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W21b

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Staff: Brian O'Neill - SC
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Hearing Date: 3/11/2015

STAFF REPORT: CDP HEARING

Application Number: 3-14-1722, Scales Restaurant

Applicant: Restaurant Pacific Group LLC

Project Location: Scales Restaurant, 33 Fisherman's Wharf #1, City of Monterey, Monterey County

Project Description: Interior remodel and façade upgrades of an existing 17,153-square-foot restaurant and the addition of outdoor seating areas.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The Applicant requests a coastal development permit (CDP) for the interior and exterior remodel of an existing 17,153-square-foot restaurant and the addition of outdoor seating areas at the former Gilbert's Restaurant on Fisherman's Wharf in the City of Monterey. The remodel maintains the existing building outline and the historic restaurant use at the project site. The proposed outdoor seating areas would expand commercial uses at the site into the public access corridor adjacent to the restaurant, the public viewing areas of the first floor deck, and the public access area on the upper floor deck.

The proposed project 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 fishing/recreational boating facilities. The proposed expansion of a general commercial 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 project would result in the conversion of an existing LUP-required public access corridor to restaurant use, and would further expand restaurant use over other public access areas of the wharf. The project does not include any public access improvements to offset the project's public access impacts. The project thus reduces, as opposed to maximizing, public recreational access opportunities and for this reason cannot be found consistent with the Coastal Act.

In terms of public views, the project would place additional development within an LUP-identified public view area that is currently accessible to the general public for enjoying views of the docks and Wharf #2. The proposed remaining view areas would be located amongst the outdoor seating areas. The proposed project thus eliminates public viewing areas and is inconsistent with 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 access and respecting public views. Such a project allows for the interior and exterior remodel, allows for a smaller outdoor seating area that has not been specifically identified in the LUP as a public viewing area, and provides for public access improvements. The Applicant has indicated to Staff a willingness to modify the project in a manner similar to the alternative project thus described.

In summary, and as conditioned to protect and enhance public access to the wharf, the project can be found consistent with the Coastal Act. The motion to act on this recommendation is found on page 4 below.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Photos

Exhibit 3 – Existing Access and Seating Plan

Exhibit 4 – Proposed Project Plans and Proposed Access and Seating Plan

Exhibit 5 – Wharf Master Plan Policies and Figure 5

Exhibit 6 – Applicant’s Lease

Exhibit 7 – Architectural Review Committee Approval for Exterior Modifications

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed project subject to the standard and special conditions below. 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 3-14-1722 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number 3-14-1722 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. Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicant 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 October 15, 2014 (titled “Scales Restaurant T.I.” and prepared by Wald Ruhnke & Dost Architects, LLP) 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 upper floor deck area as generally shown in Exhibit 4. 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.). No outdoor seating shall be located on the first floor deck or in the public access corridor.
 - b. 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 on the first floor deck area shown in Exhibit 4. All required public access amenities and elements described in Special Condition 2(b) below shall be identified.

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

- 2. Public Access Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicant 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 public access corridor and first floor deck area of the restaurant as generally depicted in Exhibit 4, and all related areas and public access amenities described in this special condition). The Public Access Plan shall be substantially in conformance with the revised 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, two benches in the public viewing areas (i.e. the first floor deck) identified in Figure 5 of Exhibit 5, and at least one trash and one recycling receptacle.

- 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 corridor. 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 (other than benches), planters, temporary structures, 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 appropriate.
- 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 COASTAL DEVELOPMENT PERMIT, the Applicant 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. 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 COASTAL DEVELOPMENT PERMIT, the Applicant shall submit to the Executive Director for review and approval

documentation demonstrating that the Applicant 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.

- 6. Liability for Costs and Attorneys' Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

Project Location

The proposed Scales Restaurant project is located at the site of the former Gilbert's Restaurant on Fisherman's Wharf #1 in the City of Monterey. Fisherman's Wharf 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 fishing industry and other related marine-oriented uses and activities, such as whale watching tours. Fisherman's Wharf is owned by the City of Monterey and space on the wharf is leased to private concessionaires who operate a series of commercial establishments, including restaurants and gift shops. Fisherman's Wharf is entirely within public trust lands granted to the City by the State of California.¹

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).

The Scales Restaurant is located at Wharf Concession #33. The Concession #33 leasehold area is 15,854 square feet in size. The restaurant building occupies 11,953 square feet of wharf, with another 5,200 square feet of on the upper floor. An approximately 12-foot wide public access corridor along the south side of the building leads the public from the main wharf walkway to an area of open decking in the back of the restaurant. This first floor deck provides public views of the docks and Wharf #2 (the commercial fishing wharf), and also connects to the lateral access areas located behind Concessions #34 and #35. In addition, there is an upper floor deck that is reached by stairs located in the public access corridor. The restaurant's lease requires that 3,829 square feet of leased area be available for public purpose. See **Exhibit 1** for a location map. See **Exhibit 2** for project site photos.

Project Description

The Applicant's concession leasehold area has historically contained a number of uses including a restaurant, retail fish market, gift shop, and delicatessen (see existing site layout in **Exhibit 3**). The lease and existing building were transferred to the Applicant last year and the commercial uses on the site ceased operations around that time.

The project includes a complete interior remodel and façade upgrade. Most of the existing interior walls and booths in the ground floor dining area will be removed. The ground floor layout will be reconfigured to maximize table space and provide a more open atmosphere. Existing walls on the upper floor will also be removed and new bathrooms will be constructed. The exterior utilizes roll-up doors and glass window walls to maximize patrons' views of the wharf walkway and the Monterey Bay. All of these proposed renovations would occur within the existing building envelope.

The project will continue the uses that have historically taken place in Concession #33, although in a different configuration. The fish market, delicatessen, and gift shop will all be located in the southeast corner of the existing building, which will occupy 1,754 square feet of space. The restaurant and oyster bar will occupy 8,370 square feet of space on the ground floor. The entire upper floor will be utilized as a banquet hall. The project maintains the occupancy limits included in the Applicant's lease.

The project also includes the addition of new outdoor seating areas in the public access corridor, the floor deck area, and the upper floor deck area. Specifically, six tables would be placed in the public access corridor, thirteen tables would be placed along the edge of the first floor deck area, and fourteen tables would be placed along the railing of the upper floor deck and also adjacent to the building. The Applicant's lease is silent in regard to outdoor seating and no prior CDP authorizing outdoor seating has been issued.² However, photographs of the project site indicate that the former Gilbert's restaurant placed outdoor seats in this area intermittently since at least 2010. The Applicant's lease contains a condition of use that states "[t]he corridor adjacent to this use shall be enhanced with appropriate public access signs, lighting, and the inclusion of benches at the rear of the [restaurant]." No existing benches are located on the first floor deck at the rear of the restaurant.

² Commission staff conducted a thorough record search and found no CDPs affecting this leasehold area.

See **Exhibit 4** for the proposed project plans, including the proposed access and seating plan.

B. LIABILITY FOR COSTS AND ATTORNEYS' FEES

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications.³ Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition xxx requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit.

C. 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 2003,⁴ also addresses this area through its Wharf Master Plan element and provides guidance.

D. PRIORITY USES

The Coastal Act includes recreation policies to 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), and establishes priority for visitor-serving commercial recreational facilities over general commercial development (30222).

***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.*

³ See also California Code of Regulations Title 14 Section 13055(g).

⁴ 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.

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.*

The Harbor LUP was certified by the Commission in October 2003 and includes the Wharf Master Plan element (see **Exhibit 5**). 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:

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.*

Consistency with the Coastal Act and LUP Guidance

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. This project will not expand upon the existing and historical general commercial use of the building on the project site and thus can be found consistent with the Coastal Act's recreational policies. However, although no new fill of coastal waters is proposed here, the proposed outdoor seating in the public access corridor and the first floor deck area is inconsistent with the intent of the Coastal Act to limit the uses over water to certain high priority uses. The placement of outdoor seating areas is essentially an expansion of general commercial use beyond the existing building envelope into new areas above coastal waters that have historically been used for public recreation and access. Aerial photographs of the site suggest that former Gilbert's restaurant may have used this space intermittently for outdoor seating after 2010, yet other aerial photographs show that the space was left open for public use as early as 1972. Because outdoor seating would expand a non-priority use above coastal waters, the proposed first floor outdoor seating is inconsistent with Coastal Act requirements.

