

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

27-4883

HEARING IMPAIRED: (415) 904-5200

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Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 3-95-10-A2

APPLICANT: SANTA CRUZ PORT DISTRICT
AGENT: Brian Foss, Port Director

PROJECT LOCATION: Port District sandy beach area fronting Crow's Nest Restaurant, 2218 East Cliff Drive, Santa Cruz Harbor, Santa Cruz (010-321-10)

PROJECT DESCRIPTION: Enclose approximate 80 x 80 ft. beach area for outdoor dining/amplified entertainment with portable facilities, Thursday nights, May 1 through September 30, for Crow's Nest Restaurant Beach Bar-B-Que

AMENDMENT DESCRIPTION: Amend permit conditions to allow Beach Bar-B-Que to continue beyond the 1996 season as specified in condition 1 of the original permit.

Port District Beach Area (east of jetty): 58,300 sq. Ft.
Area Enclosed: approx. 6,400 sq. ft.
Parking spaces: See below.
Zoning: OF-R Ocean Front Recreation
Plan designation: Coastal Dependent

LOCAL APPROVALS RECEIVED: Zoning Permit 94-113 (Design and Special Use) 10/27/94.
CEQA: Categorically Exempt 1E.

SUBSTANTIVE FILE DOCUMENTS: Original permit 3-95-10 approved 3/9/95 (see Exhibit 4); Santa Cruz City Local Coastal Program Harbor Development Plan as approved by the Commission December 15, 1994; Santa Cruz Port District Draft Beach Management Plan, March 1997

SUMMARY OF RECOMMENDATION: The staff recommends **approval** as conditioned.

The Crow's Nest Restaurant, fronting on the sandy beach of Monterey Bay, is a Port District leasee. Under Coastal Permit 3-95-10, the Santa Cruz Port District allows the restaurant to

enclose an approximate 80 x 80 foot sand beach area for use for a Beach-Bar-B-Que with entertainment. Portable tables and chairs et al. are set up for use between 5:00 and 9:30 p.m. each Thursday from May 1 through September 30. The use encumbers approximately 7000 sq.ft. of public sand beach and indirectly impacts adjacent beach areas. The use is a low cost/no cost public event which provides a coastal recreational experience. There are no limitations on entrance or table use; the public is free to enter and use the area whether or not they purchase food. Santa Cruz City requires that all improvements be removed by the following day and that the use is revocable if found incompatible with the surrounding neighborhood.

The Commission approved the use conditionally with a limited term of two years and a requirement for completion of a Beach Management Plan which addresses Santa Cruz Port District beach uses and operations. The Management Plan has been completed and gives a picture of a small, popular, intensely and well-managed urban beach that provides for a wide range of recreational uses. The Beach-Bar-B-Que, as a limited time, weekly event, is consistent with the character of this urban beach. (Note: the Beach Management Plan is on file at the Commission office and is available upon request.)

Nevertheless, the use is not a permanently permitted use included in the certified Local Coastal Program Harbor Development Plan and, hence, is not correlated with the long term parking demand or potential impacts on other beach users. In addition it is a commercial use that preempts general public use. It is, therefore, appropriate to treat it as a long term but temporary use subject to periodic Commission review to assure continued consistency with the Coastal Act.

Therefore, the amendment has been conditioned to limit the use to three (3) years to include 1997 through the summer of 1999. Subsequent use would be subject to submittal of a coastal application with an updated Beach Management Plan and parking and shuttle statistics. This would assure that the parking and circulation impacts of the development and the commercial use of the beach remain consistent with Section 30252 and 30254 of the Development Policies of the Coastal Act and Sections 30210-30214 of the Access Policies of the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby approves, subject to the conditions below, the proposed permit amendment on the grounds that the amended project, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to implement its Local Coastal Program in conformance with provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

1. Notice of Receipt and Acknowledgment. The permit amendment 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 amendment 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 amendment 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.

III. Special Conditions.

Note: Unless specifically altered by the amendment, all conditions attached to the previously approved permit and subsequent amendments remain in effect.

