

CALIFORNIA COASTAL COMMISSION

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COASTAL DEVELOPMENT PERMIT APPLICATION

Application number3-05-031, Bubba Gump's Deck Expansion

Applicant.....Bubba Gump Shrimp Company; Attn: Scott Barnett, CEO

Project location720 Cannery Row, Monterey (Monterey County)

Project description.....Construction of an approximately 1,560 square foot deck addition (1,200 square feet for outdoor restaurant dining, 360 square feet for public access) with 8-foot tall glass windscreens and a five-foot-wide lateral access that will connect with the approved Monterey Peninsula Hotel promenade access when constructed. New deck addition and lateral access will cantilever over intertidal area and connect to an adjacent structure at 700 Cannery Row; no new support structures will be placed in the intertidal area; project includes expansion of door opening from existing dining room to new deck and construction of a screen wall between the new deck and the adjacent 700 Cannery Row trash area.

Local approval.....Negative Declaration granted 4/12/05.

File documents.....Initial Study/Mitigated Negative Declaration dated March 11, 2005; Marine Biological Field Survey (Padre Associates, May 18, 2005).

Staff recommendation ...Approval with Conditions

Summary: The applicant proposes to construct a 1,560 square foot deck addition over public tidelands at the northeastern side of the Bubba Gump Shrimp Company restaurant on Cannery Row. The majority of the new deck (1,200 square feet) is proposed for outside restaurant dining and will accommodate a maximum of 84 diners; 360 square feet of the deck is proposed for new public access. This new public access consists of a 6-foot accessway to a 100-square-foot overlook area, as well as the installation of three new coastal access signs to guide pedestrians to the new public access overlook area. As proposed, the deck will span the intertidal area between the existing restaurant and the adjacent structure at 700 Cannery Row. Additionally, the project includes a five-foot-wide lateral access walkway that will provide lateral access to the approved Monterey Peninsula Hotel promenade when that access is constructed. No new piers, footings, or other support structures will be placed in the intertidal area below the restaurant.

Coastal Act Section 30210 requires maximization of public access. Cannery Row LUP Public Access Policy 3(d)(2) provides guidance regarding the maximization of public access by requiring a minimum



California Coastal Commission
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Staff: S. Craig Approved by:
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lateral access of 8 feet wide across the seaward side of structures, as a condition for all new development. This policy further provides for continuous lateral access, linking the adjacent parcels along Cannery Row that are located over public tidelands. To construct an 8-foot-wide lateral access, however, would require installation of new pilings along the seaward edge of the walkway, directly into the surf zone of the rocky intertidal area, which the applicant is concerned would be highly dangerous for construction workers and financially infeasible. Therefore, the applicant has instead proposed a five-foot-wide cantilevered lateral access that will extend from the proposed viewing deck and connect to the approved Monterey Peninsula Hotel promenade access, when that access is constructed. The applicant has proposed to construct the lateral access portion of the project only when the Monterey Peninsula Hotel project has been completed. This timing, however, is inconsistent the Coastal Act’s requirement regarding maximization of public access and is also inconsistent with the guidance provided by Cannery Row LUP Public Access Policy 3(d)(2). Thus, the project is conditioned to require that the five-foot-wide lateral access walkway be open for use concurrent with the proposed outdoor dining deck and associated public access overlook. The project is also conditioned to provide for protection of nesting seabirds during construction, to require evidence of Monterey Bay National Marine Sanctuary approval (if necessary), to specify when the public access components of the project may be closed for safety reasons, and to require a signage plan for the lateral public access walkway. Only as conditioned, will the project comply with the Chapter 3 policies of the Coastal Act.

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IV. Exhibits

- Exhibit 1: Location Map
- Exhibit 2: Project Plans
- Exhibit 3: Figures 4 & 4a from Cannery Row Land Use Plan
- Exhibit 4: Biological Survey Report
- Exhibit 5: Best Management Practices
- Exhibit 6: City Parking Survey

I. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number 3-05-031 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development 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 a Coastal Development Permit. The Commission hereby approves the coastal development permit on the grounds that the development, as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development 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 feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the development on the environment.

