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STAFF REPORT: CDP HEARING

Application Number: 3-16-0391

Applicant: City of Santa Cruz

Project Location: At the downcoast end of Main Beach, seaward of the Santa Cruz Beach Boardwalk and adjacent to the San Lorenzo River and Monterey Bay in the City of Santa Cruz (APN 007-321-07).

Project Description: Set up a fireworks firing site area and surrounding safety zone to launch a 20-minute fireworks display as a one-time free event to celebrate the 150th anniversary of the City of Santa Cruz.

Staff Recommendation: Approval with Conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is located at the downcoast end of Main Beach, seaward of the Santa Cruz Seaside Company's Santa Cruz Beach Boardwalk, and adjacent to the San Lorenzo River and Monterey Bay in the City of Santa Cruz. The project includes the construction of a firework firing-site area and safety zone, and presentation of a 20-minute fireworks display as a one-time free public event to celebrate the City's 150th Anniversary. The display will begin about 9:00 pm on October 1, 2016, and the Applicant estimates that 10,000 to 20,000 spectators will view the free public fireworks event.

In terms of public recreational access, no public streets will be closed for the fireworks event and the City will operate a free trolley to allow visitors to park downtown and be transported to the beach area. A small portion of Main Beach will be closed off temporarily for use as the firing site area and surrounding safety zone, but the remainder of Main Beach will remain open to the public. As such, the event should not adversely affect coastal visitors to a substantial degree and will provide a free attraction to them. With conditions of approval to require the maintenance of lateral beach access seaward of the fireworks safety zone, and post-event clean-up and restoration of Main Beach and the surrounding waters for a minimum of two days after the event, the project is consistent with the Coastal Act's public access and recreation policies.

In terms of marine resources, the fireworks event is planned for October 1st, which is outside of the nesting season for local birds and the breeding seasons for seals and sea lions. In addition, there are no beaches that are used as marine mammal haul-out areas in this urbanized location. However, seals and sea lions are known to haul out on the Santa Cruz Wharf, and marine mammals are also present in the nearby waters offshore of the project site. Although any noise disturbances from the fireworks display to birds and marine mammals are expected to be temporary and short-term, given the presence of an existing haul out site on the Wharf and the presence of marine mammals in the nearby waters offshore of the project site, approval of this project is conditioned to require pre- and post-event marine mammal censuses and the submission of a final monitoring report. With this requirement and additional conditions to ensure that Main Beach and the surrounding waters are adequately cleaned up following the event to protect water quality and wildlife from event debris, to prohibit the use of certain types of pyrotechnics (including specifically at the beginning of the fireworks show) and pyrotechnic materials, and to limit the event to a maximum of 20 minutes, the proposed event is consistent with the Coastal Act's marine resources policies.

Finally, the fireworks display will take place over the waters of Monterey Bay and within the boundaries of the Monterey Bay National Marine Sanctuary (Sanctuary). In order to ensure the Commission's coastal development permit (CDP) is effectively integrated with the required Sanctuary authorization, this approval is conditioned to require evidence of Sanctuary authorization, as well as U.S. Coast Guard and City of Santa Cruz Fire Department authorization.

The City is in agreement with the proposed special conditions. As conditioned, the project is consistent with the Coastal Act, and staff recommends **approval** of the CDP. The motion and resolution are found on page 3 below.

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APPENDICES

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EXHIBITS

Exhibit 1: Project Location Map

Exhibit 2: Map of Firing Site and Safety Zone Pre-Event, During Event, and Post-Event

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number 3-16-0391 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number 3-16-0391 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Firework Limitations.

- a. **Aerial Salute Limitations.** The total number of aerial “salute” shells or devices shall not exceed 6% of the total number (i.e. 5,900) of aerial shells and/or special effect pyrotechnic devices combined. The aerial “salute” shells/devices shall not be launched or detonated during the first five minutes of the fireworks display.
- b. **All Labels and Wrapping Removed.** All plastic and aluminum labels and wrappings shall be removed from all aerial shells and special effect pyrotechnic devices prior to use and before they are launched or detonated.
- c. **Prohibited Devices.** Aerial shells and/or special effect pyrotechnic devices that include a plastic outer casing and/or non-biodegradable inner components that make up more than 5% of the mass of the shell/device shall be prohibited.
- d. **Duration of Display.** The fireworks show will last no longer than 20 minutes and will take place as a one-time cost-free event on Saturday, October 1, 2016.

2. Public Access.

- a. **Lateral Beach Access.** Set up of the firing site area will begin no earlier than 7 a.m. on the event day. The Permittee may exclude public access from the firing site using safety blocks as set forth in Exhibit 2; however, the Permittee shall provide and maintain a lateral public access corridor that is at least 10 feet wide, to be located along the beach seaward of the firing site. The Permittee shall ensure that the lateral beach access is a minimum of 10 feet wide as measured inland from the tidal reach of Monterey Bay by adjusting any safety zone fencing inland as necessary. Fencing shall not be allowed to enter into Monterey Bay waters at any time. This lateral access shall be available from first light until one hour before dusk the day of the event, on October 1, 2016, at which time the Permittee may close this lateral access and further exclude public access from the “expanded fireworks safety zone” using snow fencing as set forth in Exhibit 2. The Permittee shall re-open this access at completion of the fireworks show breakdown.
- b. **Public Street Closure.** No public streets shall be closed to accommodate the fireworks event.

