

**CALIFORNIA COASTAL COMMISSION**

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**Th9e**

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**COASTAL DEVELOPMENT PERMIT APPLICATION****Application number** .....3-03-034, Monte Foundation Fireworks**Applicant**.....Rudolph F. Monte Foundation**Project location**.....Seacliff State Beach in the unincorporated Aptos-Rio Del Mar area of south Santa Cruz County.

**Project description** .....Close Seacliff State Beach to allow a fee-based fair and fireworks display to benefit Santa Cruz County Schools on an annual basis one weekend each fall for five years (2003-2007, inclusive). The event proposed for 2003 is typical of future events and would close the beach from 1pm to 10pm on Saturday October 4th, and the pier and cement ship from 8am on Friday October 3rd until 11am on Sunday October 5th. The project includes fencing and a stage structure on the beach.

**File documents**.....Coastal Development Permit Files 3-00-117, 3-01-058, 3-02-027 (Monte Foundation Fireworks 2000, 2001, and 2002); Santa Cruz County Certified Local Coastal Program (LCP)

**Staff recommendation** ...Approval with Conditions

**Summary:** The Applicant proposes to exclusively use Seacliff State Beach in south Santa Cruz County for a fund raiser for Santa Cruz County schools. The event includes food booths, games, activities, and live music stages geared towards families. The centerpiece of the event is an evening fireworks show at 9pm. The Applicant expects approximately 30,000 people to attend the one-day event with tickets costing \$10 (children 5 and under free). The Applicant is asking for a five-year permit to cover the event in 2003 as well as similar events in fall of 2004, 2005, 2006, and 2007.

The Commission has approved three previous coastal development permits (CDP) for very similar events in October 2000, 2001, and 2002 (CDPs 3-00-117, 3-01-058, and 3-02-027). The Applicant has generally incorporated the conditions of the Commission's previous approvals into their current proposed project description. Those conditions define project parameters (including signage, closure times, fencing, etc.), lateral access requirements (a through lateral access corridor is provided along the immediate shoreline for all but 6pm to 10pm on Saturday), post-event beach and water area clean-up requirements, and event monitoring/reporting.

**California Coastal Commission****May 8, 2003 Meeting in Monterey**Staff: D.Carl Approved by: **DCL**

3-03-034 Monte Foundation fireworks strprt 5.08.03.doc

The Coastal Act protects public access at Seacliff State Beach. Seacliff State Beach is a very popular camping and day-use State Park unit that attracts over 1 million coastal visitors per year. Although State Parks currently charges a parking fee of \$3 for day-users arriving by car, there is no fee for those who walk or ride their bikes into the Park for the day. The proposed project would preclude access to a portion of Seacliff State Beach facilities during parts of Friday and Saturday of the event weekends. However, such a limited closure is balanced by ensuring through lateral access along the immediate shoreline as provided for by the project description and conditions.

The Coastal Act also protects the offshore marine resources of the Monterey Bay National Marine Sanctuary (MBNMS). There is a concern that exploding pyrotechnics will disrupt wildlife habitat on and around the Seacliff State Beach pier area. There is little evidence at this time to suggest that such impact would significantly degrade the habitat here. Event monitoring from previous years is generally inconclusive. The Sanctuary has requested formal biological consultations from the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) regarding potential impacts from ongoing fireworks displays within the Sanctuary, but the Sanctuary has indicated that it is unclear when these consultations will commence or be complete. As conditioned for MBNMS approval, biological monitoring, and reevaluation (once the results of the NMFS and USFWS consultations are known), the event (over five years) addresses the Coastal Act's marine habitat protection policies.

In sum, the project will block a portion of the Seacliff State Beach for a limited time, and will result in some disruption of Sanctuary near-shore habitat, for one weekend each fall for five years. While not without Coastal Act issues, the limited scope of the event (both in terms of area impacted and individual event duration) allays fears that significant resource disruption will occur. With the required through accessway requirement and the required biological monitoring and consultation (including the reevaluation parameters), the event can generally be found consistent with the Coastal Act. The general public will be allowed to access the majority of Seacliff State Beach the day of each event, and will be displaced from a smaller portion for roughly the afternoon of each event; through lateral access will be provided. If the required biological monitoring and/or the Sanctuary's formal consultation with NMFS and USFWS regarding fireworks within the Sanctuary in general dictate, the event can be curtailed in the future as necessary to address any such issues.

As conditioned, staff recommends approval.

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## 1. 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 3-03-034 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 ground 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 amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.



## 2. 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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **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.
4. **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. **Approved Project.** This coastal development permit authorizes the proposed event for one weekend in the fall of each year for five years (for years 2003, 2004, 2005, 2006 and 2007) subject to the parameters of these special and standard conditions. For the purposes of these conditions, "Friday," "Saturday," and "Sunday" refer generically to the three consecutive days of the event within which activities would take place in any particular year. For 2003, Friday is October 3, 2003; Saturday is October 4, 2003; Sunday is October 5, 2003; and the Friday afternoon high tide is at 5pm. For future events in years 2004 through 2007, the Permittee shall provide the Executive Director with the parameters of the event, including specific dates and times addressed by these conditions, at least one month in advance of the event for that year.

The Approved Project consists of the Project Area, Safety Zone, Through Public Accessway, and Event Signage as follows:

- (a) **Project Area.** The Permittee shall be allowed to close free public access to a limited portion of the sandy beach area at Seacliff State Beach from 1pm to 10pm on Saturday only ("Project Area"). The Project Area shall be described roughly as a rectangular area extending vertically seaward from the Seacliff State Beach bulkhead to a meandering point always a minimum of ten feet inland of Monterey Bay waters, and extending laterally along Seacliff State Beach (approximately one-half mile) from a point immediately west of the sandy beach access point associated with the pedestrian bridge across Aptos Creek to a point located immediately west of



the second beach stairway west of the Seacliff State Beach pier. A \$10 fee may be charged for persons over five years of age wishing to access the Project Area from 1pm until 10pm on Saturday. The Project Area may be maintained at its perimeter with see-through construction fencing no higher than 5 feet tall. The fencing shall be installed no earlier than 12 noon on Saturday. Within the Project Area the Permittee is allowed to place a thirty-two foot by forty foot stage structure adjacent to the pier. Fencing shall not be allowed to enter into Monterey Bay waters at any time. See exhibit C for a graphic depiction of the Project Area.

- (b) **Safety Zone.** The Permittee shall be allowed to close all access to a limited portion Seacliff State Beach, all of the Seacliff State Beach pier, and a limited area of the waters offshore surrounding the Seacliff State Beach pier from 8am on Saturday to 10am on Sunday ("Safety Zone"). In addition, the Seacliff State Beach pier may be closed from 8am on Friday until 11am on Sunday. The Safety Zone shall be described as a polygon straddling the Seacliff State Beach pier measuring roughly two-hundred feet along the bulkhead (i.e., at the entrance to pier), extending to a roughly three-hundred twenty foot width at the edge of Monterey Bay, and extending out to sea approximately one-half mile. A Through Public Accessway, as described in part (c) below, shall be provided within the Safety Zone between the hours of 8am and 6pm on Saturday. Fencing shall not be allowed to enter into Monterey Bay waters at any time. See exhibit C for a graphic depiction of the Safety Zone.
- (c) **Through Public Accessway.** The general public shall be allowed unencumbered, free access to all areas of Seacliff State Beach except for the Project Area and the Safety Zone and shall be provided a minimum ten foot wide corridor providing through access along the seaward side of the Project Area ("Through Public Accessway"). On Friday at the time of the afternoon high tide, the Permittee shall identify the location of the most inland extent of the high-tide within the Project Area with a survey stake. The distance between (1) a point located 10 feet inland of the survey stake, and (2) a point on the Seacliff State Beach promenade closest to the survey stake, shall define the width of the Project Area as measured from the promenade towards the Monterey Bay. The Through Public Accessway fencing shall be set no closer to the Monterey Bay than the width so defined. The Permittee shall ensure that the Through Public Accessway remains a minimum width of ten feet as measured inland from the tidal reach of Monterey Bay by installing any such fencing a minimum of ten feet inland of the Friday afternoon high-tide mark and by adjusting any Project Area fencing inland as necessary throughout the course of the event. From 6pm to 10pm on Saturday, the Permittee may close the Through Public Accessway to general public access and include this area in the Project Area; during this period of time, access to the Project Area shall be free for those persons five and under and may be by purchase of a \$10 ticket for all others. Signage shall be placed at either end of the Through Public Accessway describing the nature of the event, the Project Area and fees associated thereto, the Safety Zone, and the Through Public Accessway. Fencing shall not be allowed to enter into Monterey Bay waters at any time. See exhibit C for a graphic depiction of the Through Public Accessway.
- (d) **Event Signage.** The Event Signage consists of Signs A, B, and C as shown in the March 11,



2003 cover letter submitted with the application (see exhibit B). For future events (in years 2004 through 2007) appropriate dates corresponding to the event dates for any particular year shall be substituted for the dates shown in the text for Signs A, B, and C in exhibit B. Sign A (the pre-event notification sign) shall be installed at the locations noted no later than 2 weeks in advance of Saturday; Sign A at the entrance to the Seacliff State Beach pier shall be in both English and Spanish. Signs B and C (beach accessway signs) shall be installed at the locations noted no earlier than 1pm on Saturday. All signs shall be removed by 10pm on Saturday. See exhibit B for Event Signage text and locations.

Any event fencing placed on the Seacliff State Beach promenade above the sandy beach immediately west of the Aptos Creek pedestrian bridge shall not block the general public's ability to freely use the Aptos Creek pedestrian bridge, freely use the sandy beach access ramp located immediately west of the Aptos Creek pedestrian bridge, and freely use the promenade area in between the Aptos Creek pedestrian bridge and the sandy beach access ramp.

See exhibit C for a graphic depiction of the Approved Project.

The Permittee shall ensure that the Approved Project is provided as described in this special condition. Any proposed changes to the Approved Project shall be reported to the Executive Director. No changes to the Approved Project shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

2. **Cleanup and Restoration of Seacliff State Beach.** All event fencing located on Seacliff State Beach shall be moved inland to a location along the bulkhead or the promenade where the fencing does not interfere with public access to or along the sandy beach (i.e., rolled up and stored there after the fireworks conclude) by 6am on Sunday, and shall be removed completely from the beach area by 10am on Sunday. Seacliff State Beach, the Seacliff State Beach pier, and the water area surrounding Seacliff State Beach pier shall be cleared of all debris, including but not limited to all fireworks detritus, and returned to their pre-event condition by 10am on Sunday. The Permittee shall inspect Seacliff State Beach, the Seacliff State Beach pier, and the water area surrounding the Seacliff State Beach pier for a minimum of two days following the conclusion of the fireworks (i.e., on Sunday and Monday) 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 debris is located, and indefinitely until such inspections do not identify any more debris.
3. **Other Agency Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval evidence of all permits, permissions or approvals granted, or evidence that no permits, permissions or approvals are necessary, for the five-year project from: (1) California Department of Parks and Recreation; (2) Monterey Bay National Marine Sanctuary; and (3) United States Coast Guard. The Permittee shall inform the Executive Director of any changes to the project required by the 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 necessary.

4. **Post-Event Monitoring Report.** WITHIN THREE MONTHS OF THE CONCLUSION OF THE EVENT EACH YEAR, the Permittee shall submit a brief Post-Event Monitoring Report to the Executive Director for review and approval. The Report shall, at a minimum, include:

- (a) **Event Description.** A narrative description of all components of the event including event set-up, the event itself, and event clean-up. The event set-up portion of the narrative shall include a specific description of the times at which beach area fencing was installed; photo documentation and verification of the pre-event high tide identification procedure and subsequent fencing location along the through public accessway; and date and time verified documentation (i.e., photos) that such fencing was at all times a minimum of 10 feet inland of the waters of the Monterey Bay. All clean-up inspection methods and results shall be identified;
- (b) **Public Access.** A narrative description of the effect of the limited closure (to Seacliff State Beach sandy beach, pier, and water area) on the public's ability to access these areas. The description shall include a summary of incidents (if any) with persons attempting to access the Seacliff State Beach sandy beach, pier, and/or water area during the event, including a description of each such incident and the manner in which it was resolved;
- (c) **Marine Resources Monitoring.** An analysis prepared by a qualified coastal biologist detailing the effect of the event on both any wildlife in the bluffs and/or trees above Seacliff State Beach, and on any marine wildlife in the immediate vicinity of the Seacliff State Beach pier and cement ship. Such analysis shall at a minimum: (1) identify a baseline condition of wildlife present in the event vicinity (through species lists, species counts, site mapping, etc.) developed through field work completed in advance of the event; (2) describe wildlife movement from field observations during the day of the event, including detailed description of the 2 hour time period prior to the event (when the pre-event bird warning activities are required) through the 2 hour time period immediately following the cessation of fireworks; (3) include follow-up field work and monitoring at regular intervals for a minimum of one month following the event to compare the post-event condition to the baseline condition in all baseline categories; and (4) include recommended event modifications meant to avoid and/or lessen the adverse effect of any identified negative impact on marine wildlife.

5. **Expiration and Extension.** This coastal development permit shall expire on the earlier of: (a) December 31, 2007; or (b) the date that the Monterey Bay National Marine Sanctuary informs the Executive Director that the Sanctuary has received information that would have a bearing on the project parameters from the United States Fish and Wildlife Service and/or the National Marine Fisheries Service pursuant to the requested consultations (see exhibit D) provided the Executive Director is so informed at least 3 months in advance of the next scheduled event (if not, then the expiration date shall be December 31<sup>st</sup> of that year). Application for extension of the permit,



including application to extend the permit for multiple years, must be made prior to the expiration date.

