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COASTAL DEVELOPMENT PERMIT AMENDMENT APPLICATION

Application number3-92-063-A2, Abalonetti's Restaurant Expansion

Applicant.....Monterey Wharf Concession No. 9, LLC (James Gilbert)

Project locationAbalonetti's Restaurant, #57 Fisherman's Wharf #1, City of Monterey, Monterey County.

Project description.....Eliminate prior permit conditions related to seating restrictions, expand outdoor seating area and install fifty additional outdoor seats, expand windscreen perimeter, modify public access area, and partition of hoist area at Abalonetti's Restaurant.

Local ApprovalsArchitectural Review Committee approval (ARC 07-478, January 30, 2008); City Council approval of Major Project and Lease Amendment (Resolution 08-171 C.S., November 4, 2008).

File documents.....Coastal development permit file 3-92-063; City of Monterey certified Land Use Plan (LUP).

Staff Recommendation ..Approval with Conditions

A. Staff Recommendation

1. Summary of Staff Recommendation

The Applicant proposes to amend a previously-approved coastal development permit (CDP) for outdoor seating at Abalonetti's Restaurant on Fisherman's Wharf in the City of Monterey. Although that permit recognizes a total of 150 restaurant seats (94 indoor seats and 56 outdoor seats), it also limits overall restaurant seating to a maximum of 94 seats at any one time in recognition of water and parking limitations. Specifically, the existing permit requires 56 seats to be closed off (i.e., no service) when the 56-seat outdoor seating area is in use.

The proposed amendment would eliminate the restriction on outdoor versus indoor use, and would add an additional 50 outdoor seats and make other interior and exterior modifications. Thus, all told, the proposed amendment would result in a 200-seat restaurant, with 94 interior seats and 106 exterior seats.



The expanded outdoor seating area would also include a more than 9-foot tall perimeter windscreen, modification of the area reserved for public access, and expanded commercial use of a public wharf area historically used as a boat hoist.

The amendment raises inconsistencies with Coastal Act and LUP priority land use standards. The project site is located over public trust lands granted to the City of Monterey. Both Coastal Act and LUP policies protect and reserve these areas for public access, visitor-serving recreational facilities, coastal-dependent uses, and commercial fishing/recreational boating facilities. The proposed expansion of a restaurant use is not consistent with the Coastal Act land use priorities as they apply to public trust areas, including limiting the allowed uses over the water to certain high priority uses.

In terms of public access areas specifically, the proposed amendment would result a conversion of existing required free public access areas (per the base CDP) to restaurant uses, and would further expand restaurant use over other wharf areas. The project thus reduces as opposed to maximizing public recreational access opportunities, including, significantly, free and low-cost opportunities, and cannot be found consistent with the Coastal Act.

In terms of public views, the project would place additional structures and development within a significant viewshed, including an LUP-identified public view corridor, and degrade public views from the main stem of the public wharf and from the existing public access area adjacent to the restaurant. The proposed amendment would also result in a narrowing of the view cone as seen from the center of the wharf, and a reduction in the amount of wharf that is currently accessible to the public for enjoying shoreline views. The proposed project thus blocks and otherwise degrades public views inconsistent with the Coastal Act.

Finally, the proposed project will also lead to an intensification of use at Abalonetti's Restaurant, including an increased amount of restaurant seating and corresponding demand for water. Though there is a water allocation for the existing restaurant, it appears that the restaurant expansion will require additional water in an area (the Monterey peninsula) where there are inadequate water supplies currently. The availability of adequate services has not been clearly demonstrated, and thus the proposed project is not consistent with the public service requirements of the Coastal Act.

Staff believes that an alternative project can be developed that accommodates much of the expansion requested at the same time as enhancing public recreational access and respecting public views. Such a project allows for the indoor versus outdoor limitation to be removed, allows for a smaller new exterior expansion area, and provides for an expanded designated public recreational access use area. Adequate water availability must be demonstrated. Such a revised project significantly expands the restaurant as compared to the existing permitted use, and provides public recreational access and visual access enhancements on the wharf to offset impacts associated with such an expansion. In other words, the adjusted project better accounts for the unique circumstances associated with commercial development atop a public trust wharf area consistent with the objectives and requirements of the Coastal Act, and allows for both restaurant expansion and enhancement and public recreational access enhancement in a way that better respects both objectives consistent with the Coastal Act.



Thus, staff recommends that the Commission conditionally approve a revised project. The motion and resolution is found directly below.

2. Staff Recommendation on CDP Amendment

Staff recommends that the Commission, after public hearing, **approve** the proposed project subject to the standard and special conditions below.

Motion: I move that the Commission approve the proposed amendment to coastal development permit number 3-92-063 pursuant to the staff recommendation.

Staff Recommendation of Approval: Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit Amendment: The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment..

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B. Findings and Declarations

The Commission finds and declares as follows:

1. Project Location, Background, and Description

A. Project Location

The Applicant proposes to amend a previously-approved coastal development permit (CDP) for outdoor seating for Abalonetti's Restaurant on Fisherman's Wharf in the Harbor segment LUP area of the City of Monterey. The Harbor segment comprises 115 acres of shoreline property along Monterey Bay between Cannery Row to the west (downcoast) and Del Monte Beach to the east (upcoast). This area is both a prime visitor destination, with an estimated 20,000 peak daily visits to the wharf, as well as the heart of Monterey's sport and commercial fishing industry and other related marine-oriented uses and activities. Fisherman's Wharf is owned by the City of Monterey and leased to private concessionaires who operate a series of commercial establishments, including restaurants and gift shops. This area is entirely within public trust lands granted to the City by the State of California.¹

Abalonetti's Restaurant is located on Wharf Concession #9 (see Exhibit A). The Concession #9 leasehold area is 6,724 square feet in size. The restaurant building occupies 3,362 square feet of wharf, and the restaurant uses another 1,188 square feet of wharf area for outdoor restaurant seating. Just seaward of the building and outdoor seating area is approximately 1,824 square feet of open decking, a portion of which was historically used as a boat hoist and repair facility.² This area is the site of the proposed development.

¹ The tidelands at Fisherman's Wharf #1 are held by the City subject to the public trust for commerce, navigation, and fisheries (the State Lands Commission has granted use of these tidelands to the City; the City in turn leases the tidelands to various entities).

² The existing restaurant building and outdoor seating area is sited such that there is another 350 square feet of wharf decking at the front of the lease site, which when combined with other portions of the lease site totals 6,724 square feet.



B. Background

CDP History

The Applicant's concession leasehold area has historically contained a number of uses including the restaurant and a boat hoist and repair facility. The boat repair facility was abandoned in 1985 and the structures removed when construction of a new boat hoist and marine repair facility was opened adjacent to the Coast Guard Pier.

In September 1992 the Coastal Commission approved coastal development permit 3-92-063 authorizing the use of approximately 575 square feet of open deck area to accommodate 36 outdoor restaurant seats, another 400 square feet of decking for 5 artists booths, and a movable four and one-half (4.5) foot tall windscreen around the outdoor seating area. The Commission's approval included a requirement for new public access amenities at this location, including two view benches. Additionally, restaurant seating was restricted to a maximum of 94 seats. When the outdoor seating area was in use, an equal number of indoor tables containing 36 seats were required to be closed off (i.e., not served). The seating restrictions were imposed to address water supply constraints and to limit impacts on public access.

In May 2000, the Commission amended its prior approval to allow an expansion of the outdoor seating area, remove the artists booths, and reconfigure the public access and view area. Similar conditions to those required on the base permit limiting the maximum number of seats and regulating the number of indoor and outdoor seats were retained. Under coastal permit amendment 3-92-063-A1, the restaurant was permitted to have a maximum of 94 seats, 56 of which could be used outdoors. The outdoor seating area was approved over approximately 1,188 square feet of wharf. Special Condition 1 of 3-92-063 was amended to allow up to 56 outdoor seats, and to require that 56 interior restaurant seats be closed off from use (i.e., no service) whenever the expanded outdoor seating area was open to the public. Permit conditions also authorized the removal of the artists booths and reconfiguration of public access into a 10-foot wide, L-shaped public access and view area. The movable windscreen was likewise reconfigured to the expanded outdoor seating area and the height increased to 6 feet. See existing site layout in Exhibit B.

Currently, the restaurant is configured generally as allowed by CDP 3-92-063.³ However, there are a series of project components that are inconsistent with the base CDP. Specifically, the two required public access benches along the wharf's edge are missing; the movable windscreen was four and one-half feet in height and permanently founded with concrete into the wharf decking; there is a gate at the entrance to the public access area from the main wharf walkway that includes an integral bench on one side and that partially blocks the public access area when open and would block it completely when closed; there is a trash enclosure immediately adjacent to the wharf edge in the public access area; and there are a series of restaurant tables adjacent to the wharf's edge in the public access area proposed—but not permitted—for expanded outdoor seating. The Commission has been unable to locate any additional permits or permit amendments authorizing these project elements, including use of the public

³ Observations based on Commission staff site visit on September 1, 2009.



access area for expanded restaurant use.⁴ Please see Exhibit F for site photographs.