3. **Clean up and Restoration of Main Beach and Adjacent Waters.** All fireworks-related debris originating from the firing site shall be recovered by the Permittee immediately following the fireworks display. The Permittee shall inspect Main Beach, the Santa Cruz Municipal Wharf, and the adjacent water area for a minimum of two days following the conclusion of the fireworks (i.e., through Sunday and Monday) for any remaining event debris, including but not limited to all fireworks detritus. All such debris found shall be properly collected and disposed of, and the inspections shall continue for at least 24 hours from the time that any such fireworks debris is located, and indefinitely until such inspections do not identify any more fireworks debris. The Santa Cruz Seaside Company will

provide post-event sand-sifting to clean the beach. The City's Beach Maintenance division is also required to provide beach clean-up along the shoreline as part of this condition.

- 4. Other Requisite 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 requisite permits, permissions or approvals granted for the fireworks display from: (1) Monterey Bay National Marine Sanctuary; (2) Santa Cruz Fire Department; (3) Santa Cruz Special Events Task Force; and (4) the United States Coast Guard. The Permittee shall inform the Executive Director of any changes to the project required by any of the above-listed agencies subsequent to approval of this permit by the Commission. Any such changes shall not constitute authorized development under this permit until the Permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally necessary.
- 5. Pre- and Post-Event Marine Mammals Monitoring Report. WITHIN 60 DAYS OF THE CONCLUSION OF THE EVENT,** the Permittee shall submit a Pre- and Post-Event Monitoring Report, prepared by a qualified biologist, to the Executive Director for review and approval. The Report shall, at a minimum, include:

 - a.** A census detailing the number of all pinnipeds and otters in the projected impact area of the event, i.e. Main Beach, underneath the Santa Cruz Wharf, and in the adjacent waters, on the day prior to the fireworks display (*i.e.*, September 30, 2016) with observations to occur for no less than one hour;
 - b.** Post-event monitoring, recording and reporting of all marine mammal activity, injury, serious injury, or mortality observed in the vicinity of the fireworks display area, i.e. Main Beach and the Santa Cruz Wharf and the adjacent waters. Monitoring for injury, serious injury, or mortality shall occur no later than the morning after the fireworks display, and shall occur for no less than one hour;
 - c.** An analysis of the data collected indicating whether and to what extent the event had an impact, if any, on marine mammals.
- 6. Modifications to this CDP.** All requirements above shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition. Minor adjustments to these requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

Project Description and Location

The City of Santa Cruz is proposing to launch fireworks from the downcoast end of Main Beach as a one-time free public event on Saturday October 1, 2016 to celebrate the City's 150th Anniversary. The display will begin at about 9:00 p.m. and will last approximately 20 minutes. The proposed project involves the siting of the fireworks firing site on a 334-foot by 85-foot portion of Main Beach near the San Lorenzo River mouth, which will be enclosed by temporary safety zone blocks¹. A minimum 10-foot-wide lateral beach accessway will be available seaward of the fireworks firing site from first light of the morning to one hour before dusk the day of the event and will be reopened again by the end of the fireworks show breakdown (i.e., approximately 11 p.m.). The firing site will be completely closed to the public on the day of the event from first light until the end of the fireworks show breakdown. A more expansive fireworks safety zone, approximately 700 feet by 334 feet in size and encompassing the entire firing site, will be established one hour before dusk until the end of the fireworks show breakdown and will occupy a portion of the lateral public access along Main Beach, as depicted on page 2 of Exhibit 2. The expanded fireworks safety zone will be enclosed by temporary snow fencing. The fireworks display will take place over the waters of Monterey Bay and within the boundaries of the Sanctuary, for which the City requires a permit from the Sanctuary. The City estimates that 10,000 to 20,000 spectators will view the free public fireworks event.

Following the event, the City proposes a beach clean-up and site inspection, along with additional clean-up, including sand sifting that will be performed the following morning. Staff from the City of Santa Cruz Parks and Recreation Department, the Santa Cruz Seaside Company, and volunteers from Save Our Shores² will assist with clean-up operations.

Please refer to **Exhibit 1** for an aerial photo/map of the project location and **Exhibit 2** for a graphic depiction of the firing site and the safety zone and the phases at which each will be in place before, during, and after the fireworks show.

