

CALIFORNIA COASTAL COMMISSION

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Staff: Ryan Moroney - SC
Staff Report: 7/23/2015
Hearing Date: 8/14/2015

ADMINISTRATIVE COASTAL DEVELOPMENT PERMIT AMENDMENT

Application Number: 3-14-1013-A2

Applicant: Monte Foundation

Project Location: At the end of the City-owned Capitola Municipal Wharf and adjacent to Monterey Bay in the City of Capitola, Santa Cruz County.

Description of Previously Approved Project: Permit allowing a 30-minute fireworks display (including construction of a staging area and safety zone) as a free public event in October 2014

Proposed Amendment: Extend prior approval for a single fireworks event to a five year permit allowing an annual 30-minute fireworks display (including construction of a staging area and safety zone) as a free public event each October from 2015 through 2019.

EXECUTIVE DIRECTOR'S DETERMINATION

The findings for this determination and the special conditions appear on subsequent pages.

NOTE: Public Resources Code (PRC) Section 30624 provides that this permit amendment shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission on August 14, 2015 at the following location:

Chula Vista Council Chambers
276 Fourth Avenue
Chula Vista, CA 91910

IMPORTANT: Before you may proceed with development, the following must occur:

You must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office pursuant to Title 14 Cal. Admin. Code Sections 13150(b) and 13158. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

BEFORE YOU CAN PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.

CHARLES LESTER
Executive Director

By: **SUSAN CRAIG**
Central Coast District Manager

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EXHIBITS

Exhibit 1: Project Location Map

Exhibit 2: Aerial Photo of Project Site

The amended permit is subject to the following special conditions. The modifications from the original permit conditions are noted in strikethrough and underline format.

I. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date 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 term or 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.

II. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Notice to Executive Director and Other Agency Approvals.** ONE MONTH PRIOR TO THE COMMENCEMENT OF ~~THE~~ EACH FIREWORKS EVENT, the Permittee shall notify the Executive Director of the proposed date for the Fireworks Event and submit to the Executive Director for review and approval evidence of all permits, permissions or approvals granted for the fireworks display from: (1) Monterey Bay National Marine Sanctuary; (2) Central Fire Protection District; and (3) United States Coast Guard. The Permittee shall inform the Executive Director of any changes to the project required by any of the above-listed agencies. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally necessary.
- 2. Fireworks Limitations.**
 - a. **Aerial Salute Limitations.** ~~The~~ For each fireworks event, the total number of aerial “salute” shells or devices shall not exceed 6% of the total number of aerial shells and/or special effect pyrotechnic devices combined. Aerial “salute” shells/devices shall not be launched or detonated during the first five minutes of ~~the~~ any fireworks display.
 - b. **All Labels and Wrapping Removed.** All plastic and aluminum labels and wrappings shall be removed from all aerial shells and special effect pyrotechnic devices prior to use and before they are launched or detonated.
 - c. **Prohibited Devices.** Aerial shells and/or special effect pyrotechnic devices that include a plastic outer casing and/or non-biodegradable inner components that make up more than 5% of the mass of the shell/device shall be prohibited.
 - d. **Duration of Display.** ~~The~~ Each fireworks display shall be limited to no longer than 30 minutes.
- 3. Clean-up and Restoration of Capitola Beach and Adjacent Ocean Waters.** FOLLOWING ~~THE~~ EACH FIREWORKS EVENT, all fireworks-related debris from the launch site shall be recovered. The Permittee shall inspect the Capitola Municipal Wharf, Capitola Beach and the adjacent water area for a minimum of two days following the conclusion of the fireworks (~~i.e., through Monday and Tuesday~~) for any remaining event debris, including but not limited to all fireworks detritus. All such debris found shall be properly disposed of and the inspections shall continue for at least 24 hours from the time that any such fireworks debris is located, and indefinitely until such inspections do not identify any more fireworks debris.
- 4. Beach Public Access.** The Permittee shall provide and maintain beach public access at all times.
- 5. Temporary Closure of Capitola Wharf.** The Permittee may close the Wharf to general public access from ~~6~~7:00 a.m. until midnight on ~~Sunday, October 12, 2014~~ the day of each

fireworks event. The Wharf shall be re-opened by 6:00 a.m. the next day.

