

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST AREA OFFICE

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*Wfa*

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Staff: SM-SC  
Staff Report: 05/22/97  
Hearing Date: 06/11/97

**STAFF REPORT  
CONSENT CALENDAR**

APPLICATION NUMBER: 3-97-29

APPLICANT: ROW TOWN, INC. (Fish Hopper Restaurant)

PROJECT LOCATION: Fish Hopper Restaurant, 700 Cannery Row, City of Monterey

PROJECT DESCRIPTION: Construction of a 200 square foot outdoor dining deck addition; construction of a separate  $\pm$  450 square foot public viewing deck addition; and, reconfiguration of existing service yard and stairway to accommodate the new public viewing deck.

LOCAL APPROVALS RECEIVED: Use Permit 96-37

SUBSTANTIVE FILE DOCUMENTS: Cannery Row Certified LUP; Coastal Development Permit Files 3-85-263 and 3-88-034

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission approve the proposed projects, subject to conditions which ensure that the construction of the project will not adversely impact the marine environment, and that public access is appropriately provided, on the basis that as conditioned, the project conforms with the Chapter 3 requirements of the Coastal Act.

**I. STAFF RECOMMENDATION**

The staff recommends that the Commission adopt the following resolution:

**Approval with Conditions**

The Commission hereby grants a permit, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in

conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant impact on the environment within the meaning of the California Environmental Quality Act.

## II. STANDARD CONDITIONS

Attached as Exhibit A.

## III. SPECIAL CONDITIONS

1. Scope of Permit. This permit authorizes the dining deck expansion, public access deck expansion, and associated structural renovations more specifically described in the application, subject to the attached Standard Conditions, the Special Conditions listed below, and the conditions of Use Permit 96-37 approved by the City of Monterey (attached as Exhibit D). Any revisions to the submitted plans as a result of the City's architectural and building permit review procedures shall not be effective until reviewed by the Executive Director for a determination of materiality, and if found to be material, approved by the Commission. Likewise, any future change in seating, other than as provided by this permit, shall be subject to coastal development permit process review.

2. Property Owner Authorizations. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, written evidence that the following underlying property owners have given all necessary permissions for the development as approved by the Commission, and that such development is consistent with the specific terms of the affected lease agreements:

- a. City of Monterey (approved tidelands lease); and
- b. The Cannery Row Company (for all elements of the project on Assessor Parcel Numbers 01-011-08, 01-011-07, and 01-011-09).

3. Public Access Easement. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit a document recorded by the landowner, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private organization approved by the Executive Director an easement for public pedestrian access to the new public viewing deck. Such easement shall be a minimum of five feet wide at its narrowest point, and extend from the Cannery Row public right-of-way to the mean high tide line. The recorded document shall include legal descriptions of the entirety of the landowners parcels affected by the easement (Assessor Parcel Numbers 01-011-07 and 01-011-08), as well as the easement area. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect said interest. The offer shall run with the land in favor of the people of the State of California binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

4. Public Access Management Plan. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, a final Public Access Management plan accompanied by written evidence of City of Monterey approval of said plan, which specifies the terms under which public use of the public viewing deck will be permitted and managed, including, but not limited to: hours of availability; signing program; and, criteria

for any temporary closures which may be necessary for purposes such as, but not limited to, maintenance, public safety during high storm wave events, or special events.

5. Waiver of Liability. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit a deed restriction, executed and recorded by the landowner, in a form and content acceptable to the Executive Director, which shall provide:

a. that the landowner understands that the site may be subject to extraordinary hazard from high waves during storms and tsunamis, and the landowner and/or any leaseholder assumes the liability; and,

b. the landowner and all leaseholders unconditionally waive any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

6. Other Agency Approvals. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, evidence that the necessary permits from the following agencies have been obtained, or that no such approval is required:

a. Monterey Bay National Marine Sanctuary;

b. U.S. Army Corps of Engineers; and,

c. Regional Water Quality Control Board;

7. Construction Requirements. The permittee shall be responsible for ensuring: that no foreign materials (e.g., construction scraps, discarded wood, wood preservatives, concrete, etc.) enter Bay waters; and, that shoreline areas are maintained in their natural state during and after construction. The construction contract shall highlight this requirement, and contain sufficient penalty provisions to offset the cost of retrieving or cleaning up any foreign materials not properly contained.