Water Supply

The Carmel River is a primary water supply source for the Monterey Peninsula, and Carmel River flows are significantly reduced due to withdrawals by the California-American Water Company (Cal-Am), the water supplier for the peninsula area. It has been long established that current Cal-Am water withdrawals are having significant adverse impacts on the Carmel River. The river, which lies within the approximate 250 square mile Carmel River watershed, flows 35 miles northwest from the Ventana wilderness in Big Sur to the Ocean. Surface diversions and withdrawals from the river's alluvial aquifer have had significant impacts on riparian habitat and associated species, particularly in the lower reaches.⁵ This includes adverse impacts to two federally-listed threatened species, the California red-legged frog (*Rana aurora draytonii*), listed in 1996, and steelhead (*Oncorhynchus mykiss irideus*), listed in 1997. In particular, water diversions and withdrawals reduce the stream flows that support steelhead habitat and the production of juvenile fish, especially during dry seasons.

In 1995, the SWRCB issued Water Rights Order 95-10 ("Order 95-10") in response to complaints alleging that Cal-Am did not have a legal right to divert water from the Carmel River and that the diversions were having an adverse affect on the public trust resources of the river. SWRCB found that Cal-Am was diverting 14,106 acre-feet per year (afy), yet only had a legal right to withdraw about 3,376 afy from the river, and that the Cal-Am diversions were having an adverse effect on the lower riparian corridor of the river, the wildlife that depends on this habitat, and the steelhead and other fish inhabiting the river. SWRCB thus ordered Cal-Am to implement measures to terminate its unlawful diversions.

SWRCB Order 95-10 also reduced the amount of water Cal-Am could take from the Carmel River and its alluvial aquifer by 20 percent in the near-term and up to 75 percent in the long-term. SWRCB further required that any new water that is developed/obtained by Cal-Am must first completely offset Cal-Am's unlawful diversions from the Carmel River before it can be used for new construction or expansions in use. Since that time, the jurisdictions along the Monterey peninsula have been implementing conservation measures, and have focused their efforts on improving water conservation programs, while also working on other potential water supply augmentation proposals.⁶

In the time since Order 95-10 in 1995, however, Cal-Am has made no significant reductions in its diversions above its legal right from the Carmel River. As a result, SWRCB issued a draft cease and desist order in 2008 that would compel Cal-Am to reduce its pumping of the Carmel River by 15% by

⁴ Commission enforcement staff are researching the case, and will pursue appropriate response following the outcome of this CDP amendment hearing.

⁵ See, for example, *Instream Flow Needs for Steelhead in the Carmel River: Bypass flow recommendations for water supply projects using Carmel River Waters*, National Marine Fisheries Service, June 3, 2002.

⁶ For example, along with other regional stakeholders, and largely to address Order 95-10 issues, Cal-Am has been pursuing development of a large-scale desalination facility (known as the "Coastal Water Project") in north Monterey County (in Marina or Moss Landing) capable of producing 10-13 MGD (11,210-14,573 afy) of potable water. The project, however, is in the preliminary environmental assessment stage, and it is unknown when or if such a facility may come online. The California Public Utilities Commission recently distributed a draft EIR for the Coastal Water Project in February 2009, and is currently preparing a response to comments on it.



October 2009, increasing to a 50% reduction by 2016.⁷ The draft order states that Cal-Am's unauthorized diversions are continuing to have adverse effects on the public trust resources of the Carmel River and should be reduced. Further, notwithstanding Order 95-10, Cal-Am water withdrawals have not been reduced beyond the initial 20% reduction in 1995, even while the Monterey peninsula urban population has increased from approximately 100,000 in 1995 to 112,000 today. Thus, the draft order observes:

Order 95-10 condition 2 intended that Cal-Am would make one-for-one reductions in the unlawful diversions from the Carmel River for water obtained from other sources, such as conservation. The current water management strategy used by Cal-Am/MPWMD, however, has not resulted in any significant reduction of unlawful diversions from the Carmel River since 1998. Instead, it appears that water savings resulting from conservation efforts have been redirected to support marginal increases in development.

The cease and desist order hearings have been completed and a decision is pending from the SWRCB. The cease and desist order could potentially further limit Cal-Am extractions. In the meantime, it is clear that the public water supply currently drawn from the Carmel River is having a significant adverse impact on the coastal resources of the Carmel River system.

Parking

The LUP's Harbor planning area is an urban waterfront area that is dominated by visitor-serving and recreational uses. Existing parking facilities serving the harbor planning area have the capacity for approximately 1,330 vehicles and are heavily used during the peak summer months and on weekends during the rest of the year. Parking in the Marina Lot directly around the marina area has space for 479 vehicles. Demand for the parking facilities around the marina area is primarily generated by visitors to Fisherman's Wharf, the recreational trail winding through the City that passes by the foot of the Wharf, and related attractions nearby.

C. Project Description

The proposed amendment would modify permit conditions to eliminate the maximum seating limitation and allow use of all restaurant seating concurrently (i.e., indoor and outdoor). Additionally, the amended project would expand commercial uses on the leasehold by expanding the outdoor seating area to accommodate 50 additional outdoor seats. As a result, the amendment would increase overall restaurant seating from the condition-imposed 94 seat maximum at any one time, to an unrestricted 200 seats (94 existing indoor seats plus 56 existing outdoor seats plus another 50 proposed outdoor seats equals 200 seats total). The outdoor seating expansion would occur over portions of the wharf previously used as a boat hoist and repair facility, as well as over a portion of the existing required public access area (at the location of the required public access view benches). Thus, under the current proposal, the Applicant would convert 960 square feet of open wharf area to commercial restaurant use (i.e., outdoor restaurant seating). See Exhibit C for the proposed site layout.

⁷ State of California, State Water Resources Control Board, Division of Water Rights, Draft Cease and Desist Order WR 2008-00XX-DWR (January 15, 2008).



The existing L-shaped public access area, which extends from the center of the wharf to the outer edge and around a portion of the backside of the outdoor seating area, would also be reconfigured into a 15-foot wide vertical access that extends from the center of the wharf to the outer edge and railing. The dog-leg would be eliminated, thereby reducing the amount of publicly accessible wharf frontage from the currently approved 45 linear feet to 15 linear feet. The existing windscreen would be removed and a 9-foot, 3-inch tall windscreen (5-foot tall glass window panels atop a 3-foot tall solid wall with a 15 inch header) would be installed along the entire perimeter of the expanded outside seating area. No new piers, footings, or other support structures will be placed in the intertidal area below the restaurant for any of the proposed development. See Exhibit C for proposed project plans.

2. Standard of Review

Fisherman's Wharf is located over State tidelands and thus is located within the Commission's retained CDP jurisdiction where the Coastal Act is the standard of review. The City's Harbor Land Use Plan (LUP), which was certified in October 2003,⁸ also addresses this area through its Wharf Master Plan element and can provide non-binding guidance.

3. Coastal Development Permit Determination

A. Relevant Policies

Relevant Coastal Act Policies

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 and extends over public tidelands. Coastal Act Sections 30210 through 30213 specifically protect and promote public access to the shoreline. In particular:

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

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

⁸ The City's LCP is not fully certified, including for the Harbor area segment, because an Implementation Plan (IP) and one land use segment have not yet been certified.



Section 30212(a): *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

Additionally, Coastal Act Recreation policies protect coastal areas for water oriented recreational activities (30220), protect lower cost visitor serving uses and prefer development providing public recreational opportunities (30213), protect ocean front land suitable for recreational use (30221), establishes priority for visitor-serving commercial recreational facilities over general commercial development (30222), protect ocean front land suitable for coastal dependent aquaculture (30222.5), reserve upland areas for coastal recreation (30223), to encourage recreation boating, limit non-water dependent land uses that congest access corridors (30224).

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

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

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

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

Section 30222.5: *Oceanfront land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.*

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

Section 30224: *Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

Coastal Act marine resource policies promote and protect facilities serving the commercial fishing, public recreational, and coastal-dependent, industries. For example, Section 30233 states in 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.

...

(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.

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 30250 requires provision of adequate public services:

Section 30250: *New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. ...*

Coastal Act Section 30251 protects public visual access and 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 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.*

Coastal Act Section 30252 requires provision of adequate parking facilities and states:

Section 30252: *The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2)*



providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Relevant LUP Policies

The Harbor LUP was certified by the Commission in October 2003 and includes the Wharf Master Plan element. In general the LUP restricts the expansion of restaurants and commercial uses and encourages marine related uses, consistent with Coastal Act access and recreation policies which give priority to coastal dependent and marine related uses, and with Coastal Act Section 30234 which protects commercial fishing and recreational boating facilities. The following sections of the LUP and Wharf Master Plan outline LUP's approach to development on the wharf:

Policy 3a (p. 22): *In the Harbor area, where existing or planned public services (i.e., water, sewer, roads) can accommodate only a limited amount of new development, priority uses, including coastal dependent uses, essential public services, and basic industries vital to the economic health of the City, region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses, shall not be precluded by other development.*

Policy 3f (p. 62): *Continue to require that all new development, or intensified existing development in or adjacent to the Harbor LCP area, provides adequate parking. Intensified uses include, but are not limited to, an increase in number of seats in restaurants, and an increase in passenger capacity for boats.*

Policy 3i (p. 62): *For new or intensified development where on-site parking is not feasible, off-site parking in the vicinity of the development may be provided. The initial review of all development projects shall include an analysis of parking needs, provision for parking, and evidence that parking can be provided without displacing other users.*

Policy 3f (p. 83): *Use development standards and procedures permitted on Fisherman's Wharf shall be those permitted in the Fisherman's Wharf Master Plan (see Appendix C) adopted by the City in July 1986, and as consistent with LUP policies.*

Wharf Master Plan Permitted Use Policies

- 1. No more new restaurants, cocktail lounges, or gift shops will be allowed on the wharf.*
- 2. Marine oriented uses should be especially encouraged and shall receive special consideration by the city.*