6. Pre- and Post-Event Monitoring Report. WITHIN 60 DAYS OF THE CONCLUSION OF THE EACH FIREWORKS EVENT, the Permittee shall submit a Pre- and Post-Event Monitoring Report to the Executive Director and the Sanctuary for review and approval. The Report shall, at a minimum, include:

(a) Marine Mammals Monitoring Report.

- i) Conduct a census detailing the number of all pinnipeds and otters in the impact area of the event, i.e. Capitola Beach, around the Capitola Wharf, and in the surrounding waters, on the day prior to the fireworks display with observations to occur for no less than 30 minutes;
- ii) Monitor, record and report all marine mammal injury, serious injury, or mortality observed in the vicinity of the fireworks display area, i.e. Capitola Beach, around the Capitola Wharf, and in the surrounding waters. Monitoring for injury, serious injury, or mortality shall occur no later than the morning after the fireworks display, and shall occur for no less than 30 minutes.

III. EXECUTIVE DIRECTOR'S DETERMINATION

The Executive Director hereby determines that the proposed development is a category of development that qualifies for approval by the Executive Director through the issuance of an administrative permit (pursuant to Public Resources Code Section 30624). Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act.

IV. FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION

A. PROJECT DESCRIPTION & LOCATION

The Monte Foundation is proposing an amendment to CDP No. 3-14-1013 to authorize its annual “Monte Foundation Fireworks Extravaganza” each October for the next five years from 2015 through 2019. The original permit authorized a similar show last year, which raised money for the Capitola Skate Park and Santa Cruz County Schools.¹ No negative coastal resource impacts were reported from the 2014 event, and the required Marine Wildlife Monitoring Report concluded that “although this was certainly a stressful event for the wildlife, especially birds, it was short term and the recovery was rapid.”

Each event will involve the same set-up as the 2014 show. A fireworks safety zone/staging and launching area will be sited on a portion of the Wharf and the entire Wharf will be closed to the public on the day of the event from 7:00 a.m. until midnight. Beach access will remain open and available throughout this time period. The fireworks display will take place over the water at the

¹ The money raised by the 2015 fireworks event will be used to resurface the public tennis courts at Jade Street Park.

end of the Wharf and over Monterey Bay and within the boundaries of the Monterey Bay National Marine Sanctuary (Sanctuary). The fireworks display will begin about 8:00 p.m. and will last approximately 30 minutes. The display will be visible from Capitola Beach, which is located directly south of Capitola's Central Village, as well as from other locations upcoast and downcoast from the Wharf. The Monte Foundation estimates that approximately 10,000 spectators will view each event.

Following each event, the Monte Foundation proposes a Wharf clean-up to take place from 9:00 p.m. until midnight. In addition, there will be a beach clean-up and site inspection that will be performed the following morning from 7:00 a.m. until noon, along with additional beach clean-up for a minimum of two days after the event, until all fireworks debris has been recovered.

Please refer to **Exhibit 1** for a location map and to **Exhibit 2** for an aerial photo of the project site.

COASTAL ACT ISSUES

B. MARINE RESOURCES & WATER QUALITY

Each proposed fireworks display would be launched from the Wharf and the display would take place over the waters of Monterey Bay and the Sanctuary (see **Exhibit 2**). Because such displays can result in discharge into Sanctuary waters, the Sanctuary has historically expressed concern about the potential cumulative impacts to marine wildlife and the environment from fireworks displays, particularly if they proliferate to multiple sites within the Sanctuary. Because of this concern, and to provide guidance for future proposed fireworks events in the Sanctuary, in 2001 the Sanctuary developed an assessment of the impacts of fireworks displays.² This Assessment recognized the historical use of fireworks in certain locations (including Capitola)³ and authorized future fireworks in four discrete areas within the Sanctuary (including Capitola), while noting that fireworks displays would be prohibited within the remainder of the Sanctuary. On March 26, 2001, the Sanctuary requested formal programmatic consultation from the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) within the context of both the Endangered Species Act and the Marine Mammal Protection Act as to the potential for "take" of listed species and/or protected mammals due to fireworks displays within the Sanctuary's boundaries. On June 22, 2005, USFWS provided its biological opinion and concurred that the Sanctuary's authorization of fireworks events within four discrete areas⁴ within the Sanctuary would not likely substantially reduce the overall populations of endangered or threatened species located within these areas. On July 19, 2006, NMFS likewise issued a letter of authorization (LOA) to the Sanctuary authorizing professional fireworks displays within Sanctuary waters. On June 28, 2012, NMFS issued an updated LOA to the Sanctuary authorizing

² *Assessment of Pyrotechnic Displays and Impacts within the Monterey Bay National Marine Sanctuary 1993-2001*, dated March 2001.