1. Continuance of the Beach Bar-B-Que: This coastal development permit allows for the continuance of the Crow's Nest Beach Bar-B-Que for a period of three years which includes the summer of 1997 through the summer of 1999. If the Santa Cruz Port District wants to extend the activity for subsequent years, an application for a coastal development permit amendment should be made by February of 2000 and shall include an updated Beach Management Plan and sufficient information regarding parking supply/demand and shuttle operations to allow a full evaluation of impacts.

IV. Findings and Declarations.

The Commission finds and declares:

1. Background

The Santa Cruz Harbor encompasses about 38 acres of land and 52 acres of water, and accommodates approximately 920 berths and dory ties for commercial and recreational boats.

Lands under Harbor jurisdiction include 3.3 acres of sandy beach on both sides of the jetties. Approximately 40,000 square feet of commercial space accommodates restaurants, retail shops, boat sales, bait and tackle shops and a variety of other marine related uses. In excess of 1,000 parking spaces support the various uses of the harbor.

The Crow's Nest Restaurant, fronting on the sandy beach, is a Port District leasee. Under Coastal Permit 3-95-10, the Santa Cruz Port District allows the Crow's Nest Restaurant to enclose an approximate 80 x 80 foot sandy beach area for use for a Beach-Bar-B-Que with entertainment. Portable tables and chairs etc. are set up for use between 5:00 and 9:30 p.m. each Thursday from May 1 through September 30. The use encumbers approximately 7000 sq.ft. of public sand beach and indirectly impacts adjacent beach areas. The use is a low cost/no cost public event which provides a coastal recreational experience. There are no limitations on entrance or table use; the public is free to enter and use the area whether or not they purchase food. The use falls somewhere between a special event and commercial use of the beach. Santa Cruz City requirements provide that the enclosed picnic area remain accessible and free to the public, that all improvements must be removed by the following day; and that the use is revocable if found incompatible with the surrounding neighborhood.

The use is not included in the certified Local Coastal Program Harbor Development Plan and, hence, is not correlated with the long term parking demand or potential impacts on other beach users. However, the development site is in the Commission's original jurisdiction and the primary standard of review for development is the Coastal Act.

To provide for a review of the impacts of the use and to establish a more comprehensive understanding and management of the Port District beach area, Special Condition 1 of Permit 3-95-10 required:

1. This coastal development permit is limited to a two year period which includes the summer of 1995 and the summer of 1996. Reapplication for an additional period of time for this use or for other commercial use of the public beach shall require prior completion of a Beach Management Plan which addresses Santa Cruz Port District beach uses and operations.

The Port District has submitted a Beach Management Plan and an updated discussion on the remote parking and water taxi program.

2. Review of Impacts -Public Access/Parking

Coastal Act Section 30252 provides, in part, that "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...(3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation..."

Coastal Act Section 30254 provides that where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use ... public recreation, commercial recreation, and visitor serving land uses shall not be precluded by other development.

Status of Current Parking Supply/Demand: Harbor parking issues reach beyond the Harbor District boundary. In the City the Seabright Beach section of Twin Lakes State Beach has no public parking facility. Beachgoers park on the residential streets and in the Harbor District Parking Lot. The portion of Twin Lakes State Beach in Santa Cruz County also has no public parking facility and beach users park along the shoreline frontage, on residential streets or pay to park in the Harbor District parking lots.

The certified Santa Cruz City Land Use Plan contains the Harbor Development Plan (HDP). The HDP parking demand/supply analysis indicates that with planned harbor improvements required parking will be 1127 and provided spaces will be 1161, for a total of 34 vacant spaces in the Harbor parking lots. Currently during non-peak times excess parking is available, particularly in the Upper Harbor.

The Port District's parking program includes 80 spaces of remote parking in the Upper Harbor and an adjacent leased area and two water taxis that run on weekends, holidays, and on Thursday nights to accommodate the increased parking demand resulting from the Beach Bar-B-Que. Both parking and water shuttle are free. During the summer of 1996 8,500 people used the shuttles. Thursday night statistics show an average of 117 people per event used the shuttles. According to the Harbor District the ride is not only functional but enjoyable for the participants.