3. *To especially encourage retail and wholesale fish markets, these markets may be allowed:*
 - *Additional building height not to exceed two stories in height. The building area created by any additional height shall be used for equipment and storage purposes only for on-site businesses, but in no case shall provide for an increase in seating capacity for restaurants.*
 - *Sale of food related to projects sold in fish markets, as specifically defined in Resolution 9000, should be allowed for customer take-out and consumption on the premises. Seating shall be for a maximum of ten persons. This sale of food shall be incidental to the sale of retail and wholesale fish products, and shall not alter the character and function of the fish markets.*
4. *The sale of products by concessionaires on Fisherman's Wharf shall be limited to those specified in Resolution 9000.*
5. *Lessees should not be permitted to sublease or assign their leases for uses different than those set forth in the lease unless such use is specifically set forth in the Wharf Master Plan or approved by the City as meeting the general purposes and objectives of the Wharf Master Plan.*
6. *The use and location of vender carts, and any change in the use and/or location of existing vender carts, shall be subject to review and approval of the City Council.*
7. *At the time an existing use is terminated and a different use is proposed, this different use shall be of the following nature:*
 - a. *Primary*
 - *Wholesale and retail fish businesses*
 - *Ship's chandlers*
 - *Sales of marine equipment and supplies*
 - *Marine equipment repair services*
 - *Aquariums*
 - *Boat rentals*
 - *Sales of fishing equipment and supplies*
 - *Other marine-oriented service or retail establishments, which, in the opinion of the City of Monterey, will be an appropriate and harmonious part of a wharf, oriented towards waterfront activities including the above uses.*

Wharf Master Plan Public Access/Open Space/Architectural Control Policies



1. *The present open space and view areas, shown in Figure 5, shall be maintained.*

...

3. *The provision of a panoramic viewpoint accessible to the general public should be a condition of any lease area expansion, as provided for in Architectural Control Policy 1.* This panoramic viewpoint should be linked to other viewpoints so as to provide lateral access at the backs of structures, where feasible, and subject to the approval of all adjacent concessionaires.*

**Architectural Control Policies...*

1. *The existing lease areas, with the exception of lease areas for retail and wholesale fishmarkets, as addressed in Permitted Use Policy 3, shall only be extended for building purposes; and the present building outlines shall be essentially maintained and only added to where such extensions and additions accomplish all of the following:*

- *The extensions and additions enhance public access and view opportunities, as defined by Public Access/Open Space Policy 3, without infringing upon the views and operations of neighbors.*
- *The extensions and additions maintain the overall design character of the Wharf.*

...

Other Relevant Policies

The tidelands along the Harbor planning area are held by the City subject to the public trust for commerce, navigation, and fisheries (the State Lands Commission has granted use of these tidelands to the City; the City in turn leases the tidelands to various entities). Regarding public tidelands, Article X, Section 4 of the State Constitution provides:

No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

Policy Conclusion

The Coastal Act assigns priority to developments that promote and protect facilities serving the commercial fishing, public recreation, and coastal-dependent industries for the project site, and this requirement is further reinforced by the certified LUP. Thus, the advisory LUP gives clear priority to marine-related uses over other general commercial uses such as restaurants, gift shops, and cocktail lounges, and requires that when an existing use is terminated, the new use must be limited to a coastal



dependent/marine related use. The LUP further requires evidence of the availability of public services including water and parking, and provides that lease/building expansion may only be approved if it enhances public access and view opportunities.

B. Analysis

Priority Uses

As summarized above, the Coastal Act establishes a priority for public recreational, recreational boating, and commercial fishing uses over general commercial development. Consistent with this intent, Section 30233 only permits a limited range of development and uses within coastal waters, including facilities that promote commercial fishing and public recreational piers that provide public access and recreational opportunities. Commercial uses such as private restaurants are not identified as one of the seven allowed uses for the placement of fill within coastal waters, and likewise are not a high priority use under the Coastal Act. Although no new fill of coastal waters is proposed here, the proposed expansion of a general commercial use is not consistent with the intent of the Coastal Act to limit the uses over the water to certain high priority uses.

This Coastal Act intent is also apparent in the certified advisory Harbor segment LUP. No more new restaurants, cocktail lounges, or gift shops are allowed on the wharf. The LUP also states that the present building outlines on the wharf shall be essentially maintained and only added to where such extensions and additions “enhance public access and view opportunities . . . without infringing upon the views and operations of neighbors.” Notably, the Wharf plan in the LUP identifies a variety of coastal dependent or marine and fishing related uses that are appropriate for the Wharf.

Fisherman’s Wharf is a public pier facility, located within public tidelands. As discussed below the proposed project involves the intensification of an existing general commercial restaurant use located above a portion of these public tidelands. As further described below, the project will extend the restaurant footprint into both a previously required public access area and into other areas of the public wharf. This expanded use is not a priority use of a public pier, nor is it coastal dependent or related. Though restaurants can be visitor serving in nature, they are primarily commercial uses which are not dependent upon coastal resources to function (i.e., they can be located in many commercially zoned sites within the City, including those far removed from the shoreline). However, if the project is modified to enhance public access and view opportunities, as described below, the Commission can find the restaurant expansion consistent with the Coastal Act requirements and LUP advice to prioritize public recreational uses.

New Development

The Coastal Act requires that new development be located in areas able to accommodate it, and with adequate public services. The restaurant expansion and related development represent a significant intensification of use in terms of the numbers of seats and demand for public services, particularly water. Water supplies on the Monterey peninsula are extremely limited. Because of this, the Commission previously restricted the intensity of use of the site when prior expansions were approved (see above). Coastal Act and LUP policies acknowledge and address this issue by requiring adequate



water be available to serve new development and ensuring that water for priority uses is not precluded by other development. The proposed amendment represents a significant increase in the intensity of commercial use of the site. The proposal would eliminate the maximum restaurant seating limitation and provide for concurrent use of indoor and outdoor seating, more than doubling Abalonetti's Restaurant seating capacity from 94 seats at any one time currently to 200 seats as proposed. Weather permitting, all or most of these seats could potentially be in service at any one time, increasing demand for water use at the restaurant.

The Applicant has indicated that the intensification of use of the restaurant seating will not necessitate an additional water allocation. One reason given for this conclusion is the statement that outdoor restaurant seating has not traditionally been included in the Monterey Peninsula Water Management District's (MPWMD) calculations of water demand. That is, the calculation of water use for a restaurant is based on the "enclosed seating" multiplied by the District's current water use factor, and the factor is not applied to "outdoor seating." This is counter-intuitive to what one would expect. Outdoor restaurant seating is just as likely as indoor seating to generate demand for water to drink. Meals prepared for outdoor patrons require no less water. Outdoor restaurant patrons have a need for restrooms facilities just as indoor customers do, and water for dishwashing and cleaning will be the same for indoor and outdoor seats. Thus, there does not appear to be any difference in indoor versus outdoor restaurant seating when it comes to water use.

Another reason given for why additional water is not needed is that outdoor seating is driven by the weather, such that when the weather is nice, people sit outside. During the evenings and when the weather is not nice, indoor restaurant seats are preferred. Though there may be some truth to this principle, it may not always be entirely accurate. As noted, the number of permitted outdoor seats would almost double (56 existing versus 106 proposed), as would the entire restaurant seating (i.e., indoor/outdoor, 94 existing versus 200 proposed). Central California weather is mild and temperate, with little or no rain, for approximately six months out of the year. The Applicant has proposed to install an over 9-foot tall wood and glass windscreen around the entire perimeter of the outdoor seating area, thus further extending the number of days and evenings that outdoor seating could comfortably be accommodated.

Therefore, the proposed amended project will lead to an intensification of use at Abalonetti's Restaurant, including an increased amount of restaurant seating and corresponding demand for water. The Applicant has not provided any evidence that there is adequate water to serve the expanded use consistent with Coastal Act Section 30250. Accordingly, Special Condition 3 is attached requiring evidence of a water permit for the expanded seating or verification from the MPWMD that an additional water allocation is not necessary.

Public Access

Article X, Section 4 of the State Constitution protects the fundamental public right to access state tidelands. This Constitutional provision is implemented by the Coastal Act, including through the Coastal Act Section 30210 requirement to provide maximum access and recreational opportunities 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.” As previously described, the project is proposed over state tidelands held by the City of Monterey for the people of California. Thus, public trust must be fulfilled in a manner consistent with Coastal Act access and recreation policies requiring that maximum public recreational access opportunities be provided.

In addition to the basic obligation to provide maximum public recreational access on the wharf, the project must mitigate the resulting impacts to existing public access. The proposed project involves the intensification of an existing commercial restaurant use within public tidelands, including by expanding outdoor restaurant seating into the existing public access and view area, and into open wharf area reserved for visitor-serving recreational facilities, coastal-dependent uses, and commercial fishing/recreational boating facilities. The elimination of existing restaurant seating limitations, and the proposed 50 additional outdoor seats, would more than double the overall restaurant seating (i.e., indoor plus outdoor) from 94 to 200 seats, and more than double the allowed number of seats that could be occupied at any one time. This, in turn, can be expected to increase demand for public services such as water and parking, but also for additional public recreational access opportunities.