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

B. Special Conditions

1. **Public Access. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit a revised public access signage plan to include coastal access signs placed at both ends of the lateral access walkway. The lateral access walkway shall provide for a connection between the 100-square-foot view deck and the approved Monterey Peninsula Hotel public access (when constructed), as shown in Exhibit #2. All public access components of the project, including the six-foot-wide vertical walkway leading to the 100-square foot overlook area, as well as the lateral access walkway, shall be constructed and ready for use prior to occupancy of the dining deck addition. The lateral public access walkway, the vertical public access, and the view deck area shall be open daily (whether or not the outside dining deck is in active use) from 8:00 a.m. until one hour after sunset. The lateral access and view deck may be closed during these hours during storms or otherwise dangerous conditions, but must be reopened as soon as the dangerous conditions have passed. The permittee is responsible for the maintenance of all access components of the approved project. If lateral access is required at the adjacent 700 Cannery Row building in the future, the permittee shall cooperate in connecting the existing lateral access at the Bubba Gump Shrimp Company site to the lateral access at the 700 Cannery Row building.
2. **Nesting Seabird Exclusion Plan. PRIOR TO COMMENCEMENT OF CONSTRUCTION (and only if construction will take place during the seabird nesting season from January through July),** the permittee shall submit to the Executive Director for review and approval a detailed program to preclude seabirds from using the site during the construction period. The program shall include, but not necessarily be limited to, the type of material to be used for excluding birds from the site during construction, the method of securing the exclusionary material to the work site and ensuring that it extends to sea level at all times, the proposed date of initial placement of the material, and measures to ensure that no nesting seabirds are disturbed by the installation of the material.



3. **Monterey Bay National Marine Sanctuary. PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the permittee shall submit to the Executive Director evidence that the Monterey Bay National Marine Sanctuary has given its authorization, if necessary, for the proposed project.
4. **Deed 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 parcel governed by this permit a deed 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 deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed 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.

III. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Background

The project as originally proposed did not include a lateral access walkway component. Commission staff had prepared a staff report for the July 2005 hearing, which was conditioned to require a lateral access component. The applicant requested and was granted a postponement by the Commission at the July 2005 hearing. Since that time, the applicant has revised the project to include a lateral access component. The applicant also agreed to a 90-day extension of time for decision on the coastal development permit. Accordingly, the deadline for Commission decision on this permit application was extended from November 14, 2005 to February 12, 2006.

B. Project Location & Description

The proposed project is located at the existing Bubba Gump Shrimp Company Restaurant at 720 Cannery Row in the City of Monterey, directly adjacent to the Monterey Bay (see Exhibit #1 for location map). The proposed project consists of a 1,560 square foot deck addition over public tidelands at the northeastern side of the Bubba Gump Shrimp company restaurant. The majority of the new deck (1,200 square feet) is proposed for outside restaurant dining and will accommodate a maximum of 84



diners; 360 square feet is proposed for new general public access. This new public access consists of a 6-foot-wide vertical accessway to a 100-square-foot view deck, as well as the installation of three new coastal access signs to guide pedestrians to the new public access view deck. As proposed, the deck will be constructed to span over the intertidal area at the edge of the Monterey Bay between the existing restaurant and the adjacent structure at 700 Cannery Row. Additionally, the proposed project includes construction of a five-foot-wide lateral access walkway that will connect to the approved Monterey Peninsula Hotel promenade when that access is constructed in the future. This accessway would be located in the same area and in similar dimensions as an existing window washing deck. No new piers, footings, or other support structures will be placed in the intertidal area below the restaurant for any of the proposed development. The proposed deck will include 8-foot-high glass windscreens on the ocean-side of the deck, as well as the construction of a screening wall between the deck and the trash area at the adjacent 700 Cannery Row building. See Exhibit #2 for proposed project plans.

The proposed project will extend over the intertidal waters of the Monterey Bay. The intertidal areas along Cannery Row are State public trust lands, previously granted to the City of Monterey, and are subject to the purview of the State in accordance with City of Monterey-State of California lease agreements.

The Monterey Peninsula Water Management District has determined that a water allocation is not required for outdoor restaurant seating. Thus, the proposed deck addition and its use for outdoor restaurant dining will not require an additional water allocation.

C. Standard of Review

This area of the City of Monterey falls within the coastal zone. The Cannery Row Land Use Plan (LUP) was effectively certified in 1981. However, several other components of the Local Coastal Program (LCP) (including one land use segment and the implementation plan) are not yet certified. Thus, the City does not have a fully certified LCP. Therefore, the LUP at this stage of the certification process is advisory only. Because of the lack of a certified LCP and the extension of the development over public trust lands, the standard of review for the project is the Coastal Act.

