

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
 725 FRONT STREET, SUITE 300  
 SANTA CRUZ, CA 95060  
 27-4863

**RECORD PACKET COPY****F6a**

Filed: 04/28/00  
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 Staff Report: 05/22/00  
 Hearing Date: 06/16/00

# Staff Report: Consent Calendar

**Application Number** 3-00-012

**Applicant** Mr. Chris Shake, Fish Hopper Restaurant

**Agent** Mr. Paul Stokes, West Coast Divers, Inc.

**Location** 700 Cannery Row, City of Monterey

**Project Description** Installation of temporary shoring timbers and bracing, operation of testing and construction equipment in the intertidal area beneath the Fish Hopper Restaurant, demolition of 12 existing concrete pilings, and construction of replacement pilings.

**Local Approvals** City of Monterey building permit # B00-0019, issued 01/12/2000.

**Staff Recommendation** Approval with Conditions

**Summary**

On February 10, 2000, applicant applied for an emergency permit to replace deteriorated pilings that support the most seaward portion of the Fish Hopper restaurant on Cannery Row in Monterey. In response to the request, Emergency permit 3-00-012-G was issued on March 1, 2000. That emergency permit included use of wood bracing for temporary support of the structure, testing of pilings with a pneumatic jack, and replacement of up to 20 pilings. This permit is a regular coastal development permit to make the work authorized under the emergency permit permanent.



**California Coastal Commission**  
**June 16, 2000 Meeting in Santa Barbara**

Staff: S. Guiney, Approved by:

On May 5, 2000, Coastal Commission staff were notified by staff of the Monterey Bay National Marine Sanctuary of several violations of the Sanctuary authorization for the emergency work, which were also violations of the emergency coastal development permit. On May 11, 2000, staff notified the applicant, by fax and posting of certified mail, of the violations and ordered the applicant to stop all work not in compliance with the emergency permit. The violations consisted of: performing work in the intertidal area during flooded conditions, storing of construction materials in the intertidal area, disposal of concrete rubble in the intertidal area, and failure to remove sand bags from the intertidal area after their purpose was fulfilled. On May 22, 2000, staff received a response to the violation notice from the applicant explaining the situation (see Exhibit 5). Staff is pursuing the violation and will be meeting on the site with the applicant and a representative of the Monterey Bay National Marine Sanctuary.

Notwithstanding the violations, staff is recommending approval of this regular permit application to make the work authorized under emergency permit 3-00-012-G permanent because the work is necessary for public safety and to protect private property. Additionally, this regular permit does not authorize any activity in violation of the emergency permit. Approval of this permit will not prejudice the violation investigation, nor will pursuit of the violation prejudice this permit.

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**Exhibits**

1. Location Map
  2. Piling Plan
  3. Emergency Permit
  4. Notices of Violation from Coastal Commission and MBNMS
  5. Applicant's Response to Notices of Violation
- 



## I. Staff Recommendation

Staff recommends that the Commission approve the project.

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. 3-00-012 pursuant to the staff recommendation.*

### **STAFF RECOMMENDATION OF APPROVAL:**

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

### **RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development 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 and 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. 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.

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## II. Conditions of Approval

### A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.



3. **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.

**B. Special Conditions**

1. **AUTHORIZED WORK.** This permit authorizes the placement of temporary shoring timbers and bracing, operation of testing and construction equipment in the intertidal area beneath the Fish Hopper Restaurant, demolition of up to 12 existing concrete pilings, and construction of up to 12 replacement pilings, in compliance with the plans and project description on file with the Commission.
2. **WITHIN 30 DAYS OF ISSUANCE OF THIS PERMIT,** permittee shall submit to the Executive Director for review copies of all other approvals which authorize the work as permanent and not just emergency work. This includes, but is not necessarily limited to, the Monterey Bay National Marine Sanctuary.
3. Permittee shall engage in no activity that results in pollution of the adjacent marine environment including, but not limited to, discharge of concrete slurry, petroleum residues, and increased turbidity. Construction equipment shall not come into contact with State waters.

Particular care shall be exercised to prevent foreign materials (e.g., construction scraps, wood preservatives, other chemicals, etc.) from entering state waters. Where additional wood preservatives must be applied to cut wood surfaces, the materials, wherever feasible, shall be treated at an onshore location to preclude the possibility of spills into state waters. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or clean up of foreign materials not properly contained.



If pile installation, or any other portion of the operations and maintenance program, requires the pouring of concrete in, adjacent to, or over the water, the following methods shall be employed to prevent uncured concrete from entering or coming into contact with state waters:

- a. Complete dewatering of the pour site, within a caisson or other barrier; the site to remain dewatered until the concrete is sufficiently cured to prevent any significant increase in the pH of adjacent waters; or,
- b. the tremie method, which involves placement of the form in water, inserting a plastic pipe down to the bottom of the form, and pumping concrete into the form so that the water is displaced towards the top of the form. If this method is selected, the displaced waters shall be pumped off and collected in a holding tank. The collected waters shall then be tested for pH, in accordance with the following California Department of Fish and Game recommendations: If the pH is greater than 8.5, the water will be neutralized with sulfuric acid until the pH is between 8.5 and 6.5. This pH-balanced water can then be returned to the sea. However, any solids that settle out during the pH balancing process shall not be discharged to the marine environment.

In each case involving such concrete pours in or near waters, a separate wash out area shall be provided for the concrete trucks and for tools. The wash out area(s) shall be designed and located so that there will be no chance of concrete slurry or contaminated water runoff to the state waters, nor into storm drains or gutters which empty into such bodies of water.