This Coastal Act intent is also apparent in the certified advisory Harbor segment LUP, which states that no more new restaurants, cocktail lounges, or gift shops are allowed on the wharf. The LUP also states that the existing 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. 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 use into a required public access area and other areas of the public wharf. This expansion 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 that 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 upgrade consistent with the Coastal Act requirements and LUP guidance to prioritize public recreational uses.

E. PUBLIC ACCESS

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.*

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

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.*

The Harbor LUP's Wharf Master Plan also includes provisions that are designed to “protect and encourage additional public access and open space on Fisherman's Wharf.”

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

- 1. The present open space and view areas, shown in Figure 5 [Exhibit 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 Concessions 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.*

**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.

Consistency with the Coastal Act and LUP Guidance

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 corridor and first floor deck area., and into open wharf area reserved for visitor-serving recreational facilities, coastal-dependent uses, and commercial fishing/recreational boating facilities. The proposed project, in turn, can be expected to increase demand for additional public recreational access opportunities.

As currently proposed (see **Exhibit 4**), the project will significantly reduce existing public access areas and associated public views. The proposal includes thirteen outdoor tables along the wharf edge of the first floor deck area, which would eliminate seventy-nine linear feet of general public viewing space along the wharf edge while maintaining fifty-nine feet of general public viewing space, which would be spread out amongst the private restaurant tables. Fourteen tables are proposed along the wharf edge of the upper floor deck and adjacent to the building, which would eliminate seventy linear feet of general public viewing space along the wharf edge while maintaining thirty-four feet of viewing space for the general public. In addition, six outdoor tables would be placed in the public access corridor, which would shrink the corridor from eleven to six feet across at its narrowest point, and even less when servers are present in the corridor. Cumulatively, the proposed project converts 149 linear feet of the wharf edge and 951 square feet of public access and open space into commercial use.⁵ No offsetting public recreational access or improvements are proposed.

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

⁵ Photographic evidence shows that the former Gilbert’s Restaurant utilized the public access area on the ground floor back deck as an outdoor seating area intermittently since at least 2010. Other historical photographs suggest that the first floor deck remained open to the public as far back as 1972. A thorough record search indicates that no CDP authorizing outdoor seating was ever obtained by the previous lessee. The Applicant’s lease does not specifically authorize outdoor seating.

Public access on the edge of the wharf is limited and the existing access area adjacent to Concession #33 provides one of the few public recreational access opportunities in this respect. Consequently, the Wharf Master Plan specifically identifies the first floor deck of Concession #33 as a public viewing area that must be maintained (see **Exhibit 5**). The public access corridor adjacent to the restaurant is identified as such in the Wharf Master Plan and includes a public access sign requirement (see **Exhibit 5**). The LUP Public Access policies specifically discuss the public access area on the first floor deck of Concession #33 and note that any development of this site should include public access improvements. Accordingly, the City included a stipulation in the Applicant's lease that states "[t]he corridor adjacent to this use shall be enhanced with appropriate public access signs, lighting, and inclusion of benches at the rear of the [Scales] restaurant." The addition of outdoor seating into the areas identified by the City as important public access space, without the addition of any public access improvements, is thus also inconsistent with the LUP.

The expanded outdoor restaurant seating on the wharf cannot be supported as proposed. However, some additional outdoor seating in combination with more significant public access enhancements is feasible and, if provided, would support a finding of consistency with the public access and recreation requirements of the Coastal Act, as well as the LUP which serves as guidance. As such, this approval is conditioned to require that the outdoor restaurant seating expansion be limited to the upper floor deck area as generally shown in **Exhibit 4**, which has not been specifically identified in the LUP as a public viewing area. The remaining portion of public wharf area on the first floor, including the deck and the public access corridor, shall be reserved for general public access and passive recreational use (see **Special Condition 1**).

Additional special conditions are necessary to provide for public improvements to offset the expansion of outdoor seating on the upper floor. The conditions require that public access amenities be provided, such as public access signs and benches, and that these facilities be maintained over the life of the development, ensure that the access amenities are in place concurrent with the approved commercial use on site, 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, and appropriately signed (see **Special Conditions 2 and 4**). **Special Condition 3** requires the Applicant to obtain all necessary local approvals to implement the public access plan. A requirement for a lease restriction is also attached as **Special Condition 5** to secure these provisions for the life of the project.

As conditioned, the proposed project is consistent with the Coastal Act and the LUP's requirements for maximizing public access and recreation.

F. WATER QUALITY/MARINE RESOURCES

Sections 30230 and 30231 of the Coastal Act state:

***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.*

The Monterey Harbor LUP states:

Harbor LUP Policy A.2.a. *In the Harbor LCP area, marine resources are confined primarily to the littoral or intertidal zone and, to a lesser degree, the sub-tidal zone. The highest concentrations of marine life are located in the harbor itself. The rocky shorelines along the western shore, as well as the pilings and breakwater of the wharf, have proved to be ideal settling grounds for many algae and invertebrate organisms. An abundance of sea life exists in the harbor despite intense use by private and commercial fishing and boating operations.*

Harbor LUP Policy A.3.o. *New development shall not result in the degradation of coastal waters caused by the introduction of pollutants or by changes to the landscape that adversely impact the quality, quantity, and flow dynamics of coastal waters. Runoff shall not be discharged in a manner that adversely impacts coastal waters.*

Harbor LUP Policy A.3.s. *BMPs shall be incorporated into the project design in the following progression:*

- *Site Design BMPs (any project design feature that reduces the generation of pollutants or reduces the alteration of the natural drainage features, such as minimizing impervious surfaces or minimizing grading)*
- *Source Control BMPs (practices that prevent release of pollutants into areas where they may be carried by runoff, such as covering work areas and trash receptacles, practicing good housekeeping, and minimizing use of irrigation and garden chemicals)*
- *Treatment Control BMPs (a system designed to remove pollutants from runoff including the use of gravity settling, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process).*

Consistency Analysis and Conclusion

As recognized by the Harbor LUP, the rich habitat located below and around the Wharf is particularly important to the diverse marine resources found there. The project site is located directly above these marine habitats. Construction-related debris has the potential to degrade coastal water quality and diminish biological productivity by contributing sediments and pollutants.

Therefore, to carry out the Coastal Act and LUP standards above, the project, as proposed, includes appropriate best management practices (BMPs) to ensure that construction activities do not impact water quality. The BMPs include the construction of a beam below the project site designed to trap falling debris, and daily inspections by the Harbor Master to identify any water quality issues. Any dust or debris will be vacuumed immediately to prevent wind blowing the debris into the water. No temporary or permanent stockpiling of construction materials, refuse, or liquid will be permitted on the site and all refuse will be removed daily. Additionally, the Applicant will employ a project manager who will assign environmental monitoring tasks daily during all phases of construction. Thus, as proposed and with the inclusion of these BMPs, the project is consistent with Coastal Act Sections 30230 and 30231.

G. ARCHITECTURAL DESIGN

Section 30251 of the Coastal Act 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.*

The Wharf Master Plan places an emphasis on maintaining a variety of exterior styles to enhance the visual appeal and uniqueness of the Wharf. The plan explains that “[t]he different size buildings, with their variety of shades, colors, heights, and roof structures, creates a visual environment that appears unplanned, but still contains just enough order so that the visual experience on Fisherman's Wharf is interesting and exciting, but not chaotic and confusing.”

