor (i.e., from the project location inland to the Murray Street Bridge) is formed by similar harbor walls, including the failing structure to be replaced. Thus the shoreline protection at issue here is part of series of structures that define the form of, and support the function of, the Harbor itself.

As such, while the proposed project includes the installation of an armoring structure in coastal waters, the proposed structure would serve the purpose of maintaining this section of the Harbor and the various coastal-dependent uses it supports, including commercial fishing and recreational boating. Thus, the proposed harbor wall can be found consistent with Coastal Act Section 30234. This in turn satisfies the requirements of Coastal Act Section 30235, which allows shoreline armoring for, among other things, coastal-dependent uses, provided certain other coastal resource protection criteria are also satisfied.

In terms of the Section 30235 requirement that shoreline structures, such as the proposed harbor wall, mitigate for adverse impacts to local shoreline sand supply, the maintenance of the Harbor requires annual dredging, the spoils of which are used for beach replenishment for downcoast beaches (up to some 300,000 cubic yards of nourishment per year). Thus, when evaluated as part of the Harbor itself, any adverse impacts of the proposed harbor wall on sand supply are self-mitigated by the Port District’s ongoing maintenance dredging program (CDP 3-18-0160), which redistributes sand which would otherwise inhibit use of the Harbor to appropriate locations for the purpose of augmenting local shoreline sand supply. Thus, the proposed harbor wall can be found consistent with Section 30235 of the Coastal Act for this reason.

In terms of the Section 30235 requirement that shoreline structures, such as the proposed harbor wall, be *required* to serve a coastal-dependent use, the Commission has in the past interpreted this to require an applicant for a shoreline protective device to demonstrate that there is no

feasible alternative that would result in reduced significant adverse impacts to coastal resources.⁹ Here, considering that the entire purpose of the harbor wall is integral to the existence of the Harbor itself, there are no feasible alternatives that would facilitate existence of the Harbor. Additionally, the proposed harbor wall does not “substantially alter landforms along bluffs or cliffs” for purposes of Section 30253, since the harbor wall would simply protect an existing significantly-altered area of the coast (the Harbor) that has been in this form since the 1960s, pre-dating the Coastal Act, and including the fact that the harbor wall is being placed in front of the existing harbor wall.

Proposed Restaurant Building

The proposed restaurant is a total replacement of an existing structure, and therefore must meet the standards imposed on new development by Coastal Act Section 30253, which requires that new development shall assure stability without the construction of protective devices that alter natural landforms along bluffs or cliffs.¹⁰ As described above, the existing harbor wall maintains the boundary of this section of the Harbor. The existing restaurant building was built on top of the existing harbor wall subsequent to the wall’s construction as part of the Harbor’s development in the 1960s. The demolition of the restaurant will facilitate the replacement of the existing harbor wall with a new wall to maintain the Harbor’s integrity at this location. Although the proposed restaurant will be situated on top of the proposed harbor wall (as the existing restaurant is situated on top of the existing harbor wall), the placement of the restaurant on top of the harbor wall does not mean that the restaurant is relying upon the harbor wall as a shoreline protective device for purposes of Coastal Act Section 30253, since the harbor wall serves the *independent* purpose of facilitating the coastal-dependent uses of the Harbor itself. As such, the proposed harbor wall does not constitute a shoreline protective device for the proposed new restaurant development.

Section 30253 additionally requires new development to minimize risks to life and property in areas of high geologic, flood, and fire hazard, and the HDP (which is guidance) requires development in the Harbor to meet FEMA flood regulations. The location of the proposed restaurant is adjacent to and over the waters of the Santa Cruz Harbor, and while it would be built above the FEMA base flood elevation (9 feet) as the HDP requires, the site is vulnerable to sea level rise and to the compounding effects of sea level rise on existing flood risk. However, the entire Harbor shares this vulnerability, which will need to be addressed holistically for the Harbor facility as a whole over time. Moreover, the harbor wall proposed for replacement has a higher elevation (12 feet at the top of the concrete pile cap) than other portions of harbor walls that form the western side of the Lower Harbor. The finished floor elevation of the proposed restaurant building is an additional 2.3 feet higher than the top of the wall, while the bottom members of the overall structure are about 0.4 feet below the top of the wall (i.e., 11.6 feet in elevation). Using the latter elevation as point of reference, the public and commercial space

⁹ Coastal Action Section 30108 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”

¹⁰ It is worth noting that the proposed restaurant does not qualify as an existing structure, coastal-dependent use, or public beach for which shoreline protection is compelled under Coastal Act Section 30235. (See also LCP Harbor Development Plan Policy 5.2.2, which states that restaurants are not coastal dependent uses.) Thus, approval of the proposed restaurant portion of the proposed project is *not* compelled approval under Coastal Act Section 30235 as the harbor wall is.

associated with the proposed restaurant would be likely to remain safe from a 100-year flood under an estimated medium-high amount of sea level rise until 2060.¹¹ Thus, the proposed restaurant building is expected to be safe from the effects of sea level rise for 40 years or so. Moreover, by the time the proposed restaurant development is threatened by sea level rise, the Harbor as a whole will be experiencing sea level rise effects, which will require adaptive action for the entire Harbor facility (either at that time or earlier).