In addition to running the shuttle program the Port District amended the permit in 1995 to change the event from Wednesday to Thursday night to reduce the competition with the Wednesday night sailboat races. Because of the time and the day of the week, a manageable parking program has evolved. The Port District continues to evaluate and adjust its parking program for this event. A land based shuttle is also available if it proves necessary.

At times the Port District experiences significant parking congestion and in the long term the parking and circulation systems of the harbor will be overcommitted on a regular basis. To date the Port District's management of the shuttle has been successful. The Port District will need to incrementally respond to the pressure of increased recreational users. Because the Beach Bar B Que is not a permanently permitted use accounted for in the Harbor Development Plan of the Santa Cruz City LCP, it must be treated as long term but temporary use that is monitored by the Commission for its consistency with the Coastal Act.

Therefore, though the use is currently consistent with the Coastal Act, the permit amendment has been conditioned to require review of the use in three years to assure that the consequences of parking and circulation impacts of the development can continue to be found consistent with Section 30252 and 30254 of the Coastal Act.

3. Review of Impacts- Public Access/Beach Use

The proposed development is located between the sea and the first public road paralleling the sea and is located on public sandy beach conveyed to the Port District from the state in 1974. The Public Access policies of the Coastal Act (Sections 30210-30214) provide for maximizing public access and recreational opportunities, protecting existing public access, and encouraging the provision of lower cost visitor and recreational facilities.

A major issue is the precedent established by permitting this type of use. If other restaurants were allowed similar uses, significant impacts on public access would occur. To preclude the establishment of a precedent for restricted use of the beach in this manner and to define a context for appropriate types of beach use, the Port District submitted a Beach Management Plan pursuant to Special Condition 1 of the original permit (CDP 3-95-10). The Beach Management Plan describes the multiple uses and operations for this intensely used beach recreation area.

One of the findings of the Commission's ReCap assessment was that often a lack of active management of beach areas led to degradation of the site, restrictions in use, and/or impacts to habitat resulting in a reduction in access opportunities. The Port District's Beach Management Plan, attached as Exhibit A, gives a picture of a small, popular, intensely managed urban beach that provides for a wide range of recreational uses. Specialized uses are: first-come, first serve volleyball courts with occasional off-season tournaments; storage of 30-40 catamarans on the beach and a swimming-restricted area to allow for their safe launching (catamarans cannot safely maneuver in the navigation channel); and the Thursday night Beach Bar-B-Que. All other uses are unrestricted. One activity that could negatively impact the beach is the yearly dredging of the harbor and channel. However, the dredging is managed by the Port District under permits by the Army Corps of Engineers and Regional Water Quality Control Board and is monitored by the Coastal Commission under approved long term coastal development permit 3-95-67 which expires in the year 2000.

The Coastal Act directs the Commission to implement the public access policies of the Act in a manner which balances various public and private needs. The Port District reports that there have been no complaints of any kind and that the barbecue is a uniquely Santa Cruz event very popular with local residents and out of town visitors. It provides a beach party atmosphere in a safe setting. The Harbor Development Plan of the Santa Cruz City LCP has as one primary objective the provision of non-boating recreational opportunities and shoreline access for the general public and to provide for the local community as well as for tourists.

From all indications the Port District Beach is a well managed public beach which provides a high level of service to the public. The Beach-Bar-B-Que fits well within the character of this urban beach. Within the context of the current harbor development and recreational population it is consistent with Coastal Act access policies and the objectives of the Harbor Development Plan.

Nevertheless, the Crow's Nest Beach Bar-B-Que is a commercial use of a public beach. It is an "exclusive use" in that any other public use is temporarily precluded unless compatible with the commercial use. There are also no limitations on the numbers of users and the event could change character over time. In addition, as discussed in finding 2 above, parking and circulation could become an issue in the longer term.

Therefore, the proposed development has been conditioned to limit use to three additional years, and to require reapplication accompanied by submittal of an updated Beach Management Plan and parking and shuttle information for review of the Beach Bar-B-Que use. This will allow the Commission to determine if the use remains consistent with the access policies of the Coastal Act regarding protection of existing public access and recreational opportunities. As conditioned, the proposed development is consistent with the Sections 30210-30214 of the Coastal Act.