Wharf Master Plan Architectural Control Policies

1. *The existing lease areas, with the exception of lease areas for retail and wholesale fish markets, 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.*

...

4. *The exteriors of any building or structure to be altered remodeled or replaced, and, any decorations, ornamentation, or signs proposed to be installed shall be approved by the Architectural Review Committee.*

Consistency Analysis and Conclusion

As explained above, the Wharf Master Plan places an emphasis on maintaining existing building outlines and discourages additions that may impact public access and views. Moreover, the City has placed controls on exterior building design to ensure that the character of the Wharf remains unique and aesthetically interesting.

The project is consistent with the Wharf Master Plan's architectural control policies because the building envelope will not be extended and the exterior façade has been reviewed and approved by the City's Architectural Review Board. The project will not extend the building beyond the existing structure and, as explained above, the project has been conditioned to eliminate the proposed outdoor seating areas on the ground floor and include public access improvements. Thus the project is consistent with the Wharf Master Plan because the existing building outline will be essentially maintained and coupled with public access enhancements. Additionally, the Architectural Review Board found that the project incorporates building elements with differing sizes, heights, styles, and shapes. The Board further found that the project was consistent with the Wharf Master Plan and approved the project. Therefore, as proposed, the project is consistent with the Coastal Act Section 30251 requirement that development be visually compatible with the character of surrounding areas, and is also consistent with the Harbor LUP Wharf Master Plan's architectural control policies.

H. 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 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 and thus comply with the substantive mandate 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).

VICINITY MAP

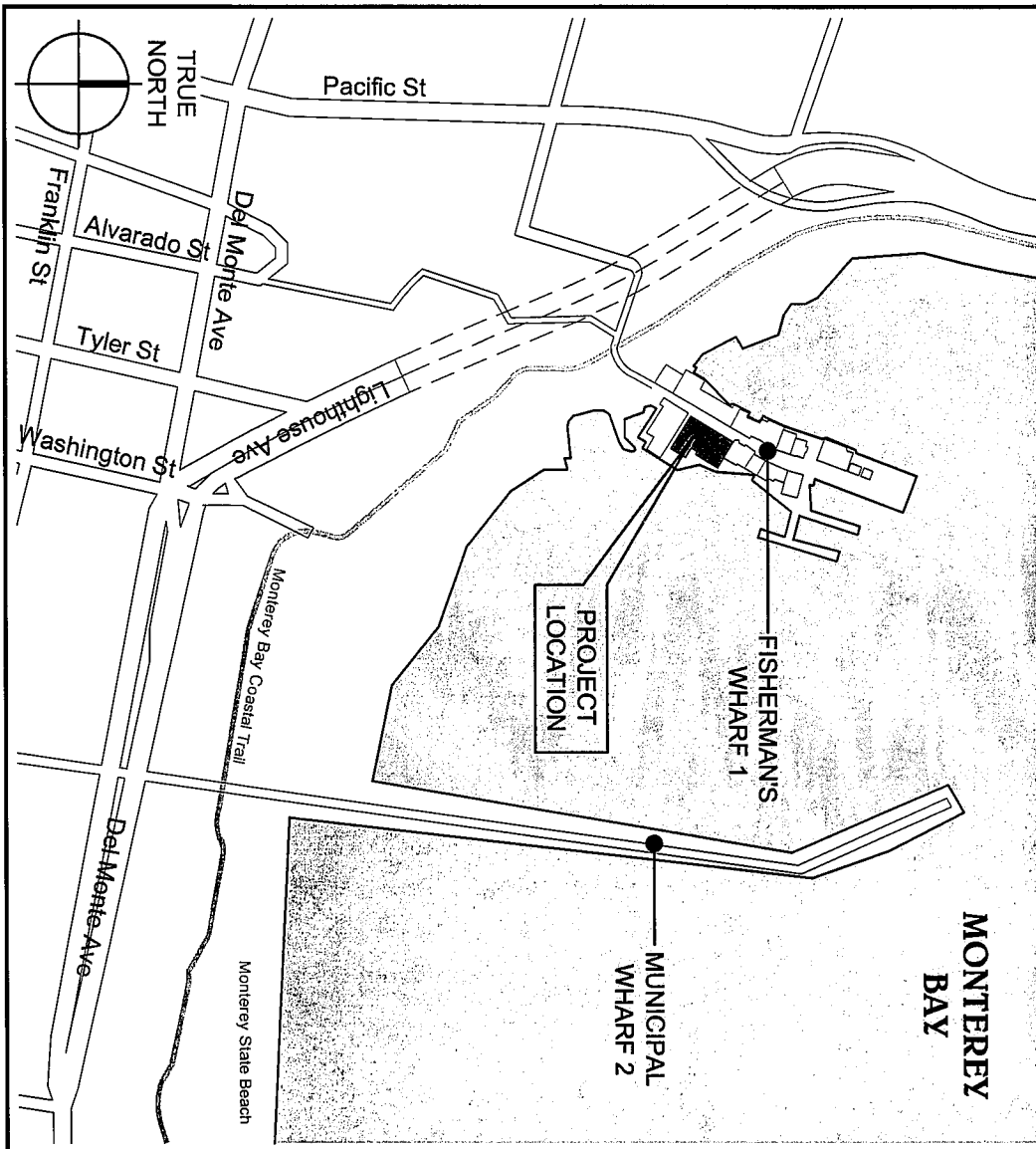






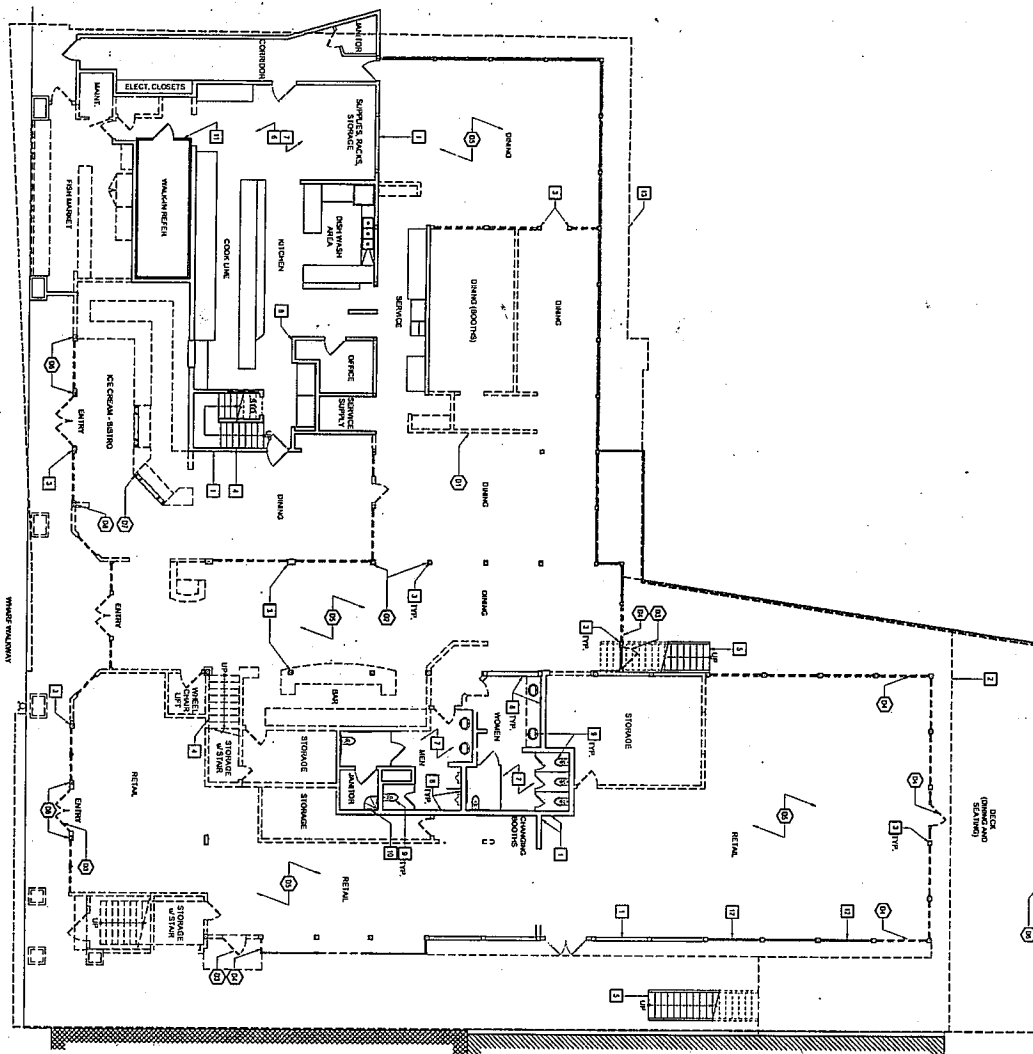






Exhibit 2
3-14-1722
5 of 5

PLAN NORTH
SCALE 1/8"=1'-0"