The Commission's experience in evaluating proposed development in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the many, many 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, the Commission has in the past required applicants to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Such a condition is appropriate under these circumstances, and this approval is conditioned for the Applicant to assume all risks for developing at this location, including for both the harbor wall and restaurant components of the proposed project (see **Special Condition 6**). As conditioned, the proposed project is consistent with the coastal hazards policies of the Coastal Act.

D. 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 is located seaward of the first through public road (Murray Street). Coastal Act Sections 30210 through 30213, 30220, 30221, and 30223 specifically protect public access and recreation. In particular:

***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.*

***30211.** Development shall not interfere with the public's right of access to the sea where*

¹¹ This estimate combines sea level rise and flood risk by adding the projected sea level rise for the area to the current base flood elevation of 9 feet. The California Ocean Protection Council's 2018 Sea Level Rise Guidance provides sea level rise projections for 12 tide gauges along the California coast (including the Monterey Tide Gauge, which is the closest of these to the project site) which are considered the best available science on sea level rise in California at this time. Under the medium-high risk aversion scenario provided in these projections (meaning that the likelihood that sea level rise will be greater than the projection is 1 in 200, or 0.5%), sea level rise for the Monterey Tide Gauge in 2060 is expected to be 2.6 feet or less. Accordingly, a 100-year flood in the Harbor could be expected to reach 11.6 feet in that year, a number which is equal to the bottom members of the proposed structures and 2.7 feet below the finished floor elevation of the proposed restaurant.

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.

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

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

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.*

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

30240(b). *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

These overlapping policies protect access to and along the shoreline and to offshore waters for public access and recreation purposes, particularly free and low cost access.

Additionally, the certified LCP for the City of Santa Cruz provides guidance on public access in the Harbor area specifically in the Land Use Plan (LUP) and Harbor Development Plan (HDP):

LUP Parks and Recreation Policy 1.7.1.5. *Provide and encourage provision of adequate bike parking at coastal recreation areas along the coast including Natural Bridges, West Cliff Drive pocket beaches, Main Beach, Seabright Beach, and the Yacht Harbor.*

HDP Policy 4.11. *Provide additional bicycle parking as part of new or expanded development projects in accordance with city standards.*

HDP Policy 5.1. *Continue to provide non-boater recreational opportunities (pathways, mini-parks, benches, observation decks) throughout Santa Cruz Harbor in a park-like setting. Develop and improve recreational facilities as part of new or upgraded commercial development.*

HDP Policy 5.2.2. *[In relevant part] In the case of potential future restaurants, which are not coastal dependent uses, accessways have priority for the immediate waterfront strip...*

Consistency Analysis

Coastal Act Policies

Section 30210 of the Coastal Act requires the Commission to provide the general public maximum access and recreational opportunities. Section 30211 prohibits development from interfering with the public's right of access to the sea. Section 30213 protects lower cost forms of access, such as the free access available at the Harbor and at the adjacent beaches. Section 30220 protects coastal areas suited for ocean-oriented activities, such as the beach and offshore surfing areas near the project site. Section 30221 protects oceanfront areas for public recreational uses. Section 30240(b) protects recreation areas, such as accessways in and along the Harbor and the adjacent beaches, from degradation and seeks to preserve recreation values. Section 30223 requires that upland areas, such as the project site, support coastal recreational uses when necessary. 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 such access, but rather that such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction to maximize public recreational access opportunities with respect to projects along the California coast that raise public access issues, like this one.

Access in the Vicinity of the Project Site

The proposed project is located in an area that is heavily used by the public for coastal access and recreation. In addition to its location within the Harbor, which supports a variety of coastal dependent uses including coastal-dependent recreation and commercial fishing (as discussed above), the project site is adjacent to the West Jetty accessway, which leads from the Atlantic Avenue street end (and connecting Harbor trails) to the end of the jetty, and which also provides access to Seabright Beach. The West Jetty accessway is closed to public vehicle traffic¹² just beyond the Atlantic Avenue street end, but it is open to cyclists and pedestrians, and sees heavy use by members of the public seeking to access the jetty, the Walton Lighthouse (situated at the seaward end of the jetty), and Seabright Beach. This accessway is also part of a network of roads and paths providing bicycle and pedestrian access around the Harbor. A pedestrian walkway beginning at the Atlantic Avenue street end connects the West Jetty accessway to the sidewalks, pathways, and parking lots that border the waters of the Lower Harbor. All of these features are extremely popular with and heavily used by the public.

Public Access Impacts

The failing harbor wall supports the entrance to the West Jetty accessway. By replacing the failing wall, the proposed project will protect the connectivity among various coastal access and recreation points that is currently provided by the West Jetty accessway and at the Harbor in general. At the same time, it will also result in adverse public access impacts, including the time during which the public per has been and will be closed, and the time during construction when access will be negatively affected.

¹² The only vehicles that are allowed to traverse the West Jetty accessway are State Parks, Port District, and emergency vehicles.

The proposed restaurant and dining deck would be located adjacent to and over Harbor waters. The proposed new replacement restaurant building would occupy the same footprint as the existing (to-be-demolished) restaurant building, but the Applicant also proposes an expansion of the dining deck (and exclusive private restaurant use for it). However, given the project's location over Harbor waters, the property must provide for public access and recreational uses, including pursuant to the Coastal Act Sections cited above (and others, such as Section 30233, see below). In addition, and as with the harbor wall component of the project, there would also be impacts to public access during construction.