Public access on the west (downcoast) edge of the wharf is limited, particularly nearest to shore, and the existing access adjacent to Abalonetti's Restaurant provides one of the few public recreational access opportunities in this respect. As currently proposed, the amendment would reduce the amount of public recreational access space required by the base CDP on the western edge of the wharf by about 30 linear feet (currently there is approximately 45 linear feet of wharf required to be available to the public by the base CDP), and replace it with additional outdoor restaurant seating that is available only to restaurant patrons. The only new or offsetting public recreational access proposed would be to expand the required vertical access area by five feet (to a 15-foot width).⁹ The amendment would also convert an additional 72 linear feet (875 square feet) of open wharf deck, formerly used for marine related services, to outdoor restaurant seating. Once again, none of this area would be available for general public access and use. Cumulatively, the proposed amendment converts over 100 linear feet and 960 square feet of wharf along the western edge of the wharf area to commercial uses.

The Applicant's representative has indicated that the Applicant would be willing to reconfigure the expanded outdoor seating area in a manner that would not disrupt the current public access configuration.¹⁰ Although this would avoid some direct impacts to the existing public access and view area, it does not address impacts of the project on public recreational access to the wharf, including with respect to those portions of the wharf between the existing restaurant building and the wharf edge, and in particular given the public trust and Coastal Act use and development priorities that apply in this location.

Accordingly, as currently proposed, the amendment does not maximize public access and recreation opportunities consistent with Section 30210 of the Coastal Act. The amendment is also inconsistent with Coastal Act access and recreation policies which protect coastal areas for water oriented recreational

⁹ This area is currently 18-20 feet wide, so this would actually be a reduction compared to the existing configuration of the accessway.

¹⁰ Communication between Commission coastal planner Mike Watson and Applicant's representative, Mark Blum.



activities (30220), protect lower cost visitor serving uses and favor development providing public recreational opportunities (30213), and establish priority for visitor-serving commercial recreational facilities that enhance opportunities for coastal recreation over general commercial development (30222). Therefore, the proposed amendment is not consistent with the access and recreation policies of the Coastal Act.

The expanded outdoor restaurant seating on the wharf area generally west of Abalonetti's Restaurant cannot be supported as proposed. However, some additional outdoor seating in combination with more significant public access enhancements is feasible and, if provided, could support a finding of consistency with the public access and recreation requirements of the Coastal Act, as well as the advisory LUP. As such, this approval is conditioned to require that the outdoor restaurant seating expansion be limited to the area immediately west of Dining Room #1 and north of Dining Room #2, as generally shown on Exhibit D. The remaining portion of public wharf area generally west of the seating expansion area and Abalonetti's Restaurant shall be reserved for general public access and passive recreational use (see Special Condition 1(c)). In the future, this public access wharf area should be linked to other wharf areas and viewpoints north and south of the lease site so as to provide lateral access along the wharf edge at the backs of structures in the future, and such modified project ensures that this project can mesh with any future projects adjacent to this lease site in the future in that respect. With these conditions, the Applicant will still be able to expand restaurant seating from the current limit of 94 to approximately 172, depending on how the tables are arranged.

Additional conditions are attached that require typical access amenities be provided such as benches¹¹ and interpretive signing, and that these facilities be maintained over the life of the development (Special Condition 2), ensure that it is constructed and opened concurrent with the approved commercial use on site (Special Condition 4), open and available for general public use during daylight hours or during wharf or business hours in the evening, whichever is later, 365 days per year (Special Condition 2(e)), and appropriately signed (Special Condition 2(c)). A requirement for a lease restriction is also attached as Special Condition 5 to secure these provisions for the life of the project.

As discussed below, an 8-foot high windscreen may be installed around the perimeter of the outdoor seating. The windscreen must include adequate measures to prevent bird strikes (e.g., etched with a single 6" x 6" emblem, symbol, or similar per glass panel). See Special Condition 1(b).

These conditions are necessary to fulfill Coastal Act requirements for maximizing public access and recreation.

Public Access Parking

Coastal Act Section 30211 prohibits new development from interfering with the public's ability to reach the shoreline including by ensuring that there is adequate parking for public access and recreation. Section 30252 requires that new development maintain and enhance public access to the coast by providing adequate parking or other means of serving the development with public transportation.

¹¹ Similar to as previously required but not present.



Though only guidance in this instance, LUP parking policies require that new or intensified uses provide adequate parking and requires all development be evaluated to identify parking needs, provision for parking, and evidence that parking can be provided without displacing other users.

The proposed amendment represents an intensification of commercial use of the property, which could have an adverse impact on public access parking and the public's ability to access the shoreline. Consistent with LUP requirements, the City analyzed the Harbor area parking facilities to determine whether there were adequate parking facilities to serve the expanded development. The existing Waterfront Attendant Parking Lot at the foot of Fisherman's Wharf has a capacity of 479 vehicles. Surveys of parking lot occupancy were taken over a year-long period between July 2007 and June 2008 and document a peak occupancy of 65% (311 spaces) in July 2007 with reduced occupancy peaks in all subsequent months through June 2008. Based on these figures, there appears to be adequate available parking spaces during peak periods to satisfy the increase in parking requirement necessitated by the increase in the number of restaurant seats at Abalonetti's Restaurant without adversely impacting parking for general public access.

Accordingly, the proposed amendment is consistent with Coastal Act access and recreation policy requirements as they apply to public parking.

Public Views

The project site is currently developed with a commercial restaurant, storage, and office space occupying 3,362 square feet of the roughly 6,724 square foot lease site. The currently approved outdoor seating area and windscreen partition occupies another 1,188 square feet of the lease site area. Though much of the project site is occupied with development, there are significant open areas that provide view corridors to Monterey Bay and the City of Monterey shoreline, and that provide visual relief for wharf users otherwise. See photos in Exhibit F.

The Coastal Act requires new development to protect views to and along the shoreline, be visually compatible with the character of the area, protect the character of this popular visitor destination, and, where feasible, restore and enhance visual quality in visually degraded areas. The LUP implements Coastal Act provisions by requiring that the present open space and view areas be preserved, and by limiting building expansion to projects that enhance public access and view opportunities, and which also maintain the overall design character of the wharf. Modification of the permit conditions, reconfiguring public access, and constructing the proposed over 9-foot tall windscreen around the perimeter of the expanded outdoor seating area, will place additional structures and development within an LUP-identified public view corridor, blocking and degrading public views from the main stem of the public wharf and from the existing public access area adjacent to the restaurant (see Exhibit F). The proposed amendment would also result in a narrowing of the view cone as seen from the center of the wharf, and, as discussed in the access finding above, a reduction in the amount of wharf (a minimum 30 linear feet and 300 square feet) that is currently required to be accessible to the public for enjoying shoreline views. In discussions with Commission staff, the Applicant has indicated that the project could be modified to retain the existing access configuration, thereby reducing some of the impacts to public



views.¹² However, this is not the proposal that is being evaluated at this time, and the project revisions would still fail to carry out Coastal Act and LUP visual resource policies because the development that would remain would have the same impacts, albeit somewhat reduced.

Thus, as proposed, the permit amendment is not consistent with Coastal Act visual resource requirements. There are, however, project modifications that can bring the proposed amendment into conformance with the LUP and Coastal Act, including by requiring that the outdoor restaurant seating expansion be restricted to that area immediately adjacent to the restaurant, that the wind screen be limited in height to 8 feet, and that the west edge of the wharf be preserved for expanded public access and view opportunities. With respect to the wind screen specifically, only a wind screen that is not perceived as a wall and/or major structure can meet the LCP and LUP visual resource requirements identified here. In other words, it needs to be primarily a see through screen without significant base or top elements that appear as more major structures, particularly in relation to excessive top elements (such as headers, mini-roofs, etc.). Special Condition 1 defines the expanded outdoor restaurant seating area and the expanded area of public access. Only development that facilitates public access and public recreational viewing may be permitted within the public access area (i.e., benches, viewing binoculars, interpretive signing, etc.). Special Condition 2 requires that general public access associated with the approved project is provided and managed with the objective of maximizing public access to the public access areas of the site and all related areas and public access amenities (Special Condition 2). That and other conditions ensure that all required amenities are available and in-place concurrent with the approved expanded commercial use on site (Special Condition 4), are open and available for general public use during daylight hours, 365 days per year (Special Condition 2(e)), and are appropriately signed (Special Condition 2(c)). In addition, the windscreen has the potential to injure or harm migratory and shore birds. Accordingly, the recommended conditions of approval require that the windscreen panels be treated in such a way as to protect through views and prevent creation of a bird strike hazard (see Special Condition 1(b)).

C. Conclusion

As conditioned by this permit, the project will provide enhanced public recreational access opportunities on Monterey's Fisherman's Wharf including by providing for additional public access along the rear of Abalonetti's Restaurant sufficient to offset impacts associated with the permitted intensification of restaurant use at this location. Public access amenities such as benches and table seating will be provided in locations overlooking Monterey Bay. Permit conditions refine and secure these public access elements. Through conditions, an alternative project can be developed that accommodates much of the expansion requested at the same time as enhancing public recreational access and respecting public views. Such a project allows for the indoor versus outdoor limitation to be removed, allows for a smaller new exterior expansion area, and provides for an expanded designated public recreational access use area. Adequate water availability must be demonstrated. Such a revised project significantly expands the restaurant as compared to the existing permitted use, and provides public recreational access and visual access enhancements on the wharf to offset impacts associated with such an

¹² Id.



expansion. In other words, the adjusted project better accounts for the unique circumstances associated with commercial development atop a public trust wharf area consistent with the objectives and requirements of the Coastal Act, and allows for both restaurant expansion and enhancement and public recreational access enhancement in a way that better respects both objectives consistent with the Coastal Act. In sum, and only as conditioned, the project will be sited and designed in such a way as to allow for a restaurant expansion that also provides maximum public recreational access at this important public site along Fisherman's Wharf #1. As such, the proposed amendment can be found consistent with the Coastal Act policies discussed in this finding.