KEY NOTES

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DEMOLITION NOTES

- (A) TO DETERMINE THAT FOLLOW UP IS BEING DONE ON THE SUBJECT AND TO OBTAIN INFORMATION FROM THE FIELD OFFICE AS TO THE STATUS OF THE SUBJECT'S CURRENT EMPLOYMENT.
- (B) CONDUCTER SHALL REVIEW AVAILABLE RECORDS OF CRIMINAL HISTORY FOR INDICATORS OF RECENT ACTIVITY OR CONTACT WITH AN "ACCOMMODATED" PERSON, PHYSICAL DISORDER, OR ADDICTION TO DRUGS, ALCOHOL, THERAPY OF LUNATIC PATIENT STATUS, ETC.
- (C) CONDUCTOR SHALL REVIEW AVAILABLE RECORDS OF CRIMINAL HISTORY FOR INDICATORS OF RECENT ACTIVITY OR CONTACT WITH A "RECEIVED INTO CUSTODY" PERSON, PHYSICAL DISORDER, OR ADDICTION TO DRUGS, ALCOHOL, THERAPY OF LUNATIC PATIENT STATUS, ETC.
- (D) CONDUCTOR SHALL REVIEW AVAILABLE RECORDS OF CRIMINAL HISTORY FOR INDICATORS OF RECENT ACTIVITY OR CONTACT WITH A "RECEIVED INTO CUSTODY" PERSON, PHYSICAL DISORDER, OR ADDICTION TO DRUGS, ALCOHOL, THERAPY OF LUNATIC PATIENT STATUS, ETC.
- (E) CONDUCTOR SHALL REVIEW AVAILABLE RECORDS OF CRIMINAL HISTORY FOR INDICATORS OF RECENT ACTIVITY OR CONTACT WITH A "RECEIVED INTO CUSTODY" PERSON, PHYSICAL DISORDER, OR ADDICTION TO DRUGS, ALCOHOL, THERAPY OF LUNATIC PATIENT STATUS, ETC.
- (F) CONDUCTOR SHALL REVIEW AVAILABLE RECORDS OF CRIMINAL HISTORY FOR INDICATORS OF RECENT ACTIVITY OR CONTACT WITH A "RECEIVED INTO CUSTODY" PERSON, PHYSICAL DISORDER, OR ADDICTION TO DRUGS, ALCOHOL, THERAPY OF LUNATIC PATIENT STATUS, ETC.
- (G) CONDUCTOR SHALL REVIEW AVAILABLE RECORDS OF CRIMINAL HISTORY FOR INDICATORS OF RECENT ACTIVITY OR CONTACT WITH A "RECEIVED INTO CUSTODY" PERSON, PHYSICAL DISORDER, OR ADDICTION TO DRUGS, ALCOHOL, THERAPY OF LUNATIC PATIENT STATUS, ETC.
- (H) CONDUCTOR SHALL REVIEW AVAILABLE RECORDS OF CRIMINAL HISTORY FOR INDICATORS OF RECENT ACTIVITY OR CONTACT WITH A "RECEIVED INTO CUSTODY" PERSON, PHYSICAL DISORDER, OR ADDICTION TO DRUGS, ALCOHOL, THERAPY OF LUNATIC PATIENT STATUS, ETC.
- (I) CONDUCTOR SHALL REVIEW AVAILABLE RECORDS OF CRIMINAL HISTORY FOR INDICATORS OF RECENT ACTIVITY OR CONTACT WITH A "RECEIVED INTO CUSTODY" PERSON, PHYSICAL DISORDER, OR ADDICTION TO DRUGS, ALCOHOL, THERAPY OF LUNATIC PATIENT STATUS, ETC.
- (J) CONDUCTOR SHALL REVIEW AVAILABLE RECORDS OF CRIMINAL HISTORY FOR INDICATORS OF RECENT ACTIVITY OR CONTACT WITH A "RECEIVED INTO CUSTODY" PERSON, PHYSICAL DISORDER, OR ADDICTION TO DRUGS, ALCOHOL, THERAPY OF LUNATIC PATIENT STATUS, ETC.

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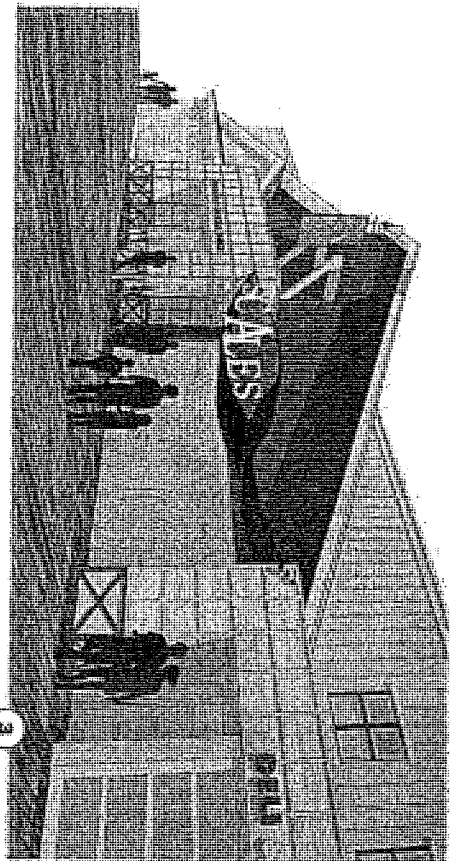
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FISHERMAN'S WHARF 1