Public Access Mitigations

To address these public access impacts, the project includes a mitigation package made up of two interrelated components. The first applies more generally to the project and its initial construction phase, namely that associated with the replacement of the harbor wall, and the second applies to the secondary phase of the project associated with the new restaurant. With respect to the latter, the Applicant has proposed to construct a new, eight-foot-wide public accessway around the proposed private dining deck on its seaward perimeter, which would connect the public pier to the West Jetty accessway (see **Exhibit 3**). This new perimeter accessway would provide the public with enhanced physical and visual access to the water's edge at the site, consistent with the Coastal Act's requirement for maximization of public access, and also consistent with LCP HDP Policy 5.2.2, which (although guidance) clearly requires that any waterfront restaurant reserve the immediate waterfront area for public access (notwithstanding the proposed expansion of the private restaurant deck). In past instances, the Commission has required such accessways to be at least ten feet wide and often wider, rather than the proposed eight feet, in order to facilitate comfortable two-way pedestrian traffic (including by individuals using wheelchairs and strollers), to provide adequate space for amenities (such as interpretive signs), and to otherwise maximize public use and enjoyment.¹³ Such minimum width is particularly critical here as the overall project must be considered public enough to meet Section 30233 requirements as well (see discussion below). Thus, **Special Condition 3** requires the Applicant to provide final restaurant plans showing a ten-foot-wide perimeter accessway, and allows increased expansion of the dining deck to accommodate the added width of the perimeter accessway.¹⁴ **Special Condition 3(h)** requires that the perimeter accessway seamlessly connect with the public pier and the West Jetty accessway, be divided from the restaurant outdoor seating area by a railing or other appropriate barrier to ensure that it

¹³ See for example CDPs 3-17-0581, 3-18-0152-W, and 3-18-0297, all of which provided a 10-foot-wide "Harborwalk" along the Morro Bay Embarcadero.

¹⁴ **Special Condition 3(b)** limits expansion of the dining deck to 35 feet from the southern limit of the existing restaurant deck, and prohibits the placement of pilings to support eastern expansion of the deck within 12 feet of the western (inland) extent of the existing floating dock, to accommodate both the dining area and the perimeter public access walkway. The deck can be expanded further east (i.e., beyond the limits imposed on the placement of pilings to support it) so long as the structure does not limit the use of the inland side of the floating dock by small craft. The proposed restaurant conceptual plans (**Exhibit 4**) show a deck that extends 35 feet from the southern limit of the existing restaurant *structure* (which is set about six feet back from the southern limit of the existing deck) and approximately 12 feet from the western extent of the floating dock. Accordingly, revised restaurant plans that provide an additional two feet of dining deck surface on the southern and eastern sides of the deck (i.e., in order to widen the perimeter accessway from eight to ten feet) would be well within the limits imposed on expansion of the dining deck imposed by **Special Condition 3(b)**.

remains clear of any restaurant-related obstruction, and to include public amenities (such as interpretive signs).

With respect to the more general component of the mitigation package, on the other side of Atlantic Avenue (and slightly uphill) from the project site, there is an accessway that leads to the Lower Harbor (see **Exhibit 2**). While the West Jetty accessway that leads to Seabright Beach and the jetty itself is a popular and well-known public access feature, it is not as obvious that the accessway that leads to the Lower Harbor is available to the public and part of a continuous system of public paths encircling the Harbor. The Applicant has future plans to improve the connection between the West Jetty accessway and the rest of the Lower Harbor (i.e., the area north of the project site) under a separate project that would include, among other project elements, construction of a cantilevered, wheelchair accessible pathway leading from the “A” dock area to the public pier. The cantilevered pathway would replace the existing accessway that connects to the Lower Harbor. Preliminary plans for this “West Jetty Walk” project show the new cantilevered pathway feature transitioning into an improved and clearly contiguous jetty accessway with various public amenities including overlooks, benches, a beach landing area, and a gateway at the beginning of the jetty itself (see **Exhibit 7**). The West Jetty Walk project would significantly improve both public access and visual resources in the project area, however it is not clear at this time when the Applicant would seek permits for this project, and some improvements to the area are necessary in the interim to clarify the public access connections that currently exist (as well as to protect visual resources, as discussed below) as mitigation for impacts to public access.

Thus, to complete the access mitigation package, **Special Condition 2** requires the Applicant to submit a Public Accessway Improvement Plan showing particular access improvements to be made at the site, including improvements to the West Jetty accessway from the aforementioned existing trail across the Atlantic Avenue street end to the southern extent of the new perimeter public access deck (see **Special Condition 2(a)**). These improvements should be consistent with those envisioned for this area as part of the planned West Jetty Walk project, but aren’t required to include any major West Jetty Walk project features (such as the cantilevered pathway, harbor overlooks, or jetty entrance archway), rather, the intent of **Special Condition 2** is that this accessway area be improved for public access use, including that its aesthetics be improved in a manner that is suggestive of a continuous accessway intended for pedestrian use (i.e., in addition to use by Port District, State Parks, and emergency vehicles as needed for maintenance and other official purposes). For instance, **Special Condition 2(a)** requires the removal or screening of a concrete pad and other fixtures on the inland (west) side of the roadway (see **Exhibit 5** for photos) and improvement of the walkway with a coordinated design theme on the walkway ground surface (such as distinctive pavers, upgraded pavement, or sidewalk stencils); **Special Condition 2(b)** requires placement of at least two wayfinding signs (one on the southwest side of the restaurant and one at the Atlantic Avenue street end) in the area; and **Special Condition 2(c)** requires installation and maintenance of at least one public trash bin and at least one public recycling bin along the West Jetty accessway.