4. Local Coastal Program/CEQA

The Santa Cruz City Local Coastal Program was certified in 1985. It was completely restructured and revised by the City in 1994. The Harbor Development Plan is a part of the Local Coastal Program. The HDP does not include the proposed beach use by the Crow's Nest in future harbor uses which are correlated with the parking demand/supply. The HDP does not provide policies to manage commercial use of the public beach or competing public uses. Nevertheless, the proposed use can be accommodated on a limited term basis as discussed in the preceding findings and is consistent with two of the primary objectives of the HDP to provide for non-boating recreational opportunities and shoreline access for the general public and to provide for the local community as well as for tourists visiting the area.

The development site is in the Commission's original jurisdiction and the primary standard of review for development is the Coastal Act. As conditioned, to limit the permit to three years the proposed development is consistent with the access policies of the Coastal Act regarding protection of existing public access and recreational opportunities, will not have any significant impact on coastal resources or public access, is consistent with the policies of Chapter 3 of the Coastal Act, and will not prejudice the ability of the City of Santa Cruz to implement its Local Coastal Program consistent with the Coastal Act.

Santa Cruz City found the project to be categorically exempt under CEQA. The City permit issued in 1995 did not have a sunset provision and remains valid.

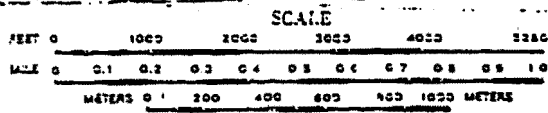

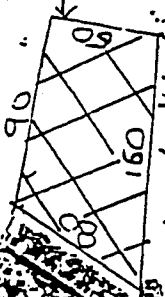


EXHIBIT NO. 1
APPLICATION NO. 3-95-10-A2
LOCATION
 California Coastal Commission

SANTA CRUZ
HARBOR BEACH

TEMP FENCED AREA



CROWS
NEST

3-95-10-A2

CALIFORNIA COASTAL COMMISSION

EXHIBIT 2

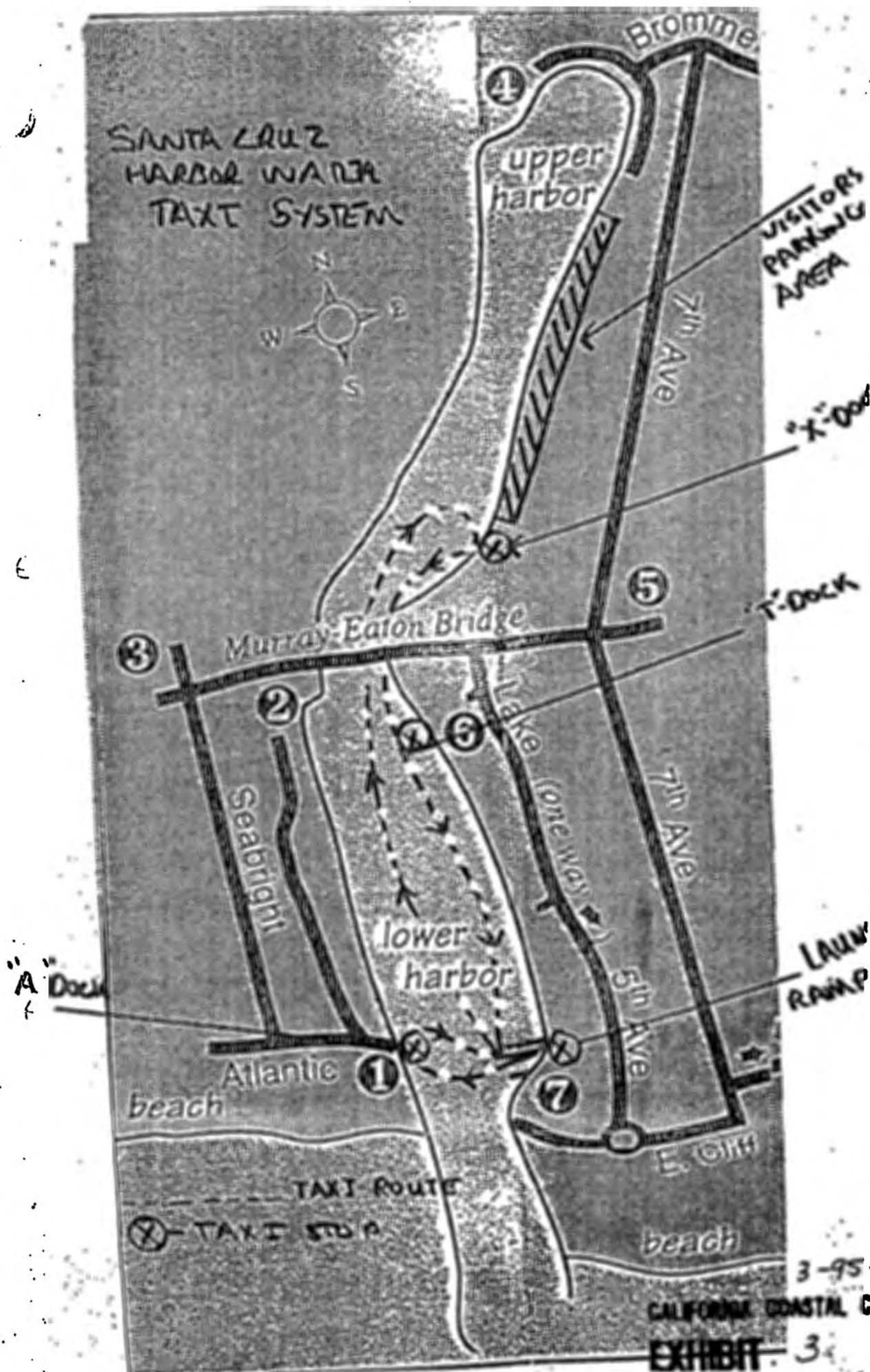
Site Plan
SANTACRUZ HARBOR
CROWS NEST
RESTAURANT
WEDNESDAY NIGHT