4. Conditions of Approval

A. 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 or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two full size sets of Revised Final Plans to the Executive Director for review and approval. The Revised Final Plans shall be in substantial conformance with the plans submitted to the Coastal Commission January 27, 2009, and titled Exterior Seating for Abalonetti's Restaurant prepared by Wayne E. Iverson, Architect) except that they shall be revised and supplemented to comply with the following requirements:
 - a. **Outdoor Seating.** The location of the expanded outdoor seating area shall be limited to the rectangular area immediately adjacent to the restaurant and existing outdoor seating area as



generally shown in Exhibit D. The plans shall clearly identify all structural elements and all other project elements to be located in this area (e.g., walkways, tables, chairs, lighting, signs, etc.).

- b. Outdoor Seating Wind Screen.** The wind screen surrounding the outdoor seating shall be limited to a maximum of 8 feet in height, shall be limited to the perimeter of the outdoor seating area (see Exhibit D), and shall include adequate measures to prevent bird strikes as much as possible while maintaining through views (e.g., etched with a single 6" x 6" emblem, symbol, or similar per glass panel). The windscreen shall include a base no taller than 3 feet, panels roughly 5' to 8' wide, and shall not include a solid element at the top (i.e., faux roof, beams, or similar are prohibited).
- c. Public Access.** The plans shall clearly identify in site plan view, all wharf areas available for public access and passive recreational use, and all access related amenities (e.g., benches, tables, access and interpretive signing, etc.) to be installed in the location labeled Public Access Area and generally shown in Exhibit D, which shall be a minimum of 15' in width from the main wharf area to the wharf edge, and a minimum of 10' in width along the wharf edge. All required public access amenities and elements described in Special Condition 2(b) below shall be identified.
- d. Access Obstructions Removed.** The plan shall provide for the removal of the existing trash enclosure structure located in the public access area and the gate and bench at the entrance to the public access area and any other obstructions to access in this area.
- e. Restaurant Seating Plan.** A seating plan for the restaurant reflecting its maximum capacity shall be included.

The Permittee shall undertake development in accordance with the approved Revised Final Plans.

- 2. Public Access Management Plan.** PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a public access management plan (Public Access Plan) to the Executive Director for review and approval. The Public Access 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 (i.e., the area along the edge of the restaurant as generally depicted in Exhibit D, and all related areas and public access amenities (i.e., benches, signs, etc.) described in this special condition). The Public Access Plan shall be substantially in conformance with the plans submitted to the Coastal Commission (and referenced in Special Condition 1 above), and shall at a minimum include the following:
 - a. Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above, shall be clearly identified as such on the Public Access Plan (including with hatching and closed polygons so that it is clear what areas are available for public access use).



- b. Amenities.** Public access amenities (such as benches, trash and recycling receptacles, etc.) shall be provided within the public access area, including at a minimum four benches where noted on Exhibit D, and at least one trash and one recycling receptacle. The existing telescope shall be maintained in an operable condition available to the public.
- c. Public Access Signs/Materials.** The Public Access Plan shall identify all signs and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (educational displays, interpretive signage, etc.). Sign details showing the location, materials, design, and text of all public access signs shall be provided. All signs shall be designed to blend into the wharf aesthetic as much as possible. The signs shall be designed so as to provide clear information without impacting public views and site character. At a minimum, public access directional signs shall be placed near the entry point from the main wharf to the public access area and at appropriate intervals along the public access area, including at a minimum where users entering the public access area first come to the wharf edge. Three large scale (approximately 5' x 5') interpretive panels with information and photos appropriate to local issues, information, and history (e.g., black and white historic photos with descriptive text) shall be placed along the back edge of the wharf theatre building on each side of the existing windows. The entry from the main wharf walkway to the public access area shall include adequate demarcation to identify the entrance into an interpretive overlook area (e.g., low key pillars with lights and identifying text, etc.). Public access signage shall acknowledge the participants in the design and provision of the public access components, including the City of Monterey and the California Coastal Commission.
- d. No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to public access (furniture, planters, temporary structures, trash receptacles, private use signs, fences, gates, etc.)) shall be prohibited. The public use areas shall be maintained consistent with the approved Public Access Plan and in a manner that maximizes public use and enjoyment.
- e. Public Access Use Hours.** All public access areas and amenities shall be available to the general public free of charge during at least daylight hours (i.e., one hour before sunrise to one hour after sunset), and during at least all non-daylight hours when the retail components of the approved project are open or general public access to the wharf is available.
- f. Public Access Areas and Amenities Maintained.** The public access components of the project shall be maintained in their approved state in perpetuity.

The Permittee shall undertake development in accordance with the approved Public Access Plan, which shall govern all general public access to the site pursuant to this coastal development permit.

- 3. Other Agency Approval.** PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the approved project



have been granted by the City of Monterey and the Monterey Peninsula Water Management District. All such evidence shall explicitly reference the approved Revised Final Plans pursuant to Special Condition 1. No changes to the approved project as a result of other agency permits, permissions, approvals, and/or authorizations shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally necessary.

- 4. Timing of Development.** All public access areas and amenities associated with the project shall be installed and open for public use no later than the time when the remodeled restaurant is open and available for service.
- 5. Lease Restriction.** PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the lease sites and parcel(s) governed by this permit a lease restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The lease restriction shall include legal descriptions of the lease sites and parcels governed by this permit. The lease restriction shall also indicate that, in the event of an extinguishment or termination of the lease restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

C. California Environmental Quality Act (CEQA)

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

The City of Monterey, acting as the lead CEQA agency, conducted an environmental review for the proposed project as required by CEQA and determined that the project was exempt from CEQA.

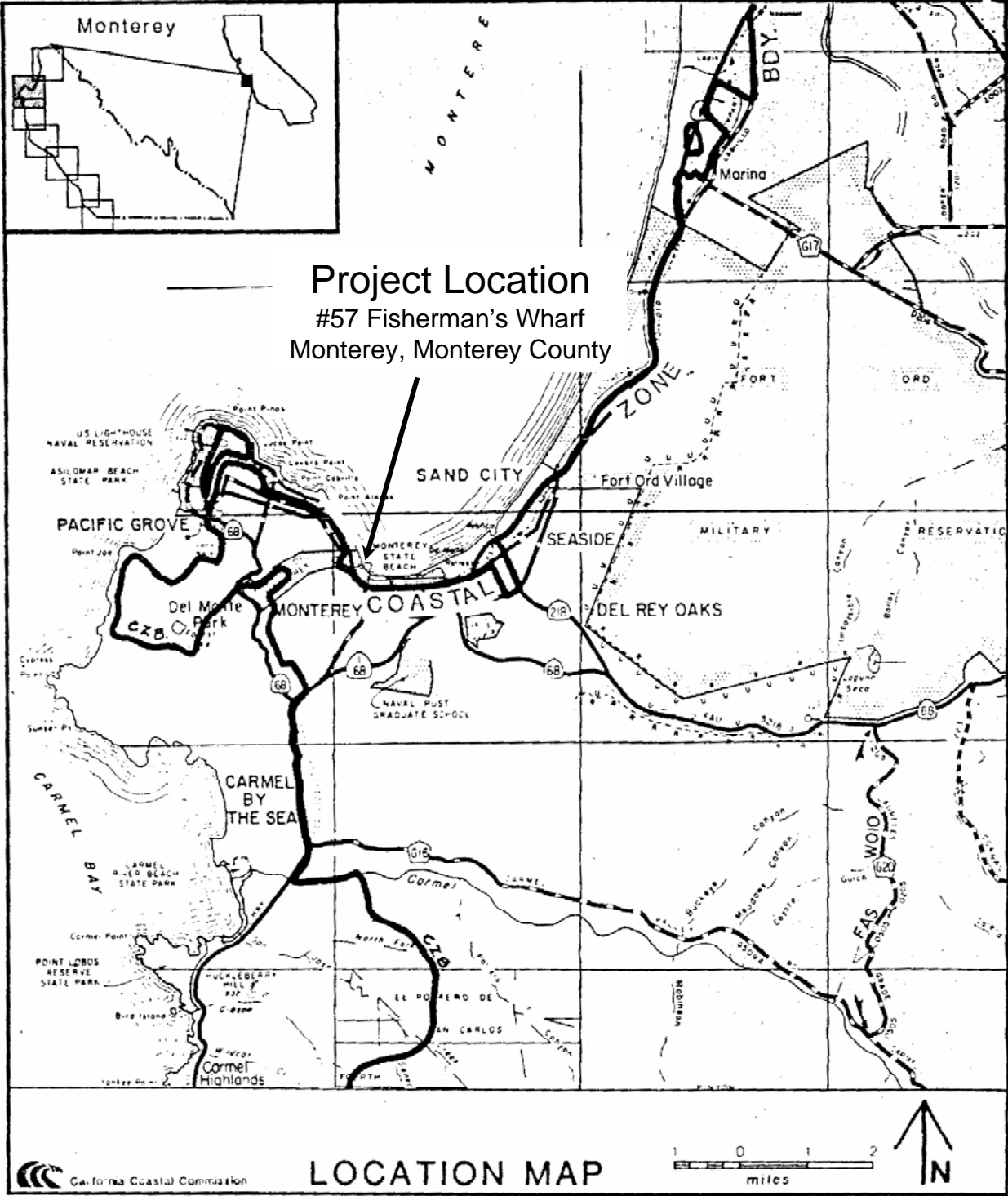
The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified



appropriate and necessary modifications to address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