D. Coastal Act Issues

1. 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, 30220, and 30221 specifically protect public access and recreation. 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...*

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

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 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.*

The Cannery Row LUP includes a number of policies that apply specifically to the Bubba Gump Shrimp Company site. Cannery Row LUP Public Access Policies 3d and 3e state, in relevant part:

3(d)(1). *Where new development is proposed for an existing structure or on slabs presently extending over the water, pedestrian access to viewpoints overlooking Monterey Bay as conceptually shown in Figure 4 is to be provided as a condition of development. This access is to be open to the public during business hours with the exception of those coastal dependent uses where access is not appropriate. Maintenance and liability of this access is to be the responsibility of the property owner. This access and viewpoint may be open or enclosed and within, above, or below the structure.*

Pedestrian access to the viewpoint, if enclosed, is to be a minimum width of 6 feet. If open, the pedestrian access to the viewpoint is to be a minimum width of 10 feet. The viewpoint at the end of the pedestrian access is to consist of a minimum of 100 square feet of accessible viewing area. The square footage of any public pedestrian access and viewpoint opportunities provided in addition to those required minimum standards is not to be counted against the total maximum building square footage allowed by the floor area ratios set in the Development section of this LUP.

3(d)(2). *Pedestrian movement parallel and adjacent to the water shall be required with*



unobstructed views of the water in the form of an open or enclosed walkway a minimum of 8 feet wide across the seaward sides of structures, as a condition of all new development, consistent with the Coastal Act's requirements for shoreline access. ... (b) For the greatest length of Cannery Row, continuous lateral access linked from parcel to parcel, shall be developed as part of each project. In the four areas shown in Figure 4a... lateral access shall be provided. These accessways shall, if possible, be continuous and linked from parcel to parcel. Linked accessways in such areas shall be deemed feasible with the following exceptions... (4) Along stretches of the rocky shoreline where public safety considerations preclude lateral accessways. Access may be precluded only during hazardous periods if the City concurs that public safety concerns exist. Management techniques rather than physical barriers shall be used wherever feasible.

3(e)(5)(6). 5) Improve and coordinate (i.e., directional signing) pedestrian access along Cannery Row with other access points shown in Figure 4. 6) Include access signing in a coordinated directional signing program for Cannery Row.

The tidelands along Cannery Row 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:

SEC. 4. 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.

This Section of the Constitution is incorporated by reference into the Coastal Act through Section 30210. Thus, regarding the Cannery Row tidelands, the public trust is to be fulfilled in a manner consistent with Coastal Act access policies requiring maximum access to and along the shoreline. For this reason, the Cannery Row LUP provides numerous specific requirements regarding public access along the Cannery Row shoreline. The proposed project involves an intensification of use of an existing visitor-serving structure that is located on a portion of these public tidelands. Currently, there is no general public access to the public tideland area occupied by the Bubba Gump Shrimp Company.

Cannery Row is a popular tourist destination, which contains many shops, restaurants, several hotels, and the Monterey Bay Aquarium. The Cannery Row coastline is generally rocky but there are two accessible beaches, specifically McAbee Beach and San Carlos Beach. Public visual access of the coastline is largely blocked by development but does exist at four points along the Row, specifically at a plaza at the Monterey Bay Aquarium; Steinbeck Plaza; a walkway below the Chart House restaurant; and a plaza at the Monterey Plaza Hotel and Spa. In addition, the Commission approved the



development of the Monterey Peninsula Hotel in 2001. When developed, the Monterey Peninsula Hotel will be located directly adjacent (northwest) of the existing Bubba Gump Shrimp Company restaurant (see pg. 1 of Exhibit #2). The Commission's approval of the hotel included extensive public access amenities, including lateral access along the hotel's entire ocean frontage, as well as a promenade area directly adjacent to the Bubba Gump Shrimp Company that will extend slightly further seaward than the existing restaurant building.

The proposed project consists of a 1,560 square foot deck addition at the northeast side of the Bubba Gump Shrimp Company restaurant on Cannery Row, including a windscreen enclosure (Exhibit #2). Approximately 1,200 square feet of the new deck is proposed for outside dining and will accommodate a maximum of 84 patrons at a time. The development also includes a new 6-foot-wide vertical public accessway leading to a new 100-square-foot viewpoint area at the edge of the Monterey Bay for a total public access area of 360 square feet. The width of the proposed vertical public accessway is consistent with certified LUP Public Access Policy 3(d)(1). The size of the proposed 100-square-foot viewpoint area is also consistent with LUP Public Access Policy 3(d)(1). These land use policies provide specific guidance for access along the Cannery Row tidelands, consistent with the public access policies of the Coastal Act.