33 WHARF #1
MONTEREY, CA 93940

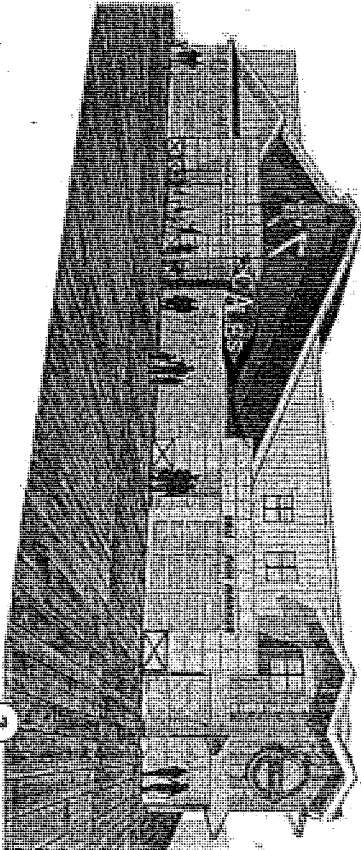
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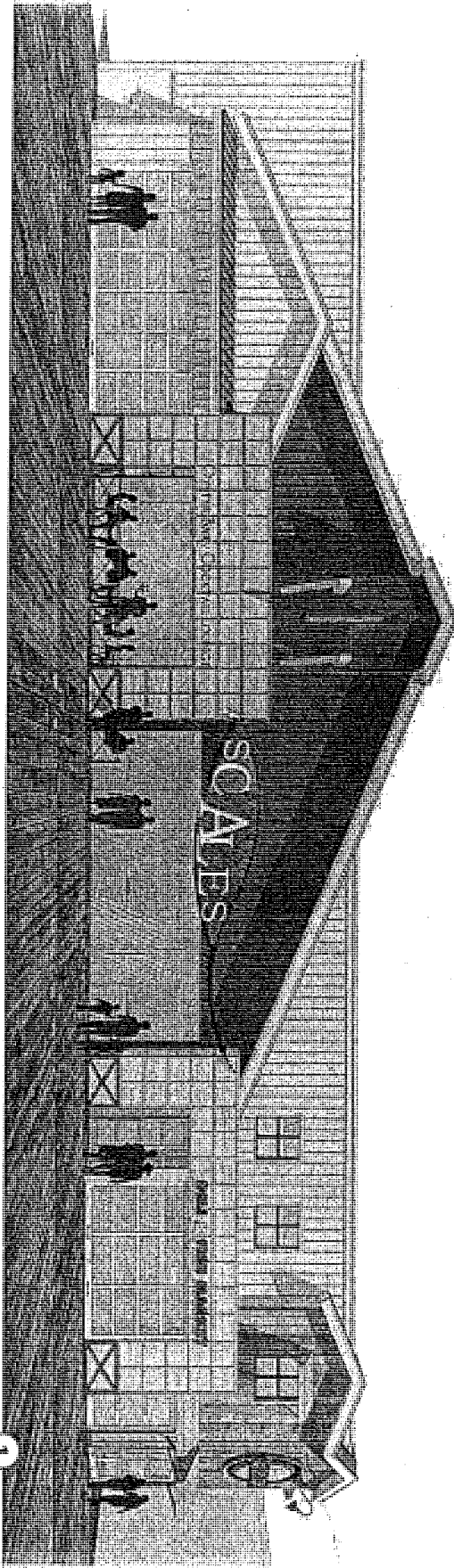
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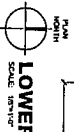
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SHAKE RESTAURANT T.I.
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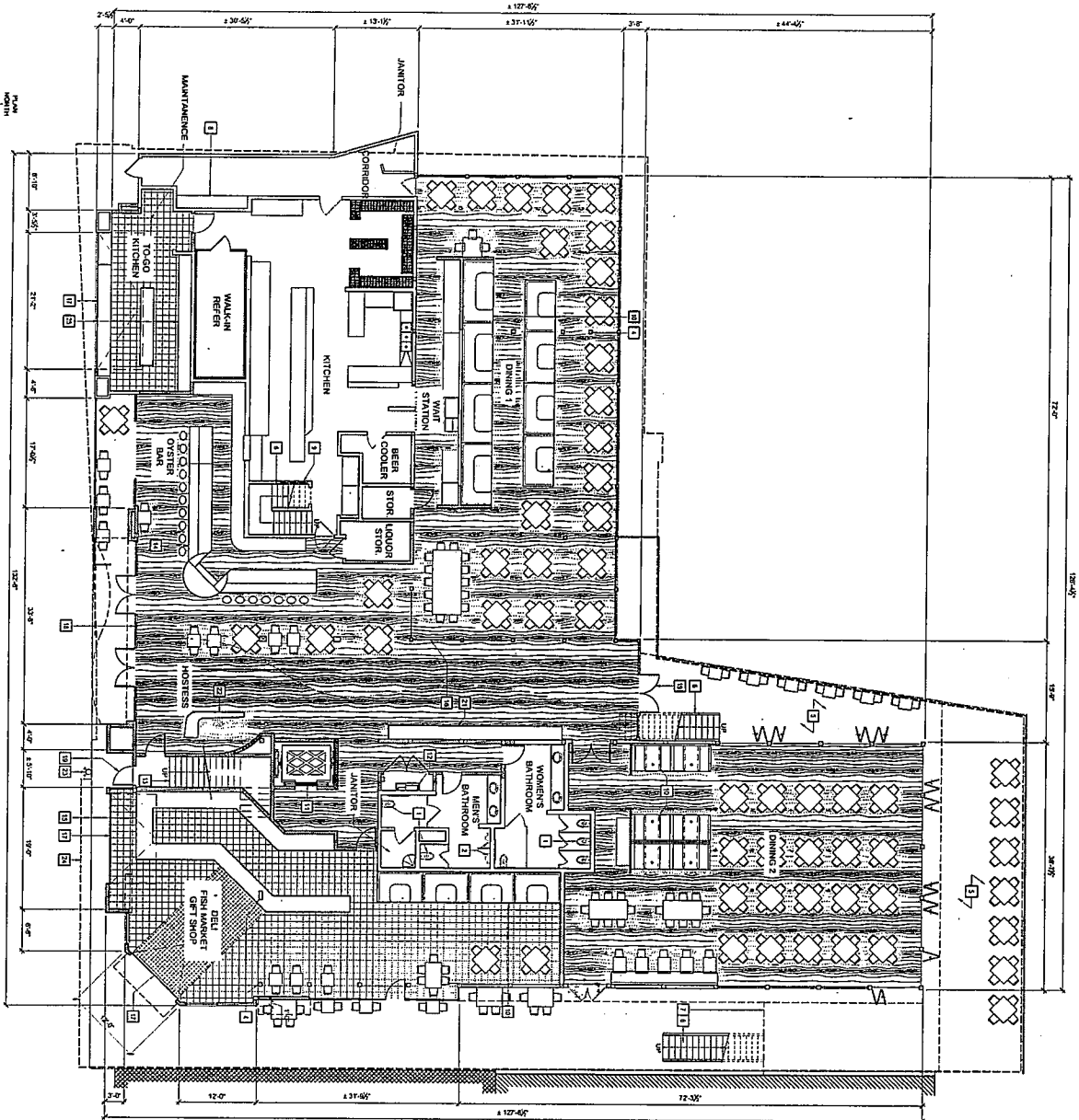
33 WHARF #1
MONTEREY, CA 93940

WP&D
54
WALD RUPPEL & DOUG
ARCHITECTS LLP
2300 GARDEN WOOD, SUITE 300
MONTEREY, CALIFORNIA 93940
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WWW.WP&D.COM