³ Fireworks displays were typically held on Independence Day in Capitola throughout the 1970s, and possibly in the decades preceding the 1970s. The City discontinued the Independence Day fireworks displays due to safety and crowd control concerns. Since creation of the Sanctuary in 1993, only three fireworks displays have been held in Capitola. One event took place in 1999 to celebrate the City's 50th anniversary and the second event took place in 2009 to celebrate the City's 60th anniversary. The third event took place last year under the base permit.

⁴ These four areas consist of: 1) Half Moon Bay; 2) Northern Monterey Bay Area (including Santa Cruz, Capitola, and Aptos); 3) Southern Monterey Bay Area; and 4) Cambria.

fireworks displays within Sanctuary waters until 2017. Both USFWS and NMFS recommended that the Sanctuary include appropriate mitigation and conservation measures when authorizing fireworks displays within the Sanctuary to minimize or avoid impacts to special status species. Both the Commission and the Sanctuary have authorized fireworks within Sanctuary waters based in part on the Assessment and its recommendations.⁵

Regarding the proposed fireworks events, a biotic report⁶ was previously prepared to evaluate the potential impact of a 2009 Capitola fireworks display on sensitive bird and mammal species. The report's study area included an approximately 1.5 mile stretch of coastline in Capitola, including the Wharf, terrestrial environments along the beach and shoreline, the mouth of Soquel Creek, and coastal cliffs and bluffs where accessible on foot. Segments of inaccessible shoreline, including coastal cliffs and bluffs, offshore kelp forests, and the underside of the Capitola Wharf were observed from a boat. According to the biotic report, ten special-status species have the potential to occur within the study area. Seven of these special status species were specifically identified as present within the study area during late January 2009.⁷ This biotic report remains applicable and relevant to the proposed fireworks events.

In terms of potential bird impacts, each event will take place in October when the nesting season for birds in the area, including sensitive bird species, is complete. As a result, the fireworks displays are not expected to impact nesting birds. As to potential impacts to non-nesting birds, these impacts would be temporary and short term. Birds would be expected to retreat from the area when the fireworks start, and to return afterwards. Thirteen years of monitoring for similar fireworks events at Seacliff State beach in Aptos has not shown significant adverse bird impacts.

Regarding marine mammals, the biotic report notes that unlike other piers and wharves that are located in Santa Cruz County (e.g., the Municipal Wharf in Santa Cruz and the Seacliff Beach Pier and the "cement ship" at Seacliff State Beach in Aptos), the Capitola Wharf lacks supportive platforms below the Wharf that can be used by marine mammals to haul out. Also, the shoreline in the immediate vicinity of the Capitola Wharf is highly urbanized, actively used by beachgoers, and generally lacks isolated sites that could be used by marine mammals to haul out. Thus, the proposed event will not impact any marine mammal haul-out sites. In addition, this event is not happening during the seal and sea lion breeding seasons, which occurs in early to mid-spring for harbor seals (i.e. March to early May) and late spring into summer (i.e. May to July) for sea lions. Also, this area of Capitola is not a known breeding ground for these species.⁸

Regarding marine mammals located in the waters offshore of the project site i.e., Capitola Wharf, while it is likely that the noise from the fireworks display will disturb marine mammals that may be present in these offshore waters at the time of the event, this disturbance will be

⁵ See, for example, CDPs 3-00-117, 3-01-058, 3-02-027, 3-03-034, and 3-03-034-A1 (Monte Foundation Fireworks at Seacliff State Beach) as well as CDPs 3-09-016 (City of Capitola) and 3-13-0960 (City of Santa Cruz).

⁶ *Supplemental Environmental Report for the City of Capitola 60th Anniversary Fireworks Event Permit Application*, Santa Cruz County, California by Ecosystems West Consulting Group, April 2, 2009.