4. Permittee shall insure that heavy equipment operations on and adjacent to the construction site are kept to the absolute minimum necessary to install the temporary emergency measures authorized by this emergency permit. Project staging areas shall be kept to the minimum size necessary, and shall be restored to their pre-existing condition immediately upon completion of the emergency work. All leaks, drips, and other spills shall be cleaned up immediately and contaminated materials properly disposed of at an off-site location. Equipment shall not be refueled on beach areas.
5. Any dewatering required to install the emergency protection measures shall be coordinated with the Executive Director of the Coastal Commission, the Monterey Bay National Marine Sanctuary, the Central Coast Regional Water Quality Control Board, and the City of Monterey, to the greatest degree feasible. All water discharges shall conform to requirements of these agencies.
6. Permittee shall submit a written statement from the contractor to the Executive Director within two weeks of completion of the work, stating that the work has been completed in accordance with all approvals.



### **III. Findings**

#### **A. Project Location and Description**

The project site is the most seaward portion of the Fish Hopper Restaurant at 700 Cannery Row in Monterey, which extends out over the intertidal area. Twelve of the existing concrete pilings in the intertidal area supporting the restaurant building are proposed to be replaced. At least one of the pilings was displaced by heavy ocean surf this past winter. Replacement of other pilings was made necessary by weakening of the pilings due to sea water contact with the steel reinforcing bars in the pilings that caused the metal to rust. On February 2, 2000, the City of Monterey Building Official ordered the restaurant to close that portion of the dining area above the area of failed and failing pilings. Consideration of this application to authorize the work done under emergency permit 3-00-012-G as permanent, is based solely upon the policies of Chapter 3 of the Coastal Act. However, please note that consideration of this application does not constitute an admission as to the legality of any development undertaken on the subject site without benefit of a coastal development permit or any work that may have exceed that authorized by a coastal development permit and shall be without prejudice to the California Coastal Commission's ability to pursue any legal remedy available under Chapter 9 of the Coastal Act.

#### **B. Emergency Coastal Development Permit 3-00-012-G**

##### **1. History and Violation**

On February 10, 2000, applicant applied for an emergency permit to replace deteriorated pilings that support the most seaward portion of the Fish Hopper restaurant on Cannery Row in Monterey. In response to the request, Emergency permit 3-00-012-G was issued on March 1, 2000. That emergency permit included use of wood bracing for temporary support of the structure, testing of pilings with a pneumatic jack, and replacement of up to 20 pilings. This permit is a regular coastal development permit to make the work authorized under the emergency permit permanent.

On May 5, 2000, Coastal Commission staff were notified by staff of the Monterey Bay National Marine Sanctuary of several violations of the Sanctuary authorization, which were also violations of the emergency coastal development permit. On May 11, 2000, staff notified the applicant, by fax and posting of certified mail, of the violations and ordered the applicant to stop all work not in compliance with the emergency permit. The violations consisted of: performing work in the intertidal area during flooded conditions, storing of construction materials in the intertidal area, disposal of concrete rubble in the intertidal area, and failure to remove sand bags from the intertidal area after their purpose was fulfilled.



## 2. Impacts and Current Status

The actual impacts of the violations are unknown. However, operation of equipment in the water to drill holes in the rock for the steel reinforcing bars could result in petroleum products and rock dust entering waters of the Bay. These materials are harmful to marine organisms. Storage of materials in the intertidal area could result in some material being washed into the Bay, with unknown effects on the marine environment. Disposal of concrete debris in the intertidal area could adversely affect public views. Please see Exhibit 4 for notices of violation and Exhibit 5 for the applicant's response. As of the writing of this staff report, staff had not yet been able to verify the applicant's response or that rectification of the violations has occurred. Staff is pursuing the violation and will be meeting on the site with the applicant and a representative of the Monterey Bay National Marine Sanctuary. Rectification of the violation would include removal of all stored construction material from the intertidal area, except that being actively used, cessation of all work under flooded conditions, and prompt removal of sand bags following curing of concrete.

Notwithstanding the violations, staff is recommending approval of this regular permit application to make the work authorized under emergency permit 3-00-012-G permanent because the work is necessary for public safety and to protect private property. Additionally, this regular permit does not authorize any activity in violation of the emergency permit and will not prejudice the violation investigation.

## C. Standard of Review

The Coastal Act is the standard of review in this case. The location of the work is in the intertidal area and therefore in the Commission's permit jurisdiction. The City of Monterey does not have a fully certified LCP. The Cannery Row Land Use Plan is certified, but the implementation plan is not.

## D. Public Access and Recreation

### 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 except where:*

.....

(2) *adequate access exists nearby, or,*

(b) *For purposes of this section, "new development" does not include:*

.....

(3) *Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.*

(5) *Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.*

By wading, or by snorkel, or kayak there is existing public access beneath this over-water restaurant -- as well as along the outside and of the restaurant at street level. No public access will be affected by the proposed work. There will be no change in intensity of use or floor area, height, or bulk of the existing restaurant. The work is therefore consistent with Coastal Act Sections 30211 and 30212 regarding public access.

**E. Marine Environment**

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.*

**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:*

*(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

The piling work entails construction activity in the intertidal area including demolition of existing concrete pilings, drilling of holes in the rock for new reinforcing steel, placement of piling forms, and pouring of concrete into the forms. Any of these activities could result in damage to the sensitive marine environment including adverse impacts to both sessile and non-sessile organisms through crushing, altered water chemistry if raw concrete comes into contact with sea water, etc. Both the emergency permit and this regular permit are conditioned to require that the work not result in foreign material entering the intertidal area. Further, the Monterey Bay National Marine Sanctuary has issued an Authorization for the emergency work with conditions similar to the Commission's. The work constitutes fill in coastal waters. However, it is replacing existing pilings and is for support of the pier structure that provides public access out over the water and provides for recreational opportunities (sightseeing, fishing, etc.)