### **3. Recommended Findings and Declarations**

The Commission finds and declares as follows:

#### **A. Project Location**

The proposed temporary event would take place at Seacliff State Beach in unincorporated south Santa Cruz County. Seacliff State Beach is a unit of the State Parks system located just downcoast of Capitola that includes campsites, beach, pier, interpretive center and associated public recreational amenities open year round. The Park is entered from the blufftop above and opens onto an elevated, paved parking and day-use/campground area running along the backbeach bluffs at this location supported by a roughly 5 foot high bulkhead at its interface with the sandy beach. The approximately one-mile stretch of beach area where the project would take place is part of a roughly 15 mile unbroken stretch of beach extending from New Brighton State Beach to the Pajaro River. The Monterey Bay National Marine Sanctuary, the largest of twelve such federally protected sanctuaries nationwide, is directly offshore. See exhibit A for project location.

For permitting purposes, it is important to note that the proposed event would take place both on the sandy beach and inland portions of the State Park. The portion of the event taking place on the elevated day-use and campground area running the length of the backbeach is located within the coastal permitting jurisdiction of Santa Cruz County (see "Other Agency Review" finding below). The portion of the project located within the sandy beach area and near shore waters (including the pier) seaward of the bulkhead is located within the Commission's retained coastal permit jurisdiction. The portion of the project within the Commission's jurisdiction is the portion addressed by this coastal development permit application.

#### **B. Project Description**

The Applicant proposes to exclusively use a portion Seacliff State Beach for what the Applicant describes as a fund raiser for Santa Cruz County schools. The weekend event includes food booths, games, activities, and live music stages geared towards families. The centerpiece of the event is an evening fireworks show at 9pm. The Applicant expects approximately 30,000 people to attend the event. Tickets for entry cost \$10 with children 5 and under allowed in for free. The food and activity booths charge their own separate fees.

The Applicant is asking for a five-year permit to cover the event in 2003 as well as similar events in



2004, 2005, 2006, and 2007. The 2003 event, indicative of future year's events as well, would take place on Saturday, October 4, 2003 with various set-up and takedown activities extending from Friday through Sunday. More specifically, within the Commission's jurisdiction the Applicant's proposal would:

- Close a portion the State Beach to general public access from 1pm to 10pm on Saturday October 4<sup>th</sup> to allow for the fundraiser; during this time frame, the non ticket-holding public would be excluded from the approximately one mile stretch of dry sandy beach at Seacliff. Within this excluded area, a 10-foot wide through accessway would be provided along the water's edge from 1pm until 6pm to allow the general (non-fee paying) public to access up and downcoast beach areas; this through accessway would be closed at 6pm. The project area would be maintained by 5 foot orange construction fencing and security guards.
- Close the Seacliff Pier from 8am on Friday October 3<sup>rd</sup> until 11am on Sunday the 5<sup>th</sup> to allow for the fireworks show to be set up. The extended closure (i.e., two days) is meant to ensure public safety from the time the explosives are delivered (i.e., Friday at 8am) until after the fireworks show and removal of explosives.
- Close a safety area surrounding the pier (because of the fireworks) including sandy beach areas up and downcoast and the ½ mile area of ocean offshore roughly within 150 feet of the pier. The safety areas would be closed from 8am on Saturday the 4<sup>th</sup> until 10am on Sunday the 5<sup>th</sup>. These areas would be off-limits to both ticket holders as well as the general public for safety purposes. The ocean safety area would be patrolled by boat and the beach area would be marked off by 5 foot orange construction fencing. A ten foot wide corridor would be provided along the length of the safety zone adjacent to the ocean to allow passage up and downcoast under the pier.
- Place a stage (roughly 32 by 40 feet and 4 feet high, with a roughly 30 by 40 foot canopy) on the beach upcoast of the pier (to be used for musical presentations, magician shows, cheerleader routines, etc.) and several chairs and tables upcoast of the pier for a VIP lounging area.

See the Applicant's proposed site plan, exhibit B.

In general, the majority of the daytime activities would take place in the Seacliff day-use area (above the beach bulkhead) with the beach area within the project area used for general beach use by ticket holders. The stage on the beach would be used for various functions during the event. As the fireworks event approaches, the Applicant expects ticket holders to take up places on the sand to watch the fireworks show. The Applicant would "sweep" the project area at 1pm on Saturday the 4<sup>th</sup> to inform any beachgoers that an event was about to take place for which they could either purchase a ticket or move to up or downcoast beach areas outside of the project area.

The Applicant indicates that the general public would be allowed back into Seacliff State Beach after the fireworks show at 10pm on Saturday. Since Seacliff State Beach closes for day-use at 10pm, this means that the public would be unable to access the beach until 6am the next day (Sunday). According to the Applicant, all beach area fencing would be rolled up at the completion of the fireworks event on



Saturday and completely removed by 10am on Sunday the 5<sup>th</sup>.

## **C. Other Agency Review**

### **1. State Parks**

In past years, State Parks has issued the Applicant a Special Event Permit for the use of Seacliff State Beach. As of the date of this staff report, this Permit has not yet been granted. State Parks is continuing to work with the Applicant. This approval is conditioned for evidence of State Parks approval (see special condition 3).

### **2. Santa Cruz County**

The project would take place within Seacliff State Park and Beach in the unincorporated area of south Santa Cruz County. As detailed earlier, the portion of the project landward of the sandy beach at this location is located within the County's coastal permitting jurisdiction. The County has indicated that they do not consider the event a project for purposes of CEQA, and that "the proposed development meets all zoning requirements and needs no local permits other than encroachment permits from the Department of Public Works."

### **3. Monterey Bay National Marine Sanctuary**

The project would take place at least partially within the Monterey Bay National Marine Sanctuary. The Sanctuary has grown increasingly concerned about the potential negative impacts of fireworks within the Sanctuary. On March 26, 2001, the Sanctuary requested formal programmatic consultation from USFWS and 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. Such consultation has yet to occur, and the Sanctuary has indicated that it is unclear when these consultations will commence or be complete. Other than permit applications for recurring annual fireworks events that have been permitted by the Sanctuary in the past (such as that proposed here), the Sanctuary has indicated that it has suspended review of any "new" fireworks applications pending completion of consultation with USFWS and NMFS. See exhibit D for MBNMS report on fireworks within the Sanctuary from 1993-2001 and the formal request for consultation.

MBNMS is processing an application for the proposed project and indicates that an approval is to be expected with conditions similar to those required by the Sanctuary in years past (e.g., prohibition on aerial "salute" shells, requirements for removal of plastic labels and packaging from shells, prohibition on plastic casings, etc.). The Sanctuary also requires 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. The Applicant has adjusted their event to eliminate "salutes" and to ease into the program (i.e., starting with lower intensity fireworks) so that any wildlife in the area can temporarily relocate before the larger scale noise and explosions ensue. The Sanctuary has in the past approved the subject event. This approval is conditioned



for evidence of Sanctuary approval (see special condition 3).

#### **4. U.S. Coast Guard**

The project temporarily would impact the ability of boaters to utilize Bay waters and the Applicant indicates that it has asked for permission from the U.S. Coast Guard. As of the date of this staff report, the Coast Guard has not signed-off on the event but has in the past. This approval is conditioned for evidence of Coast Guard approval (see special condition 3).

### **D. Standard of Review**

The portion of the proposed development that is the subject of this coastal development permit application is located within the Coastal Commission's retained coastal permitting jurisdiction. Because of this, the County's certified LCP can provide non-binding guidance, but the standard of review for the proposed coastal development permit is the Coastal Act.

### **E. Coastal Development Permit Determination**

#### **1. Public Access and Recreation**

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 on the beach. Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

*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.*

*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.*

*30212(a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

*30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where*



*feasible, provided. Developments providing public recreational opportunities are preferred. ...*

*30220: Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

*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.*

*30223: Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30240(b) also protects parks and recreation areas such as Seacliff State Beach. Section 30240(b) states:

*Section 30240(b). Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The Applicant in this case is requesting a coastal permit to cover this year's event, as well as events over the next four years. This year's event is typical of the types of impacts that can be expected from future events as well.

The proposed event would take place on an approximately one-mile stretch of Seacliff State Beach between Potbelly Beach and New Brighton State Beach (upcoast) and Aptos Creek (downcoast) along the shores of Monterey Bay. This beach area where the project would take place is part of a roughly 15 mile unbroken stretch of beach extending from New Brighton State Beach to the Pajaro River. The Monterey Bay National Marine Sanctuary is offshore. See exhibit A.

The event as proposed for this year would prohibit the general public from using a portion of Seacliff State Beach from 1pm until 10pm on Saturday October 4<sup>th</sup>; during this time, only persons with event tickets would be allowed in the project area (the project area encompasses approximately 30 acres of sandy beach along an almost one-mile stretch). The event would prohibit the general public from using Seacliff State Beach pier from 8am on Friday October 3<sup>rd</sup> until 11am on Sunday October 5<sup>th</sup>. The event would prohibit all persons (with tickets and without) from the "safety zone" on the beach and in the water area surrounding the pier from 8am on Saturday the 4<sup>th</sup> until 10am on Sunday the 5<sup>th</sup>. During set-up and clean-up activities (extending from the morning of Friday the 3<sup>rd</sup> until the morning of Sunday the 5<sup>th</sup>), general public access, where not otherwise excluded, would be adversely affected by noise and other interference from set-up crews and materials.

Usually, the affected public beach and water recreational area is available to overnight RV and day-use visitors through the main park entrance (from State Park Drive and Highway One) as well as to visitors walking to the affected beach area from upcoast New Brighton State Beach and Potbelly Beach and from



the downcoast Esplanade/Beach Drive area of Aptos. At least partially because of the wide nature of the beach and its unbroken length along the shores of Monterey Bay, the subject beach area is very popular as a lateral walking beach. Approximately 1 million visitors per year use Seacliff State Beach, and State Parks indicates that the 26 campsites here are some of the most popular in the state. State Parks currently charges a parking fee of \$3 for day-users arriving by car; there is no fee for those who walk or ride their bikes into the Park for the day. The Park is open from 6am to 10pm.

The Applicant proposes to charge a \$10 fee (5-year olds and under would be allowed in for free) for the public to gain access to this public beach recreational area during the 9 hours of the event. Separate fees would be required for the food and activity booths that would line the elevated paved area above the beach.

The Coastal Act specifically protects recreational beach and offshore public access here. The Coastal Act requires maximization of public access (30210) and does not allow development to interfere with the public's right to use this stretch of public beach (30211). The Act requires protection of low cost recreational facilities such as the State Park (30213) and requires that the State beach and waters here be protected for recreational uses (30220 and 30221).

The proposed project raises several issues with the Coastal Act's public access and recreation policies because it:

- reduces public access and recreational opportunity contrary to the requirements of Coastal Act Section 30210; the affected public beach, pier, and water area would not be available for free public access as is normally the case;
- interferes with the public's right of access to the beach and bay at this location contrary to the requirements of Coastal Act Section 30211;
- blocks lateral public access from 6pm until 10pm on the day of each event contrary to the requirements of Coastal Act Section 30212. During this time, those wishing to move laterally along the coast would need to circumvent the project inland (what was a one mile walk along the beach would become a roughly 4 mile circuitous route along local streets to get back down to the beach on the other side of the event);
- fails to protect the lower cost Seacliff State Beach visitor recreational facilities contrary to the requirements of Coastal Act Section 30213; relative to the current free use of the public beach, a \$10 fee for access does not represent a low cost activity, particularly since day-use of the public beach here is currently provided free of charge;
- prohibits access to the offshore water-oriented recreational area surrounding the pier and extending offshore roughly ½ mile contrary to the requirements of Coastal Act Section 30220;
- impacts the ability of the public to access, enjoy, and use Seacliff State Beach as well as adjacent upcoast (New Brighton State Beach and Potbelly Beach) and downcoast (Seacliff downcoast of Aptos Creek) beaches by introducing 30,000 persons into the affected beach area contrary to Coastal



Act Section 30240(b).

The issues raised are similar to the issues raised due to previous events in 2000, 2001, and 2002 (CDPs 3-00-117, 3-01-058, and 3-02-027). However, the potential for Coastal Act inconsistency has been lessened to a certain degree by the fact that the Applicant incorporated into the proposed project previous CDP requirements to provide for: a lateral accessway (to provide through access along the beach for a portion of the event); reduced beach area used for the project; event signing; and specific cleanup parameters. The Commission's previously adopted findings are instructive in this regard. In approving the previous events in 2000, 2001, and 2002, the Commission found as follows:

*In light of the Coastal Act access and recreation inconsistencies, and in order to ensure that the public is not unduly precluded from access to the State Beach for the duration of the proposed event, the Commission finds that the Applicant's proposed project does not adequately protect public access. The Commission is supportive of an event designed to raise funds for area schools, but such an event must be mindful of the public's ability to access the coast here. Although the Commission is willing to allow certain public access prohibitions to ensure public safety pursuant to Section 30212(a)(1), the complete closure of this stretch of beach to the public to allow a fee-based event to take place on State Beach is not consistent with Coastal Act policies.*

*One obvious option to address Coastal Act inconsistencies would be to allow free access to the beach area but allow the Applicant to charge a fee for access to the elevated promenade above the beach (where the overwhelming majority of the event would take place).<sup>1</sup> The Applicant could encourage, but not require, a donation for beach access during the event under such a scenario. Under such a scenario, Commission Staff believe that it is unlikely that there would be a large number of persons who would access the affected beach area during the day and then attempt to stay and watch the fireworks show for free. Rather, the persons meandering along and/or recreating on Seacliff State Beach during the event would be expected to either: (1) offer a donation for a ticket; (2) pay for a ticket to enter the elevated paved area where the vast majority of the event will take place; (3) enjoy the public beach without paying a fee or donation and (a) go home before the evening fireworks event begins, or (b) stay for the show without paying. The number of persons staying for the fireworks without paying a fee would likely be but a handful. In any case, in light of the 30,000 persons expected, this small number of persons would be insignificant in relation to the overall event, and little price to pay to maintain continued public access on a State beach at the same time as allowing the event to take place.*

*The Applicant expressed a concern that such an option would make the event unmanageable in terms of checking the event area for paying versus non-paying event goers, particularly in light of the 30,000 people expected to attend. And while the number of persons "free-loading" on the fireworks show may be low this year, the Applicant expressed reservations that such a provision*

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<sup>1</sup> Issues raised by such a fee for entrance into this elevated paved area, an area outside of the Commission's original jurisdiction, would need to be addressed by State Parks and Santa Cruz County.



would undermine successful ticket sales for future events should it be widely understood that the fireworks could be viewed from the beach area for free.