The proposed project also includes construction of a cantilevered 5-foot-wide lateral access walkway in an area where a window washing ledge now exists. This lateral access will connect the proposed view deck with the approved Monterey Peninsula Hotel promenade, when the hotel is constructed. New deck supports would be installed with deck railing posts, as well as horizontal wire cables spaced four inches apart and a top railing. New 4' x 12' beams would be installed and would cantilever out approximately six feet to provide for the five-foot-wide lateral walkway. The walkway decking would consist of pressure treated wood.

Coastal Act Section 30210 requires maximization of public access. Cannery Row LUP Public Access Policy 3(d)(2) provides guidance for maximization of public access by requiring a minimum lateral access of 8 feet in width across the seaward side of structures, as a condition for all new development. This policy further provides that continuous lateral access, linking adjacent parcels along Cannery Row, be required for areas shown in Figure 4a of the Cannery Row LUP (see Exhibit #3 for Figure 4a). The subject parcel is one of the areas shown in Figure 4a. There are a number of constraints, however, that make an 8-foot-wide lateral access walkway difficult to implement in conjunction with this project. According to the Commission's staff engineer, the maximum width of a cantilevered lateral access walkway is approximately six feet, in any situation. The proposed cantilevered lateral access is a total of 6 feet in width when the railing and structural supports are included. According to the Commission's staff engineer and the project engineer, an 8-foot-wide lateral access walkway could not be cantilevered but would instead require pile supports at the seaward edge of the walkway. There is, however, a sharp drop-off just seaward of the Bubba Gump Shrimp Company building. Thus, the area where piles would need to be placed to support an 8-foot-wide walkway would be located at approximately -10 feet MLLW. The work to install pilings along the seaward edge of the walkway would need to be done in an area of ocean surge and wave forces. According to the project's contractor, this would be extremely dangerous for the construction workers and would cost at least 20 times as much as piling placement



done in areas above the surf zone (pers. comm. Paul Stokes, West Coast Divers). In light of these constraints and the relatively small size and cost of the proposed restaurant improvements, accepting the applicant's offer to construct a five-foot wide lateral accessway is an appropriate way to maximize coastal access opportunities consistent with Coastal Act requirements. If future expansions or modifications to the restaurant are proposed, expanding the lateral accessway will need to be further considered.

As discussed above, the approved Monterey Peninsula Hotel has extensive public access amenities, including lateral access along the entire hotel seaside frontage, which will extend to a large promenade area directly adjacent to the Bubba Gump Shrimp Company. The proposed Bubba Gump project includes a lateral public access walkway that will connect to the Monterey Peninsula Hotel promenade access when the hotel is constructed. The applicant has requested that the lateral access walkway not be completed until the Monterey Peninsula Hotel access improvements are constructed. Cannery Row LUP Public Access Policy 3(d), however, requires lateral access across the seaward sides of structures as a condition of *all* new development, whether or not the lateral access will provide a connection to adjacent access. Furthermore, Coastal Act Section 30212(a) requires that public access along the coast be provided in new development projects. Therefore, the proposed lateral access is required as part of the overall proposed dining deck expansion project and cannot be separated from that part of the project. Finally, the Commission originally approved a hotel development on the adjacent property in 1984; that project was never constructed. In 2001, the Commission approved a revised hotel development on the adjacent property, which still has not been constructed. Given this history, it would be unwise to allow a delay in construction of the lateral access walkway until the hotel public access is completed. Therefore, Special Condition #1 requires that all public access components of the project shall be constructed and ready for use prior to occupancy of the dining deck addition. This condition also specifies that the public access will be required to be open from 8:00 a.m. to one hour after sunset, consistent with the lateral access approved for the Monterey Peninsula Hotel. This condition also requires submission of a signage plan for the lateral access walkway. As conditioned, the project is consistent with Coastal Act Section 30210 and Cannery Row LUP Public Access Policy 3(d)(2).