⁷ The following is the list of the ten special status species that could be present within the study area: (1) steelhead; 2) tidewater goby; 3) Common loon (nesting); 4) Brown pelican (nesting colony and communal roosts); 5) American peregrine falcon (nesting); 6) Double-crested cormorant (rookery site); 7) Brandt's cormorant (rookery site); 8) Southern sea otter; 9) California sea lion; and 10) Pacific harbor seal.

⁸ According to the Sanctuary findings in *Assessment of Pyrotechnic Displays and Impacts Within the Monterey Bay National Marine Sanctuary 1993 – 2001* (2002).

temporary and short-term. As with bird impacts, thirteen years of monitoring of fireworks impacts at Seacliff State Beach has not shown a discernable impact to marine mammals,⁹ even with a very active haul-out area at the end of the pier on the cement ship (for that case). In this case, lacking an active haul-out area and any other indication that there is any kind of unusually high marine mammal activity at or near the Wharf, the proposed event is not expected to significantly impact marine mammals. However, given the presence of marine mammals in the waters offshore of the project site, **Special Condition 2(d)** limits the length of each fireworks display to a maximum of 30 minutes. In addition, **Special Condition 6** requires that a pre-event census of marine mammals in the vicinity of the project site be done prior to each event, along with a post-event evaluation to determine if any injury or mortality to these species occurred. This condition also requires submittal of a monitoring report within 60 days of conclusion of each event. The mammal censuses and monitoring reports will provide valuable information that may be used to provide appropriate mitigation as necessary in future CDPs for fireworks displays at this location.

As a means to strictly limit the effect of fireworks on wildlife in the area, previous Commission actions in this area have included limitations on the types of fireworks that could be launched at the beginning of the event. The intent has been to open an event with more minimal fireworks that allow wildlife to ease into the event and flush more readily from the area without an immediate barrage of huge explosions and salutes that may exacerbate impacts. This limitation is appropriate in this case as well, and thus this approval is conditioned to limit the total number of “aerial salute” shells or devices for each event to no more than 6% of the total number of aerial shells and/or special effect pyrotechnic devices combined, and to prohibit such “aerial salute” shells/devices during the first five minutes of the fireworks display (see **Special Condition 2(a)**).

Event debris from a fireworks program can impair Sanctuary water quality as well as harm wildlife that may ingest and/or become entangled in such debris. The USFWS biological opinion noted that Sanctuary staff has documented the presence of a substantial number of fireworks casings in the ocean immediately following previous fireworks displays held over Sanctuary waters. Other fireworks debris that may enter the ocean includes cardboard cylinders, disks, and shell case fragments; paper strips and wadding; plastic wadding, disks, and tubes; aluminum foil; cotton string; and even whole unexploded shells (i.e. duds or misfires). It is likely that paper strips, cardboard, and cotton string are biodegradable and do not persist for long periods of time in the ocean environment. However, other materials, such as plastic, are likely to persist in the marine environment for lengthy periods if they are not washed ashore and removed by personnel. In previous permits for fireworks programs over Sanctuary waters, the Commission and the Sanctuary have prohibited the use of specific pyrotechnic devices, such as those containing an outer plastic casing, and have required that all plastic labels and wrappings be removed from the pyrotechnic shells before they are launched. **Special Conditions 2(b) and 2(c)** incorporate these prohibitions into this permit. Additionally, **Special Condition 3** requires the Permittee to inspect Capitola Beach, the Capitola Wharf, and the water area surrounding the Capitola Wharf for a minimum of two days following the conclusion of each fireworks event to look for any remaining event debris, including but not limited to all fireworks detritus, and to properly dispose of all debris.

⁹ Id.

Finally, the Sanctuary is currently processing an application for the 2015 event and has indicated that an approval is expected with conditions similar to those required by the Commission and the Sanctuary in years past for other fireworks displays (e.g., limitation on aerial “salute” shells, requirements for removal of plastic labels and packaging from shells, prohibition on plastic casings, inspection and cleanup of the beaches and waters in the event area for as long as it takes to effectively dispose of all event-related debris, etc.) Moreover, the Applicant expects to undergo either an annual or multiple year permitting process for all future events. Thus, to ensure the Commission’s CDP is effectively integrated with the Sanctuary authorization (as in past cases of fireworks CDPs that involved the Sanctuary), this approval is conditioned for evidence of Sanctuary approval prior to each fireworks event (see **Special Condition 1**).