The Commission is mindful of the nature of the event and the willingness shown on the Applicant's part to make modifications to better address Coastal Act access and recreation issues. There are multiple ways to modify the project so that the general public is not unduly prohibited from accessing the public beach here at the same time as providing the greatest probability for a successful and manageable event consistent with the goals and objectives of the Applicant. With this in mind, Commission Staff and the Applicant have negotiated appropriate revisions to the proposed event. Accordingly, the Commission can find the proposed project consistent with the applicable Coastal Act public access and recreation policies, and can approve a coastal permit for the event, if it is modified as follows:

1. The portion of the project located on the sandy beach shall be reduced to allow more of the State Beach to be available for general public access throughout the day. This can be accomplished by moving the upcoast perimeter of the project (proposed for Las Olas Drive) towards the Seacliff Sate Beach pier. If the project area perimeter is moved to the second stairway on the west of the pier, an additional roughly one-half mile of the beach unit will remain accessible to the non-fee paying public, and the event can be condensed into a primary beach area where the main beach area structures (i.e., tents and stage) and related events are proposed. Since the State Beach is usually open from 6am to 10pm, this means that the public will only be excluded from this reduced beach project area for 9 of the 16 hours that the State Beach is typically open (i.e., from 1pm until 10pm on Saturday). The Applicant has indicated that such an arrangement would be acceptable. See Exhibit C for the approved project area.
2. The general public must be allowed through lateral access along the seaward side of the event for the majority of the day. This can be accomplished by establishing an access corridor along the water's edge through which the general public can access the beach and ocean from up and downcoast during the event without paying a fee. This access corridor would be a minimum of ten feet in width inland of water's edge. To minimize the psychological barrier to public access represented by fences, gates, and guards, the general public should be allowed to pass freely in this area without any interference or other encumbrance. The Applicant would be allowed to close the lateral accessway from 6pm until 10pm on Saturday to better control the event leading up to the fireworks show at 9pm. Since the State Beach is usually open from 6am to 10pm, this means that the public will enjoy lateral access for 12 of the available 16 hours that the State Beach is typically open. The Applicant has indicated that such an arrangement would be acceptable. See Exhibit C for the approved accessway.
3. The general public shall be made aware of the event and the event's public and fee-paying parameters. This can be accomplished by placing signs describing the event taking place, and explaining the fences and fees, at either end of the event (up and downcoast). In this way,



*it will be clear that the public is allowed free through access and will better understand the event taking place.*

- 4. The safety zones proposed by the Applicant, within which both fee and non-fee persons are excluded, can be made part of the event as proposed. As indicated by the Applicant, these areas will include a 10-foot wide lateral corridor along the water's edge under the pier extending laterally approximately 350 feet through the safety zone surrounding the pier. With the beach access corridor kept open for the majority of the day (other than from 6pm until 10pm on Saturday), the public's ability to access along the beach is not unduly compromised.*
- 5. To ensure that the beach area reverts to general public use as soon as possible after the event, all beach area fencing shall be rolled-up and stored adjacent to the beach bulkhead or off the beach following the fireworks display. The beach, pier, and water area must be cleaned of debris, including fireworks detritus, and the overall area returned to its pre-event condition by 10am on Sunday October 15, 2000.*

*See Special Conditions 1, 2, and 3.*

*By modifying the project in this way, the general beach-going public will not be unduly restricted in their use of Seacliff State Beach and will be provided through lateral access along the beach for the majority of the day of the event. The only exception is during the time period from 6pm until 10pm on Saturday when through lateral access would be blocked to the non-fee paying public. Such a closure would better allow the Applicant to control the event at the critical fireworks time and specifically ensure public safety when fireworks are detonated. Such a public safety limitation is consistent with the applicable access policies. The Applicant has indicated that such an arrangement would be acceptable.*

*As conditioned, the Commission finds that the proposed project maximizes public access and recreation to the degree feasible; interferes to the least extent feasible with the public's right of access to and along the sea; provides lateral public access; protects lower cost visitor recreational facilities; protects the offshore water-oriented recreational area; and is compatible with the continuation of the beach park and recreation area; and, as such, is consistent with Coastal Act Sections 30210, 30211, 30212, 30213, 30220, and 30240(b). Therefore, the proposed project, as conditioned, is in conformity with the applicable public access and public recreation policies of Coastal Act Chapter 3.*

In the case of the current proposal, the same general Coastal Act access and recreation issues are engendered for this year's event and the future events proposed. However, the Applicant has been mindful of the previously required conditions and has incorporated various elements of the previous approval into the project to lessen its effect on the general public's enjoyment of this section of the coast for the subject weekend. For clarity, special condition 1 defines the approved project parameters and special condition 2 defines cleanup parameters. Note that special condition 1 includes specific parameters to ensure that the through public accessway provided along the shore is inland of the



expected high tide by requiring measurement of the previous afternoon's high tide to establish the location of the through accessway fencing. Since the high-tide on the day of the event would be similar, such pre-event locating should ensure that the accessway remains available for through public access and that the fencing does not contact Bay waters. In any case, special condition 1 requires fencing to be periodically moved inland during the course of the event if necessary (e.g., should unexpected tidal surges otherwise narrow the through public accessway) to ensure a minimum ten feet wide corridor at shore's edge. It also requires that the beach area fencing be rolled up and moved inland (to the bulkhead or off the beach) at the conclusion of the event on Saturday night so that the fencing does not impact the ability of the public to use the beach Sunday morning when the State Park opens at 6am; the fencing, and the other event structures and materials on the beach, need to be removed from the beach area and the beach returned to its pre-event condition by 10am on Sunday for the same reason. In past years events, the Applicant has enlisted volunteers to clean the beach and has indicated that everything has been removed from the beach generally well earlier than the 10am deadline. See special condition 1.

There are certain inherent Coastal Act concerns associated with an event that involves so many persons and takes up so much beach area. However, in light of State Parks willingness to allow a private event on State Park beach, and each individual event's limited duration, and only as conditioned, the Commission can find it consistent with the Coastal Act policies cited in this finding. In making this access and recreation finding, the Commission notes that such finding is necessarily informed and shaped by the inconclusive evidence (to date) of any lasting marine resource impacts (see findings that follow below); future analyses and information of such impacts may alter the basic assumptions that premise such an access and recreation finding, and thus this finding is limited to the events as proposed and the information as known to the Commission as of the date of this report.

## 2. Land Use Priorities

Coastal-dependent and coastal-related development are among the highest priority Coastal Act uses. Section 30001.5 states in part:

*Section 30001.5. The Legislature further finds and declares that the basic goals of the state for the coastal zone are to: (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources. ... (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners. (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast. ...*

The Coastal Act requires that public recreational uses take precedence over private residential and general industrial or commercial development, but not at the expense of coastal-dependent industry:

*30220: Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*



*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.*

*30223: Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30255 also provides:

*Section 30255. Coastal-dependent developments shall have priority over other developments on or near the shoreline. ...*

The Coastal Act defines coastal-dependent and coastal-related as follows:

*Section 30101. "Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.*

*Section 30101.3. "Coastal-related development" means any use that is dependent on a coastal-dependent development or use.*

The Coastal Act establishes the beach and ocean recreational use of Seacliff State Beach as a coastal-dependent, priority use. The proposed event does not necessarily require a site on or near the shoreline to function and is not dependent upon another use that does. As such, the event is not coastal-dependent nor coastal-related and thus does not enjoy any sort of priority for siting on the beach. In fact, the proposed event could just as easily take place at an inland location better able to accommodate a fee-based event for 30,000 persons (for example, the Santa Cruz County Fairgrounds). To the extent that event-goers use the beach and ocean resources in combination with event activities, however, some amount of priority use is associated with the proposed event.

As detailed earlier, the proposed event would partially block the public's ability to make full use of this public recreational facility in order to allow a fee-based fireworks and fair event to take place here one fall weekend (typically in October) each year. To the extent that the events could be located inland, and to the extent the events block use of the beach-recreational area by the general public when this public beach recreational use *cannot* be accommodated at inland locations, the proposed events raise questions of consistency with the land use priorities of the Coastal Act.

Fortunately, there are complementary Coastal Act policies at play here (i.e., public access and recreation, and priority uses) that together dictate that the public beach and ocean be kept open for public use to the extent practicable. Although it could be argued that the entire beach area in question should be left open to the public for the duration of each event, the Commission finds that the public exclusion period is minimal and that the middle ground is appropriate in this instance to allow the Applicant better control over the fireworks portion of the event specifically to ensure public safety when fireworks are detonated (see above access and recreation finding). See special condition 1. In addition, the events may bring



visitors to the coast who would not otherwise be attracted to Seacliff State Beach and the special coastal resources there. To the extent additional persons are made aware of – and enjoy – such coastal access and recreation areas, public access is maximized as directed by the Act.

As conditioned, the Commission finds that the proposed project will ensure continued recreational use of Seacliff State Beach to the extent feasible and can be found consistent with the Coastal Act land use priorities discussed in this finding.<sup>2</sup>

### 3. Marine Resources and Habitat

The Coastal Act protects the marine resources and habitat offshore Seacliff State Beach. Coastal Act Sections 30230 and 30231 provide:

*Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

*Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Coastal Act Section 30240 states:

*Section 30240(a). Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*Section 30240(b). Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

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<sup>2</sup> Again, in making such findings, the Commission notes that such findings are necessarily informed and shaped by the inconclusive evidence (to date) of any lasting marine resource impacts (see findings that follow below); future analyses and information of such impacts may alter the basic assumptions that premise such a land use priorities finding, and thus this finding is limited to the events proposed and the information known to the Commission as of the date of this report.



The fireworks display would be detonated from atop the Seacliff State Beach Pier and over the Monterey Bay National Marine Sanctuary. At the end of the pier is the weathered and battered concrete ship Palo Alto.<sup>3</sup> Off limits to public access, what is left of the Palo Alto serves as habitat for a variety of marine birds as well as a small harbor seal rookery. Although the Sanctuary is home to some 26 Federal and State Endangered and Threatened species, it does not appear that any special status habitat exists on or around the pier and/or cement ship. As such, the immediate detonation site itself (i.e., the pier) does not appear to constitute ESHA. However, Sanctuary waters (and the adjacent cement ship) are teeming with wildlife. As previously indicated, some such wildlife is listed and some not. The Commission's rebuttable presumption is that Sanctuary waters of themselves are considered ESHA, much as wetlands are oftentimes categorically defined as ESHA. Therefore, though the pier itself (where the fireworks would be detonated) does not appear to constitute ESHA, the area under it and surrounding it should be considered such habitat.

The Coastal Act requires that the event be designed in such a way as to not significantly degrade nor disrupt ESHA, and that it be protective of both marine wildlife and water quality. As proposed, there is little question that the fireworks event will result in displacement of the marine wildlife present on and around the pier and cement ship. MBNMS and Applicant biological monitoring from the previous three year's events shows that the birds and seals in this area vacated the cement ship as soon as the fireworks began. These species began to return shortly thereafter, the Sanctuary and Applicant's consulting biologists recording counts of birds and mammals that night and the following morning. However, lacking a complete baseline, and a more complete, long-range follow-up, the overall effect is difficult to measure.

What is clear is that there is an impact on marine wildlife resources due to the event. Migrating and breeding birds are known to move out of their preferred habitats in response to disruptions; the same could be said for other ocean-going birds living here. In addition, since birds that are resting are conserving energy, alarm movements that cause a waste of such energy can result in negative impacts on these birds survival since there will be less energy remaining for breeding, maintaining nests and territory, as well as foraging and feeding. The impact would be similar for the harbor seals.

Furthermore, event debris can both impair Sanctuary water quality as well as harm wildlife that may ingest and/or become entangled in such debris.

The Sanctuary has more recently become increasingly concerned about the potential negative impacts of fireworks on marine resources within the Sanctuary. On March 26, 2001, the Sanctuary requested formal programmatic consultation from USFWS and NMFS within the context of both the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) as to the potential for "take" of listed species and/or protected mammals. Such consultation has yet to occur, and the Sanctuary has indicated

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<sup>3</sup> The Palo Alto was towed to Seacliff State Beach in the early 1930s and beached just offshore. Although outfitted as a nightclub, the nightclub business failed in a few years and the Palo Alto was subsequently stripped of accoutrements and essentially abandoned. It has since weathered and broken up in surf zone over the ensuing years. Today the Palo Alto is off-limits to public access for safety purposes.



that it is unclear when these consultations will commence or be complete. Other than permit applications for recurring annual fireworks events that have been permitted by the Sanctuary in the past (such as that proposed here), the Sanctuary has indicated that it has suspended review of any "new" fireworks applications pending completion of consultation with USFWS and NMFS. See exhibit D for MBNMS report on fireworks within the Sanctuary from 1993-2001 and the formal request for consultation.