To ensure that the public is aware of all the above-described access amenities, additional wayfinding signage is also needed at the site. Currently, a large sign on the side of the existing restaurant structure directs pedestrians to Seabright Beach and the Walton Lighthouse (see

Exhibit 5), and signage identifying the public pier as a public feature was required under previous CDPs. To ensure that all public access features are clearly identifiable as such, the proposed project is required to, at minimum, replace the existing sign (which will be removed when the restaurant building is demolished) with new signage directing the public to the beach, jetty, and lighthouse; provide additional public access signage to that effect near the terminus of the Atlantic Avenue sidewalk; restore public access signage on the public pier (which is currently contraindicated by the closure of the public pier) once the public pier is reopened; and provide public access signs for the new ten-foot-wide lateral accessway at its junctions with the public pier and the West Jetty accessway.

The Public Accessway Improvement Plan would be required to be submitted for Executive Director review and approval no later than three months following commencement of harbor wall construction in order to ensure that any delay in the construction of the proposed new restaurant does not delay the development and implementation of public access improvements for the site. To ensure that the required public access improvements are made and operated in a manner that ensures maximum public access, **Special Condition 4** requires the Applicant to prepare a public access management plan that specifies the parameters (e.g., public use hours, maintenance, etc.) for all the required public access amenities.

Addressing Specific Public Access Impacts of Restaurant Operations

Public Pier

The operation of a restaurant in this location has the potential to impact public access in several ways. First, and most notably, despite the dual public-private use parameters for the restaurant deck established in CDP P-01-76-1665, the restaurant operators ultimately did not allow non-restaurant patrons to use the expanded deck area, and only allowed restaurant patrons to use this area, inconsistent with the CDP and without CDP authorization, until the restaurant was closed in 2016.

Second, a 2007 amendment to CDP 3-85-16 allowed the restaurant to utilize a 765-square-foot section of the adjacent public pier (about 40% of the total pier area) for restaurant seating and table storage. While permit conditions required that the remainder of the pier be made available for public use, including by placement of benches on the pier, the restaurant's use of the public pier at times exceeded the designated area, and more generally gave the public pier the appearance of a private space for restaurant patrons. The restaurant also typically placed a greeting stand at the landward edge of the public pier, which blocked visual access to the remainder of the pier and further created the appearance that the public pier was intended for restaurant patron use only. Conditions on CDP 3-85-16-A1 make clear that the restaurant's authorization to use the 765-square-foot area for seating was provisional and subject to re-review by the Executive Director after five years (i.e., December 31, 2012). This review never occurred, and thus the authorization for even that subset of the pier for restaurant use terminated in 2012. Nevertheless, the restaurant operators continued to use the pier in this way without CDP authorization until the time of the restaurant's emergency closure in 2016. Such unpermitted use of the public pier was negatively impacting public coastal access in a manner inconsistent with the public access and recreation policies of the Coastal Act. While the expanded dining deck proposed as part of this project provides the restaurant with additional space for outdoor seating and should reduce its need to encroach upon public areas for this purpose, given the impacts

which have in fact occurred over the years with respect to operation of the existing restaurant, there is still a risk that operation of the new proposed restaurant could also have adverse impacts to public access at and around the public pier.

Accordingly, **Special Condition 3(g)** requires that the public pier shall not be used for restaurant purposes (e.g., seating or placement of a restaurant greeting stand). This condition also requires that three, six-foot-long benches be placed at the seaward end of the public pier for public use. These benches were required as a condition of CDP 3-85-16-A1, but they were removed at some point (possibly in association with the closure of the public pier). These requirements (along with the public access signage requirements noted below) will ensure that the public pier will be maintained for public use, in a manner that creates an inviting atmosphere for the public.

Restaurant Deliveries, Trash Bins, and ADA Parking

Vehicle access to the restaurant also presents a variety of potential access impacts. Deliveries and patron drop-offs may block the entrance to the West Jetty accessway and, before the restaurant closed, an Americans with Disabilities Act (ADA)-accessible parking space was located in the entrance to the accessway itself (see **Exhibit 5**). Additionally (and as discussed further below), the restaurant has in the past placed trash and recycling containers in the vicinity of the entrance to the West Jetty accessway. In addition to degrading the visual quality of public areas, the placement of trash bins in this area can impair physical access to the beach, especially in conjunction with the other types of activities that occur in the vicinity as a result of restaurant operation (i.e., deliveries and drop-offs). **Special Condition 4(c)** addresses such potential disruptions by prohibiting obstruction of public access areas and amenities by restaurant activities, equipment, or uses, including restaurant trash disposal. An exception is provided for restaurant delivery trucks and related loading/unloading activities; however, these functions must be completed as expeditiously as possible to minimize impacts to public access. Additionally, **Special Condition 3(i)** requires that the revised restaurant plans include accessible parking space(s) necessary to meet ADA requirements, and that these be placed on Port District property in a manner that does not physically or visually obstruct the entrance to the West Jetty accessway or the public pier.¹⁵

Restaurant Parking

The proposed project includes an expanded dining deck, which will allow for the proposed restaurant to serve more patrons than in the past, which could lead to an increased need for restaurant parking. The Port District has historically provided dedicated, paid parking for the restaurant in the Lower Harbor area (see **Exhibit 2**), which also provides parking for slip renters and Harbor visitors (including patrons of Harbor businesses).¹⁶ Prior to its closure in 2016, Aldo's was allocated 28 parking spaces out of 224 total parking spaces in the southwestern

¹⁵ The condition language would also allow accessible parking to be located on City property (e.g., along Atlantic Avenue) if the City authorizes the space(s) to be provided there and public access is not significantly adversely affected.