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LOWER LEVEL FLOOR PLAN



KEY NOTES

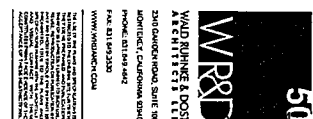
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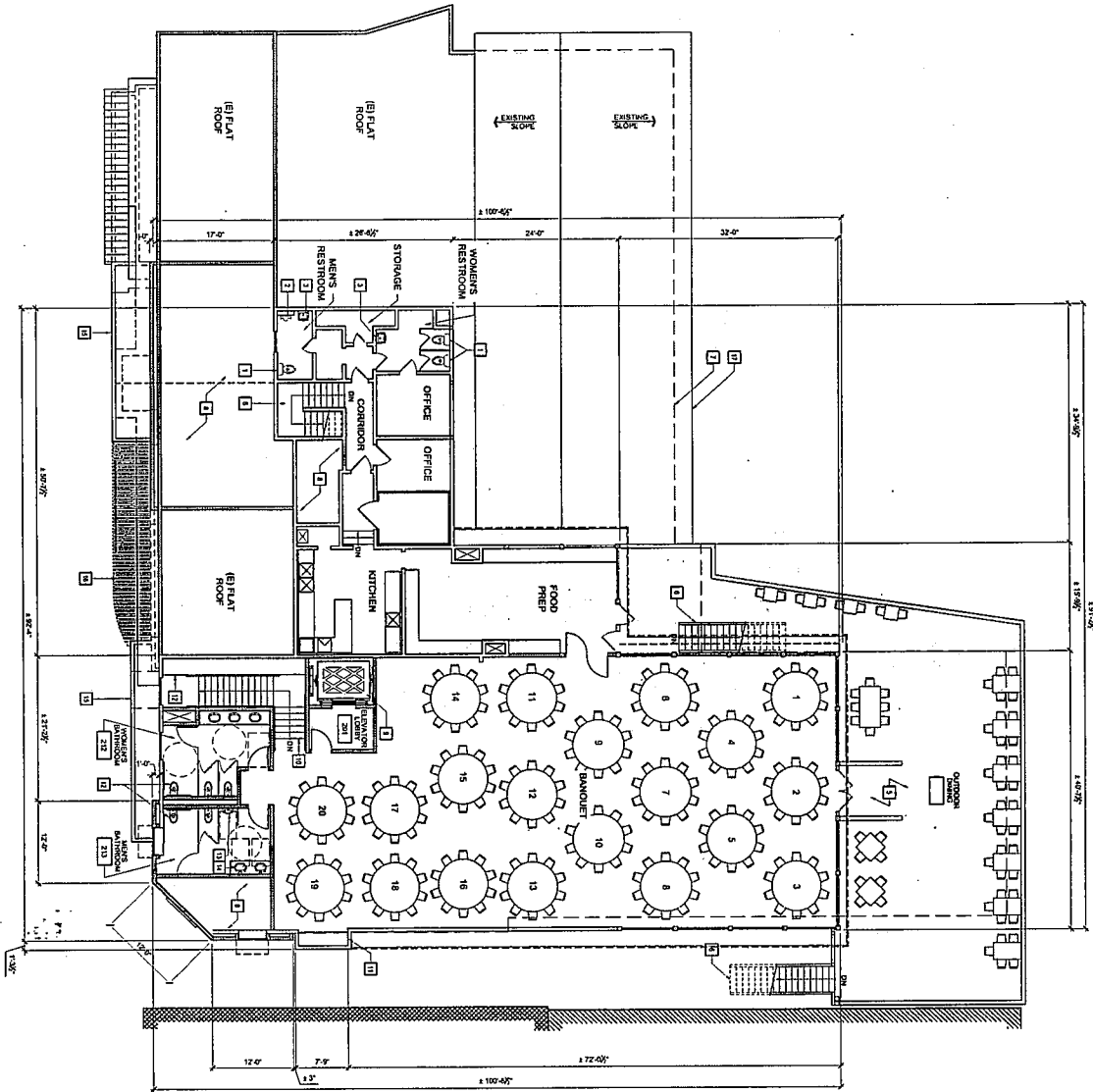
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SHAKE RESTAURANT T.I.
FISHERMAN'S WHARF 1

33 WHARF #1
MONTEREY, CA 93940



UPPER LEVEL FLOOR PLAN



KEY NOTES

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CHECKED BY: [Name]
DATE: 8/2/2014
PLANNING: [Name]
REVISIONS: [Name]
SHEET NAME: [Name]
SHEET NO.: [Name]
A202
FILE NAME: 14062

SHAKE RESTAURANT T.I.
FISHERMAN'S WHARF 1
33 WHARF #1
MONTEREY, CA 93940

50
WPRD
WALD RIVER & DOSE
ARCHITECTS LLP
3000 SANDHILL ROAD, SUITE 300
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This architectural floor plan illustrates the first floor of the National Congress Center. The layout includes a large central hall with multiple seating areas, a prominent staircase, and several smaller rooms and corridors. The plan is detailed with furniture such as tables, chairs, and sofas, as well as architectural features like walls, doors, and stairs. The overall design is functional and spacious, suitable for a large-scale event or gathering.

1) NO INCREASE IN OVERALL SQUARE FOOTAGE BETWEEN PROPOSED PLAN AND EXISTING BUILDING

1 APPROXIMATE LOCATION OF LEASE LINE PER MONTEREY CITY LEASE DOCUMENTS

VERTICAL ACCESS

LEASE REQUIREMENTS 3,475 SQ. FT.	
PROVIDED	
1	
WHARF LEVEL:	2,544 SQ. FT.
	190 SQ. FT.
	<u>2,734 SQ. FT.</u>
UPPER LEVEL:	
	993 SQ. FT.
TOTAL PROVIDED, *	3,475 SQ. FT.

NOT FOR CONSTRUCTION

33 WHARF #1
MONTEREY, CA 93940

PLOT DATE	02/1/20
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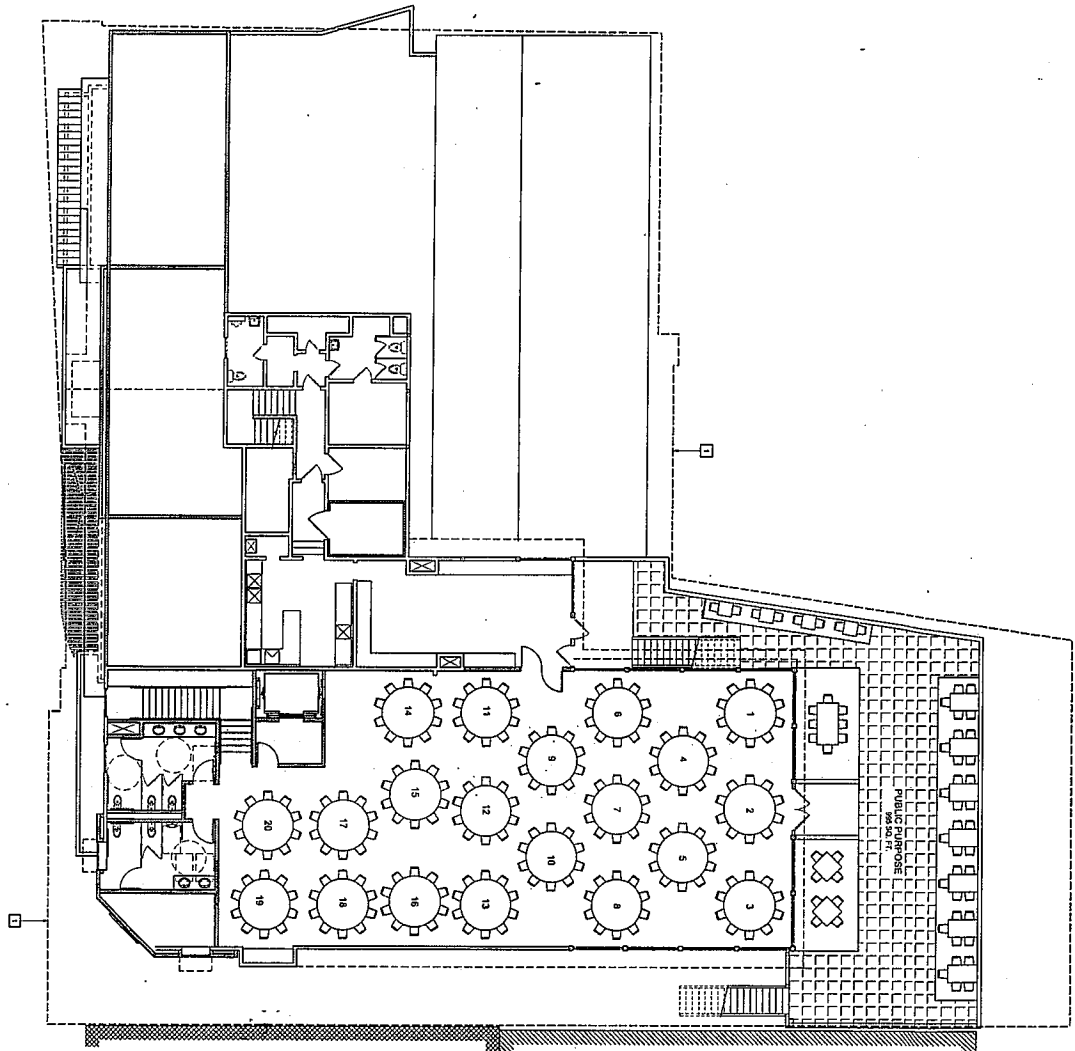
SUBMISSION 07.12.2014
PUBLISHED
RE-SUBMISSION 08.11.2014