B. PRIOR COMMISSION ACTION ON OTHER FIREWORKS EVENTS IN THE COASTAL ZONE

The Commission has in the past processed several CDPs for fireworks displays in other areas of the coastal zone, including those that involve potential impacts to public use of sandy beaches or other public access areas, and to marine and habitat resources. For example, since 2000 the Commission has conditionally approved six CDP applications and two CDP amendments³ to allow the Monte Foundation to close a portion of Seacliff State Beach in Santa Cruz County to allow a fair and fireworks display in October of each year. A later-approved Monte Foundation CDP⁴ authorized a fireworks show to take place at the end of the Capitola Wharf in 2014. In

¹ An orange-colored permeable fencing material.

² Save Our Shores is a non-profit marine conservation organization based in Santa Cruz, California whose mission is caring for the marine environment through ocean awareness, advocacy, and citizen action.

³ CDPs 3-00-117, 3-01-058, 3-02-027, 3-03-034, 3-03-034-A1, 3-03-034-A2, 3-13-0960, and 3-14-1013.

⁴ CDP 3-14-1013 and CDP 3-14-1013-A2.

2015, that CDP was amended to allow the fireworks show to recur annually in October from 2015 to 2019. The CDPs for each of these events required a cleanup after the events (including but not limited to all fireworks detritus), post-event monitoring of impacts to wildlife (given these sites' locations near marine mammal haul-out areas and nearby bird habitat on the bluffs), evidence of other requisite agency approvals, as well as restrictions on the types and amount of fireworks that can be used.

In 2002, the Commission approved an LCP amendment⁵ to the certified Mission Bay Park Master Plan (in the City of San Diego) that addressed fireworks programs at SeaWorld. The Mission Bay Park Master Plan established a program for fireworks events and established a limit on the number of displays to 150 per year. As part of its review, the Commission required modifications to the LCP amendment to address cleanup of debris, monitoring of overall effects and, at the wildlife agencies' requests, relocation of the barge from which the fireworks would be launched further east so that fireworks debris would not land as heavily into Mission Bay on the adjacent Fiesta Island. The Commission also required additional water quality protection measures, including the use of divers each morning following an event, and the submission of annual monitoring reports.

In 2009, the Commission approved a CDP for the City of Capitola to allow a 30-minute fireworks display that was launched from the end of the Capitola Wharf as a one-time free event held on September 2, 2009 to celebrate the City of Capitola's 60th anniversary.⁶ The Commission conditioned its approval to require evidence of other requisite agency approvals, restrictions on the types and amount of fireworks used, and cleanup and restoration of Capitola Wharf, Capitola Beach, and the surrounding waters after the event.

In some instances, the Commission has not required a CDP for a fireworks event when it can be determined that the specific temporary event would not have any significant adverse impact on coastal resources. For example, in 2003, the City of Morro Bay requested a Commission determination as to whether or not the City's proposed fireworks display would qualify as a temporary event that did not require a permit. Due to concerns raised by the Audubon Society and by the Commission, the City proactively took action to move the display from the originally planned location near Morro Rock (where falcons and western snowy plovers are known to nest) to another location within the bay where there was less potential for disturbance to avian and marine species. The City also offered to implement a number of measures to direct access away from sensitive areas, provide information to attendees regarding the sensitivity of the area, clean up after the display, and to allow third party monitoring of sensitive sites in conjunction with the Audubon Society and relevant State agencies. Based upon the City's actions specifically taken to address Coastal Act concerns, the Commission determined that the temporary event was not expected to have a significant adverse effect upon coastal resources and therefore no CDP was required under Coastal Act section 30610(i).

C. STANDARD OF REVIEW

The proposed project site is located within the Commission's retained CDP jurisdiction area and not within the City's certified LCP jurisdiction. Thus, the standard of review for this proposed

⁵ City of San Diego Major LCP Amendment Number 2-2001-C.

⁶ CDP 3-09-016.

project is the Coastal Act, but the City of Santa Cruz's LCP can provide persuasive, non-binding guidance.

D. MARINE RESOURCES

The Coastal Act protects the marine resources and habitat offshore of this site. Coastal Act Section 30230 requires that marine resources be maintained, enhanced and, where feasible, restored. Coastal Act Section 30231 requires that new development not interfere with the biological productivity of coastal waters or the continuance of healthy populations of marine species. Coastal Act Sections 30230 and 30231 specifically state:

***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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Analysis

The City's proposed fireworks display would be launched from the downcoast end of Main Beach and the display will take place over the waters of Monterey Bay and the Sanctuary (See Exhibit 1). The Sanctuary has historically expressed concern about the potential cumulative impacts to marine wildlife and the environment from fireworks displays, particularly if permitted firework events proliferate to multiple sites within the Sanctuary. Because of this concern, and to provide guidance for future proposed fireworks events in the Sanctuary, in 2001 the Sanctuary developed an Assessment for the impacts of fireworks displays.⁷ This Assessment recognized the historical use of fireworks in certain locations (including Santa Cruz⁸ and Capitola⁹) and authorized future fireworks in four discrete areas within the Sanctuary (including Santa Cruz), while noting that fireworks displays would be prohibited within the remainder of the Sanctuary.

⁷ *Assessment of Pyrotechnic Displays and Impacts within the Monterey Bay National Marine Sanctuary 1993-2001*, dated March 2002.