¹⁶ The permit status of paid parking in the lot on the western side of the Lower Harbor is uncertain, and this CDP neither compels nor authorizes any paid parking in that area.

portion of the lot. Some additional parking spaces, depending on final restaurant plans,¹⁷ would be required given the additional restaurant seating area proposed on the expanded dining deck, and the already low number of parking spaces allocated. This raises potential public access issues insofar as the parking spaces reserved in the parking lot for restaurant patrons might otherwise be used to provide parking for Harbor-related coastal-dependent uses (e.g., slip renters; users of the public launch) and public access; however, a parking study conducted in 2015 (i.e., prior to the closure of Aldo's and the public pier) found that both the visitor and slip renter parking spaces in the southwestern Harbor lots were underutilized. On average, the spaces were 40% and 35% percent occupied (respectively), and peak observed occupancy was 77% for slip renter spaces and 75% for visitor spaces. Additionally, the greatest observed demand for parking in the southwestern Harbor was in the area furthest from the project area (i.e., near "FF" dock, which is more than 1,000 feet from the project site). While the demand for parking in other areas of the Harbor (i.e., especially, the southeastern Harbor, which is across the channel from the project area and the location of several restaurants and the public launch) remains high relative to supply, this does not appear to be the case in the southwestern Harbor, and particularly not in the vicinity of the project site. As such, it is reasonable to expect that any additional parking requirements triggered by the proposed new restaurant's parking demands can be met on the Applicant's property without negatively impacting public access. **Special Condition 3(j)** requires that dedicated parking for restaurant patrons be provided in the Lower Harbor parking lot consistent with the requirements of the certified Harbor Development Plan.

Finally, while the amendment to the restaurant's original CDP (CDP P-01-76-1665) required bicycle racks to be provided at the site, dedicated bicycle parking is not currently available there, inconsistent with that approval. Additional bicycle parking supports public recreational access in the area and may reduce the need for vehicle parking; it is also specifically required or recommended for the Harbor by the City's certified LCP LUP and HDP (which both provide guidance), and the above-referenced Harbor parking study. Specifically, the City LCP's Parks and Recreation Policy 1.7.1.5 encourages provision of "adequate" bike parking at coastal recreation areas including the Harbor, and the parking study found "very limited" existing bicycle parking at the Harbor, suggesting that this standard is not being met. The parking study also recommends adding bicycle parking in restaurant and business locations, and LCP Harbor Development Plan Policy 4.11 requires it as a component of new or expanded development. Accordingly, **Special Condition 2(d)** would require placement of a bicycle parking rack in an appropriate location near the restaurant (i.e., in an area where it will not block any public access areas and will facilitate public utility while protecting views).

Construction-Related Access Impacts

With respect to construction impacts, the public pier will remain closed for the duration of the harbor wall replacement phase of the project, and the temporary chain-link fencing that currently encircles both the pier and the restaurant will remain in an expanded configuration in order to allow minor, intermittent staging activities at the end of Atlantic Avenue¹⁸ and to maintain

¹⁷ Parking requirements in the Harbor are based on square footage of the use in question; the number of spaces required per square feet of restaurant area is provided in the LCP's Harbor Development Plan. In any case, the restaurant would need to account for all of its parking requirements based on current professional standards for same.

¹⁸ The primary staging area for the project will be inland of the southwestern parking area of the Lower Harbor.

public safety (see **Exhibit 3**, p. 5). Additionally, all construction of the harbor wall and installation of pilings will occur between June 15 and November 30 in order to minimize potential impacts to steelhead and coho salmon, as well as to minimize impacts to water quality from stormwater runoff during rain events. This means that construction will be underway during the peak season for coastal recreation in two summers (i.e., in Summer 2019 for the harbor wall replacement and the public pier work, and in Summer 2020 for the restaurant reconstruction, including the dining deck and the perimeter accessway).

To mitigate these impacts and ensure that public access at the site remains in some form throughout project construction, the Applicant has proposed to maintain a ten-foot-wide public accessway connecting the Harbor trails across the Atlantic Avenue street end to the West Jetty accessway and Seabright Beach for the duration of the project. **Special Condition 5** requires the Applicant to prepare a construction plan prior to the issuance of the CDP that specifically identifies areas to be closed for construction-related purposes, and **Special Condition 5(i)** requires public access between the Atlantic Avenue street end and the West Jetty accessway/Seabright Beach to be maintained for the entirety of the construction period, save for brief interruptions for the exclusive purpose of transporting construction materials across the accessway when necessary. This condition also requires directional signs to be placed at either end of the temporary construction accessway to make it clear to the public that the beach is accessible from the Harbor during construction and vice versa.

Thus while some construction-related access impacts at the site are inevitable, the project as conditioned minimizes such impacts as much as can be accomplished using construction BMPs, and the aforementioned mitigation package can appropriately and commensurately offset remaining impacts. As conditioned, the project will be constructed in a manner that preserves the area's critical function as a point of connection between other access and recreation opportunities.