#### IV. FINDINGS AND DECLARATIONS

A. Project Location and Description. The Cannery Row area of the City of Monterey has evolved from a seaside fishing/canning industry center to a public recreational area of major significance. The certified Cannery Row Land Use Plan identifies the site for visitor-serving commercial uses as does the City zoning. The subject parcel is on the bayside of Cannery Row street, and portions of the building extend on pilings into the intertidal area. The applicant's restaurant occupies the seaward-most portion of the warehouse style building that also contains a number of other visitor serving businesses. The parcel upcoast of the site contains Macabee beach, backed by the new Steinbeck Plaza, which includes a stairway to the beach.

The Fish Hopper Restaurant (previously the Outrigger Restaurant) has applied to expand an existing outdoor dining area of approximately 498 square feet, by 200 additional square feet.

This deck, which is oriented on the southern side of the building, is currently open to the general public during hours of restaurant operation, as required by Coastal Development Permit No. 3-85-263, which previously authorized its use for outdoor dining. This permit also limited outdoor seating to 28, and total restaurant seating to 471. Total restaurant seating will not increase by this proposal; however, 18 interior seats that were removed as a result of interior renovations will be relocated to the expanded dining deck, for a total of 46 outside seats. As required by the previous coastal permit, this change, and any future seating change, is subject to coastal permit process review.

As part of this proposal, the outdoor dining deck will no longer be available for public access, as the mixing public access and restaurant uses has proved to be problematic. As mitigation for the loss of this existing public access area, the applicant proposes to construct a new public viewing deck of approximately 450 square feet, on the north side of the restaurant. Including the new public access walkway to serve this deck, approximately 628 square feet of public area would be provided.

Both the dining deck expansion and the new public viewing deck extend beyond the parcel on which the Fish Hopper Restaurant is located. This additional area includes tidelands under the jurisdiction of City of Monterey, (which the development will be cantilevered over - no new pilings are proposed), as well as the parcel to the north (Bubba Gump Restaurant), and the parcel to the south (Steinbeck Plaza). By issuance of Use Permit 96-37, the City of Monterey has given approval for the encroachment over public tidelands, subject to a tidelands lease agreement. The underlying property owner of the three private parcels on which the development will be located has given permission for the applicant to submit, and the Coastal Commission to file, the subject application. Special Condition 2 attached to this permit requires that the applicant submit evidence that these underlying property owners have given all necessary permissions for the development as approved by the Commission. In addition, Special Condition 6 will ensure that the project is consistent with the requirements of other public agencies (Monterey Bay National Marine Sanctuary, U.S. Army Corps of Engineers, and the Regional Water Quality Control Board).

**B. Coastal Act Conformance.**

**1. Public Access and Recreation.**

The Coastal Act states:

Section 30001.5 (c) "Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners."

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

Consistent with the objectives of the above policy, the proposed project seeks to provide additional public access and recreational opportunities, through the provision of a new public viewing deck, as well as through the expansion of the visitor-serving establishment in a manner which will promote public enjoyment of the coast.

The primary concerns raised during local review of this project, were: whether or not the quality of the access and recreational opportunities to be provided by the project would be equivalent to those currently available; and, whether or not the public will be able to clearly recognize that the new viewing deck will be available for public use, given that the stairway structure on the adjacent parcel (Bubba Gump Restaurant) partly interferes with the public's ability to see the new accessway from Cannery Row. The City of Monterey concluded that the new deck on the north side of the restaurant would provide unique and dramatic coastal views, warranting the tradeoff of eliminating access on the south side (already available from Steinbeck Plaza). To increase the visual accessibility of the new accessway from Cannery Row, the applicant modified the project design, and proposed more readily visible coastal access signing. With these changes, the local Use Permit was approved by the Monterey City Planning Commission on January 7, 1997 (attached as Exhibit D), and appropriately addresses Coastal Act requirements identified above.