RECEIVED

DEC 1 - 1994

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST OFFICE

SANTA CRUZ
HARBOR WATER
TAXI SYSTEM



CALIFORNIA COASTAL COMMISSION

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Commission Action:

**ADOPTED**STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 3-95-10

APPLICANT: SANTA CRUZ PORT DISTRICT
AGENT: Brian Foss, Port Director

PROJECT LOCATION: Port District sandy beach area fronting Crow's Nest Restaurant, 2218 East Cliff Drive, Santa Cruz Harbor, Santa Cruz (010-321-10)

PROJECT DESCRIPTION: Enclose approximate 80 x 80 ft. beach area for outdoor dining/amplified entertainment with portable facilities, Wednesday nights, May 1 through September 30, for Crow's Nest Restaurant Beach Bar-B-Que

Port District Beach Area (east of jetty): 58,300 sq. ft.
Area Enclosed: approx. 6,400 sq. ft.
Parking spaces: See below.
Zoning: OF-R Ocean Front Recreation
Plan designation: Coastal Dependent

LOCAL APPROVALS RECEIVED: Zoning Permit 94-113 (Design and Special Use) 10/27/94. CEQA: Categorically Exempt 1E.

SUBSTANTIVE FILE DOCUMENTS: Santa Cruz City Local Coastal Program Harbor Development Plan as approved by the Commission December 15, 1994.

SUMMARY OF RECOMMENDATION: The Santa Cruz Port District proposes to allow the Crow's Nest Restaurant to enclose an approximate 80 x 80 foot sand beach area for use for a Beach-Bar-B-Que with entertainment. Portable tables and chairs et al. are set up for use between 5:00 and 9:30 p.m. each Wednesday from May 1 through September 30. The use directly encumbers approximately 7000 sq.ft. of public sand beach and indirectly impacts adjacent beach areas. The use is not included in the Local Coastal Program Harbor Development Plan and is not correlated with long term parking supply or impacts on other beach users. However, the development site is in the Commission's original jurisdiction and the primary standard of review for development is the Coastal Act.

The Bar-B-Que time coincides with the Wednesday night sailboat races and is considered by the Port District to be a low cost/no cost public event which provides a coastal recreational experience. There are no limitations on entrance or table use; the public is free to enter and use the area whether or not they purchase food. The use falls somewhere between a special event and commercial use of the beach.