Conclusion

The proposed harbor wall project is necessary to address a public safety emergency that is currently restricting public access in a popular coastal area, and the restaurant project will provide for additional visitor-serving use at a popular visitor destination. As conditioned, the project will appropriately mitigate all potential impacts to public access by requiring improvements to existing public access and recreation facilities, and will ensure that public access is maintained during construction of both the harbor wall and the restaurant. The project as conditioned can therefore be found consistent with the above-cited public access and recreation policies of the Coastal Act.

E. MARINE RESOURCES

The Coastal Act protects the marine resources and habitat offshore of this site. Coastal Act Sections 30230 and 30231 provide:

Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner

that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231. *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

In addition, Section 30233 addresses filling of coastal waters and provides (in relevant part):

Section 30233. *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

The Coastal Act defines fill as follows:

Section 30108.2. *"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.*

Additionally, the HDP, which serves as guidance, provides direction on overwater construction, both broadly and at the project site specifically:

HDP Policy 3.7.2. *[In relevant part] Allow improvement of Aldo's Restaurant, including limited expansion for a total square footage of 4,000 square feet with a special use permit...*

HDP Policy 3.8. *Allow new, expanded, and/or replacement development and uses in accordance with uses outlined in Policy 3.7 and on Table H-5, CD (Coastal Dependent)*

Zone District standards, development/design standards outlined below, provision of adequate parking and mitigation of environmental impacts...

HDP Policy 3.8.3. *Buildings shall not be expanded over the water, except for pier additions.*

Consistency Analysis

Water Quality and Noise

The proposed project involves significant construction in and over coastal waters, which can cause water quality impairment from sediment disturbance and runoff, equipment leaks, and spills of construction materials into Harbor waters. Additionally, pile driving can negatively impact marine wildlife by generating significant underwater noise. The prospect of both increased underwater sound and diminished water quality due to project activities are of particular concern as they relate to steelhead, which are known to occur in small numbers in Harbor waters, as well as other marine taxa.

The proposed project may additionally include the placement of new pilings in Harbor waters to support the proposed expanded dining deck and perimeter public access walkway.¹⁹

Special Condition 3(e) requires Final Restaurant Plans to identify any new pilings to be installed in association with the restaurant replacement and dining deck expansion, and that all piling materials, preservatives, and coatings be consistent with the requirements of the Commission's standard best management practices (BMPs) for use of treated wood.

With respect to the potential water quality impacts of overwater construction, the Applicant has incorporated the Commission's standard best management practices for work over water (including maintaining good construction site housekeeping controls and procedures, the use of appropriate erosion and sediment controls, a prohibition on equipment washing, refueling, or servicing over coastal waters, etc.) into the project description and project plans, and **Special Condition 5** requires the Applicant to provide a Construction Plan that further specifies how these practices will be applied in the project area. To further protect marine resources and offshore habitat, **Special Condition 5** also requires construction documents to be kept at the site for inspection, and also requires a construction coordinator to be available to respond to any inquiries that arise during construction. The proposed construction timeline (June 15 to November 30) minimizes the likelihood that storm events will cause runoff contaminated by construction materials or sediment to enter Harbor waters, and also avoids the annual migration periods for salmonids, including steelhead.²⁰

To address the noise impacts of pile driving, the Applicant proposes to use low impact methods (i.e., a vibratory hammer or a "press-in" driving) to force the new harbor wall's

¹⁹ This expansion is not inconsistent with the guidance provided by LCP HDP Policy 3.8.3, which prohibits expansion of buildings over water.

²⁰ Steelhead typically migrate upstream between December and April, while downstream migration peaks between March and May. Another salmonid of concern in the project area is the coho salmon (*Oncorhynchus kisutch*). Though coho do not occur naturally in Harbor waters, federal critical habitat for the species includes the Harbor area. Coho typically migrate upstream between November and January and downstream from March to July, with the peak occurring between April and early June, outside of the proposed construction window.

sheet piles through the sedimentary soil overlaying the sandstone, and to jet and/or pre-drill the sandstone to reduce its resistance and, by extension, the hydro-acoustic impacts of sheet pile installation.²¹ **Special Condition 3(e)** requires that similar methods be used to install any new pilings required to support the restaurant, the dining deck, and the outer perimeter public walkway. The Applicant also proposes to employ noise attenuation measures, which either further reduce hydro-acoustic noise impacts or discourage fish and marine mammals from entering the area where hydro-acoustic disturbance will be most pronounced.²²

Fill of Coastal Waters

Additionally, the proposed project involves filling of coastal waters, both for the purpose of constructing a new harbor wall seaward of the existing harbor wall, and for the purpose of installing pilings to support the expanded dining deck (including the outer perimeter public walkway), as well as the restaurant and the decking itself (i.e., also considered fill of coastal waters when it covers coastal waters, as is the case here. Under Coastal Act Sections 30233(a)(1) and (3), such fill can be permitted to maintain existing harbor facilities and for the placement of piers that provide public access and recreation opportunities.

In this case (and as discussed above), the proposed harbor wall is necessary to maintain the form and function of the Harbor. It can therefore be allowed under Section 30233(a)(1) if there is no feasible less environmentally damaging alternative, provided that any adverse environmental effects are mitigated.