⁸ The City of Santa Cruz presented annual fireworks shows between 1991 and 2004 (without CDPs) to celebrate the City's date of incorporation.

⁹ Fireworks displays were typically held on Independence Day in Capitola throughout the 1970s, and possibly in the decades preceding the 1970s. The City discontinued the Independence Day fireworks displays due to safety and crowd control concerns. Since creation of the Sanctuary in 1993, a limited number of fireworks displays have been held in Capitola: in 1999 to celebrate the City's 50th anniversary, in 2009 (CDP 3-09-016) to celebrate the City's 60th anniversary of incorporation. Furthermore, the Monte Foundation received a permit to have an annual fireworks show from 2014 through 2019 at the Capitola Wharf (CDP 3-14-1013-A2).

On March 26, 2001, the Sanctuary requested formal programmatic consultation from the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) within the context of both the Endangered Species Act and the Marine Mammal Protection Act as to the potential for “take” of listed species and/or protected mammals due to fireworks displays within the Sanctuary’s boundaries. On June 22, 2005, USFWS provided its biological opinion and concurred that the Sanctuary’s authorization of fireworks events within four discrete areas¹⁰ within the Sanctuary would not likely substantially reduce the overall populations of endangered or threatened species located within these areas. On July 19, 2006, NMFS issued a letter of authorization (LOA) to the Sanctuary authorizing professional fireworks displays within Sanctuary waters. On June 28, 2012, NMFS issued an updated LOA to the Sanctuary authorizing fireworks displays within Sanctuary waters until July 3, 2017. Both USFWS and NMFS recommended that the Sanctuary include appropriate mitigation and conservation measures when authorizing fireworks displays within the Sanctuary to minimize or avoid impacts to special status species. Previously, both the Commission and the Sanctuary have authorized fireworks within Sanctuary waters based in part on the Assessment and its recommendations.¹¹ The proposed event is located in one of the four distinct areas authorized by the federal wildlife agencies (the Northern Monterey Bay Area).

In terms of potential bird impacts, the event will take place on October 1, 2016, which is outside of the nesting season for birds in the area, including sensitive bird species. As a result, the fireworks display is not expected to impact nesting birds. As for potential impacts to non-nesting birds, these impacts would be temporary and short term for the duration of the actual fireworks display. Birds can be expected to retreat from the area when the fireworks start, and to return afterwards. Many years of monitoring for similar fireworks events at Seacliff State beach in Aptos, the Wharf in Capitola, and the Wharf in Santa Cruz have not shown that these fireworks events result in significant adverse bird impacts.

Regarding marine mammals, California sea lions and harbor seals are known to congregate around the Santa Cruz Wharf and use the supportive platforms below the wharf to haul out. However, the shoreline in the immediate vicinity of Main Beach is highly urbanized, actively used by beach goers, and generally lacks isolated sites that could be used by marine mammals to haul out on the beach. In addition, this event is not scheduled during the seal or sea lion breeding seasons, which occurs in early to mid-spring for harbor seals (March to early May) and late spring into summer (May to July) for sea lions. Also, this area of Santa Cruz is not a known breeding ground for these species.¹² However, the sea lions and seals congregating at the Wharf may be flushed out into the water at the beginning of the fireworks event.

Regarding marine mammals located in the waters offshore of the project site (including sea lions, harbor seals, and otters), while it is likely that the noise from the fireworks display will disturb marine mammals that may be present in these offshore waters at the time of the event, this

¹⁰ These four areas consist of: 1) Half Moon Bay; 2) Northern Monterey Bay Area (including Santa Cruz, Capitola, and Aptos); 3) Southern Monterey Bay Area; and 4) Cambria.

¹¹ See, for example, CDPs 3-00-117, 3-01-058, 3-02-027, 3-03-034, 3-03-034-A1 and 3-03-034-A2 (approval until end of 2015) (Monte Foundation Fireworks at Seacliff State Beach), CDP 3-09-016 (City of Capitola fireworks display in 2009), and CDP 3-14-1013 (Monte Foundation Fireworks at Capitola Wharf).

¹² According to the Sanctuary findings in *Assessment of Pyrotechnic Displays and Impacts Within the Monterey Bay National Marine Sanctuary 1993 – 2001* (2002)

disturbance will be temporary and short-term only for the actual duration of the fireworks display. Fifteen years of monitoring of fireworks impacts at Seacliff State Beach, Capitola, and Santa Cruz has not shown that similar fireworks displays result in a discernable impact to offshore marine mammals,¹³ and lacking any other indication that there is any kind of unusually high marine mammal activity at or near the Main Beach, the proposed event is not expected to significantly impact marine mammals. However, given the presence of the haul-out site on the Wharf and the presence of marine mammals in the waters offshore of the project site, **Special Condition 1(d)** limits the length of the fireworks display to a maximum of 20 minutes in order to protect these special status species in accordance with 30230. In addition, **Special Condition 5** requires that a qualified biologist conduct a pre-event census of marine mammals in the vicinity of the project site, along with a post-event evaluation to determine if any impacts, injury or mortality to these species occurred. This condition also requires submittal of a monitoring report within 60 days of conclusion of the event along with analysis of the impacts from the event. The mammal censuses and monitoring report will provide valuable information that may be used to provide appropriate mitigation as necessary in future CDPs for fireworks displays at this location. This will help to ensure that future uses of the marine environment are carried out in a manner that will sustain the biological productivity of coastal waters and maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes as required by Section 30230.