In any case, MBNMS is processing an application for the proposed project and indicates that an approval is likely with conditions similar to those imposed by the Sanctuary in years past (e.g., prohibition on aerial "salute" shells, requirements for removal of plastic labels and packaging from shells, prohibition on plastic casings, etc.). The Sanctuary also requires 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. The Applicant has adjusted their event to eliminate "salutes" and to ease into the program so that any wildlife in the area can temporarily relocate before the large scale noise and explosions ensue.

Although clearly any potential impacts on marine resources and habitats could be completely avoided by moving the event to an inland site more readily able to accommodate an event of this magnitude (e.g., the Santa Cruz County fairgrounds), the effect of the event on the long-term habitat value in the immediate area is not entirely clear. It appears as though a limited duration wildlife displacement impact is to be expected, but the overall impact on marine habitat here is less easily measured. Likewise, the potential for ESHA, ESA and/or MMPA issues is uncertain at this point. Cumulative impacts on Sanctuary resources as a whole are also difficult to assess. Fortunately, formal USFWS and NMFS consultation has begun on such questions, though the results of such consultations are not complete. To address such issues in this case, conditions can be applied to insure complete debris removal and to monitor and document the effects of the event on marine wildlife in the area (see special conditions 2 and 4) and to limit the event to one weekend (see special condition 1). In addition, to account for the possibility that the Sanctuary's USFWS and/or NMFS consultations are complete before the five year permit has expired, and that the results of those consultations would have a bearing on coastal permitting decisions, this approval is structured to expire upon Sanctuary notification that this has occurred (see special condition 5). In such a case, the Applicant would need to apply for a coastal permit (multiple year or not) prior to any subsequent events.

As so conditioned, and based on the current understanding of marine resource impacts and related concerns,<sup>4</sup> the Commission finds that the proposed project will be protective of marine resources and habitats in and around the Seacliff State Beach pier to the extent feasible and can be found consistent with the Coastal Act policies in this finding.

#### 4. LCP Consistency

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<sup>4</sup> Again, future analyses and information of such impacts may alter the basic assumptions that premise such a marine resource and ESHA finding, and thus this finding is limited to the current proposed events and the information known to the Commission as of the date of this report.



The project is located on the beach partially within the jurisdiction of Santa Cruz County. The portion of the event taking place on the elevated day-use and campground area running the length of the backbeach is located within the coastal permitting jurisdiction of Santa Cruz County. The portion of the project located within the sandy beach and water area (including the pier) seaward of the bulkhead is located within the Commission's retained coastal permit jurisdiction. The County has determined that no permits nor approvals are required for shutting down the State Park within their coastal permit jurisdiction. As such, and as discussed earlier, although the County's certified LCP can provide non-binding guidance, the standard of review for this coastal development permit application is the Coastal Act. In any case, the Commission generally tries to reconcile projects with an eye to maintaining consistency with certified LCP policies unless there is some compelling coastal resource reason not to do so.

The County's LCP land use (Existing Parks and Recreation) and zoning (PR – Parks, Recreation and Open Space) designations for the beach area protect this beach and back-beach area for recreational and open space use. LCP Land Use Plan Policy 2.22.1 establishes a hierarchy of uses whereby coastal recreational use has priority over the subject event; LUP Policy 2.22.2 prohibits the conversion of an existing priority use to a lesser priority use. Moreover, the LCP strongly protects this beach area from the intrusion of non-recreational structures and protects existing public access (for example LUP Policies 7.7.4, 7.7.10, 7.7.11, 7.7.12 and LCP Zoning Section 13.20.130). Monterey Bay and coastal water quality are specifically protected by LUP Policies 5.4 et seq. LCP wildlife protection policies include LUP Policies 5.1 et seq (Biological Diversity), and Zoning Code Chapter 16.32 (Sensitive Habitat Protection).

The proposed project, as conditioned: allows the public to continue to access most of Seacliff State Beach for the majority of each individual event; includes measures to address impacts to marine resources and habitats; and, as such, can be found consistent with the goals, policies, and objectives of the County's certified LCP to the extent practicable for the beach area portion of the of the project.

## **5. 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 Commission understands that the County exempts the proposed project from CEQA based on their determination that the event does not constitute a "project." In any case, 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 suggested modifications to

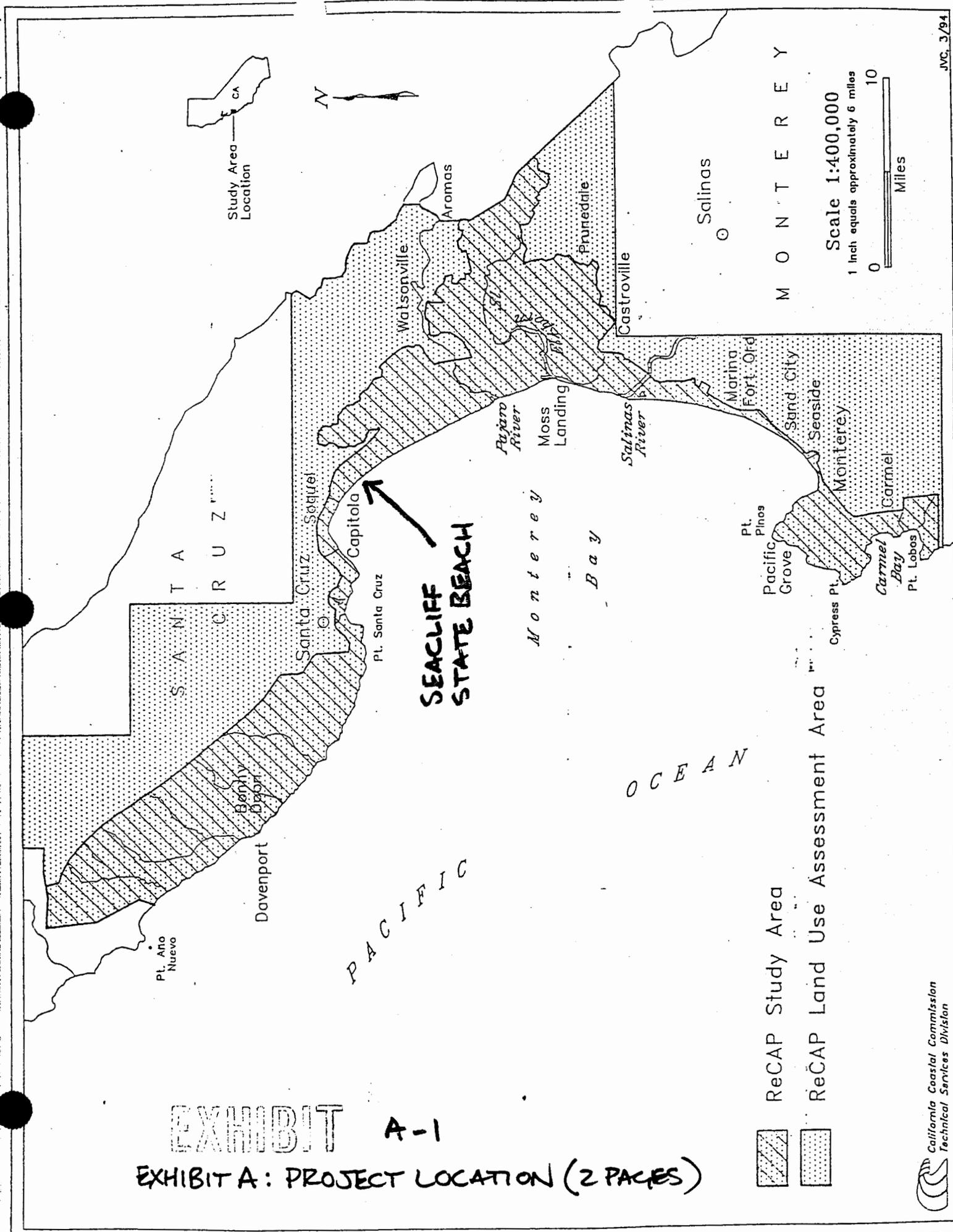


avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference. Accordingly, the project is being approved subject to conditions 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.



Proposed Milestone Targets  
Toward  
Public Review Draft CHMP

<b>Date</b>	<b>Activity</b>	<b>Description</b>	<b>Responsible</b>
March 21 - Friday	CHMP Technical Working Group Meeting	Guidelines discussion (Aesthetics, Landslides, Vegetation)	Combined Working Group
March 31 - Monday	Comments due on Draft Guidelines for Corridor Aesthetics	March 2003 version	Working Group/Steering Committee Representatives
April 15 - Tuesday	Comments due on Draft Guidelines for Landslide Management & Storm Damage Response	March 2003 version	Working Group
April 18 - Friday	Steering Committee Conference Call - TENTATIVE	Review target date schedule and milestones	Steering Committee Representatives
April 18 - Friday	Comments due on Admin Draft Vegetation Management Guidelines	March 2003 version	Working Group
May 1 - Thursday	Revised Draft CHMP with Guidelines to Steering Committee	May 2003 version Draft CHMP with Management Guidelines (Aesthetics, Landslide, Vegetation)	Caltrans
May 19 - Monday	Comments due on Draft CHMP Complete Packet	May 2003 version	Steering Committee
May 23 - Friday	Steering Committee Conference Call - TENTATIVE	Disposition of comments or outstanding issues	Steering Committee
May 30 - Friday	Steering Committee receives Revised Draft CHMP documents	Revisions per May review	Caltrans
June 5 - Thursday	Steering Committee Meeting	Consensus agreement to release document(s) for public review	Steering Committee Members
July 1	Availability of Draft CHMP for Public Review	Public Review period begins	



**EXHIBIT A-1**  
**EXHIBIT A: PROJECT LOCATION (2 PAGES)**

-  ReCAP Study Area
-  ReCAP Land Use Assessment Area

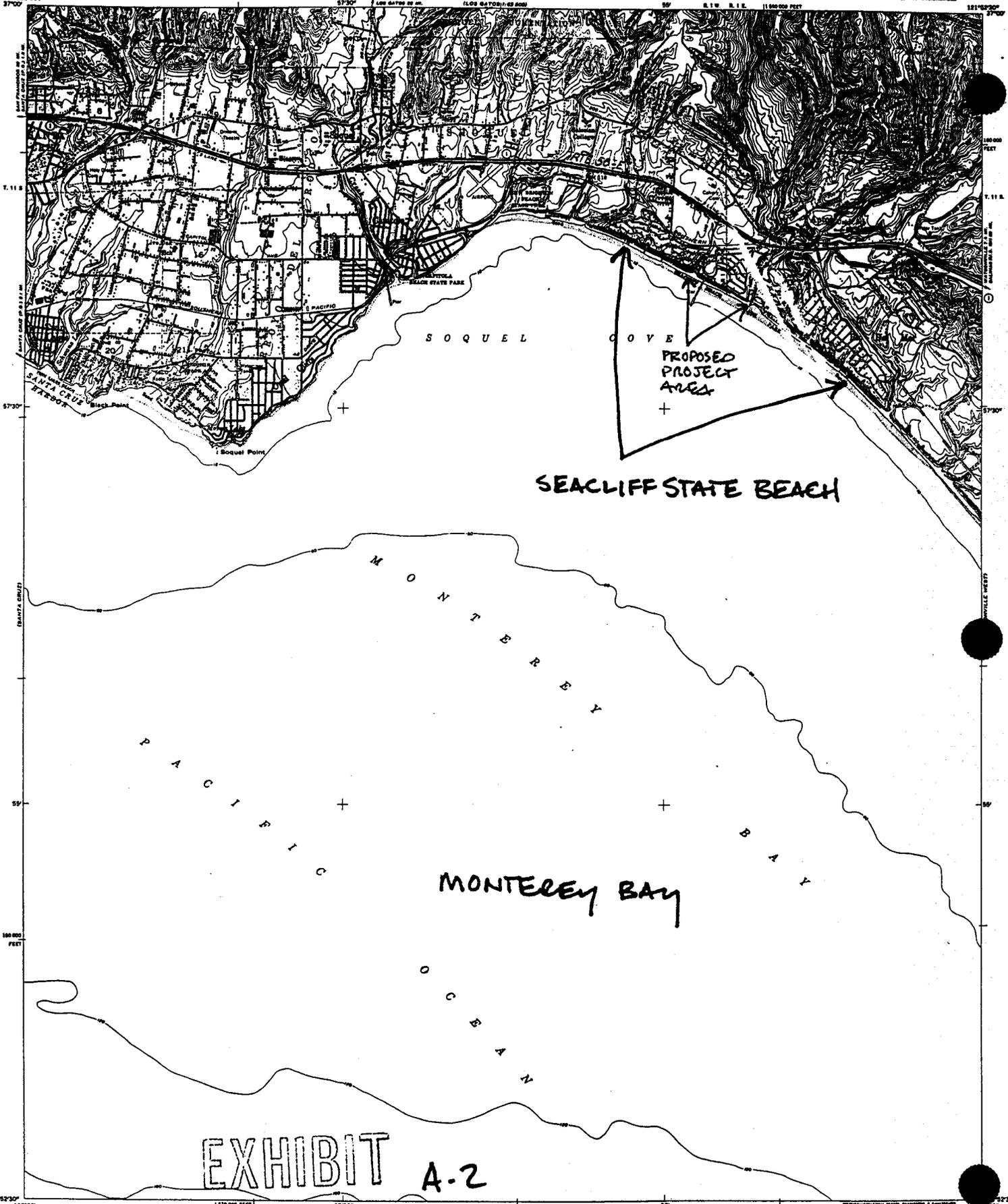
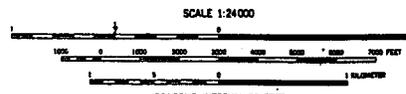


EXHIBIT A-2

Mapped, edited, and published by the Geological Survey  
Control by USGS and USC&GS  
Topography from aerial photographs by multiple methods  
and by plane-table surveys 1954. Aerial photographs taken 1952  
Hydrography compiled from USC&GS Chart 5403  
Polycone projection. 1927 North American Datum  
10,000-foot grid based on California coordinate system, zone 3  
Red tint indicates area in which only landmark buildings are shown  
Dashed lines indicate approximate locations



STATE ROUTES MAY, 1959

ROAD CLASSIFICATION	
Heavy-duty	Light-duty
Medium-duty	Unimproved dirt
U.S. Route	State Route

CONTOUR INTERVAL 20 FEET  
DATHIN IS HIGH SEA LEVEL  
DEPTH CURVES IN FEET—DATHIN IS MEAN LOWER LOW WATER  
SHEDLINE SHOWN REPRESENTS THE APPROXIMATE LINE OF HIGH WAVE DASHES  
THE HEIGHT ABOVE OF THIS IS APPROXIMATELY 4 FEET  
THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS  
FOR SALE BY U. S. GEOLOGICAL SURVEY, FEDERAL CENTER, DENVER, COLORADO OR WASHINGTON 25, D. C.