Notwithstanding the unresolved emergency permit violations (performing work in the intertidal area during flooded conditions, storing of construction materials in the intertidal area, disposal of concrete rubble in the intertidal area, and failure to remove sand bags from the intertidal area after their purpose was fulfilled), as conditioned by this permit, the proposed work is consistent with Coastal Act Sections 30230, 30231, and 30233 regarding protection of the marine environment. This approval does not authorize any work, emergency or otherwise, that is inconsistent with either the emergency permit or this permit or that is inconsistent with Coastal Act sections 30230, 30231, and 30233. Approval of this permit will not prejudice the violation investigation.



## **F. LCP Planning Process**

Coastal Act Section 30604(a) states:

*Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for that conclusion.*

The Cannery Row area of the City of Monterey falls within the coastal zone, but the City does not have a fully certified LCP. The City's Cannery Row Land Use Plan (LUP) is certified. Currently, the City is working on preparing the implementation portion of its LCP, but there is no time frame for completion.

Although the location of the work is in the Commission's original jurisdiction and so therefore the standard of review will never be LCP, but rather the Coastal Act, for the reasons discussed in this report, the Commission finds that, as conditioned: the proposed project would not prejudice Commission action on future coastal planning decisions regarding development in Monterey; and is consistent with Coastal Act requirements that development not prejudice LCP planning efforts that conform to the Coastal Act.

## **G. Enforcement**

As described in this staff report, the piling replacement work that is the subject of this permit was authorized as emergency work under permit 3-00-012-G. The proposal evaluated herein has been for CDP authorization to make the emergency work permanent. Although this application has been considered based upon the policies of Chapter 3 of the Coastal Act, consideration of this application does not constitute an admission as to the legality of any development undertaken on the subject site without benefit of a coastal development permit or that exceeds work authorized under emergency permit 3-00-012-G and shall be without prejudice to the California Coastal Commission's ability to pursue any legal remedy available under Chapter 9 of the Coastal Act.

## **H. California Environmental Quality Act (CEQA)**

Section 13096 of the California Code of Regulations requires that a specific finding be made in