In order to ensure that the public access and recreation opportunities proposed by the project are effectively carried out, consistent with public safety needs, Special Conditions have been attached to this permit which require: the dedication of a public access easement necessary to allow for public access to the proposed public viewing deck; and Executive Director approval of a Public Access Management Plan addressing, among other things, public safety needs and signing. With these conditions, the project can be found consistent with Coastal Act Sections 30001.5(c), 30210, and 30212(a).

## 2. Marine Environment.

Coastal Act Section 30232 requires:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Due to its location above the Monterey Bay National Marine Sanctuary, special precaution needs to be taken to prevent materials harmful to the marine environment from entering Bay waters. Wood stain, cement, and other materials which may be involved in project construction must be properly handled and maintained. In order to ensure this takes place

consistent with the requirements of the above policy, Special Condition 7 requires the permittee to ensure that no foreign materials enter Bay waters; and, that shoreline areas are maintained in their natural state during and after construction. In addition, Special Condition 6 requires evidence of any required approvals from the Monterey Bay National Marine Sanctuary.

### 3. Natural Hazards.

Section 30252 of the Coastal Act states that new development shall:

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

The structures and people utilizing the shoreline along Cannery Row are subject to hazards posed by tsunamis (tidal waves induced by earthquakes), storm waves, and earthquakes.

The applicant proposes structural changes to the existing building which will provide public access in this hazardous area. The signing required by Special Condition 4, as well as the signing required by the locally approved Use Permit, will caution the public of these potential hazards, consistent with the above policy. In addition, pursuant to Special Condition 5, the applicant and landowner must waive any claim of liability on the part of the Commission for approving the project.

With these conditions, the development conforms with Section 30253 of the Coastal Act.

### V. LCP AND CEQA

Because the conditions attached to this permit achieve project consistency with Chapter 3, the development will not prejudice the ability of the local government to complete a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Similarly, the Special Conditions attached to this permit ensure that the development will not have a significant adverse impact on the environment within the meaning of the California Environmental Quality Act (CEQA). The City of Monterey adopted a Negative Declaration for this project pursuant to CEQA on January 7, 1997.

CALIFORNIA COASTAL COMMISSION

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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. 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.