There are two alternatives to the proposed harbor wall replacement that would not involve fill of coastal waters: Construction of a new harbor wall in the exact location of the existing harbor wall, and a “no project” alternative in which the existing wall is allowed to continue to degrade in place. In the first instance, the existing wall would have to be extracted, and the backfill (which dates to the construction of the Harbor and does not meet modern standards for fill) would have to be excavated and disposed of off-site. This would be a significantly more impactful project than the proposed approach, as it would require dewatering of the area around the harbor wall, along with additional in-water work, earthwork adjacent to harbor waters, and increased construction traffic and public access impacts. The no project alternative is not feasible, as it would result in the loss of backfill material into harbor waters (i.e., from holes that will continue to form in the harbor wall as it continues to degrade) while at the same time threatening public safety, public access, and the integrity of the Harbor itself. The proposed project is therefore the least damaging alternative, and environmental impacts from fill are expected to be minimal due to the small area to be filled (300 square feet, some of which is already covered by riprap) and the highly engineered and heavily modified nature of the area.

²¹ The design of the proposed harbor wall also minimizes hydro-acoustic noise impacts because anchoring the tie-backs to the pile caps (as would occur in this case) reduces the depth to which the piles must be driven.

²² Specifically, the Applicant proposes soft starts (when initial driving strikes use low hammer energy and, consequently, produce less noise), a bubble curtain (a wall of bubbles that acts both as a deterrent to fish and marine mammals and as a sound screen that reduces the transmission of noise outside the work area), and pile cushions (which cushion the top of the pile from the hammer and reduce the sound associated with each strike).

The new replacement restaurant building and expanded deck areas (including new pilings) will also result in fill of coastal waters. Although a private restaurant and a deck to serve a private restaurant are not themselves within the scope of an allowable use for fill of coastal waters under Coastal Act section 30233(a), the project as a whole can be considered a public recreational project by virtue of the perimeter public access deck (at 10 feet in width, as described above) and the new public ADA-accessible restrooms, and thus meet Coastal Act Section 30233 requirements in that way. But for these components, and those associated with the public pier, and the modifications provided by **Special Conditions 2, 3, and 4**, the private restaurant and related development would not be approvable here. Fortunately, the project can be approved and modified in such a way as to provide for project objectives, while also ensuring an adequate public access component consistent with Coastal Act requirements.²³ In addition to the proposed new public walkway, the deck expansion would allow for the provision of publicly accessible restrooms at the site (i.e., a new public amenity) but not hinder the continued use of the existing floating docks for boating and other coastal recreation purposes.²⁴

Regarding the other two prongs of 30233(a), there is no feasible less environmentally damaging alternative than the fill identified as there would be no feasible way of expanding this area over the water without fill. The mitigation package appropriately and commensurately offsets and mitigates impacts associated with same.

Therefore, as conditioned, the project can be found consistent with Coastal Act Sections 30230 and 30231 regarding protection of marine resources and offshore habitats, and with Section 30233(a) pertaining to fill of coastal waters.

F. VISUAL RESOURCES

Coastal Act Section 30251 states:

***Section 30251.** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the*

²³ It also balances the directives of guiding LCP HDP Policies 3.8.3 (which does not allow the expansion of *buildings* overwater, but does allow the expansion of public piers) and HDP Policies 3.7.2 and 3.8 (which allow replacement and limited expansion of Aldo's particularly, provided that the associated impacts are mitigated).

²⁴ According to the Applicant, the existing floating dock at the project site dock was constructed primarily to serve visitors who wanted to boat to the restaurant and tie up dockside while dining, and to provide a landing space for the Harbor's water taxi. Since these purposes do not typically result in heavy use of the dock, it has also been used to berth abandoned vessels slated for demolition. All of these purposes are accommodated on the eastern side of the dock, which would not be impacted by expanded decking. The western side of the dock is not typically used to accommodate visiting vessels, though it is occasionally used for smaller craft when the dock is experiencing heavy utilization. Any deck overhead would not impact this use, and **Special Condition 3(b)** specifies that the expansion of the deck be limited as necessary to maintain it.

California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Additionally, HDP Policy 3.8.4 (which is guidance) provides height limits for new development in the Harbor:

HDP Policy 3.8.4. *New development shall not exceed two stories (35 feet) in height, except for accessory uses which shall not exceed 1 story (15 feet) in height. Development shall be consistent with the City's CD District regulations and development standards and the Port District's adopted Santa Cruz Harbor Design Criteria (June 1981).*

Consistency Analysis

The harbor wall that would be replaced by this project is generally not visible from land, as it is partly submerged and covered by the public pier, restaurant building, and dining deck. When finished, the proposed replacement harbor wall would not substantially alter the visual appearance of the area, as the proposed structure would be screened from on-land public viewing areas by the same site features that hide the existing harbor wall and, to the extent that the harbor wall is visible from any other public area (e.g., from the water level), the new harbor wall would appear very similar to the existing harbor wall.

The proposed new restaurant and expanded dining deck would have a greater potential to affect the visual character of the area. Most notably, the Applicant has proposed to replace the existing, 13-foot-tall building with a new 22-foot-tall structure. The impacts of a taller restaurant building on public views are not likely to be pronounced, however, due to the existing obstructions to views of the water in the project area. Specifically, the view to Harbor waters from the West Jetty accessway has been blocked by the restaurant in its present form for many decades. However, the proposed restaurant building will be seen as taller (and thus bulkier) than the existing restaurant building, and the proposed dining deck expansion will be seen to cover an additional area of harbor waters compared to the existing dining deck, which will cause some impacts to public views over existing conditions. This impact, however, can be addressed by ensuring that all such development is sited and designed to protect public views from significant adverse impacts (see **Special Condition 3(n)**).