SOQUEL, CALIF.  
1914 MAPS 14 10' QUADRANGLE  
N 3552.5—W 12152.3/7.5



**RUDOLPH F. MONTE FOUNDATION**

*Dedicated to the Children of Santa Cruz County*

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**RECEIVED**

MAR 12 2003

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Date: March 11, 2003

To: Dan Carl – Coastal Planner

From: Kim Gallick

Subject: Coastal Development Permit Application

Timing of Event:  
Saturday, October 4, 2003  
1:00pm to 10:00pm

Tickets:  
Tickets will be available in advance, at any local school or Deluxe Foods of Aptos. They may also be purchased the day of the event at any of the three entrances.

Timing for public access closures:  
Seacliff State Beach Park will be closed to all non-ticket holders on Saturday, October 4, 2003, from 1:00pm to 10:00pm. The pier and cement ship will be closed from Friday, October 3, 2003 at 8:00am, until Sunday, October 5, 2003 at 11:00am.

The Safety Zone is set up to keep people away from the fireworks detonation area. The technicians have requested that the safety zone be maintained during the entire event, as a precaution. To review the dimensions of the Safety Zone, please see attached map. The safety zone will be marked with orange construction fencing as described below. We will set up the safety zone on Saturday, October 4, 2003 at 8:00am, and remove it by 10:00am, on Sunday, October 5, 2003. The public will be prohibited from enter this area starting at 8:00am on Saturday (with the exception of the public access way), and will be allowed back in the area once all devises have been removed.

During the event we will set up a corridor to allow people to walk along the wet sandy beach from one side of the pier to the other. This will be an area for people who do not wish to purchase a ticket to walk from one side of the beach to the other. First Alarm will be on duty to make sure people are moving along. This walkway will be open from 1:00pm to 6:00pm. The walkway will be a minimum of 10 feet wide and 4600 feet in length.

**Fencing:**

There are two types of fencing that will be used. 1) Temporary Cyclone Fencing, which will be used to set up the walkways, parking areas and road closures. This type of fencing stands 8 feet tall, and is used in 12-foot panels. In previous years we have used 3500 feet. 2) Construction Fencing (orange), which is used on the beach to create parameters for non-ticket holders and to establish a safety zone. This fencing stands 5 feet tall, and approximately 1800 feet will be used. You can see through all types of fencing, and at no time will the fencing enter the bay waters.

**Fence Locations:**

There are four sections within our event that will have fencing for crowd control and safety.

- 1) Bluff fencing. This area is located above the beach on the upper section of the State Park unit. Temporary Cyclone fencing will be used in this area

Bluff fencing will be erected on Friday, October 3, 2003 at 8:00am  
Public access will be permitted until Saturday, October 4, 2003 at 1:00pm.  
Public access will be prohibited until 10:00pm.  
The fencing will be removed by Sunday, October 5, 2003 by 10:00am.

- 2) Safety Zone Fencing. The area is located around the ship-pier where pyrotechnic activities will be taking place. Construction fencing will be used in this area.

Fencing will be erected on Saturday, October 4, 2003 at 8:00am.  
With the exception of the walkway, public access to this area will be prohibited.  
The fencing will be removed by Sunday, October 5, 2003 at 10:00am.

- 3) Main Beach Access Fencing. Fencing will be used on either side of the main beach to restrict access to the event area. However, access will be provided at the wet sandy beach area for public access.  
Construction fencing will also be used in this area.

Main Beach access fencing will be erected on Saturday, October 4, 2003 at 12:00pm.

Public access will be permitted to the event area until 1:00pm, on Saturday, October 4, 2003.

Public access will be prohibited until 10:00pm

- 4) Public Access Walkway Fencing. So as to provide public access to and along the wet sandy beach area, while restricting access to the event area. Construction fencing will mark this area.

Methods to achieve closures:

During any part of the set up on Friday and Saturday, the park will be open to the public. At 1:00pm on Saturday, October 4, 2003, a group of State Parks Rangers, and members of our staff will do a beach sweep, explaining to people that an event is taking place. At that time they may either purchase a ticket or move outside of the event area.

Installation of Structures:

There will be no permanent structures installed. However, for the day of the event we bring in two stages and approximately 25 to 35 booths.

Main Stage:

Parameter: 32'x40'

Height: 4'

A canopy hangs over the stage measuring 30'x40'.

The main stage will be placed on the right side of the pier. (Looking out to sea.)

**With the exception of the fencing this is the only structure that will be placed on the beach.**

Children's Stage:

Parameter: 20'x20'

Height: 1'

Canopy: 20'x20'

The children's stage will be placed in the day use parking area.

Booths:

Parameters: 10'x10'

Height: 8'

The booths will be placed sporadically throughout the event. They are used by the schools to sell food, souvenirs, and games.

Signage:

If possible we would like to use the same signage as last year.

Sign A:

*On Saturday, October 4, 2003, a portion of Seacliff State Beach will be closed to the general public from 1:00pm to 10:00pm, for the Monte Foundation Fireworks Event. This event is a fundraiser for the school children of Santa Cruz County. All picnic and camping areas as well as a section of the beach on either side of the pier will be closed to those who have not purchased a \$10.00 admission ticket. Free public beach access along the water's edge will be maintained seaward of the event area, except between the hours of 6:00pm and 10:00pm on Saturday, October 4, 2003 when this area too will require a \$10.00 admission ticket. The pier will be closed to ALL public use Friday, October 3, 2003 and Saturday, October 4, 2003 for public safety purposes; they bay waters within 50 yards of the pier and extending offshore 1/2 mile will likewise be off limits for public safety purposes. If you have any questions, please contact Kim Gallick at 831-685-3317. Thank you for your cooperation!*

This sign will be posted both prior and during the event.

Sign B:

*Free though public beach access along this corridor. Please note that there is a \$10.00 admission fee to gain entry to the event area. Please note that this public beach access way will be closed to free public use between the hours of 6:00pm and 10:00pm.*

*This fireworks event benefits the school children of Santa Cruz County. Thank you for your cooperation!*

Sign C:

*You must purchase a ticket to enter at this gate. For public beach access, please go to the New Brighton State Beach access (up coast) or the alternate Seacliff State Beach access at the Esplanade (down cost across Aptos Creek). Per Coastal Commission Request, we have provided a free public beach access corridor along the event to ensure through public access along the water's edge for your convenience.*

These are the signs provided by you last year. Please let me know if you would like to make changes, change the location, or add signs to this list. Any suggestions would be greatly appreciated.

See Attached Map #2 for locations.

Evidence of other agency approvals:

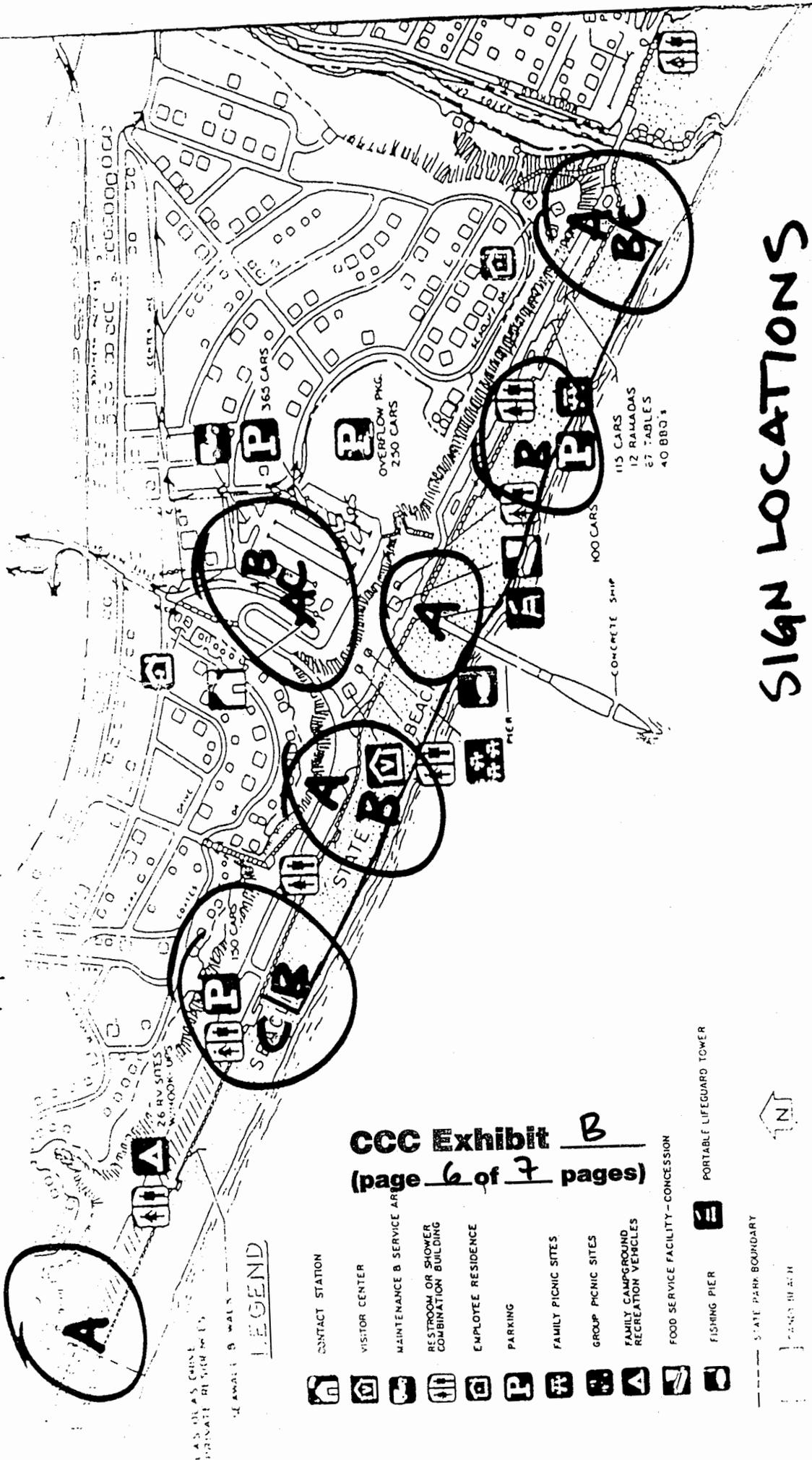
We are currently working all other agencies to obtain our permits. In speaking with the Monterey Bay National Marine Sanctuary, United States Coast Guard, California State Parks, and the Aptos/La Selva Fire Department, I have had no indication that there will be any problems. At this time they are all currently awaiting the fireworks synopsis, which will be provided by Fireworks by Grucci.

Posting Notice:

Please provide us with the correct description that you would like placed on the posting notice.

Thank you for taking the time to review this information, if you have any questions please contact me at 831-685-3317.