**Fish Hopper Restaurant**

**3-00-012**

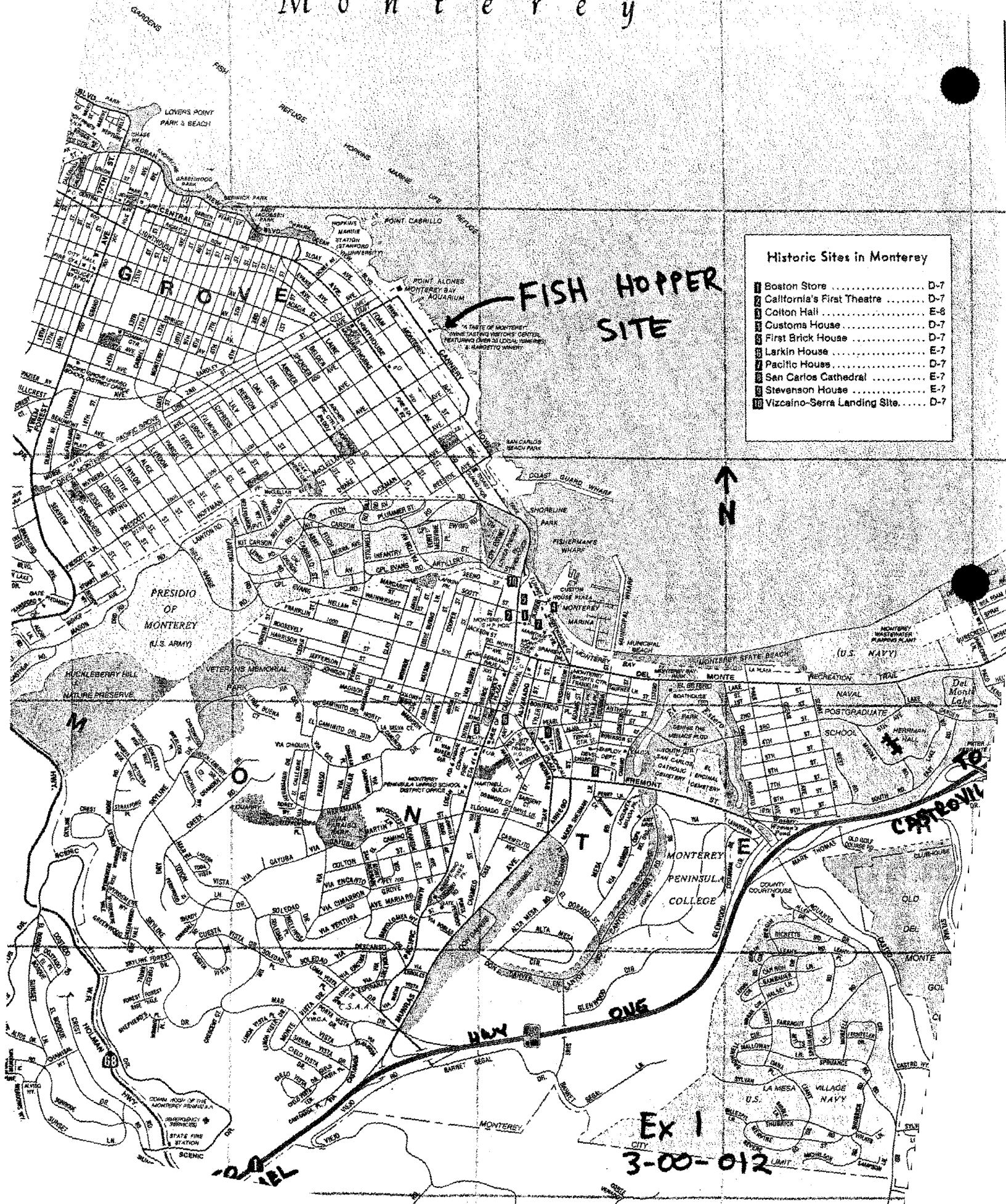
- 11 -

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

The 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 proposed project's coastal resource issues have been discussed in the emergency permit and in this staff report and appropriate mitigations have been developed to ensure that the work will result in no significant adverse effects on the environment. The Commission finds that only as conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.



# Monterey



### Historic Sites in Monterey

- 1 Boston Store ..... D-7
- 2 California's First Theatre ..... D-7
- 3 Colton Hall ..... E-8
- 4 Customs House ..... D-7
- 5 First Brick House ..... D-7
- 6 Larkin House ..... E-7
- 7 Pacific House ..... D-7
- 8 San Carlos Cathedral ..... E-7
- 9 Stevenson House ..... E-7
- 10 Vizcaino-Serra Landing Site ..... D-7

**FISH HOPPER SITE**

"A PART OF MONTEREY"  
 HISTORIC VISITOR CENTER  
 FEATURING OVER 50 LOCAL HISTORIES  
 & BARGAIN SHOP

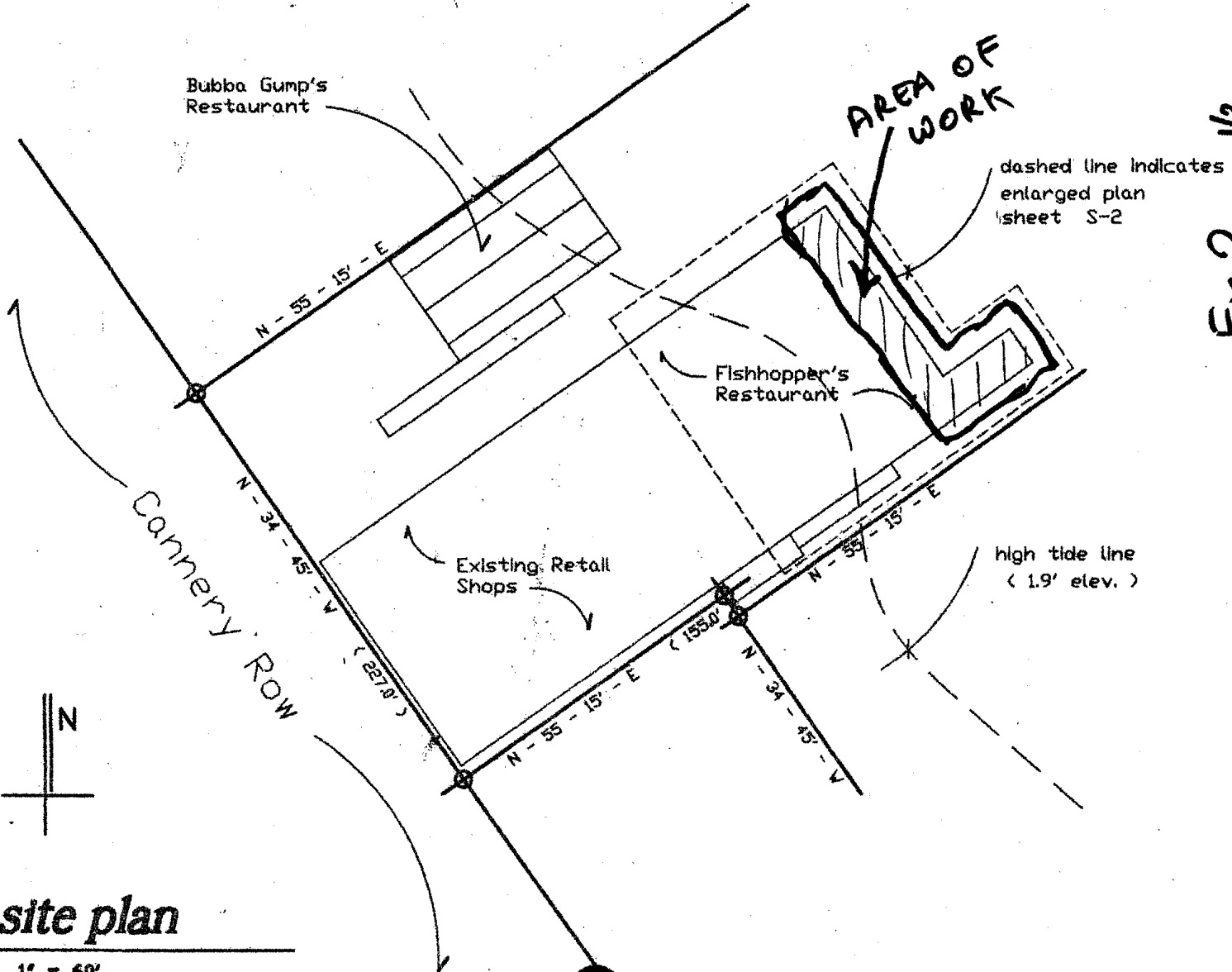
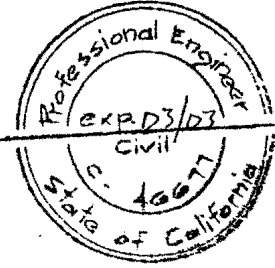


Ex 1  
 3-00-012

Responsibilities : In accordance with normal industry practice, Contractor remains responsible for with project design, all means & methods, temporary structures & shoring, and jobsite safety issues.