As conditioned, the Commission finds that the proposed fireworks event will preserve water quality and protect marine resources in the vicinity of Capitola Beach and Wharf. Thus, the project is consistent with the marine resources policies of the Coastal Act.

C. PUBLIC ACCESS

The project site is located between the first public road and the sea, and it is within the Commission’s original jurisdiction, thus the main issues raised by this application are consistency with the public access and recreation policies of the Coastal Act (Sections 30210, 30211, 30213, 30221, and 30252(3)). These policies protect the beach (and access to and along it) and offshore waters for public access and recreation purposes, including lower-cost access and recreational opportunities.

The proposed fireworks display is a once-a-year, temporary and free public event that will provide public recreation and enjoyment on the beach. All normally accessible areas (such as Capitola Beach and the Central Village area) will remain open and available to the general public as usual with the exception of the Wharf itself where public access will be restricted on the day of the event from 7:00 a.m. on to allow for pre-display setup at 8:00 a.m. and for actual fireworks launching at 8:00 p.m. The Wharf will re-open the following morning at 6:00 a.m.¹⁰ Capitola Beach will remain open at all times throughout the day of each event and during the fireworks display. No public streets will be closed for the event. Parking will be provided in the City-owned Pacific Cove parking lot, the parking lots located along Cliff Drive, and on-street village parking. As such, the event should not adversely affect coastal visitors generally, and in fact will provide a free attraction to them in an urban setting capable of handling such an event and potential attendees.

The 30-minute fireworks display would temporarily impact the ability of boaters to use Monterey Bay waters around the Wharf and offshore of Capitola Beach during the time of the event but the impact will be negligible because the duration of the event is so short. However, U.S. Coast Guard approval is required. Therefore, this approval is also conditioned for evidence of U.S. Coast Guard approval prior to each fireworks event (see **Special Condition 1**).

The main public access issue in this case is primarily with respect to the cleanup of any

¹⁰ The Capitola Wharf is typically open for access from 6 a.m. (when the bait shop on the Wharf opens for business) until about 10:00 p.m. (when the restaurant at the end of the Wharf closes for the night).

fireworks and/or event debris following each event. It is possible that fireworks debris may make its way onto the beach, and it is possible that event attendees may leave other debris as well. Given that some debris may float, it may be that debris continues to be present even following initial cleanup activities. Some debris of this type can be avoided by simply prohibiting certain pyrotechnic devices (such as those that contain an outer plastic casing), and by requiring that all plastic labels and wrappings be removed from the pyrotechnic shells before they are launched. In addition, the Commission's experience with nearby fireworks events has been that aggressive and focused clean-up following the event can be adequate to ensure that beach and offshore waters are returned to their pre-event state in a relatively short period of time.

The Applicant proposes to clean-up the Wharf immediately following the event and to inspect and clean-up Capitola Beach and the surrounding waters for a minimum of two days following the event for any remaining event debris including, but not limited to, all fireworks detritus and all other event debris. In addition, the Applicant will be assisted by volunteers from Save Our Shores to provide additional beach clean-up.

With conditions to maintain beach public access and to limit certain types of shell materials and ensure that the Capitola Wharf, Capitola Beach, and the surrounding waters are adequately cleaned up following the event (**Special Condition 2, Special Condition 3 and Special Condition 4**), the proposed event, as conditioned, is consistent with the Coastal Act's public access and recreation policies.

D. FIRE HAZARDS

Launching fireworks during the fire season raises the question of whether such an activity could increase fire hazard. In this case, the fireworks would be launched from the Wharf and over the water and viewed from a public beach. There is also the potential for a misfire of some sort landing on nearby buildings or in other developed areas. The Applicant is required to obtain authorization from the Central Fire Protection District (the local fire protection district) for each proposed fireworks display to ensure adequate precautions are taken to protect against fire hazard. In addition, Fire Department officials will be on hand to monitor the fireworks through set up, take down and during the display. Coastal Act Section 30253 requires that fire risks be minimized. Therefore, this approval is conditioned for evidence of Central Fire Protection District approval prior to each event (see **Special Condition 1**).

E. 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 that the activity may have on the environment.

The City of Capitola, acting as lead agency, found that the project was exempt from CEQA requirements. 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 preceding administrative coastal development permit findings discuss the relevant coastal resource issues with the proposal, and the permit conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above, which are incorporated herein in their entirety by reference.