3-95-10 Partial Staff Report
Full report on file at Commission office.

3-95-10-A2
CALIFORNIA COASTAL COMMISSION
EXHIBIT 4 1 of 3

The Port District will provide a shuttle service from the Upper Harbor parking lot to mitigate parking impacts. The early evening time of use will reduce potential impacts with beach day users. Staff recommends that the use be approved by the Commission on a limited term basis to assess impacts and allow the Port District to develop a Beach Management Plan to assure appropriate management of the use and preclude a proliferation of similar uses. As conditioned, no significant impacts on public access or resources will occur from this limited term use and the development, as conditioned, is consistent with the policies of Chapter 3 of the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to implement its Local Coastal Program in conformance with provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See Exhibit A, attached.

III. Special Conditions.

1. This coastal development permit is limited to a two year period which includes the summer of 1995 and the summer of 1996. Reapplication for an additional period of time for this use or for other commercial use of the public beach shall require prior completion of a Beach Management Plan which addresses Santa Cruz Port District beach uses and operations.
2. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director of the Coastal Commission for review and approval, a Parking and Shuttle Plan based on the memorandum from Santa Cruz Port District dated February 1, 1995. Signage and final details of the proposed off-street parking area shall be submitted. (Exhibit 4 attached.)
3. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director of the Coastal Commission for review and approval, a legal agreement with the Crow's Nest Restaurant that includes the following provisions:
 - 1) Use of the beach for the commercial picnic barbeque is limited to an 80 by 80 foot area pursuant to City permit 94-113.

- 2) The permit is for seasonal use which may only be exercised on Wednesdays from May 1 until October 1st with hours of operation 5 p.m. to dusk or 9:30 p.m.
- 3) All improvements erected with the use including but not limited to tables, banners, signage, fencing, chairs, booths, and speakers shall be removed by 9 a.m. the following day.
- 4) The fencing material will be of mesh to reduce the visual barrier. The fenced area shall be accessible and free to the public. No restrictions on use of tables or chairs shall be made; there shall be no requirement for purchase.
- 5) Restaurant restroom facilities shall be available to Beach Bar-B-Que event visitors.

IV. Findings and Declarations.

The Commission finds and declares:

1. Background, Location and Description of Development

Background: In the summer of 1993 it was reported to the City that tables had been put up on the beach and food was being served by the Crow's Nest Restaurant. The Santa Cruz Port District had approved the use but had not applied for City permits, believing the use was within the parameters of their Harbor Development Plan and did not require further review. Subsequently, it was determined that the use was located in the Coastal Commission's original jurisdiction and would require a coastal permit from the Coastal Commission as well as any City permits.

Location: The Santa Cruz Harbor encompasses about 38 acres of land and 52 acres of water, and accommodates approximately 920 berths and dory ties for commercial and recreational boats. Lands under Harbor jurisdiction include 3.3 acres of sandy beach on both sides of the jetties. Approximately 40,000 square feet of commercial space accommodates restaurants, retail shops, boat sales, bait and tackle shops and a variety of other marine related uses. In excess of 1,000 parking spaces support the various uses of the harbor.

The Crow's Nest is a Port District leasee. The restaurant is a successful visitor serving facility that provides moderately priced dining on the bay. The restaurant is located fronting the sandy beach and adjacent to the downcoast side of the harbor channel. Catamarrans are stored on the beach in front, beach volleyball courts are nearby and the boat launch facility is directly inland.

Description: The Santa Cruz Port District proposes to allow the Crow's Nest Restaurant to install a plastic mesh fence to enclose an approximate 80 x 80 foot sand beach area for use as a Wednesday night Beach-Bar-B-Que facility/event. The area would serve as an outdoor dining and entertainment area with live amplified entertainment. Portable tables and chairs and ancillary structures are set up for use between 5:00 and 9:30 p.m. each Wednesday from May 1 through September 30. See Exhibit 2 attached.

3-95-10-A2

CALIFORNIA COASTAL COMMISSION

EXHIBIT 4 3 of 3