HLL, HEA  
C100

R Wayne Johnson



dashed line indicates enlarged plan sheet S-2

high tide line (1.9' elev.)



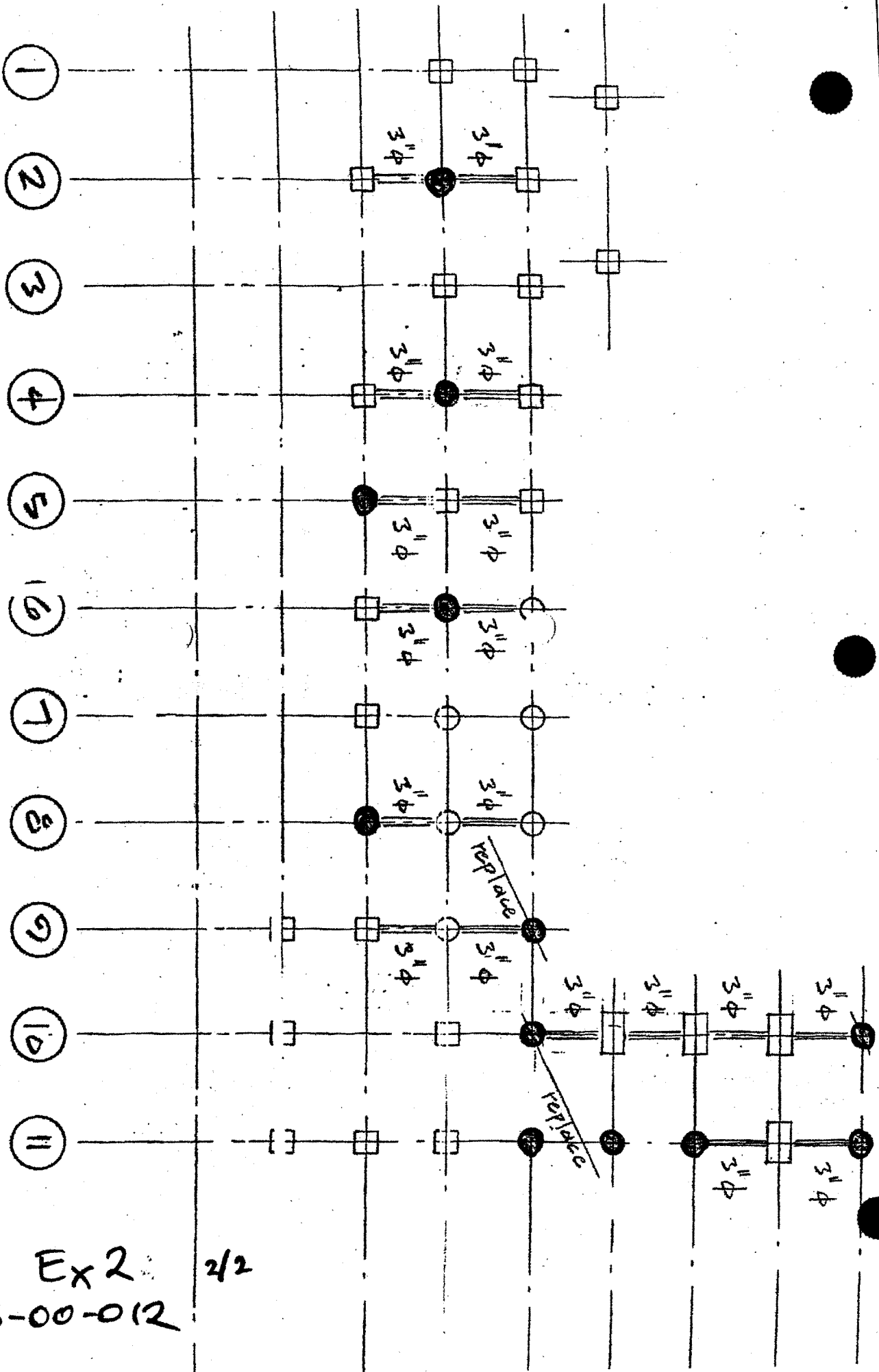
site plan

1" = 60'

EX 2 1/2  
3-00-012

drawing release

- Exist. square or rectangular pier
- Exist. circular pier
- New circular pier



Ex 2 2/2  
3-00-012

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
125 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
831 428-8663



# EMERGENCY PERMIT

Issue Date: **March 1, 2000**Emergency Permit No. **3-00-012-G**

Chris & Sabu Shake  
Fish Hopper Restaurant  
700 Cannery Row  
Monterey, CA 93940

## LOCATION OF EMERGENCY

Fish Hopper Restaurant, 700 Cannery Row, in the City of Monterey, Monterey County (APN 001-011-008).

## WORK PROPOSED

Installation of bracing and replacement of concrete pilings: Interim measures to stabilize restaurant and replace up to 20 failed concrete pilings under the portion of the restaurant subject to the Notice and Order to Vacate issued by the City of Monterey. Includes placement of temporary shoring timbers, installation of bracing, operation of testing and construction equipment in the intertidal area beneath the building.