As a means to strictly limit the effect of fireworks on wildlife in the area, previous Commission actions in this area have included limitations on the types of fireworks that could be launched at the beginning of such events. The intent of these limitations has been to initiate the event with minimally-impactful fireworks that allow wildlife to acclimate more easily to the event and flush more readily from the area without being adversely impacted by sudden, unexpected explosions and noises of severe magnitude. Such a restriction is appropriate in this case as well, and thus this approval is conditioned to limit the total number of aerial “salute” shells or devices (*i.e.*, fireworks designed to explode in a loud manner for aesthetic effect) to no more than 6% of the total number of aerial shells and/or special effect pyrotechnic devices combined, and to prohibit such aerial “salute” shells/devices during the first five minutes of the fireworks display (see **Special Condition 1(a)**).

Event debris from a fireworks program can impair Sanctuary water quality as well as harm wildlife that may ingest and/or become entangled in such debris. The USFWS biological opinion noted that Sanctuary staff has documented the presence of a substantial number of fireworks casings in the ocean immediately following previous fireworks displays held over Sanctuary waters. Other fireworks debris that may enter the ocean includes cardboard cylinders, disks, and shell case fragments; paper strips and wadding; plastic wadding, disks, and tubes; aluminum foil; cotton string; and even whole unexploded shells (*i.e.* duds or misfires). It is likely that paper strips, cardboard, and cotton string are biodegradable and do not persist for long periods of time in the ocean environment. However, other materials, such as plastic, are likely to persist in the marine environment for lengthy periods if they are not washed ashore and removed by personnel. In previous permits for fireworks programs over Sanctuary waters, the Commission and the Sanctuary have prohibited the use of specific pyrotechnic devices, such as those containing an

¹³ See, for example, CDPs 3-00-117, 3-01-058, 3-02-027, 3-03-034, 3-03-034-A1, 3-03-034-A2, 3-09-016, 3-13-0960, 3-14-1013, 3-14-1013-A1, and 3-14-1013-A2.

outer plastic casing, and have required that all plastic labels and wrappings be removed from the pyrotechnic shells before they are launched. The City's project does not propose to use such devices and also proposes to remove labels and wrapping before fireworks are launched. **Special Conditions 1(b) and 1(c)** incorporate these prohibitions/requirements so that they are enforceable conditions of this permit. Additionally, **Special Condition 3** requires the City to inspect Main Beach, the shoreline, and the water area adjacent to the Wharf that is visible with binoculars for a minimum of two days following the conclusion of the fireworks program to look for any remaining event debris (though subject to inspections of indefinite duration until inspections yield debris-free results for at least 24 hours), including but not limited to all fireworks detritus, and also that this debris be properly collected and disposed of.

Finally, the Sanctuary is currently processing a permit application for this same project and has indicated that any approval can be expected to have attached conditions similar to those required by the Commission and the Sanctuary in years past for other fireworks displays (e.g., a limitation on aerial "salute" shells, requirements for removal of plastic labels and packaging from shells, prohibition on plastic casings, inspection and cleanup of the beaches and waters in the event area for as long as it takes to effectively dispose of all event-related debris, etc.). To ensure the Commission's CDP is effectively integrated with the Sanctuary's authorization (as in past cases of fireworks CDPs that involved the Sanctuary), this approval is conditioned for evidence of Sanctuary approval (see **Special Condition 4**).

In summary, the Sanctuary's Assessment, the USFWS Biological Opinion, and the NMFS LOA have all authorized, as a generalized matter, firework events to be held in the Northern Monterey Bay Area of the Monterey Bay National Marine Sanctuary, including the proposed project site in Santa Cruz. Impacts to nesting, special-status birds will be avoided by holding the fireworks event outside of the nesting bird season. Impacts to marine animals and the marine environment nearby Main Beach and offshore waters will be mitigated by: limiting the length of the fireworks display to 20 minutes (**Special Condition 1(d)**); requiring a qualified biologist to perform a pre-event census and post-event evaluation (**Special Condition 5**); limiting use of aerial "salute" shells (**Special Condition 1(a)**); prohibiting certain non-biodegradable firework materials (**Special Conditions 1(b) and (c)**); requiring post-event debris inspection (**Special Condition 3**); and requiring evidence of requisite Sanctuary approval (**Special Condition 4**). As conditioned, the Commission finds that the proposed fireworks event will maintain water quality and protect marine resources in the vicinity of Main Beach and the Wharf. Thus, the project is consistent with the marine resources policies of Section 30230 and 30231 of the Coastal Act.