SHEET NAME:
LOWER LEVEL
PUBLIC
PURPOSE

A211

FILE NAME	MODIFIED

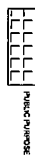
3-14-1722
4 of 7



KEY NOTES

THE KEYNOTES THAT FOLLOW APPLY TO THE DRAWING ON THIS SHEET ONLY. REFER TO FOLLOWING SHEETS FOR NOTES THAT ARE APPLICABLE TO THOSE DRAWINGS.
☐ APPROXIMATE LOCATION OF LEASE LINE FOR MONTEREY CITY LEASE DOCUMENTS

LEGEND



PUBLIC PURPOSE

PUBLIC PURPOSE

LEASE REQUIREMENTS 3,300 SQ. FT.
 SEE SHEET A211

**SHAKE RESTAURANT T.I.
 FISHERMAN'S WHARF 1**

33 WHARF #1
 MONTEREY, CA 93940

14062

PRINT DATE: 8/21/2014
 DRAWN BY: D.D.
 CHECKED BY: S.E. (S.E.)
 PLANNING
 DATE: 8/21/2014
 REVISION: 08/21/2014

SHEET NAME:
 UPPER LEVEL
 PUBLIC
 PURPOSE

SHEET NO.:
A212

FILE NAME: 100420

NOT FOR CONSTRUCTION

WPR&T
 WIND PAPER & T
 ARCHITECTS & INTERIORS
 2000 GARDEN ROAD, SUITE 100
 MONTEREY, CA 93940
 PHONE: 831.649.4442
 FAX: 831.649.3330
 WWW.WINDPAPER.COM

EXTERIOR FINISH LEGEND

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PRE NAME: _____

33 WHARF #1
MONTEREY, CA 93940

14062

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References

1. **CONTRACTING**
 2. **SUPPLIERS**
 3. **BUYERS**

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EXERCISE 10

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PREAMBLES

Architectural drawing of a building facade, showing a long, narrow structure with multiple levels and a central section. The drawing includes dimensions and labels:

- Top dimensions: $\pm 12'-10"$, $\pm 28'-6"$, $\pm 15'-11"$, and $\pm 0'-0"$ (marked as $\pm 0'-0"$ and $\pm 28'-3'-6"$).
- Left side labels: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.
- Right side labels: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.
- Central section labels: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

SCALE: 1/8"=1'-0"

EXTERIOR FINISH LEGEND

[illegible][illegible]

NOT FOR CONSTRUCTION

SHAKE RESTAURANT T.I.
FISHERMAN'S WHARF 1

33 WHARF #1
MONTEREY, CA 93940

41022

PRINT DATA

DRAWING 81

2473500

SUBSIDIARY POINTING

1

1

1

1

E1 EV

SHEET NO.

A

FILE NAME:

•

FILE NAME: A303

[illegible]

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.*

Wharf Master Plan Public Access/Open Space Policies

1. *The present open space and view areas, shown in Figure 5 [Exhibit 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 Concessions 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.

Wharf Master Plan Architectural Control Policies

1. *The existing lease areas, with the exception of lease areas for retail and wholesale fish markets, 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.*
- ...
4. *The exteriors of any building or structure to be altered remodeled or replaced, and, any decorations, ornamentation, or signs proposed to be installed shall be approved by the Architectural Review Committee.*

Harbor LUP Policy A.2.a. *In the Harbor LCP area, marine resources are confined primarily to the littoral or intertidal zone and, to a lesser degree, the sub-tidal zone. The highest concentrations of marine life are located in the harbor itself. The rocky shorelines along the western shore, as well as the pilings and breakwater of the wharf, have proved to be ideal settling grounds for many algae and invertebrate organisms. An abundance of sea life exists in the harbor despite intense use by private and commercial fishing and boating operations.*

Harbor LUP Policy A.3.o. *New development shall not result in the degradation of coastal waters caused by the introduction of pollutants or by changes to the landscape that adversely impact the quality, quantity, and flow dynamics of coastal waters. Runoff shall not be discharged in a manner that adversely impacts coastal waters.*

Harbor LUP Policy A.3.s. *BMPs shall be incorporated into the project design in the following progression:*

- *Site Design BMPs (any project design feature that reduces the generation of pollutants or reduces the alteration of the natural drainage features, such as minimizing impervious surfaces or minimizing grading)*

- *Source Control BMPs (practices that prevent release of pollutants into areas where they may be carried by runoff, such as covering work areas and trash receptacles, practicing good housekeeping, and minimizing use of irrigation and garden chemicals)*
- *Treatment Control BMPs (a system designed to remove pollutants from runoff including the use of gravity settling, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process).*

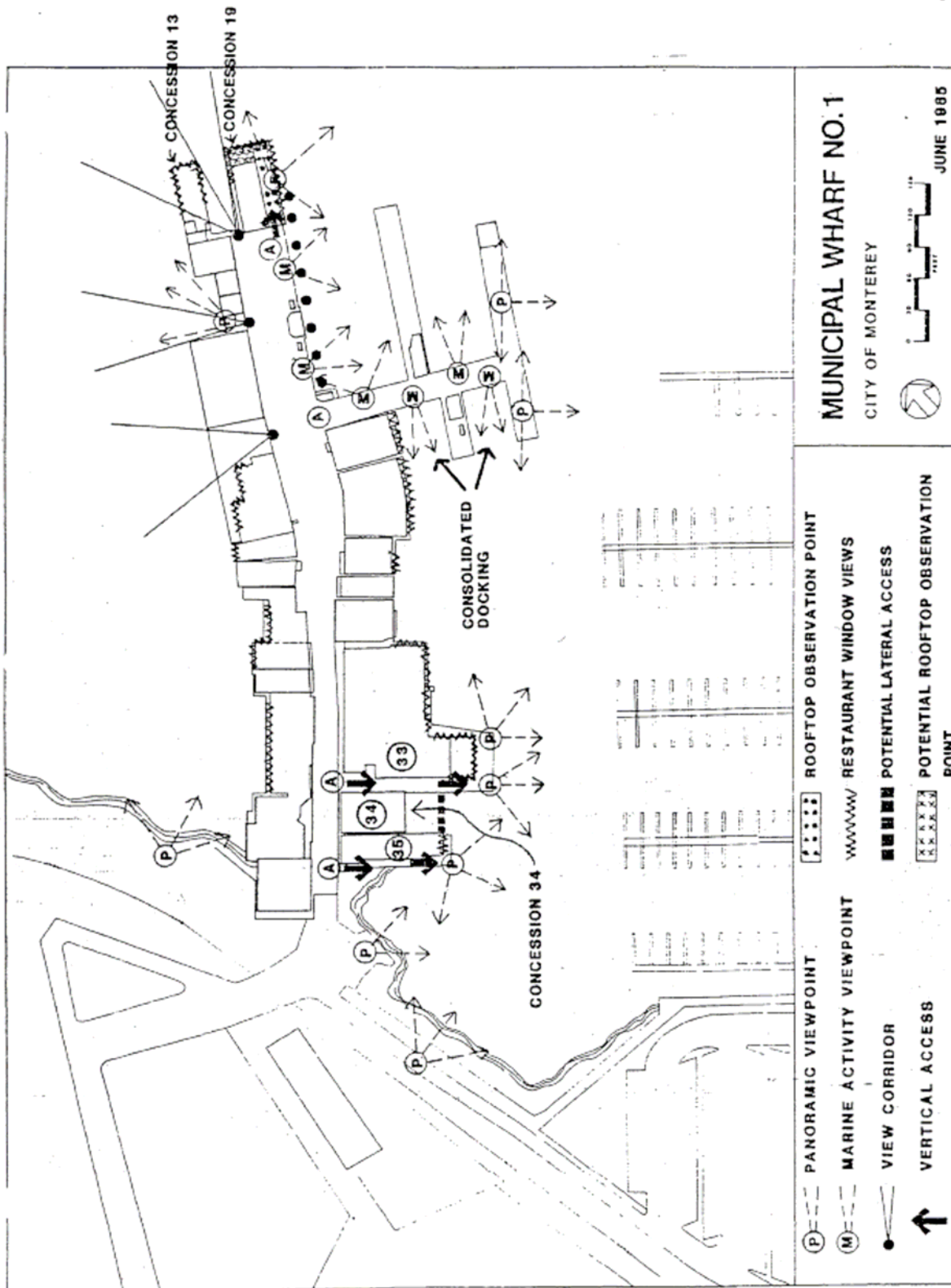


FIGURE 6
PUBLIC ACCESS/OPEN SPACE

(A) PUBLIC ACCESS SIGNING
●●● POTENTIAL OPEN SPACE
(SEE PUBLIC ACCESS POLICY 6)