MAP #2



SIGN LOCATIONS

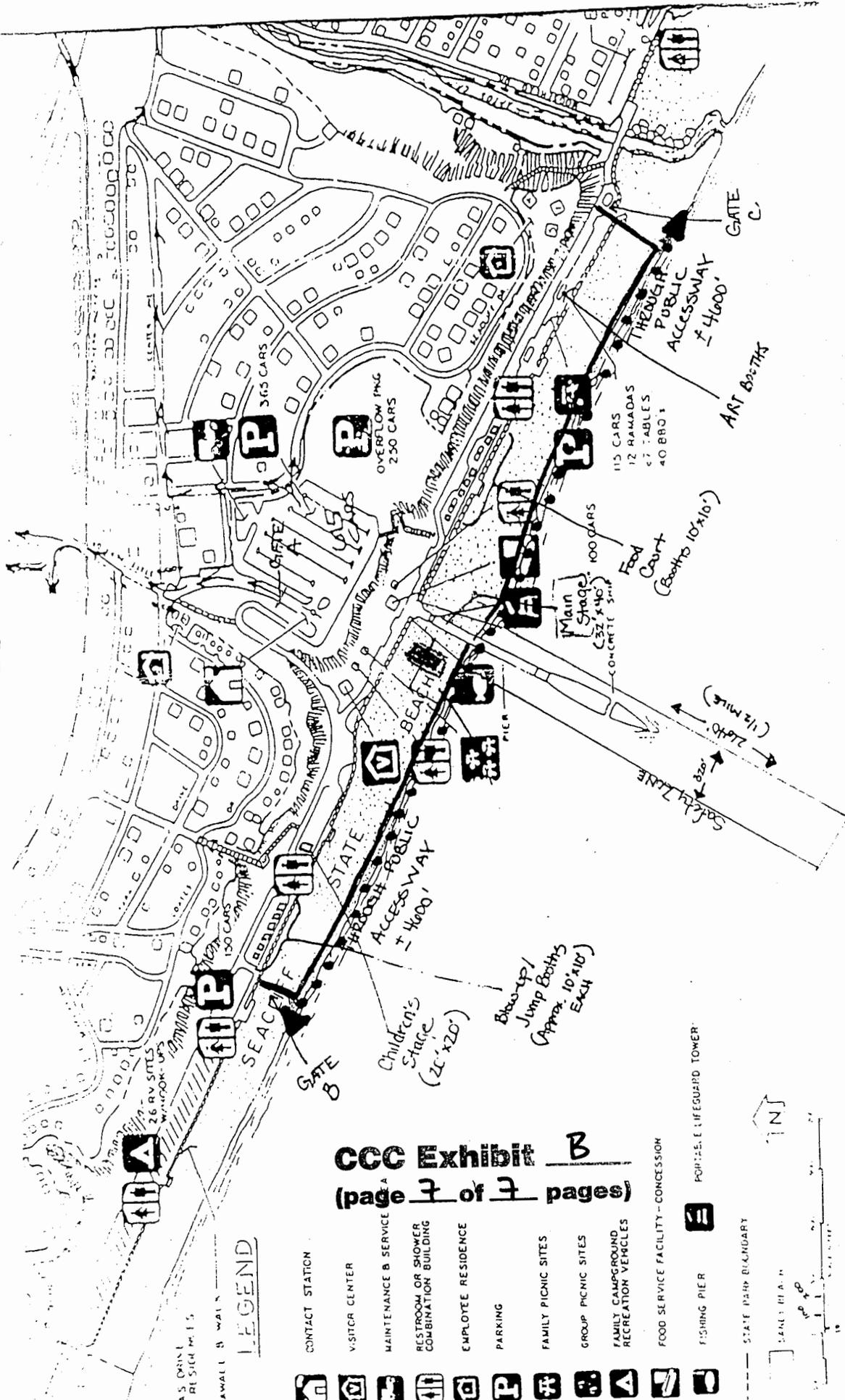
**CCC Exhibit B**  
(page 6 of 7 pages)

**LEGEND**

- CONTACT STATION
- VISITOR CENTER
- MAINTENANCE & SERVICE AREA
- RESTROOM OR SHOWER COMBINATION BUILDING
- EMPLOYEE RESIDENCE
- PARKING
- FAMILY PICNIC SITES
- GROUP PICNIC SITES
- FAMILY CAMPGROUND RECREATION VEHICLES
- FOOD SERVICE FACILITY - CONCESSION
- FISHING PIER
- PORTABLE LIFEGUARD TOWER
- STATE PARK BOUNDARY
- PIER
- CONCRETE SHIP
- 26 RV SITES
- 150 CARS
- 365 CARS
- 250 CARS
- 100 CARS
- 115 CARS
- 12 RAMADAS
- 67 TABLES
- 40 BBQ'S



MAP #1



**CCC Exhibit B**  
(page 1 of 7 pages)

- LEGEND**
- CONTACT STATION
  - VISITOR CENTER
  - MAINTENANCE & SERVICE BUILDING
  - RESTROOM OR SHOWER COMBINATION BUILDING
  - EMPLOYEE RESIDENCE
  - PARKING
  - FAMILY PICNIC SITES
  - GROUP PICNIC SITES
  - FAMILY CAMPGROUND RECREATION VEHICLES
  - FOOD SERVICE FACILITY - CONCESSION
  - FISHING PIER
  - STATE PARK BOUNDARY

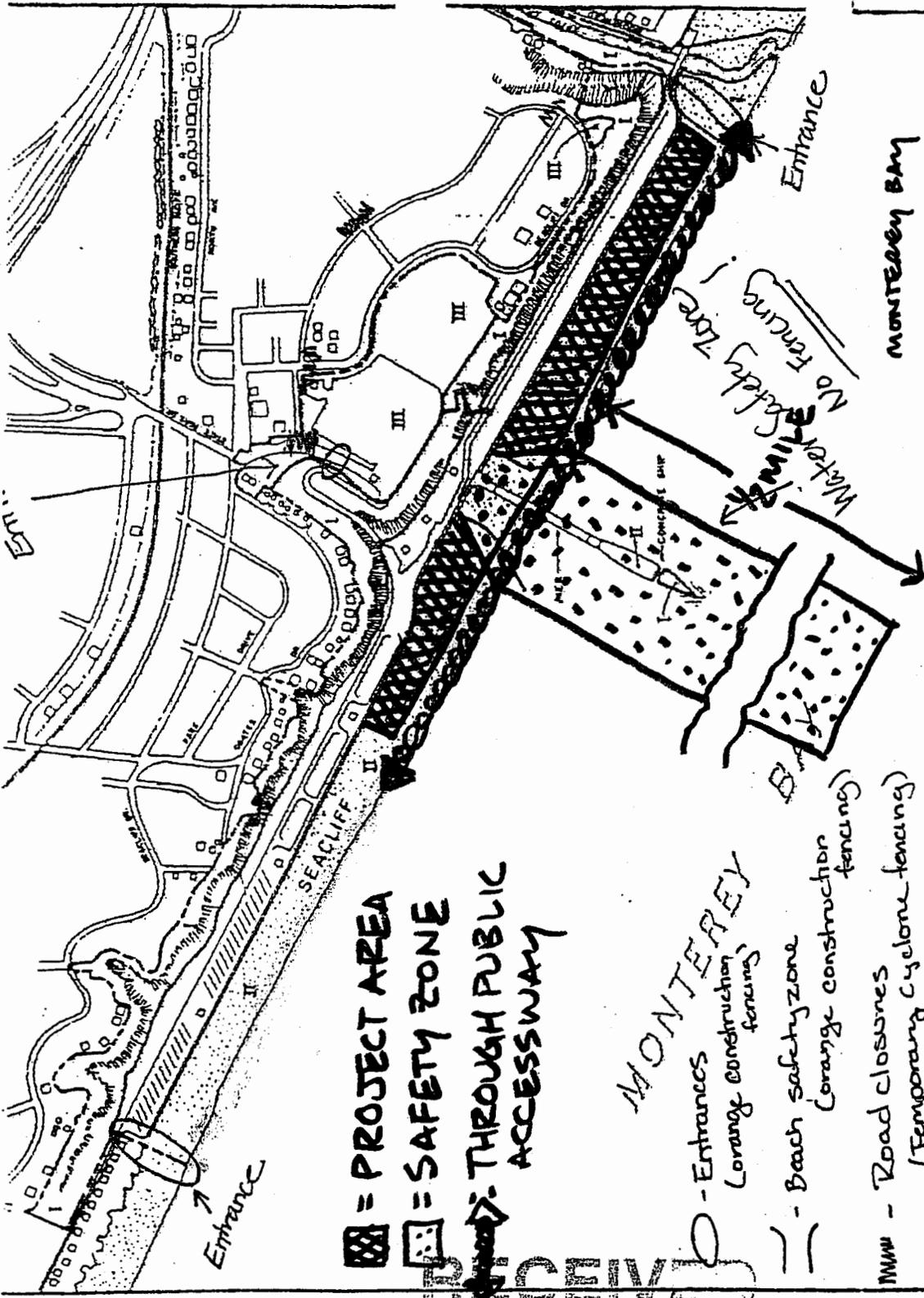
POP 25. E. LIFEGUARD TOWER

SAFETY ZONE (1/2 MILE)

SEATTLE, WA



Utilities located per utility request.



[Hatched Box] = PROJECT AREA  
 [Dotted Box] = SAFETY ZONE  
 [Arrow] = THROUGH PUBLIC ACCESSWAY

MONTEREY  
 - Entrances (Orange construction fencing)  
 - Beach safety zone (Orange construction fencing)  
 - Road closures (Temporary cyclone fencing)

LEGEND  
 - - - STATE PARK BOUNDARY  
 - - - - - OPEN SPACE EASEMENT MANAGED BY DPR  
 [Dotted Box] SANDY BEACH

APPROXIMATE IMPACT LEVEL	CHARACTERISTICS	APPROPRIATE FACILITIES
I-LOW	- OCEAN FACING BLUFFS AND ADJACENT MUFFLETOP AREAS WITHIN 100 FEET OF CLIFF. - AFTER CREEK DRAINAGE. - REVERSELY DETERMINATED DIRECTION OF THE CONCRETE SHE.	TRAILS AND STARWAYS IN AREA KNOWN TO BE STABLE IN THE LONG TERM. MINOR IMPROVEMENTS TO EXISTING TRAILS AND HISTORIC HOUSES MAY REMAIN.
II-MODERATE	- SANDY BEACHES AND FILL MATERIAL IN DEVELOPED CAMPGROUND.	PRE-EXISTING AREAS, PORTALS, EXPANSION, IMPROVING PARKING, OR EXISTING HOUSES, HISTORIC PERIODS MAY REMAIN. CAMPING CONCERNS AND VISITOR FACILITIES MAY REMAIN.

APPROVED PROJECT (1 PER)  
 FOR ILLUSTRATIVE PURPOSES ONLY  
 SEE SPECIAL CONDITION 1

AUG 22 2000

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

EXHIBIT

← NORTH

C-1

EXHIBIT C: APPROVED PROJECT SITE DETAILS (2 PAGES)

APD'S  
CREEK

± 4800 FEET  
BULKHEAD

PROJECT  
AREA

← THROUGH PUBLIC ACCESSWAY →

← 120' →

PROJECT  
AREA

PER

10' MINIMUM

HIGH TIDE LINE  
AS MEASURED  
ON FRIDAY  
AFTERNOON

MONTEREY BAY

1/2 MILE

SAFETY ZONE

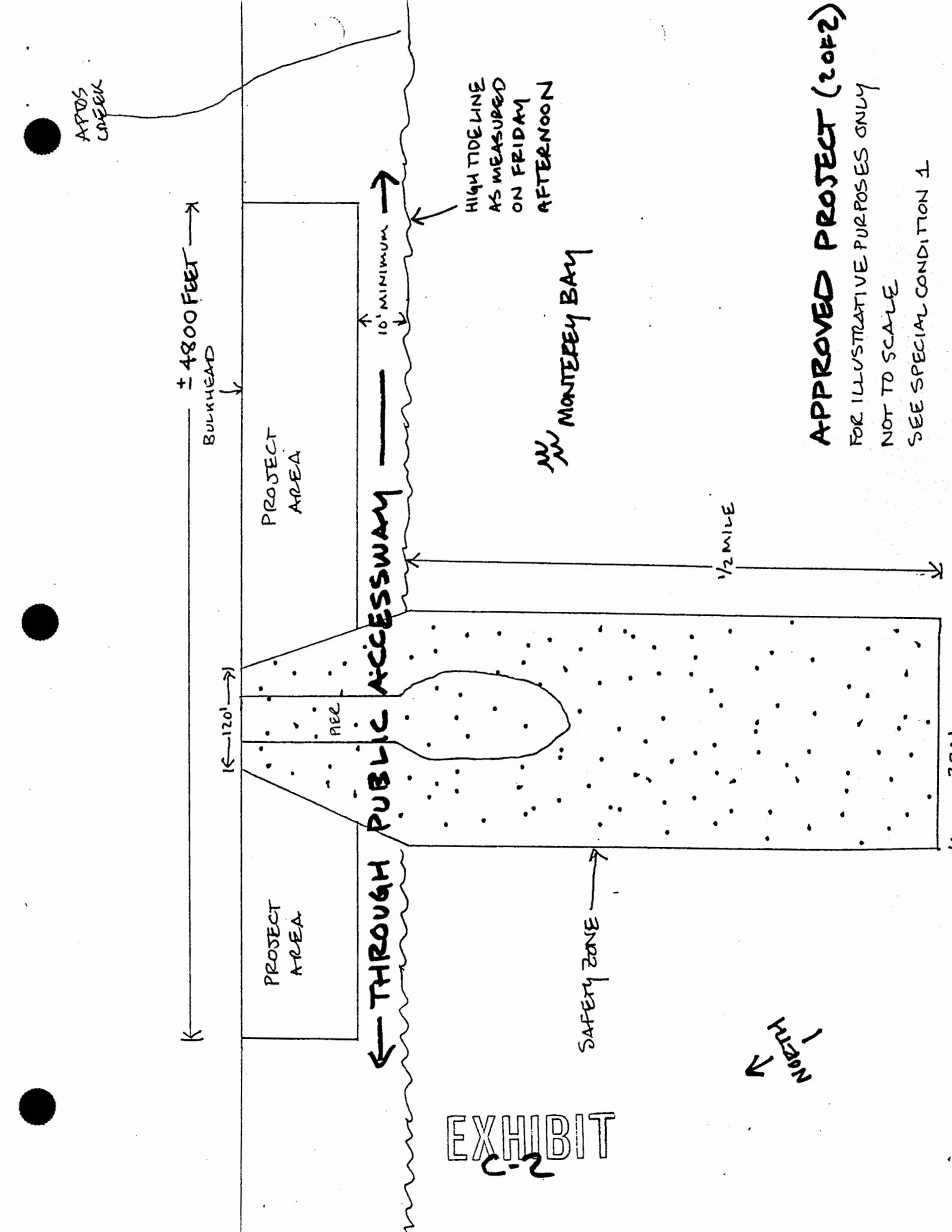
↑  
NORTH

APPROVED PROJECT (20F2)

FOR ILLUSTRATIVE PURPOSES ONLY  
NOT TO SCALE

SEE SPECIAL CONDITION 1

EXHIBIT  
C-2





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

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

March 26, 2001

Ms. Anne Badgley  
Director, Pacific Region  
U.S. Fish and Wildlife Service  
911 NE 11th Avenue  
Portland, Oregon 97232-4181

Dr. Rebecca Lent  
Administrator, Southwest Region  
National Marine Fisheries Service  
501 West Ocean Boulevard, Suite 4200  
Long Beach, CA 90802-4213

Dear Ms. Badgley and Dr. Lent:

Since 1993, the Monterey Bay National Marine Sanctuary (MBNMS), a component of the National Oceanic and Atmospheric Administration (NOAA), has processed requests for professional fireworks displays affecting the Sanctuary. The MBNMS encompasses ocean waters from mean high tide to an average of 30 miles offshore between Rocky Point in Marin County and Cambria in San Luis Obispo County. The site adjoins 296 miles (25%) of California's coastline. Sponsors of fireworks displays conducted in the MBNMS are required to obtain Sanctuary authorization due to discharge of spent pyrotechnic materials into Sanctuary waters and potential disturbance of marine species (15 CFR §922.132).