E. 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 (Beach Street). Coastal Act Sections 30210, 30211, 30212, 30213, and 30214 specifically protect public access and recreation. In particular:

***Section 30210.** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational*

opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211. *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212(a). *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected...*

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

Section 30214(a). *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the fact and circumstances in each case ...*

Coastal Act Section 30240(b) also protects parks and recreation areas, such as the Main Beach area adjacent to the Santa Cruz Municipal Wharf. 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** (emphasis added).*

These overlapping policies protect the beach (and access to and along it) and offshore waters for public access and recreation purposes, including lower-cost access and recreational opportunities.

Analysis

Main Beach is located directly adjacent to the San Lorenzo River and Monterey Bay (See Exhibit 1). The proposed fireworks display is a cost-free, public, temporary event that will take place on October 1, 2016. All normally accessible areas, including adjacent Cowell Beach, the Boardwalk and most of Main Beach, will remain open and available to the general public as usual, with the exception of the immediate firing site and the expanded fireworks safety zone on a portion of Main Beach. Public access to the immediate firing site portion of the beach will be restricted with safety blocks on the day of the event from first light until the end of the fireworks show breakdown (approximately 11 p.m.), but a 10-foot-wide portion of lateral beach access will remain open until one hour before dark. Lateral public access along the expanded fireworks safety zone portion of the beach will be restricted on the day of the event from one hour before dusk, for the duration of the actual firing event, until the end of the fireworks show breakdown (See Exhibit 2). These restrictions will allow for pre-display setup and the clean-up of the fireworks firing site, while ensuring the safety of the public throughout the actual firing event. Although the proposed project will limit public access to a portion of the beach (first, in the

immediate firing site area, then in the expanded fireworks safety zone), these closures are temporary, and it will affect only a portion of Main Beach and is consistent with public safety needs as identified in Sections 30210, 30212, and 30214.

In order to ensure that lateral public access is maintained and is adequate for public access during the day of the event, **Special Condition 2** makes public access requirements enforceable conditions of this CDP. This condition requires that lateral beach access be maintained throughout the day of the event until one hour before dusk, and also requires that this lateral access be reopened by the end of the fireworks show breakdown. This lateral public access is required to be a minimum of 10 feet wide as measured inland from the tidal reach of Monterey Bay at all times, by adjusting any fencing inland as necessary throughout the day. The safety zone blocks and fencing shall not be allowed to enter into Monterey Bay waters at any time. The remaining portions of Main Beach will be available for general public access the entire day of the event. Thus, the project will not interfere with the public's right of access to the sea as required by Sections 30211 and 30212.

The fireworks display is a one-time, temporary and cost-free public event that will provide public recreation and enjoyment on the beach. No public streets will be closed for the event. Parking will be provided in the nearby Boardwalk parking lots and on-street parking will be available in the Beach area and the nearby downtown area. In addition, the City will operate a free trolley service to allow spectators to park for free in the more remote downtown parking lots and to attend the event without bringing their cars into the beach area. As such, the event should not adversely affect coastal visitors generally, and in fact will provide a free attraction to them in an urban setting capable of handling such an event that could draw a large number of potential visitors, consistent with Section 30213 in terms of protecting, encouraging and providing low-cost visitor-serving recreational opportunities. Other than the expanded safety zone and the firing site area on Main Beach, which will be closed temporarily for safety reasons, the general public will be able to recreate in the remaining beach area as normal.

The 20-minute fireworks display would temporarily impact the ability of boaters to use Monterey Bay waters around the Wharf and offshore of Main Beach during the time of the event, but this impact will be minimal because of the short duration of the show. However, U.S. Coast Guard approval is required to undertake this project, and therefore this approval is conditioned for evidence of Coast Guard approval (see **Special Condition 4**).

The critical public access issue in this case primarily relates to the cleanup of any fireworks and/or event debris following the event. It is possible that fireworks debris may make its way onto the beach and that event attendees may leave other debris as well. Given that some debris may float in the water, debris may continue to be present even following initial cleanup activities, which may inhibit public use or access of Main Beach. Some debris of this type can be avoided by simply prohibiting certain pyrotechnic devices (such as those that contain an outer plastic casing), and by requiring that all plastic labels and wrappings be removed from the pyrotechnic shells before they are launched (see **Special Conditions 1(b) and 1(c)**). In addition, the Commission's experience with nearby fireworks events has been that aggressive and focused cleanup following the event is ordinarily adequate to ensure that beach and offshore waters are returned to their pre-event state in a relatively short period of time.

The City proposes to inspect Main Beach and the surrounding waters for a minimum of two days following the event, i.e. Sunday through Monday (though subject to inspections of indefinite duration until inspections yield debris-free results for at least 24 hours), for any remaining event debris including, but not limited to, all fireworks detritus and all other event debris. In addition, the City's Beach Maintenance division will provide beach clean-up along the shoreline and post-event sand sifting to clean the beach. Finally, the City will be assisted by the Santa Cruz Seaside Company as well as volunteers from Save Our Shores to provide additional beach clean-up. See **Special Condition 3**.