The applicant has expressed safety concerns regarding the public access during storm periods or periods of high tides. Consistent with the guidance provided by Cannery Row LUP Public Access Policy 3(d)(2)(4), Special Condition #1 provides that the applicant may close the accessway and view deck during stormy or otherwise dangerous conditions. The accessway and view deck must be reopened as soon as the dangerous conditions abate.

In conclusion, the proposed project, as conditioned, is consistent with the public access policies of the Coastal Act and of the Cannery Row Land Use Plan.

2. Marine Environment & Environmentally Sensitive Habitat

Coastal Act Sections 30230 and 30231 provide for the protection of marine resources and the biological productivity of coastal waters and state:



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.*

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.*

Cannery Row LUP Natural Marine Resources and Habitat Area Policies 3b and 3j protect sensitive shoreline habitats and state:

3b. *Require sensitive shoreline restoration (debris cleanup) and maintenance (litter control) in a manner that will not impair biological productivity for the habitat and restoration needs areas shown in Figure 2, as a condition for any grading, excavation, demolition, or construction in conjunction with shoreline development.*

3j. *For any grading, excavation, demolition or construction undertaken in conjunction with improvements to existing over-water structures, require as a condition of development control measures... that will protect the sensitive marine resources beneath existing over-water structures.*

a. Biological Resources

Intertidal Species. The proposed deck expansion project will span the water at the intertidal edge of the Monterey Bay. The applicant's biologist performed a survey of the plant and animal species located in the intertidal habitat that will be shaded by the proposed deck expansion. The biologist also performed a survey of the immediately adjacent intertidal areas that are already shaded by existing development (see Exhibit #4 for biologist's report and photos of intertidal area). The decking will extend to the approximately 0.00 ft (MLLW) tide-line over rock and cobble/boulder habitats in the intertidal zone of Monterey Bay. The proposed deck will be located between two existing pile-supported buildings that cover similar habitat and extend as far as or slightly farther offshore than the proposed development. In the case of the proposed lateral accessway, there is a window washing walkway of a similar width located in this area currently. Thus, the proposed lateral accessway will be located in an area already shaded by existing development and will not cause any additional shading of the intertidal zone.

The biologist's survey found that relatively few species were present in the intertidal area below the



proposed deck and that most of these species are commonly found elsewhere in the Monterey Bay area within similar habitats. Dominant epifauna in the upper intertidal area (+2 to +5 feet) included littorine snails, turban snails, and limpets. The mid-tide area (0 feet to +2 feet) was characterized by a dark purple encrusting coralline algae, aggregating anemones, and sandcastle worms. The survey found that the species composition under the existing restaurant (shaded area) was similar to that observed within the area that is currently non-shaded but will become shaded with development of the proposed deck. Two differences, however, were observed: 1) the relative abundance of aggregating anemones was lower within the shaded area than in the non-shaded area, and; 2) a larger area of shaded rocks was covered with the encrusting purple coralline algae than non-shaded rocks. These differences are likely due to: 1) reduced symbiotic algae (which require sunlight) that anemones use to augment captive feeding, and; 2) the fact that shaded rock surfaces dry more slowly than those that are directly exposed to sunlight, resulting in an expansion of habitat conducive to the observed coralline algae.

The survey concluded that the habitat that will be shaded by the proposed decking is not unique to the area nor does it support any rare, threatened, or endangered species, and that similar habitat and plant and animal species are found in the upper and mid-intertidal areas along Cannery Row and throughout the Monterey Bay peninsula. The shading resulting from the proposed deck expansion will not have a significant effect on or result in substantial alteration to the plant and animal communities that currently exist in this area. While there may be a shift in the relative abundance of some common species (e.g., aggregating anemones and encrusting coralline algae), no significant negative impacts are anticipated as a result of the proposed project. Thus, the proposed project is consistent with Coastal Act Sections 30230 and 30231.

Nesting Seabirds. Several species of seabirds, including pigeon guillemots and pelagic cormorants, are known to nest under buildings along Cannery Row. Neither of these bird species is a listed species. Nevertheless, they are important in the coastal marine ecology of the area. These birds begin their nesting season in January or February of each year, and complete nesting by August. No nesting seabirds were observed under the Bubba Gump Shrimp Company restaurant during the biological survey in May 2005; the only birds observed during the survey were nonnative pigeons (pers. comm. Ray de Wit).