EXHIBIT NO. <b>A</b>
APPLICATION NO. 3-97-29
FISH HOPPER RESTAURANT
STANDARD CONDITIONS



9615

FISH HOPPER RESTAURANT  
**PROJECT SITE**

22

SEE TOP LEFT

MAP 242

MAP 240

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**EXHIBIT NO. B**

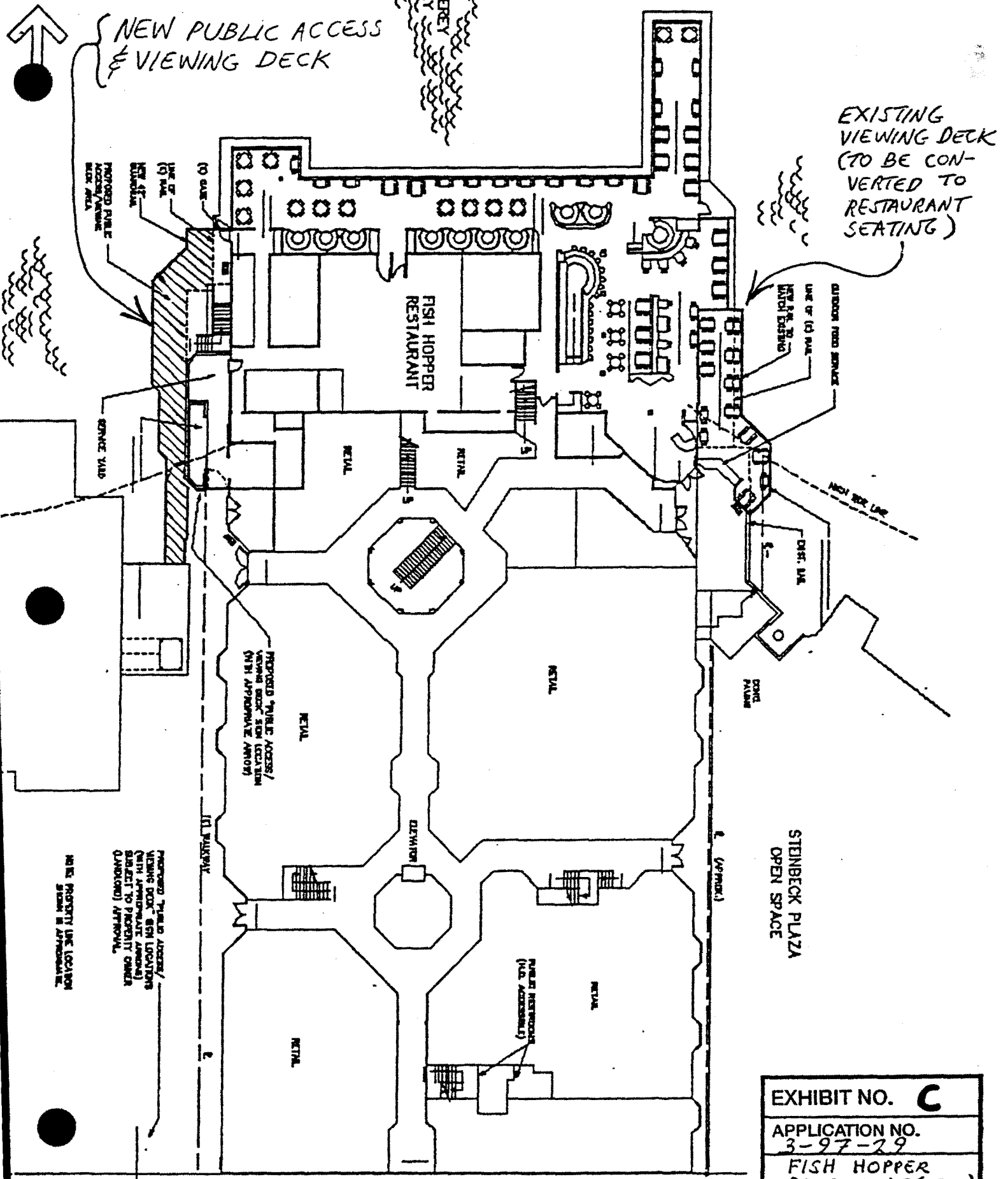
APPLICATION NO.  
3-97-29

FISH HOPPER  
RESTAURANT

LOCATION MAP

MONTEREY CO





PROPPOSED PUBLIC ACCESS / VIEWING DECK (SEE LOCATION WITH APPROPRIATE ARROWS) SUBJECT TO PROPERTY OWNER (LANDOWNER) APPROVAL.

NOTE: PROPERTY LINE LOCATION SHOWN IS APPROXIMATE.

EXHIBIT NO. <b>C</b>
APPLICATION NO. 3-97-29
FISH HOPPER RESTAURANT (DECKS)
SITE PLAN



**PERMIT**

Jim McCord  
(Applicant)

503 Wye Street  
(Mailing Address)

Monterey, CA 93940  
(City, State, Zip)

700 Cannery Row (Fish Hopper)  
(Subject Property)

Use Permit 96-37  
Permit Number and Type

Use Permit granted for the deck expansion on the south side of the  
building for seating and outside food service and for the deck  
expansion on the north side for public access and viewing.