With conditions to maintain public lateral beach access at the shoreline prior to and after the event, to limit certain types of shell materials, and to ensure that the Santa Cruz Wharf, Main Beach, and the surrounding waters are adequately cleaned up following the event, the proposed event, as conditioned, is consistent with the Coastal Act's public access and recreation policies (see **Special Condition 2**).

F. FIRE HAZARDS

Coastal Act Section 30253 requires that fire risks be minimized. Section 30253 provides, in applicable part:

Section 30253(a). New development shall do all of the following: (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard...

Analysis

Launching fireworks during the fire season raises the question of whether such an activity could increase fire hazard. In this case, the fireworks would be launched nearby and over the water, but they would also be launched from a public beach. There is also the potential for a misfire of some sort landing on nearby buildings or in other developed areas. The City indicates that an event permit is required from its own Special Events Task Force and Santa Cruz Fire Department (the local fire protection district) for the proposed fireworks display to ensure adequate precautions are taken to protect against fire hazard. In addition, Santa Cruz Fire Department officials will be on hand to monitor the fireworks through set up, take down and clean-up operations. This approval is conditioned for evidence of Santa Cruz Fire Department approval in order to minimize risk to life and property from potential fire hazard (see **Special Condition 3**).

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

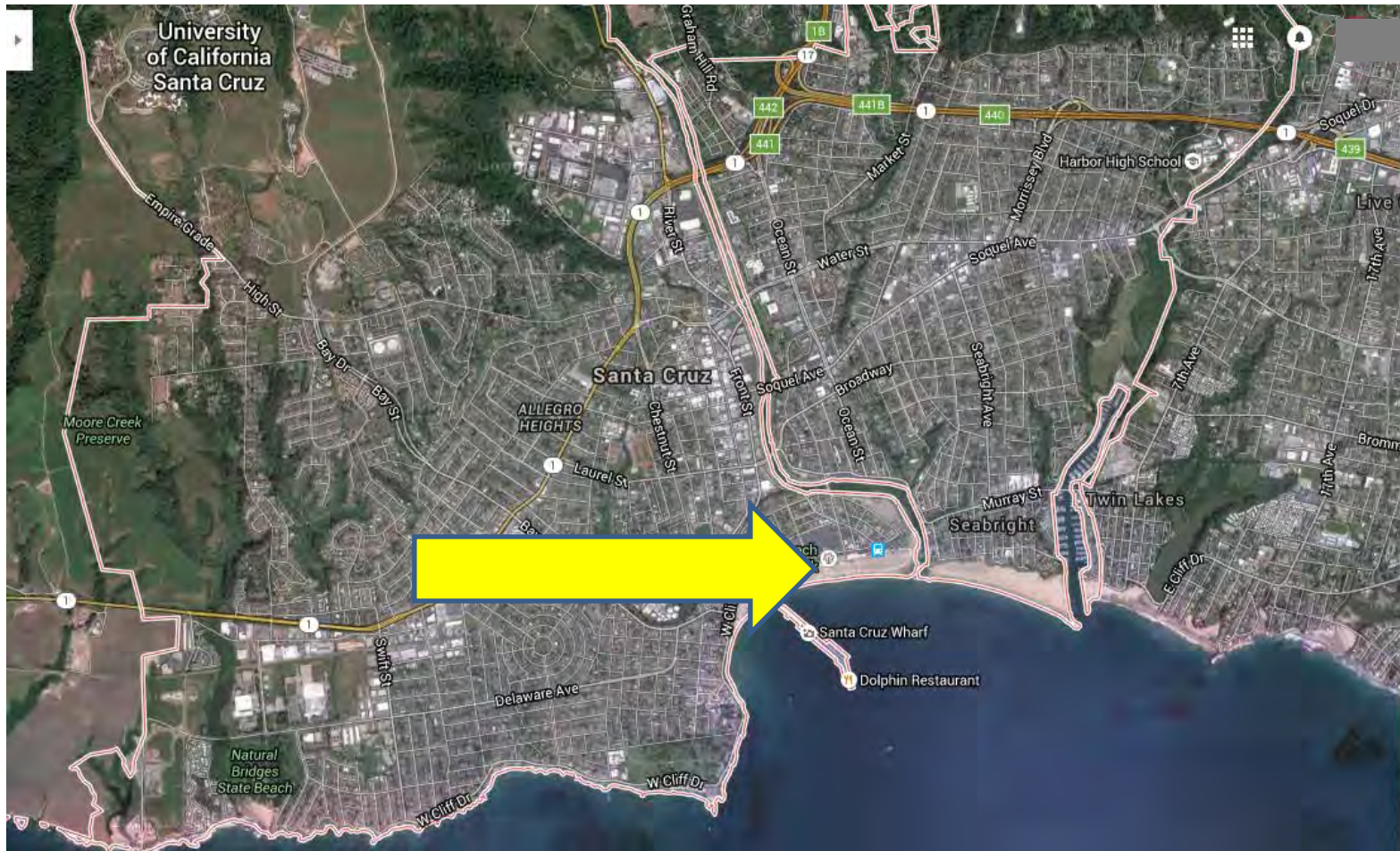
The City of Santa Cruz, acting as lead agency, found that the project was exempt from CEQA requirements under CEQA Guidelines Section 15300.1, which is the exemption for projects in relation to ministerial projects that require no discretionary approval. Although the project does require a Special Events Permit and Fire Permit which were approved by City Staff, those

permits do not require discretionary approval. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The preceding coastal development permit findings discuss the relevant coastal resource issues with the proposal, and the permit conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