In 1992, the MBNMS was the first national marine sanctuary to be designated along urban shorelines and has addressed many regulatory issues previously not encountered by the national program. Authorization of professional fireworks has been one such issue that has required a steady refinement of our policies and procedures toward this activity as we have learned more about its impacts to the environment. Initially, the MBNMS believed that it could minimize potential impacts through permit conditions and has steadily refined conditions to

- Limit the location and time of the display
- Limit the number of aerial "salute" effects used in the display
- Delay the use of aerial "salute" effects until five minutes after the commencement of the display to afford wildlife time to depart the impact area
- Require removal of plastic labels and wrappings from pyrotechnic devices

EXHIBIT

D-1

EXHIBIT D: MBNMS REQUEST FOR USFWS & NMFS  
CONSULTATION ON FIREWORKS EVENTS WITHIN THE SANCTUARY (15 PAGES)



- Prohibit use of any aerial mortar containing non-biodegradable components exceeding five percent of the mortar's mass
- Recover all related debris from the launch site and affected beaches
- Conduct monitoring, and require post-show cleanup and reporting.

However, due to our observations over the past 8 years, past correspondence with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS), public complaints of wildlife disturbance, and an increasing number of requests to perform fireworks displays in the Sanctuary, we believe that potential impacts from the displays warrant programmatic consultation with the USFWS and NMFS in accordance with Section 7 of the Endangered Species Act (ESA) and regulations at 50 CFR §402.10. In addition to ESA consultation, we request findings by both the USFWS and NMFS whether fireworks displays in the Sanctuary are likely to constitute a "taking" of marine mammals under provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*. If a take is deemed likely, on either a universal or local scale, then we request guidance from both Services regarding measures to eliminate or reduce impacts to a level of insignificance or instructions regarding the applicability of incidental take permits to this activity.

In order to assist both Services in their review of this activity within the Sanctuary, we have prepared the enclosed report titled "Assessment of Pyrotechnic Displays and Impacts within the Monterey Bay National Marine Sanctuary 1993 - 2001". This report comprises the sum of the information we have assembled on the nature and impact of fireworks displays within the Sanctuary. It indicates that disturbance of marine species has been observed to occur as a result of fireworks demonstrations and includes an empirical analysis of impacts for some specific sites. The MBNMS is requesting consultation in order to obtain a determination, from the Federal agencies with primary management responsibility for these species, on the following questions:

- 1) Does disturbance from professional pyrotechnic displays pose a significant threat to protected species on either an individual, collective, or site specific basis?
- 2) Does the level of threat for any individual species, collection of species, or specific habitat area constitute a taking under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), and/or the Migratory Bird Treaty Act (MBTA - 16 U.S.C. 703 *et seq.*)?
- 3) What are the nature and characteristics of each identified threat for each affected species?
- 4) What measures and/or alternatives should be implemented to safeguard any resources at risk?

EXHIBIT D-2

- 5) Should seasonal restrictions apply?
- 6) How should cumulative impacts be measured and managed to prevent harm to protected species and habitat?
- 7) Are incidental take permits, or similar instruments, applicable to this activity under the ESA, MMPA, or MBTA?

Within the past twelve months, the MBNMS has received a four fold increase in the number of requests for private fireworks displays. Evidence suggests that private firms on the Monterey Peninsula have both an economic incentive and an available clientele to support an increasing number of displays of varying size on a monthly basis. The MBNMS is concerned about the potential cumulative impacts to marine wildlife and the environment from such displays, particularly if they proliferate to multiple sites within the Sanctuary. Once you have assessed the potential impacts to protected species, based on current use patterns, we request your assistance in developing policies and procedures to prevent an incremental increase and expansion of fireworks in a manner that would cause negative cumulative impacts to those resources.

Please contact our office to establish a protocol for coordinating review of this activity between the various regional and field offices of the USFWS and NMFS. In order to proceed with this review in an efficient manner, it will be necessary to identify key points of contact for each set of statutory concerns (i.e. ESA, MMPA, MBTA) within each agency.

If you have any questions or require clarification of any of the information we have provided, please contact Scott Kathey by phone at 831-647-4251 or by email at [scott.kathey@noaa.gov](mailto:scott.kathey@noaa.gov).

Sincerely,



WILLIAM J. DOUROS  
Superintendent

enclosures

cc: Diane Noda, USFWS, Ventura  
Wayne White, USFWS, Sacramento  
Tammy Tate Hall, USFWS, Region 1  
Irma Lagomarsino, NMFS, SW Region  
Tina Fahy, NMFS, SW Region  
John Armor, NOAA, ONMS

EXHIBIT D-3

RECEIVED

MAR 30 2001

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

ASSESSMENT OF  
PYROTECHNIC DISPLAYS AND IMPACTS  
WITHIN THE MONTEREY BAY  
NATIONAL MARINE SANCTUARY  
1993 - 2001 \*

\* STAFF NOTE: EXCERPTS OF THIS REPORT ARE PROVIDED  
HERE. THE FULL REPORT IS AVAILABLE FOR REVIEW AT  
THE COASTAL COMMISSION'S CENTRAL COAST DISTRICT OFFICE.



EXHIBIT D-4

# Assessment of Pyrotechnic Displays and Impacts within the Monterey Bay National Marine Sanctuary 1993 – 2001

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Pacific Grove	21
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EXHIBIT  
D-5



# Assessment of Pyrotechnic Displays and Impacts within the Monterey Bay National Marine Sanctuary 1993 – 2001

## INTRODUCTION

This report includes many terms unique to the pyrotechnic industry. A glossary has thus been added to define industry terms, and figures and graphics have been attached to provide the reader with a better understanding of the form and function of pyrotechnic devices employed in professional (commercial) fireworks displays.

## BACKGROUND

The Monterey Bay National Marine Sanctuary (MBNMS) was designated as the ninth national marine sanctuary in the United States on September 18, 1992. Managed by the Office of National Marine Sanctuaries (ONMS) within the National Oceanic and Atmospheric Administration (NOAA), the MBNMS encompasses 5300 square miles of ocean waters from mean high tide to an average of 30 miles offshore between Rocky Point in Marin County and Cambria in San Luis Obispo County (see Map A). The site adjoins 296 miles of California's outer coastline, overlaying 25% of state coastal waters.

Federal regulations governing activities within the MBNMS became effective on January 1, 1993. In April 1993, a Monterey firm inquired whether Sanctuary authorization was necessary to conduct a professional fireworks display over the waters of the Sanctuary. The MBNMS replied that the debris fallout from the display would constitute a discharge into the Sanctuary and thus a violation of Sanctuary regulations, unless written authorization were secured from the MBNMS. Since that time, the MBNMS has received a total of 46 requests for professional fireworks displays and has issued 42 permits. A list of fireworks requests received since 1993 is included as Appendix A. The majority of displays have been associated with large community events such as Independence Day and city festivals.

The MBNMS was the first national marine sanctuary to be designated adjacent to urban shorelines and, when designated, became the largest marine sanctuary in the United States, equal in area to 77% of all other Federal marine sanctuaries in existence at the time. As a result of its large size and near proximity to urban areas, the MBNMS has faced many regulatory issues not previously encountered by the national program. Authorization of commercial fireworks is one such issue that has required a steady refinement of MBNMS policies and procedures, as the Sanctuary has learned more about the potential impacts of professional fireworks displays on the marine environment. The Sanctuary has monitored individual displays over the years to improve its understanding of their characteristics and potential impacts to Sanctuary resources, but no comprehensive scientific studies have been completed on fireworks in the Sanctuary. This report presents empirical information and the cumulative findings

# EXHIBIT D-6



of the MBNMS to date concerning fireworks impacts upon marine resources within the Sanctuary.

As stated above, the MBNMS has issued 42 permits for professional fireworks displays since 1993, with a current average of 7 approvals per year. The number of public fireworks displays within the Sanctuary has remained relatively constant, while private fireworks requests have increased considerably in recent months. Private fireworks displays averaged one per year between 1993 and 2000. Within a six month period from October 2000 to March 2001, the MBNMS received four requests for private fireworks displays in the Sanctuary, and information suggests that such requests will continue and increase in the future. The table below presents a relative comparison of the types of fireworks events authorized by the MBNMS over the past eight years:

**Table 1**

<b>Fireworks Event Category</b>	<b>Percentage of Total Fireworks Permits Issued</b>
Independence Day festivals	36%
City festivals	33%
Private events	17%
Public school fundraisers	14%

Pyrotechnic displays within the Sanctuary are conducted from a variety of coastal launch sites – beaches, bluff tops, piers, offshore barges, and golf course sand traps and tee boxes. The authorized displays have been confined to eight general locations in the Sanctuary, listed below and shown on Map B.

**Table 2**

<b>Fireworks Display Locations</b>	
Half Moon Bay	Monterey
Santa Cruz <sup>1</sup>	Pacific Grove
Capitola	Pebble Beach <sup>2</sup>
Aptos	Cambria

These sites were approved for each display based on their proximity to urban areas and pre-existent high human use patterns; seasonal considerations, such as the abundance and distribution of marine wildlife; and the acclimation of wildlife to human activities and elevated ambient noise levels in the area. The Pebble Beach site is no longer authorized for displays within the Sanctuary due to its proximity to sensitive marine resources in the area. The City of Santa Cruz continues to sponsor an annual fireworks display each October; however, the MBNMS ceased issuing permits to the city after 1995, when a boundary confirmation revealed that the fireworks display and fallout area are outside Sanctuary boundaries.

In considering requests for fireworks displays, the MBNMS has consulted with biologists from State and Federal agencies and universities, local property managers and residents, environmental sensitivity index (ESI) maps prepared for the California

# EXHIBIT D-7



Department of Fish and Game (CDFG) and the National Oceanic and Atmospheric Administration (NOAA)<sup>3</sup>, other environmental maps, and both published and unpublished resources.

The Sanctuary has issued no written denials of fireworks requests to date, but has redirected at least three displays away from the Sanctuary through preliminary discussions with prospective applicants.<sup>4</sup> These prospective shows were private events planned for non-traditional display locations that would have posed an undue threat to marine resources.<sup>5</sup> The MBNMS suspended review of new applications in February 2001, pending completion of consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) regarding potential adverse effects to marine mammals, seabirds, and other protected species. Community fireworks displays and recurring annual events permitted in past years will still be authorized, with conditions, pending conclusion of consultation.

## EXHIBIT D-8



## MONTE FOUNDATION FIREWORKS

APTOS\*

Site Description – The site has been used annually for a large fundraiser for Aptos area schools in October. The launch site is on the Aptos Pier and part of a grounded cement barge at Seacliff State Beach (see Map F). The aerial shells are aimed above and to the south of the pier. The site is sometimes fogged in during summer months. The large aerial show lasts for approximately 20 minutes.

Human Use Patterns – The impact area is immediately adjacent to a recreational beach. The beaches to the east and west of the launch site are used daily by beachgoers and water sport enthusiasts from the regional area. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and other recreational users, but typically at moderate to light levels of activity. To the east and west of the Pier are public use beach areas and private homes at the top of steep coastal bluffs. During the period from sunset through the duration of the fireworks display, 30-40 vessels anchor within the acute impact area to view the fireworks. Vessels criss-cross through the waters seaward of the cement barge to take up position. In addition, U. S. Coast Guard and State Park Lifeguard vessels motor through the impact area to maintain a safety zone around the launch site.

Marine Wildlife – At the seaward end of the Aptos Pier is a 400-foot grounded cement barge. The barge was set in position as an extension of the pier, but has since been secured against public access. Brown pelicans, cormorants, gulls, and other marine birds routinely use the cement barge as a roosting site. The barge has broken into two parts isolating the bow section from the rest of the vessel. The exposed interior decks of the barge have created convenient haulout surfaces for harbor seals. In a 2000 survey, the MBNMS recorded as many as 45 harbor seals hauled out on the barge in the month of October. The isolated bow section is particularly favored by pelicans and cormorants, and contains the bulk of roosting seabirds. Black turnstones seem to favor the interior spaces of the vessel along the aft section, and gulls attend the upper portions of the aft superstructure. See Appendix H for survey information. Approximately 1/2 statute miles to the east of the pier is the mouth of Aptos Creek where shorebirds congregate. Sea otters are moderately concentrated in the impact area, primarily around the nearshore kelp forests. The following are excerpts from the staff survey included as Appendix H:

All the birds flushed the cement ship after the start of the fireworks display.