In the matter of the above-described application, the City Council of the City of Monterey, on January 7, 1997, approved the granting of this permit, subject to the following conditions:

Qualifications

1. Signatures - The permit shall not become effective until signed and dated by both the applicant and the property owner and returned to the Community Development Department.
2. Nullification - The permit shall become null and void if not exercised or extended within twenty-four (24) months of the date of granting hereof. It is the applicant's responsibility to track the 24 month expiration date and to request any extensions prior to that date. No renewal notice will be sent.
3. Revocation - The permit shall be subject to revocation for failure to comply with all Conditions of Approval stated on the back of this form.

[Signature]  
Applicant's Signature

1/16/97  
Date

\_\_\_\_\_  
Property Owner's Signature

\_\_\_\_\_  
Date

EXHIBIT NO. <b>D</b>
APPLICATION NO. 3-97-29
FISH HOPPER RESTAURANT
LOCAL APPROVAL

**700 CANNERY ROW  
USE PERMIT 96-37**

**CONDITIONS OF APPROVAL:**

1. That the Use Permit is granted for the deck expansion on the south side of the building for seating and outside food service and for the deck expansion on the north side for public access and viewing located and developed substantially as shown on attached Exhibit A. The future retail area on the north side is not approved and shall be subject to a separate future application. Outside seating on the south side deck shall be limited to 46 seats as shown on the 10/30/96 seating plan. The physical changes that removed 18 seats from the interior to allow the seat count to be increased from the originally approved 28 outside seats to 46 outside seats shall remain in place and interior seating shall not be increased, per the plan on file with the Planning Department.
2. That all development on the project property shall be constructed and thereafter maintained in accordance with the conditions of this permit.
3. Prior to applying for building permits, the applicant shall apply for Architectural Review Committee approval. The Architectural Review Committee shall pay particular attention to:
  - a. Design of a solid replacement fence around the trash enclosure on the north side deck.
  - b. Design and location of trash receptacle containers with recycling provisions.
  - c. Lighting in the public access area.
  - d. Additional landscaping along the north side deck.
4. Prior to issuance of a Building Permit, the applicant shall meet any permit and fee requirements, if such are needed, of the Monterey Peninsula Water Management District.
5. Prior to issuance of a Building Permit, the applicant shall obtain all necessary permits from the California Coastal Commission and U.S. Army Corps of Engineers.
6. Prior to opening and use of the decks, the applicant shall enter into and agree to the tidelands lease requirements of the City of Monterey.
7. The south side outside seating area and food service stand shall not be utilized until the north side public access and viewing deck are completed, fully signed and open to the public. The south side public access shall be maintained as much as feasible until the north side public access is provided.
8. The public access/viewing areas on the north side deck as shown on Exhibit A shall be dedicated to the City of Monterey as an open space easement. The deck area shall be maintained by the applicant and open at a minimum from 8:00 a.m. to closing of the restaurant, or, if possible,

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Exhibit D, p.2

longer hours if acceptable to the City and the applicant. Access to the deck shall be signed for public access as directed by City and Coastal Commission staff, including the possibility of signing directly on the deck.

9. Building materials used for the expansion shall contain no creosote.
10. The applicant shall comply with all the requirements of the Building Department, paying particular attention to the exiting for the south side deck.
11. The deck shall be signed to warn of storm wave danger and the deck shall be closed when storm waves present a danger to pedestrians.
12. Prior to issuance of a Building Permit, the applicant shall submit to the Public Works Department for review and approval a plan for catch basins to retain sediment within the site area and a plan for debris cleanup in shoreline areas during construction.
13. Prior to issuance of a Building Permit, the applicant shall make application and receive approval for a Lot Line Adjustment for the deck expansions or comply with any other lot line adjustment mitigation measures as reviewed and approved by the City Attorney and Building Official.
14. This permit shall become null and void if not exercised or extended within two (2) years of the date of granting by the Planning Commission. It is the applicant's responsibility to track the two year expiration date and request permit approval extensions prior to the permit expiration date. No renewal notice will be sent to the applicant.

CITY COUNCIL  
1/7/97

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Exhibit D, p.3