Although no nesting seabirds were seen this year under the Bubba Gump Shrimp Company restaurant, it is possible that seabirds could nest in this area in the future. Thus, if construction of the proposed project were delayed until early 2006 (the start of the nesting season), there could be potential impacts to nesting seabirds. Special Condition #2, therefore, requires that if construction takes place during the seabirds' nesting season, that the applicant must submit a plan to exclude birds from the project site. The recommended method is to screen the seaward portion of the site down to sea level with heavy-duty netting dense enough and heavy enough to preclude birds from getting through it, while preventing birds from becoming entangled in the netting. The goal would be to exclude birds from the site entirely during construction only. Once the project is completed, the birds could resume use of the area. As conditioned, the project is consistent with Coastal Act Sections 30230 and 30231, as well as Cannery Row LUP Natural Marine Resources and Habitat Area Policy 3j.



b. Water Quality

The proposed deck expansion and lateral access will span above the intertidal edge of Monterey Bay. No new footings, piers, or support structures will be constructed in the intertidal area below the proposed deck or the lateral access. All construction will take place above the water and the intertidal rocks. The applicant has included a series of best management practices in the project description to protect water quality during construction (see Exhibit #5). These best management practices provide adequate protection of the intertidal area below the restaurant from impacts due to construction activities. Thus, the proposed project is consistent with the water quality protection policies of the Coastal Act and the certified Cannery Row Land Use Plan.

3. Traffic & Parking

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The majority of businesses along Cannery Row, including the Monterey Bay Aquarium and a variety of shops and restaurants, do not provide on-site parking or off-site parking lots for their customers. Instead, the City has a comprehensive parking program that consists of an approximately 1,000-space public parking garage one block off of Cannery Row. In addition to this parking garage, there are approximately 1,150 other on-street or other-parking-lot spaces in the Cannery Row area. The City also operates the WAVE (Waterfront Area Visitor Express) shuttle system that operates during the peak summer months from the Memorial Day weekend through the Labor Day weekend. The WAVE program, which is free to users, shuttles visitors from the underused parking areas in downtown Monterey to Cannery Row. Signs along major incoming streets direct visitors to downtown parking lots when traffic and parking in the Cannery Row area are impacted. Summer 2000 WAVE ridership totaled 103,869. In 2004, the City began operating additional shuttle vehicles (a total of five shuttle trolleys can now be in use at one time) and WAVE ridership increased to approximately 168,000.

The City of Monterey Parking Division performs a parking occupancy survey each August, over a three-day peak period (Friday, Saturday, and Sunday). The survey is conducted in August because that is the month that parking is most impacted on Cannery Row. In August 2004 approximately 90% of the available parking spaces in the immediate Cannery Row area were occupied at 1:00 p.m., with less than 48% of these spaces being occupied at 7:00 p.m. (see Exhibit #6, Area C). The seven-year occupancy



average for August 1998 through August 2004 at 1:00 p.m. was 86%. The average occupancy for 7:00 p.m. for these seven years was less than 55%. Thus, even at peak times, there is generally some parking available in the Cannery Row area.

The Bubba Gump Shrimp Company deck expansion is being proposed because during peak periods (e.g., weekends, holidays, summer days) the restaurant often has a waiting time (for its patrons to be seated) of at least an hour. Thus, the proposed deck expansion is being proposed to enable the restaurant to accommodate more patrons at a time and to reduce the length of waiting times for a table. The proposed project is not a new attraction on Cannery Row and thus will not likely attract additional visitors to Cannery Row, but will instead better accommodate existing visitors through reduced waiting times. Thus, the proposed project will not cause additional traffic and parking impacts along Cannery Row. In addition, as discussed above, there is generally adequate parking for visitors in the Cannery Row area and the City operates a free shuttle program to Cannery Row during the busy summer season, which reduces traffic and parking impacts on Cannery Row. For all these reasons, the proposed project is consistent with Coastal Act Section 30252 regarding the maintenance and enhancement of public access to the coast.

4. Other Agency Review

The applicant will also need to secure authorization for the proposed project from the Monterey Bay National Marine Sanctuary (MBNMS). The applicant has applied to MBNMS for authorization of the project and Commission staff has discussed the project with MBNMS staff. Special Condition #3 requires that, prior to commencement of construction, the permittee demonstrate that authorization from MBNMS for the project has been received.

IV. 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. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions which implement the mitigating actions required of the applicant by the Commission (see Special Conditions). As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.