In terms of views other than Harbor views, the area upcoast of the proposed restaurant and dining deck project site consists of a 45-foot-bluff, the top of which is developed with private residences. Thus, there are no public views that would be affected by the replacement of the structures below this bluff from this location. With respect to the view from the north/inland, the project site is separated from the rest of the Lower Harbor by a small slope, which already blocks views in this direction somewhat from the pedestrian walkways of the Lower Harbor. The taller new restaurant would also be more visible from more seaward locations (i.e., from the West Jetty) and downcoast (i.e., from the Harbor waters or the eastern side of the Harbor). It is important to note, however, that the restaurant plans are conceptual and the Applicant fully intends to develop more detailed and refined plans. These plans will need to go through local processes (including Special Use Permit and Design Permit review) and also through this CDP's review process, both of which can ensure that public views are adequately protected.

The proposed new restaurant concept identifies a Cape Cod-style building with a peaked roof and shingle siding, with all mechanical equipment recessed into the roof. This design is more in keeping with the look and feel of the Harbor than the existing, architecturally indistinct restaurant, which has a flat roof and uses angled trellising to screen rooftop mechanical equipment. Utility boxes and pipes visually dominate the west side of the existing restaurant building, contributing to the uninviting appearance of the West Jetty accessway. In this sense, and on design alone if it is maintained in its next, more refined version, the proposed new restaurant could improve the visual character of the site, and **Special Conditions 2 and 3** require further aesthetic improvements to the West Jetty accessway and other elements of the project vicinity. These include the installation and maintenance of native plant landscaping (**Special Conditions 2(a) and 3(k)**), enclosure of any restaurant trash in a structure consistent with the general style of the restaurant (**Special Condition 3(c)**), and screening or recessing of restaurant utilities and mechanical equipment (**Special Condition 3(f)**). **Special Condition 2(a)** additionally specifies that Revised Accessway Improvement Plans shall include a variety of changes to the West Jetty accessway and Atlantic Avenue street end that would improve the visual appearance of the area, e.g., removal or screening of the concrete pad and other fixtures on the inland (west) side of the roadway and improvement of the walkway with a coordinated design theme on the walkway ground surface (such as distinctive pavers, upgraded pavement, or sidewalk stencils). **Special Condition 4** requires maintenance of these improvements.

Impacts to public views from the public pier are also a concern. Currently, the public pier extends about forty feet further east over the waters of the Harbor than the dining deck, providing members of the public the opportunity to look south toward the Harbor entrance channel, the Walton Lighthouse, and the Monterey Bay without the obstruction of restaurant tables and patrons. By reducing the gap between the eastern extent of the two structures, the expanded outdoor dining deck would reduce this unobstructed view south from the public pier. Additionally, the retractable awning proposed for the dining deck, which is intended to be made of a transparent material in order to preserve overwater views for restaurant diners, would at minimum still require solid framing that would further intrude upon the view south from the public pier. However, the public pier would still extend further into Harbor waters than the dining deck under the proposed project due to the fact that the floating dock, which limits the expansion of the dining deck, skirts the public pier and jogs landward in front of the dining deck. Thus the end of the public pier will still afford unobstructed views toward the ocean, the new public access walkway around the perimeter of the dining deck required by **Special Condition 3(h)** will provide an opportunity for public enjoyment of the view south from the project site without any obstruction by restaurant activities, and the awning and other restaurant development can be required to be sited and designed to avoid any significant impacts to public views.

Overall, though the increased sizing of the restaurant building and expansion of the dining deck will result in some adverse impacts to coastal visual resources, as conditioned, the proposed project can appropriately minimize and otherwise offset these impacts (which are incremental in nature, rather than entirely new, as the project does not propose construction of a new building and deck where none existed before) by improving the overall public viewshed as seen from the West Jetty accessway, in particular by providing new public views in an area where they are currently blocked by the restaurant's private use of the deck (via the perimeter walkway around

the expanded dining deck). As conditioned, the project can therefore be found consistent with the above-cited Coastal Act public viewshed policies.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

The City of Santa Cruz identified the harbor wall replacement as qualifying for a Class 2 Categorical Exemption from CEQA under Section 15302 of the CEQA Guidelines, which concern replacement or reconstruction projects, and **Special Condition 3** requires the Final Restaurant Project Plans to be submitted with evidence that any required review under the California Environmental Quality Act (CEQA) has been completed. The Coastal Commission's review and analysis of land use proposals via approval of CDPs has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA (14 CCR Section 15251(c)). The preceding CDP findings discuss the relevant coastal resource issues with the proposal, and the CDP conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources.

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 – SUBSTANTIVE FILE DOCUMENTS²⁵

- CDP File 3-18-0841
- CDP File G-3-16-0056
- CDP File 3-15-0854
- CDP File 3-85-016-A1
- CDP File 3-85-016
- CDP File P-01-76-1665
- CDP File P-1665

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

²⁵ These documents are available for review in the Commission's Central Coast District office.

3-18-0841 (Santa Cruz Harbor Sheet Pile Wall and Restaurant Replacement)

- Santa Cruz Port District
- City of Santa Cruz
- California State Lands Commission