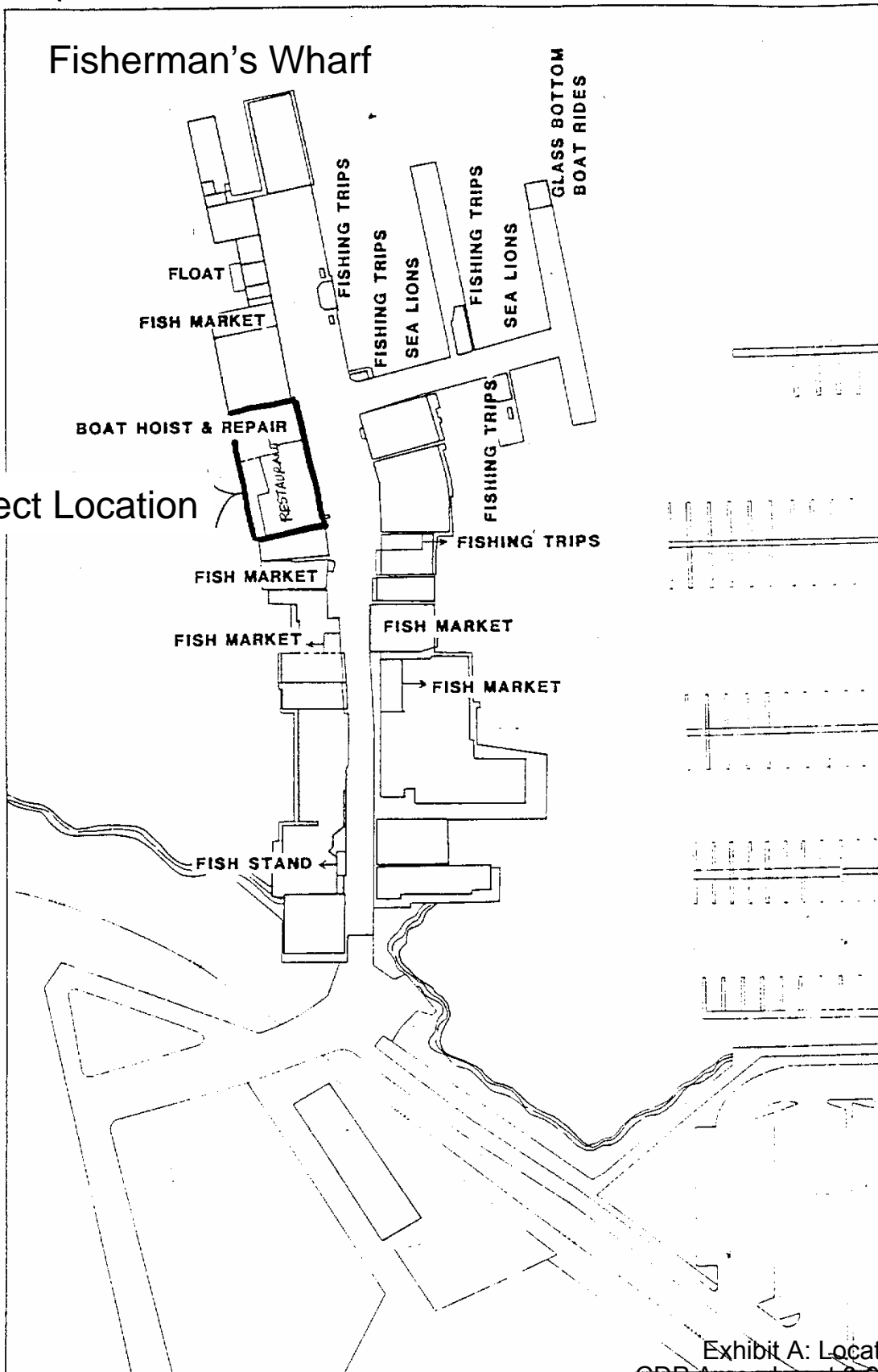
The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, 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).