During the fireworks show some pelicans and cormorants could be seen circling the area. Within 10 minutes of the show being over, pelicans and cormorants began to return. I would estimate that approximately 25% of the birds returned by the end of the survey which was at 2155. Debris was visible floating on the surface of the water.

It was obvious that all the birds flushed the cement ship after the start of the fireworks display, but even with the aid of a night vision monocular it

EXHIBIT D-9



was difficult to quantify exactly how many birds were returning. Harbor seals could not be seen during and immediately after the event. Its likely, based on the reaction of the birds and the noise of the display, that the seals evacuated the area on and around the cement ship. Harbor seals were sighted hauled out on the ship and in the water the following morning. Previous surveys were generally conducted mid-day and there may be some variability in the data, based on behavioral patterns of birds and mammals during afternoon hours as opposed to early morning and evening.

## MONTEREY

Site Description - Each Independence Day, the City of Monterey launches approximately 750 shells and an equal number of low-level effects from a barge anchored approximately 1000 feet east of Municipal Wharf II and 1000 feet north of Del Monte Beach (see Map G). The aerial shells are aimed above and to the northeast. The site is often fogged in during summer months. The City's display lasts approximately 20 minutes and is accompanied by music broadcasted from speakers on Wharf II. The marine venue adjacent to Monterey Harbor is preferred for optimal public access and to avoid the fire hazard associated with terrestrial display sites. The fireworks display occurs at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

Since 1999, a Monterey New Year's festival has used the City's launch barge for an annual fireworks display. The medium-size aerial display lasts approximately 8 minutes.

Three private displays (1993, 1998, and 2000) have been authorized from a launch site on Del Monte Beach, depicted on Map G. The 1993 display was an aerial display. Subsequent displays have been low-level displays, lasting approximately 7 minutes.

Human Use Patterns - The fireworks impact area lies directly under the approach/departure flight path for Monterey Peninsula Airport (MRY) and is commonly exposed to noise and exhaust from general aviation, commercial, and military aircraft at approximately 500 feet altitude. The airport supports approximately 280 landings/takeoffs per day in addition to touch-and-goes (landing and takeoff training). Commercial and recreational vessels operate in the area during day and night hours from the adjacent harbor. A 30-station mooring field lies within the acute impact area between the launch barge and Municipal Wharf II. The moorings are completely occupied during the annual fireworks event. Auto traffic and emergency vehicles are audible from Lighthouse and Del Monte Avenues, main transportation arteries along the adjacent shoreline. The impact area is utilized by thousands of people each week for boating, kayaking, scuba diving, fishing, swimming, and harbor operations. During the period from sunset through the duration of the fireworks display, 20-30 vessels anchor within the acute impact area to view the fireworks. Vessels criss-cross through the waters south of the launch site to take up position. In addition, U. S. Coast

# EXHIBIT D-10





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

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

\* → Authorization MBNMS-2000-030  
Monte Fireworks  
Permit holder: Marcus Monte  
Biological Monitoring report

Observer: Deirdre Hall, MBNMS

Primary operation area: Seacliff State Beach, Aptos, California. See attached map.

Timeline & Summary of Observations:

5 October 2000, 1445 – Scott Kathey and Deirdre Hall, MBNMS, surveyed the cement ship via the Sanctuary vessel, Shark cat. Birds and mammals are present at the site. Weather: overcast skies, sea surface mostly calm, tidal height ≈ 3.9 ft. See attached data.

11 October 2000, 1220 – Scott Kathey and Deirdre Hall, MBNMS, surveyed the cement ship via the Sanctuary vessel, Shark cat. Birds and mammals are present at the site. During this survey 45 harbor seals were counted hauled out on the ship. Weather: overcast skies with hazy sun, five foot swells, tidal height ≈ 3.7 ft. See attached data.

12 October 2000, 1215 – Scott Kathey and Deirdre Hall, MBNMS, surveyed the cement ship via the Sanctuary vessel, Shark cat. Birds and mammals are present at the site. Weather: partly sunny skies, wave height of 2 – 4 feet, tidal height ≈ 3.3 ft. See attached data.

14 October 2000, 1445 – I arrived at Seacliff State Beach, and met with a police officer who was stationed at the head of the steps leading onto the beach, which was enclosed with an orange plastic fence except for the area approximately 10 feet above the high tide line (pursuant to the California Coastal Commission permit). I identified myself and stated my intent to conduct a marine mammal & bird survey. The officer stated that access is being denied to the beach from the festival and directed me to the information booth. The information booth attendant then accompanied me back to the police officer. The police officer stated that I would need a police escort to conduct the survey. I made the police officer aware of the conditions of the authorization, and asked that he summon Mr. Monte to the scene. The information booth attendant hailed an Organizer on his hand held radio; I explained the situation, made her aware of the conditions of the Authorization, and she approved my access.

EXHIBIT

APPENDIX H

D-11



Monitoring report  
Monte Fireworks

14 October 2000, 1500 – I walked down the steps, about 300 feet onto the beach, I stepped under the orange fencing material and was denied access by yet another police officer. I recommended that he contact the officer at the foot of the steps if he had questions regarding my presence and continued to walk towards the high tide line.

14 October 2000, 1505 -1535 – I began a survey of the beach area, approximately 0.5 miles north and south of the cement ship pier. The survey included species that were flying, on the beach and visible on the cement ship. Identifying birds to the species level on the cement ship from the beach proved to be difficult, as the sun was glaring onto the sea, so some were identified to genus. Weather: sunny skies, light breeze, tidal height  $\approx$  2.3 ft. The beach survey included:

Species	Beach-10/14/00 @1505
Black bellied plover, <i>Pluvialis squatarola</i>	1
Black turnstone, <i>Arenaria melanocephala</i>	0
CA brown pelican, <i>Pelicanus occidentalis</i>	43
Cormorant sp., <i>Phalacrocorax</i>	45
Gull sp., <i>Larus sp.</i>	13
Harbor seal, <i>Phoca vitulina</i>	
Heermann's gull, <i>Larus heermanni</i>	4
Marbled godwit, <i>Limosa fedoa</i>	1
Pigeons	28
Tern sp., <i>Sterna sp.</i>	0
Western grebe, <i>Aechmophorus occidentalis</i>	0
Western gull, <i>Larus occidentalis</i>	13
Willet, <i>Catoptrophorus semipalmatus</i>	5

14 October 2000, 1702 -1718 – I began a survey from the water with the aid of the California Department of Fish and Game's rigid hull inflatable vessel, driven by Warden Jess Mitchell. We approached the cement ship slowly as to deter flight or flushing. I spent 16 minutes surveying the starboard and port sides of the sunken vessel. As we maneuvered to the port side of the cement ship many birds flushed and we backed the RHI away slowly. Tidal height  $\approx$  1.1 ft. See attached data.

14 October 2000, 1919 – I checked on the cement ship site again, the number of birds seems to be constant. I used the aid of a night vision monocular to survey the area, and I was able to see a few seals swimming in the mid-ship area. Sunset at 1813.

14 October 2000, 2110 – Deployment of fireworks. All the birds flushed the cement ship after the start of the fireworks display.

EXHIBIT D-12

*Monitoring report  
Monte Fireworks*

14 October 2000, 2115 – During the fireworks show some pelicans and cormorants could be seen circling the area. Within 10 minutes of the show being over, pelicans and cormorants began to return. I would estimate that approximately 25% of the birds returned by the end of the survey which was at 2155. Debris was visible floating on the surface of the water.

15 October 2000, 0727 – I conducted a sunrise survey aboard the CDFG rigid hull inflatable vessel, driven by Warden Jess Mitchell, the following day to determine presence/absence/numbers of individual birds and mammals. Weather: overcast skies, sea surface mostly calm, tidal height = 2.7 ft. See attached data.

Assessment:

One obstacle facing the Observer was the nighttime survey. It was obvious that all the birds flushed the cement ship after the start of the fireworks display, but even with the aid of a night vision monocular it was difficult to quantify exactly how many birds were returning. Harbor seals could not be seen during and immediately after the event. Its likely, based on the reaction of the birds and the noise of the display, that the seals evacuated the area on and around the cement ship. Harbor seals were sighted hauled out on the ship and in the water the following morning. Previous surveys were generally conducted mid-day and there may be some variability in the data, based on behavioral patterns of birds and mammals during afternoon hours as opposed to early morning and evening.

EXHIBIT D-13

Monitoring report  
Monte Fireworks

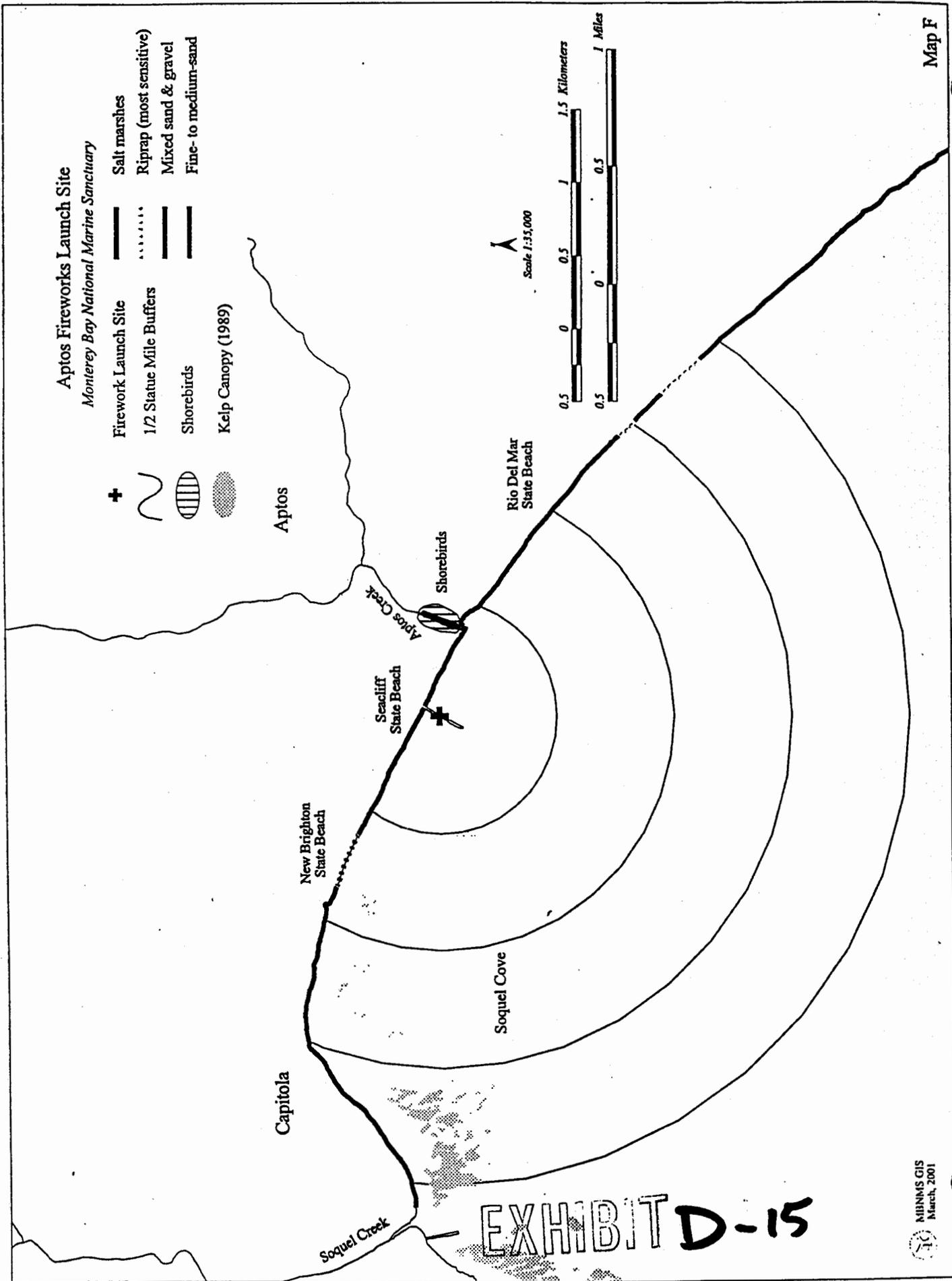
Species	Boat-10/05/00 @1445	Boat-10/11/00 @ 1220	Boat-10/12/00 @ 1215	Boat-10/14/00 @1702	Boat-10/15/00 @ 0727
Black turnstone, <i>Arenaria melanocephala</i>	0	2	0	1	2
Brandts cormorant, <i>Phalacrocorax penicillatus</i>	70	80	63	116	61
CA brown pelican, <i>Pelicanus occidentalis</i>	40	35	36	88	24
Double crested cormorant, <i>Phalacrocorax auritus</i>	20	20	15	5	4
Gull sp., <i>Larus sp.</i>	0	0	0	13	2
Harbor seal, <i>Phoca vitulina</i>	6	45	16	7	11
Heermann's gull, <i>Larus heermanni</i>			3	0	3
Pelagic cormorant, <i>Phalacrocorax pelagicus</i>	0	0	0	8	0
Tem sp., <i>Sterna sp.</i>	0	0	0	0	2
Western grebe, <i>Aechmophorus occidentalis</i>	0	0	0	3	2
Western gull, <i>Larus occidentalis</i>	20	30	14	44	26

EXHIBIT D-14

**Aptos Fireworks Launch Site**

*Monterey Bay National Marine Sanctuary*

-  Firework Launch Site
-  1/2 Statue Mile Buffers
-  Salt marshes
-  Riprap (most sensitive)
-  Mixed sand & gravel
-  Kelp Canopy (1989)
-  Shorebirds
-  Fine- to medium-sand



**EXHIBIT D-15**