(20) CONCESSION NUMBER

EXHIBIT A

**CITY OF MONTEREY WHARF NO. 1
CONCESSION #33**

Lessee: Gloria Brown and Mary Alice Cerrito Fettis

Mailing Address:

1. Al Nicora
Gilles, Nicora, Minor & Sullivan
961 Blanco Circle, Suite B
Salinas, CA 93901
2. c/o Jim Gilbert
30 Fisherman's Wharf
(177 Webster Street Suite 469)
Monterey, CA 93940

1. Gross Lease Area: 15,854 square feet
2. Lessee's Lease Area Available for Public Purpose: 3,829 square feet
3. Lessee's Gross Lease Area for Computation of Rent: 12,025 square feet
4. Lessee's Use of Premises: Restaurant
Retail Fish Market
Gift Shop
Delicatessen
5. Beginning Minimum Monthly Rent as of 12/1/99 and subject to annual adjustment): \$4,657.28
6. Conditions of Use:

- Items sold in the gift shop shall be limited to those permitted in Resolution 9000 in the City of Monterey.
- One freestanding sign, subject to City approval, may be displayed on the premises at a location designated by the City of Monterey.
- There shall be no oral advertising permitted from the concession or on any part of Fisherman's Wharf.

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

- The corridor adjacent to this use shall be enhanced with appropriate public access signs, lighting, and inclusion of benches at the rear of the Red Snapper restaurant. These changes shall be subject to Architectural Review Committee review and approval, and shall be installed prior to the occupancy of the expanded gift shop or delicatessen.
- Prior to applying for building permits for the building addition, the applicant shall apply for Architectural Review Committee approval. All exterior alterations shall be reviewed by the Architectural Review Committee.
- The applicant shall comply with the requirements of the Fire and Building Departments. Maximum occupant loads for the concession areas are as follows:

Main Floor Dining Area	173
Back Bar	135
Bar#3	39
Dining Room #1	14
Oyster Bar #2	34
Upstairs Dining Room and Bar	222

The upstairs dining room also has an allowable maximum occupant load of 477 persons, for concentrated use only. This would be the maximum occupant load if tables and chairs were not being used.

- Prior to issuance of a building permit for the building alterations, the applicant shall obtain all required permits from the Army Corps of Engineers and the California Coastal Commission.

Refer to Resolution 9000, enacted March 17, 1959, as amended, for definition of permitted uses.

RESOLUTION NO. A14-076

A RESOLUTION OF THE ARCHITECTURAL REVIEW COMMITTEE

**APPROVING AR PERMIT 14-269 FOR PRELIMINARY AND FINAL ARCHITECTURAL
REVIEW OF EXTERIOR MODIFICATIONS AT 30 WHARF #1**

WHEREAS, Mr. Ken Turgen, filed an application to construct exterior changes to 30 Wharf #1;

WHEREAS, the Architectural Review Committee (ARC) must make the findings for Preliminary and Final Architectural Review as outlined in the Municipal Code;

WHEREAS, the ARC must determine that the proposed siting, form, mass, and architectural style are appropriate for the project site, the immediate area, and the City;

WHEREAS, the building siting will not change as a result of this proposal;

WHEREAS, the Wharf Master Plan contains the following statement that affects form, mass and architectural style:

The different size buildings, with their variety of shapes, colors, heights and roof structures, creates a visual environment that appears unplanned, but still contains just enough order so that the visual experience on Fisherman's Wharf is interesting and exciting but not chaotic and confusing;

WHEREAS, the proposed remodel does include building elements with different sizes, shapes, heights and roof structures. The mass, form and architectural style appear appropriate for the Wharf and City because the structure is visually pleasing and contains diverse design elements (shapes and modulation) consistent with the Plan guidance;

WHEREAS, the ARC must determine that the proposed project will not unreasonably impair the views, privacy, or living environment currently enjoyed by other properties in the vicinity;

WHEREAS, the proposed project increases building height by introducing a new gable-end roof. No significant views, privacy or living environment issues have been identified. Story-pole staking has also been installed and no concerns were raised prior to the packet publication date;

WHEREAS, the proposed project is substantially consistent with the Monterey General Plan, as well as all applicable and adopted Area or Neighborhood Plans, design guidelines or similar documents;

WHEREAS, the proposed project is consistent with the Commercial General Plan Land Use Designation because the project continues a commercial use on Wharf I. The project is also consistent with the Wharf Master Plan as documented in the statement above;

WHEREAS, the ARC must determine that the proposed finish, colors, materials, landscaping, lighting, fencing, and all other exterior features are appropriate for the project site, the immediate area, and the City;

WHEREAS, the Wharf Master Plan encourages variety as outlined above. The proposed color scheme includes a variety of colors that are complimentary; and,

WHEREAS, the City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15303, Class 3) because the project proposes to modify an existing storefront with no increase in square footage.

Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2.

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located - a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The project proposes to renovate an existing building. The site is not located in a particularly sensitive environment because it is located on the Wharf I deck.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. The project renovates an existing building. The project will have no cumulative impact because the scope is limited to one structure.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The project renovates an existing building. The project will have no significant effect.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified Environmental Impact Report (EIR). The project site is not located on a scenic highway.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. The project site is not located on a hazardous waste site.

Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The existing building was significantly altered in 2005 and the building is not eligible for the California or National Registers.

NOW, THEREFORE, BE IT RESOLVED BY THE ARCHITECTURAL REVIEW COMMITTEE OF THE CITY OF MONTEREY approves AR Permit 14-269 for Preliminary and Final Architectural Review as shown in Exhibit A with the following Conditions of Approval.

Standard:

1. That, prior to submittal for Building Permits, the applicant shall provide a copy of these Conditions of Approval on the front page of any plans to be included in the Building Permit submittal.
2. That the hours of construction shall be limited to the Wharf Construction Hours.
3. That this approval will expire 24 months from the date of approval by the City of Monterey ARC unless the required Building Permits are issued for the project. It is the applicant's responsibility to track the expiration date and any request for extension must be made a minimum of 60 days prior to expiration. No renewal notice will be sent to the applicant or property owner.

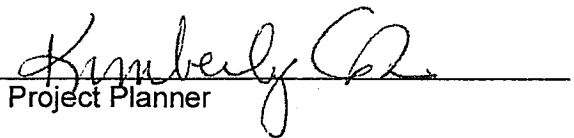
PASSED AND ADOPTED BY THE ARCHITECTURAL REVIEW COMMITTEE OF THE CITY OF MONTEREY this 17th day of September, 2014, by the following vote:

AYES:	5	MEMBERS:	Latasa, Freeman, Dawson, Kimzey, Searle
NOES:	0	MEMBERS:	None
ABSENT:	0	MEMBERS:	None
ABSTAIN:	0	MEMBERS:	None
RECUSED:	1	MEMBERS:	Silva

APPROVED:

ATTEST:


Architectural Review Committee Chair


Project Planner