Fisherman's Wharf

Project Location



MUNICIPAL WHARF NO. 1

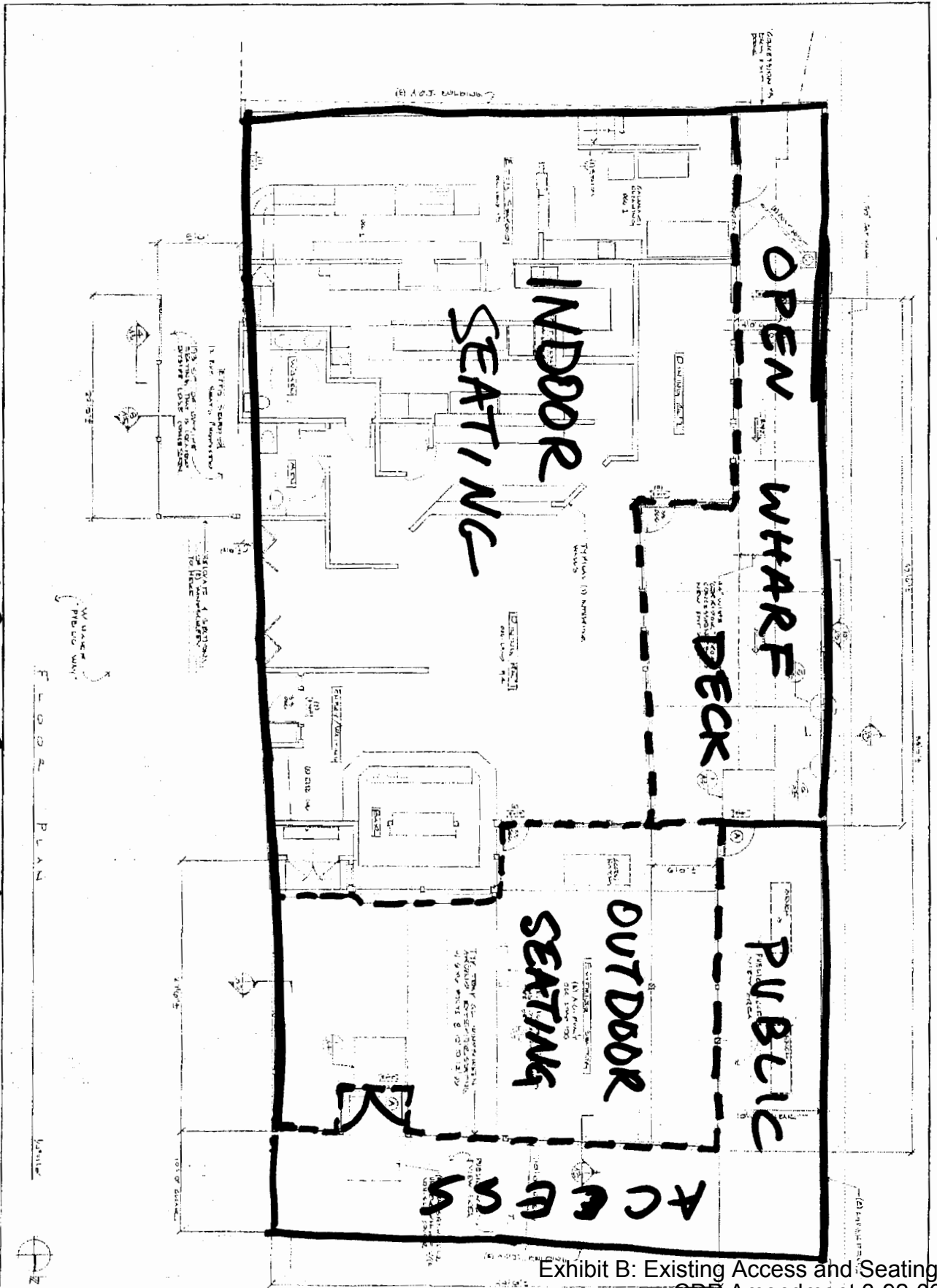
CITY OF MONTEREY



FIGURE 2

MARINE ORIENTED ACTIVITIES

ABALONETTI'S RESTAURANT



EXISTING SEATING AND ACCESS PLAN

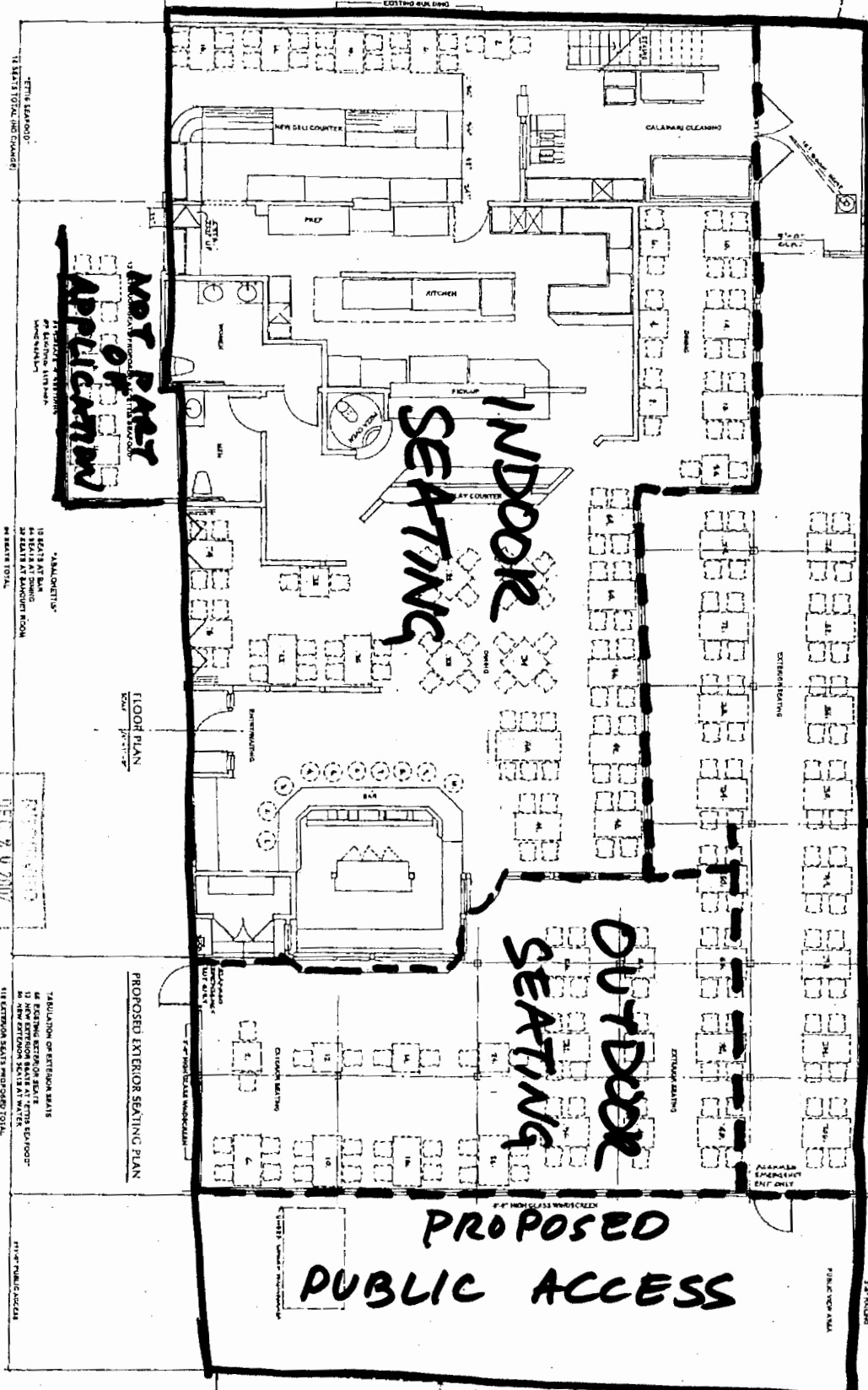
Exhibit B: Existing Access and Seating Plan
CDP Amendment 3-92-063-A2

EXTERIOR SEATING FOR:
ABALONETTI'S RESTAURANT
57 FISHERMAN'S WHARF No. 1

ALEX QTT
CONSULTING ENGINEER
REGISTERED PROFESSIONAL ENGINEER
STATE OF CALIFORNIA 15748

PROPOSED ACCESS AND SEATING AREAS

PROPOSED NEW OUTDOOR SEATING AREA



7. TABULATION OF INTERIOR SEATING
 11 SEATS AT THIS SEATING AREA (SEATING INTERIOR)
 12 SEATS AT "JALONETTI'S" (SEATING INTERIOR)
 113 INTERIOR SEATS (SEATING TOTAL)

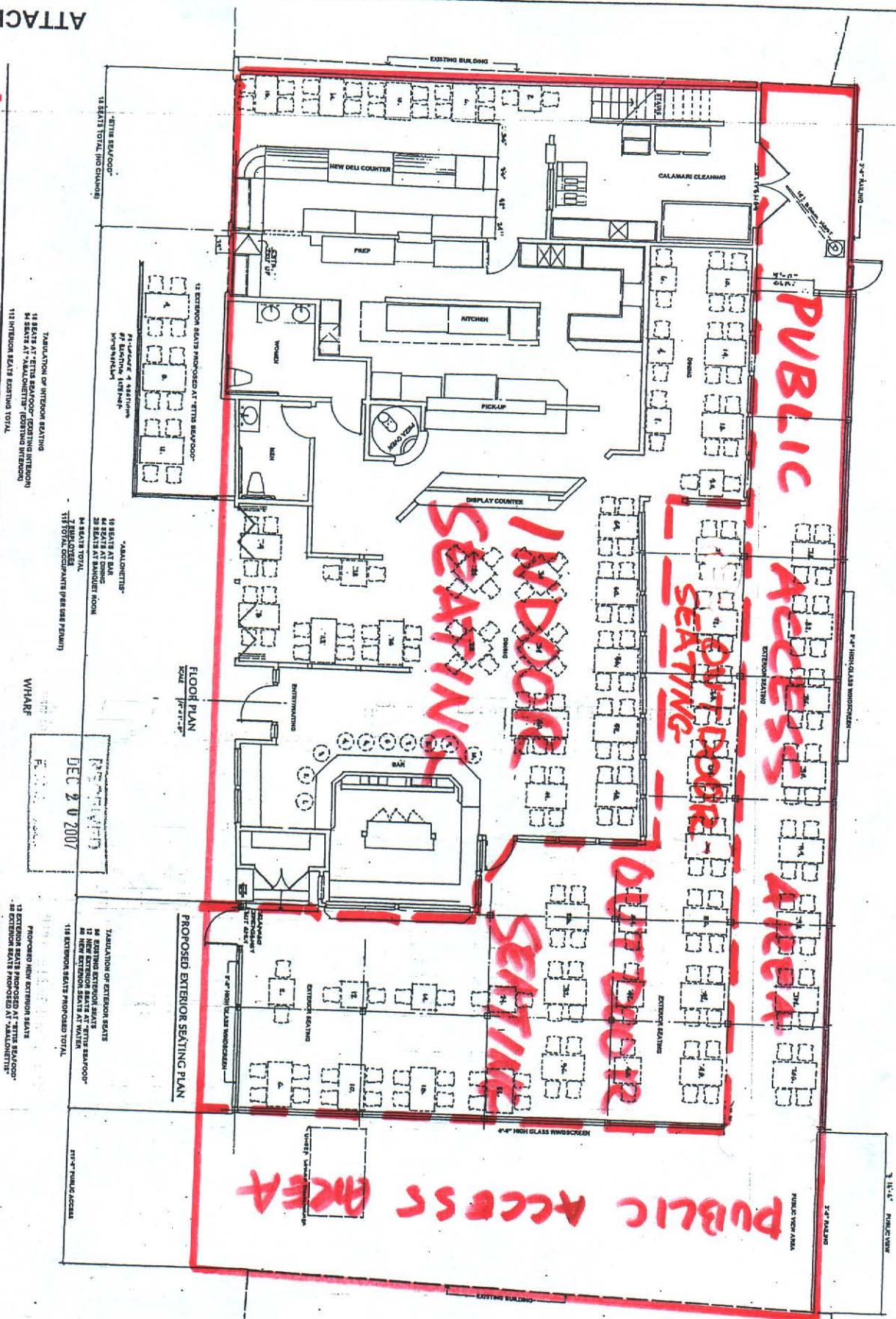
7. TABULATION OF EXTERIOR SEATING
 14 SEATING SEATING SEATS
 15 NEW EXTERIOR SEATING AT "JALONETTI'S"
 16 NEW EXTERIOR SEATING AT "JALONETTI'S"
 17 EXTERIOR SEATING PROPOSED TOTAL

7. TABULATION OF TOTAL SEATING
 11 SEATS TOTAL (INDOOR SEATING)
 14 SEATS TOTAL (EXTERIOR SEATING)
 127 SEATING TOTAL

DATE: DEC 20 2007

Exhibit C: Proposed Access and Seating Plan
 CDP Amendment 3-92-063-A2
 Page 1 of 1

PROPOSED PROJECT MODIFICATIONS



EXISTING BUILDING
 13 SEATS AT "ETTES SEAFOOD"
 11 SEATS TOTAL (INDOOR)

EXISTING BUILDING
 13 SEATS AT "ETTES SEAFOOD"
 14 SEATS AT "JALONETTI'S RESTAURANT"
 11 SEATS TOTAL

JALONETTI'S
 13 SEATS AT BAR
 23 SEATS AT BOUNDED ROOM
 14 SEATS TOTAL
 113 TOTAL OCCUPANTS PER USE PERUM

PROPOSED NEW EXTERIOR SEATING
 13 EXTERIOR SEATS PROPOSED AT "ETTES SEAFOOD"
 13 EXTERIOR SEATS PROPOSED AT "JALONETTI'S"
 26 EXTERIOR SEATS PROPOSED TOTAL

REVISIONS
 DEC 20 2007

WHARF

PROPOSED EXTERIOR SEATING PLAN

FLOOD PLAN

Exhibit D: Proposed Project Modifications
 CDP Amendment 3-92-063-A2

A-1

INTERIOR SEATING FOR JALONETTI'S
 457 FISHMAN'S WHARF NO. 1, MONTEREY, CA

THE USE OF THESE PLANS AND SPECIFICATIONS IS LIMITED TO THE ORIGINAL SITE. ANY OTHER USE, REVISIONS, OR MODIFICATIONS MUST BE APPROVED BY THE ARCHITECT. NO PART OF THESE PLANS OR SPECIFICATIONS SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT. SEALS AND STAMPS SHALL BE PLACED IN THE SPECIFIED LOCATIONS. THE ARCHITECT'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED. THE ARCHITECT DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED HEREON. THE USER OF THESE PLANS AND SPECIFICATIONS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE ARCHITECT'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED.