This letter constitutes approval of the emergency work that you and your representative have requested, as described above. I understand from the information that you submitted that an unexpected occurrence in the form of structural piling failure threatens the Fish Hopper Restaurant and represents "a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services." (Definition of "emergency" from § 13009 of the California Administrative Code of Regulations.) Therefore, the Executive Director of the Coastal Commission hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of this permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) As conditioned, the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the attached pages.

Sincerely,

Peter M. Douglas  
Executive Director

  
By: Lee Otter  
District Chief Planner

Enclosures: Emergency Permit Acceptance Form

cc: Bill Fell, City of Monterey  
Michelle Finn & Scott Kathey, Monterey Bay National Marine Sanctuary  
Ed Wiley, U.S. Army Corps of Engineers  
Deborah Johnson, Department of Fish and Game

Ex 3 1/4  
3-00-012

### CONDITIONS OF APPROVAL

1. The enclosed emergency permit acceptance form must be signed by the property owner and returned to the California Coastal Commission's Central Coast District Office within 15 days of the date of this permit (i.e. by March 16, 2000). This emergency permit is not valid unless and until the acceptance form has been received in the Central Coast District Office.
2. Only that work specifically described in this permit and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the date of this permit (i.e., by March 31, 2000) unless extended for good cause by the Executive Director.
4. The measures authorized by this emergency permit are only temporary. Within 60 days of the date of this permit (i.e., April 30, 2000), the permittee shall submit a complete application for a regular coastal development permit (or waiver thereof) to have the emergency work be considered permanent. The emergency work shall be removed in its entirety within 150 days of the date of this permit (i.e., by July 29, 2000 unless before that time the California Coastal Commission has issued a regular permit (or waiver thereof) for the development authorized by this emergency permit.
5. In exercising this permit, the permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g., U.S. Army Corps of Engineers, California State Lands Commission, Regional Water Quality Control Board, Monterey Bay National Marine Sanctuary, Monterey County, City of Monterey).
7. Permittee shall insure that the work authorized by this permit complies with all applicable ordinances, easements, and permit requirements imposed by the City of Monterey; permittee shall submit to the Executive Director copies of all local approvals and easements upon issuance by the City.
8. Permittee shall engage in no activity that results in pollution of the adjacent marine environment (concurrently comprising a portion of the Monterey Bay National Marine Sanctuary). Such pollution includes, but is not limited to, concrete slurry, petroleum residues, and increased turbidity. Work shall be performed at low tide, so that construction equipment does not operate in Bay waters.

Particular care shall be exercised to prevent foreign materials (e.g., construction scraps, concrete, metal bar, wood preservatives, other chemicals, etc.) from entering state waters. Where additional wood preservatives must be applied to cut wood surfaces, the materials, wherever feasible, shall be treated at an onshore location to preclude the possibility of spills into state waters. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or clean up of foreign materials not properly contained.

Ex 3 2/4

3-00-012



If pile installation, or any other portion of the operations and maintenance program, requires the pouring of concrete in, adjacent to, or over the water, the following methods shall be employed to prevent uncured concrete from entering or coming into contact with state waters:

- a. Complete dewatering of the pour site, within a caisson or other barrier; the site to remain dewatered until the concrete is sufficiently cured to prevent any significant increase in the pH of adjacent waters; or,
- b. the tremie method, which involves placement of the form in water, inserting a plastic pipe down to the bottom of the form, and pumping concrete into the form so that the water is displaced towards the top of the form. If this method is selected, the displaced waters shall be pumped off and collected in a holding tank. The collected waters shall then be tested for pH, in accordance with the following California Department of Fish and Game recommendations. If the pH is greater than 8.5, the water will be neutralized with sulfuric acid until the pH is between 8.5 and 6.5. This pH-balanced water can then be returned to the sea. However, any solids that settle out during the pH balancing process shall not be discharged to the marine environment; or,
- c. Placement of a form during a sufficiently low tide such that the form is not in contact with Bay water, then sealing the outside bottom of the form with sandbags so that no Bay water will later come into contact with concrete inside the form, and pumping concrete into the form. The form shall be removed only at low tide and only after the concrete has cured sufficiently to prevent alteration of the pH of Bay water by contact with the concrete.

In each case involving such concrete pours in or near waters, a separate wash out area shall be provided for the concrete trucks and for tools. The wash out area(s) shall be designed and located so that there will be no chance of concrete slurry or contaminated water runoff to the state waters, nor into storm drains or gutters which empty into such bodies of water.

9. Permittee shall insure that heavy equipment operations on and adjacent to the construction site are kept to the absolute minimum necessary to install the temporary emergency measures authorized by this emergency permit. Project staging areas shall be kept to the minimum size necessary, and shall be restored to their pre-existing condition immediately upon completion of the emergency work. All leaks, drips, and other spills shall be cleaned up immediately and contaminated materials properly disposed of at an off-site location. Equipment shall not be refueled on beach areas.
10. Any dewatering required to install the emergency protection measures shall be coordinated with the Executive Director of the Coastal Commission, the Monterey Bay National Marine Sanctuary, the Central Coast Regional Water Quality Control Board, and the City of Monterey, to the greatest degree feasible. All water discharges shall conform to requirements of these agencies.

Ex 3 3/4

3-00-012

11. Within 30 days of the date of this permit (i.e., by March 31, 2000), permittee shall remove all portions of the collapsed pilings within the vicinity of the project site, and dispose of such materials at a licensed landfill.
12. Failure to comply with the conditions of this approval will result in enforcement action under the provisions of Chapter 9 of the Coastal Act.
13. The issuance of this emergency permit does not constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit and shall be without prejudice to the California Coastal Commission's ability to pursue any remedy under Chapter 9 of the Coastal Act.