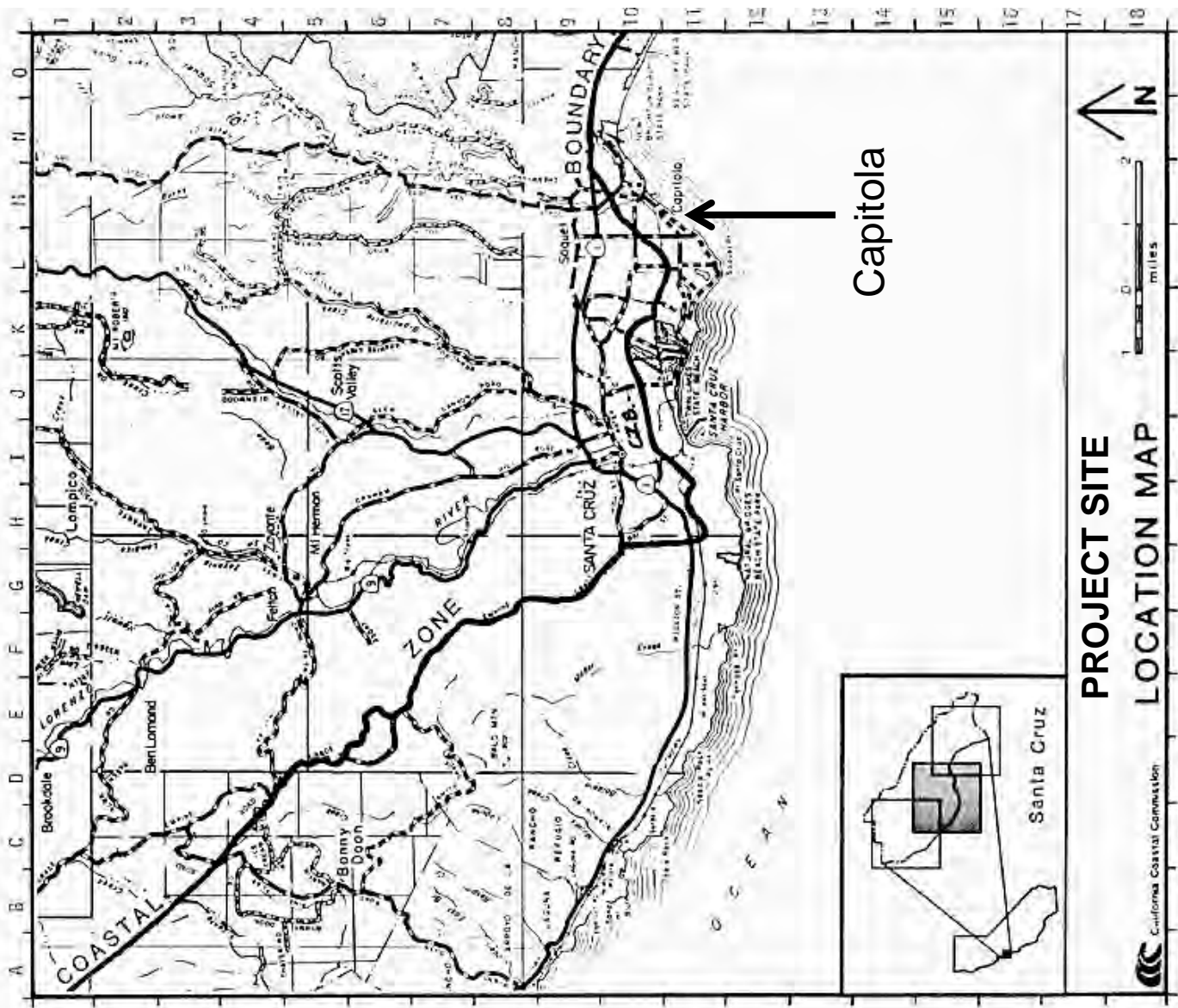
As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

V. ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE

I acknowledge that I have received a copy of this permit and have accepted its contents including all conditions.

Name and Signature of Permittee (Monte Foundation Representative)

Date of Signature



Capitola

**PROJECT SITE
LOCATION MAP**



County of Santa Cruz

Sheet 2 of 3

Project Site Location: Aerial Photo of Capitola Wharf



Capitola Village

Cliff Drive

Image No. 200401545 www.californiacoastline.org
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