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 CAMEL, CA 95021
 415/228-4208
 415/228-4206

MONTEREY BAY

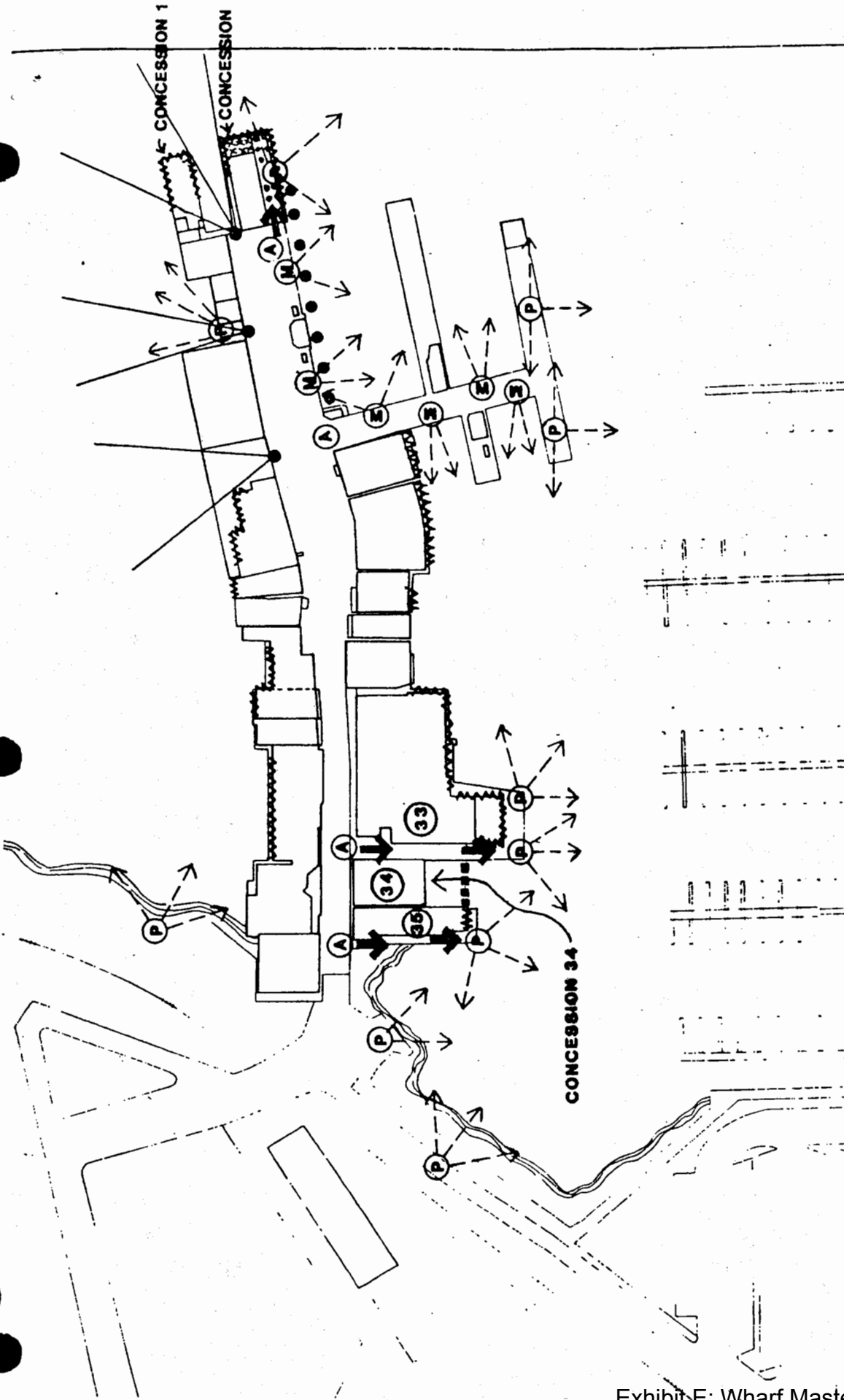
APPENDIX A

WHARF MASTER PLAN PUBLIC ACCESS/OPEN SPACE/ARCHITECTURAL CONTROL POLICIES
AS ADOPTED IN THE WHARF MASTER PLAN
FOR FISHERMAN'S WHARF
BY THE MONTEREY CITY COUNCIL

1. The present open space and view areas, shown in Figure 5, shall be maintained.
2. To provide additional public access and view area, Concession 34 should be allowed to replace its structure over the water under the condition that access be placed across the back of the structure. This access should be provided in a way that will not preclude the linking of this access with the existing public access on adjoining Concessions 35 and 33, as shown in Figure 5. The required public access for Concession 34 shall not be required to be linked to Concessions 35 and 33 without the consent of Concession 35 and 33. The existing public access on Concessions 35 and 33 should be considered separate and should be required to be linked to public access improvements on Concession 35 as a condition of development when improvements are proposed for either Concession 35 or 33.
3. The provision of a panoramic viewpoint accessible to the general public should be a condition of any lease area expansion, as provided for in Architectural Control Policy 1.* This panoramic viewpoint should be linked to other viewpoints so as to provide lateral access at the backs of structures, where feasible, and subject to the approval of all adjacent concessionaires.
4. Should any concession cease operation and not desire to renew its lease, the City should study the structure to see if the structure should be removed and the area should become permanent open space.

* Architectural Control Policies in the Wharf Master Plan reads as follows:

1. The existing lease areas, with the exception of lease areas for retail and wholesale fishmarkets, as addressed in Permitted Use Policy 3, shall only be extended for building purposes; and the present building outlines shall be essentially maintained and only added to where such extensions and additions accomplish all of the following:
 - The extensions and additions enhance public access and view opportunities, as defined by Public Access/Open Space Policy 3, without infringing upon the views and operations of neighbors.
 - The extensions and additions maintain the overall design character of the Wharf.
2. New two-story structures shall not be permitted on the Wharf except where:
 - Such structures encourage marine-related uses in line with Permitted Use Policy 3.
 - Such structures do not significantly affect the overall design



MUNICIPAL WHARF NO. 1
 CITY OF MONTEREY



JUNE 1986

- PANORAMIC VIEWPOINT
- MARINE ACTIVITY VIEWPOINT
- VIEW CORRIDOR
- VERTICAL ACCESS
- ROOFTOP OBSERVATION POINT
- RESTAURANT WINDOW VIEWS
- POTENTIAL LATERAL ACCESS
- POTENTIAL ROOFTOP OBSERVATION POINT

- PUBLIC ACCESS SIGNING
- POTENTIAL OPEN SPACE
- CONCESSION NUMBER

FIGURE 6

PUBLIC ACCESS/OPEN SPACE

APPENDIX C

WHARF MASTER PLAN PERMITTED USE POLICIES

AS ADOPTED IN THE WHARF MASTER PLAN
FOR FISHERMAN'S WHARF
BY THE MONTEREY CITY COUNCIL

1. No more new restaurants, cocktail lounges, or gift shops will be allowed on the wharf.
2. Marine-oriented uses should be especially encouraged and shall receive special consideration by the City.
3. To especially encourage retail and wholesale fishmarkets, these markets may be allowed:
 - additional building height not to exceed two stories in height. The building area created by any additional height shall be used for equipment and storage purposes only for on-site businesses, but in no case shall provide for an increase in seating capacity for restaurants.
 - sale of food related to projects sold in fishmarkets, as specifically defined in Resolution 9000, should be allowed for customer take-out and consumption on the premises. Seating shall be for a maximum of ten (10) persons. This sale of food shall be incidental to the sale of retail and wholesale fish products, and shall not alter the character and function of the fishmarket.
4. The sale of products by concessionaires on Fisherman's Wharf shall be limited to those specified in Resolution 9000.
5. Lessees should not be permitted to sublease or assign their leases for uses different than those set forth in the lease unless such use is specifically set forth in the Wharf Plan or approved by the City as meeting the general purposes and objectives of the Wharf Plan.
6. The use and location of vendor carts, and any change in the use and/or location of existing vendor carts, shall be subject to review and approval of the City Council.
7. At the time an existing use is terminated and a different use is proposed, this different use shall be of the following nature:
 - a. Primary
 - wholesale and retail fish businesses
 - ship's chandlers
 - sales of marine equipment and supplies
 - marine equipment repair services
 - aquariums
 - boat rentals
 - sales of fishing equipment and supplies

- other marine-oriented service or retail establishments, which, in the opinion of the City of Monterey, will be an appropriate and harmonious part of a wharf, oriented toward waterfront activities including the above uses



Monterey Shoreline Recreation Trail

Abalonetti's Restaurant
#57 Fisherman's Wharf

Fisherman's Wharf



Abalonetti's Restaurant

Monterey Harbor

Abalonetti's Restaurant

Wharf Theatre

Outdoor Seating Area

Trash Enclosure

Bench at entrance
to Public Access Area

Abalonetti's Restaurant

Edge of Wharf

Restaurant tables in
public wharf area

Public Access Area



Tables in public wharf area



Bench and fence.

Gate

Public Access Area



Abalonetti's
Restaurant

Gate and bench at
entrance to public access area