As noted in Condition 4 above, the emergency work carried out under this permit is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a coastal development permit (or waiver thereof) must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly.

If you have any questions about the provisions of this emergency permit, please contact the Commission's Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

Ex 3 4/4

3-00-012



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE

Monterey Bay National Marine Sanctuary  
299 Foam Street  
Monterey, California 93940

May 4, 2000

Christopher Shake  
Fish Hopper Restaurant  
700 Cannery Row  
Monterey, California 93940

Dear Mr. Shake:

This letter is notification that that you have 24 hours to correct several violations of Authorization MBNMS-2000-002. If corrective action is not completed by that time to fulfill the terms of the authorization as set forth below, we will move to immediately suspend and possibly revoke the authorization.

On Friday, April 21, 2000, Sanctuary staff identified several violations of Authorization MBNMS-2000-002 at the Fish Hopper Restaurant. A construction crew was observed working in the intertidal area at the northeast corner of the restaurant. The workers had demolished part of a concrete caisson and deposited the debris (concrete remnants) on the seabed within the Sanctuary. The pile of debris was below the rising tide waters. The ocean water level was at the workers' knees as they used a pneumatic jackhammer to drill holes into the bedrock. They then inserted short lengths of steel rebar into the holes as preparation of a foundation for a new caisson. Staff also observed that sand bags used in the recent construction of other caissons had not been removed from the intertidal area and were becoming covered in sand. This work violated the following conditions of Authorization MBNMS-2000-002:

*Special Condition 3* - No construction work may be conducted below the mean high water line unless tidal waters have receded from the authorized work area.

*Special Condition 6* - No material may be abandoned or discharged into the waters of the Sanctuary at any time, including construction materials or demolition debris such as concrete, forms, tools, lumber, pipes, plastic sheeting, rebar, etc. The authorization holder shall immediately report to the Sanctuary Superintendent the discharge/deposit of any matter into the Sanctuary (whether intentional or accidental) as a result of this project, with the exception of debris from building structural supports authorized by the Sanctuary for demolition, provided all such debris is recovered. In addition, a

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detailed description of any such incident shall be included in the written report required by General Condition #8 of this Authorization.

*Special Condition 7* - All caissons, pilings, and parts thereof must be removed entirely from the Sanctuary. All debris resulting from demolition and construction activity must be removed beyond the reach of ocean waters prior to the next high tide to avoid migration into the Sanctuary. No debris shall be neglected, abandoned, or stored within the reach of ocean waters.

The Sanctuary Enforcement Coordinator notified the contractor, Paul Stokes, who arrived at the site during the inspection, that the work was a violation of the Sanctuary authorization because ocean waters had not receded from the authorized work area, the concrete debris had not been removed prior to contact with the next flood tide, and the sand bags had similarly not been removed prior to contact with the next flood tide. Mr. Stokes stated that the demolition work had been completed the day before and assured the enforcement coordinator that the debris would be removed by the end of the day (Friday, April 21, 2000). He stated that the sand bags had been left in place in anticipation that they would soon be transferred to pack the base of the steel form for the next caisson to prevent the escape of uncured cement during the cement pour operation.

On Tuesday, May 2, 2000, Sanctuary staff again inspected the worksite and discovered that the concrete debris was still present in the intertidal zone, and had additionally been scattered by the surf to other intertidal locations. Sand bags still remained in the intertidal zone, and several had become almost completely buried. In addition to the previous violations, 10-20 steel rebar rods were found stored in the intertidal zone in violation of Special Condition 8 of the authorization. Due to the failure of the contractor to correct the violations pointed out to him by Sanctuary staff, we are considering action to immediately suspend or revoke Authorization MBNMS-2000-002 for construction work within the Monterey Bay National Marine Sanctuary. You are hereby instructed to correct the aforementioned violations within 24 hours of receipt of this notification. Failure to do so may result in immediate enforcement action by the National Oceanic and Atmospheric Administration. In addition, any violation of authorization terms and conditions may subject the authorization holder to civil penalties, forfeiture costs, and other remedies under the National Marine Sanctuaries Act and regulations at 15 CFR Part 922 in accordance with General Condition 7 of the authorization.

Upon receipt of written confirmation from your office that the aforementioned violations have been corrected, Sanctuary staff will inspect the site, and you will be informed in writing whether work may resume under Authorization MBNMS-2000-002.

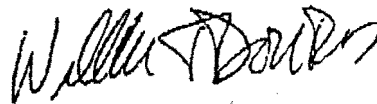
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If you have any questions regarding this action, you may contact me by phone at 831-647-4201 or Scott Kathey at 831-647-4251.

Sincerely,



WILLIAM J. DOUROS  
Superintendent

cc: P. Stokes, West Coast Divers  
L. Otter, CCC  
T. Beuttler, NOAA GCOS  
C. Teraoka, NOAA OLE

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**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
ENFORCEMENT DIVISION  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863



VIA CERTIFIED MAIL (RECEIPT P 437 924 267)

May 11, 2000

To: Mr. Chris Shake  
Fish Hopper Restaurant  
700 Cannery Row  
Monterey CA 93940

Property Location: **700 Cannery Row, City of Monterey**

Subject Activity: **Demolition and Replacement of Concrete Pilings**

Violation File: **V-3-00-003**

Dear Mr. Shake,

Staff of the California Coastal Commission have received a copy of a letter from staff of the Monterey Bay National Marine Sanctuary to you dated May 4, 2000, notifying you of violations of Sanctuary Authorization MBNMS-2000-002 (see attached). The violations consisted of deposition of concrete debris from a concrete caisson into the intertidal area, work in the water including drilling of holes into the bedrock and placement of steel rebar into the holes, failure to remove sand bags from the intertidal area, and storage of rebar in the intertidal area.

These violations of the Sanctuary Authorization are also violations of Emergency Coastal Development Permit 3-00-012-G. Condition 8 of that emergency permit states in part that

*Work shall be performed at low tide, so that construction equipment does not operate in Bay waters.*

*Particular care shall be exercised to prevent foreign materials (e.g., construction scraps, concrete, metal bar, wood preservatives, other chemicals, etc.) from entering state waters.*

**You are hereby notified to stop immediately all work on the property that is not authorized by Emergency Coastal Development Permit 3-00-012-G. All work that is authorized by that permit must be accomplished in strict compliance with the conditions thereof. Please be advised that non-compliance with the terms and conditions of an approved permit constitutes a violation of the Coastal Act.**

Coastal Act Section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a coastal permit without securing a permit, or that may be inconsistent with any permit previously issued by the Commission, the Executive Director may issue a temporary order directing that person to cease

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and desist. Coastal Act Section 30810 states that the Coastal Commission may also issue a permanent cease and desist order after a public hearing has taken place. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

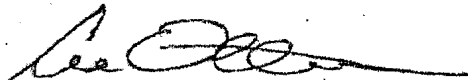
Furthermore, Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000. Coastal Act Section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

Upon receipt of written confirmation from your office that the aforementioned violations have been corrected, Commission staff will inspect the site, and you will be informed in writing of the results.

Please contact Steve Guiney in the Central Coast District Office if you have any questions regarding this matter. All correspondence and communication regarding this matter should be directed to Mr. Guiney at the address and phone number above; please refer to your file number (V-3-00-003) when communicating with this office. Failure to comply with the requirements of this notice will result in referral of this case to our Statewide Enforcement Unit in San Francisco for further legal action.

Thank you for your anticipated cooperation.

Sincerely,



Lee Otter  
District Chief Planner  
Central Coast District Office

cc: Paul Stokes, WCD Inc.  
Frank Donangelo, Cannery Row Company  
Scott Kathey, MBNMS  
Diane Landry, Legal Counsel, California Coastal Commission Central Coast District Office  
Nancy Cave, Manager, California Coastal Commission Enforcement Program

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THE FISH HOPPER  
SEAFOOD & STEAKS  
RECEIVED

COPY

May 18, 2000

MAY 22 2000

Steve Guiney  
Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

RE: The Fish Hopper Restaurant

Dear Mr. Guiney:

I am I receipt of your letter dated May 11, 2000 and would liketo respond to the issues raised therein as follows:

**Drilling:**

The concrete debris mentioned is old concrete (50 years + or -). That concrete was part of one specific caisson that collapsed during the winter storms. When the caisson fell, it took with it some surface rock that had adhered to its underside, thereby leaving a depression approximately 2' deep at that location. New holes need to be drilled into bedrock at that location to receive the new rebar for this caisson. Several cups full of fine powered granite is the result of drilling. You may note from the Marine Sanctuary letter, that the date and time of drilling coincided with the minus tide. It can also be deduced that no condition will exist where a dry area will be available. The dust created by drilling holes, whether scattered by the breeze hundreds of feet from the hole, to rest on the sand washed into the water at high tide or if we drill in 2' of water and the lapping waters dissipate this miniscule amount of organic native material, begs the point.

**Steel:**

The placement of steel into these holes is a very necessary part of the procedure. Failure to do so will result in holes filling up with sand and pebbles thus requiring us to again re-drill the following day. Bare steel rebar has to remain in the location for several weeks while the cage is built (allowed only several hours a day due to wave action.) At such time (mid month) tides become unacceptable for concrete, thus resulting in the steel cage being in site for a month or more. Steel used in marine construction is factory epoxy coated against the effects of salt water so what damage can occur from placement is non-existent.

**Sand Bags:**

Sand bags consist of hession sacks filled with native sand and placed around the form. The reason for their use is two-fold.

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Steve Guiney  
Coastal Commission  
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RE: The Fish Hopper Restaurant

- 1) As a preventative measure to ensure no migration of wet concrete to seep under the form during pouring.
- 2) To lessen the effects of ocean waves from undermining the curing concrete.

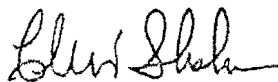
The sand bags should stay in place for ten days until partial strength of the pour is achieved. The tidal action will, of course, partially bury these bags and that is very desirable providing a great barrier to wave action. Bags are removed thereafter. The three caissons poured to date where constructed, were in fact poured during dry conditions.

Please consider this letter as confirmation that steel in the intertidal area is in place there as part of the project and cannot be covered up until the concrete is placed. Please further note that sandbags for three prior pours have been removed after completing their ten day function and that all small, old concrete chunks have been removed (approximately one wheel barrel full) to a landfill.

We intend to cover the steel as soon as the Marine Sanctuary allows us to pour concrete at the more offshore locations per the recognized guidelines (tremie method). We await their reply to our letter of May 8<sup>th</sup>, 2000, which clearly sets these out.

I hope this letter addresses all of your concerns and if we can clarify any further points, please do not hesitate to contact me. I thank you in advance for your attention and consideration.

Sincerely,



Chris Shake  
Proprietor

cc: Scott Kathey, Monterey Bay National Marine Sanctuary  
Frank Donangelo, Cannery Row Company  
John Villapondo, Monterey Building Department  
Paul Stokes, West Coast Divers  
Diane Landry, California Coastal Commission  
Nance Cave, California Coastal Commission  
T. Beuttler, NOAA

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