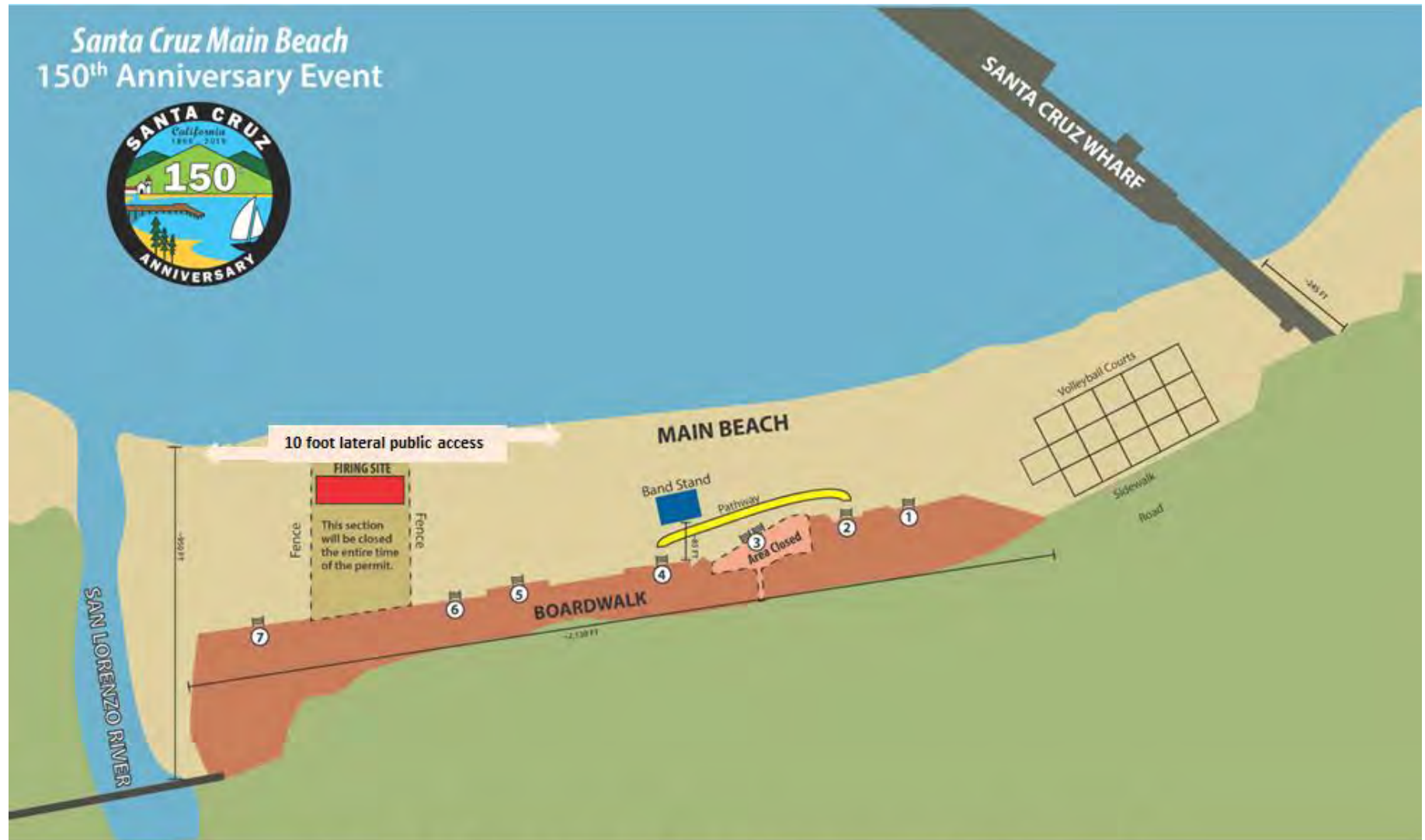
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. CDP 3-11-027 City of Santa Cruz Beach Management Plan
2. City of Santa Cruz Local Coastal Program
3. Assessment of Pyrotechnic Displays and Impacts Within the Monterey Bay National Marine Sanctuary 1993 – 2001 (2002)
4. Letter of Authorization issued by National Marine Fisheries Service to the Monterey Bay National Marine Sanctuary, valid from July 4, 2012 through July 3, 2017.

Project Location: Main Beach Santa Cruz

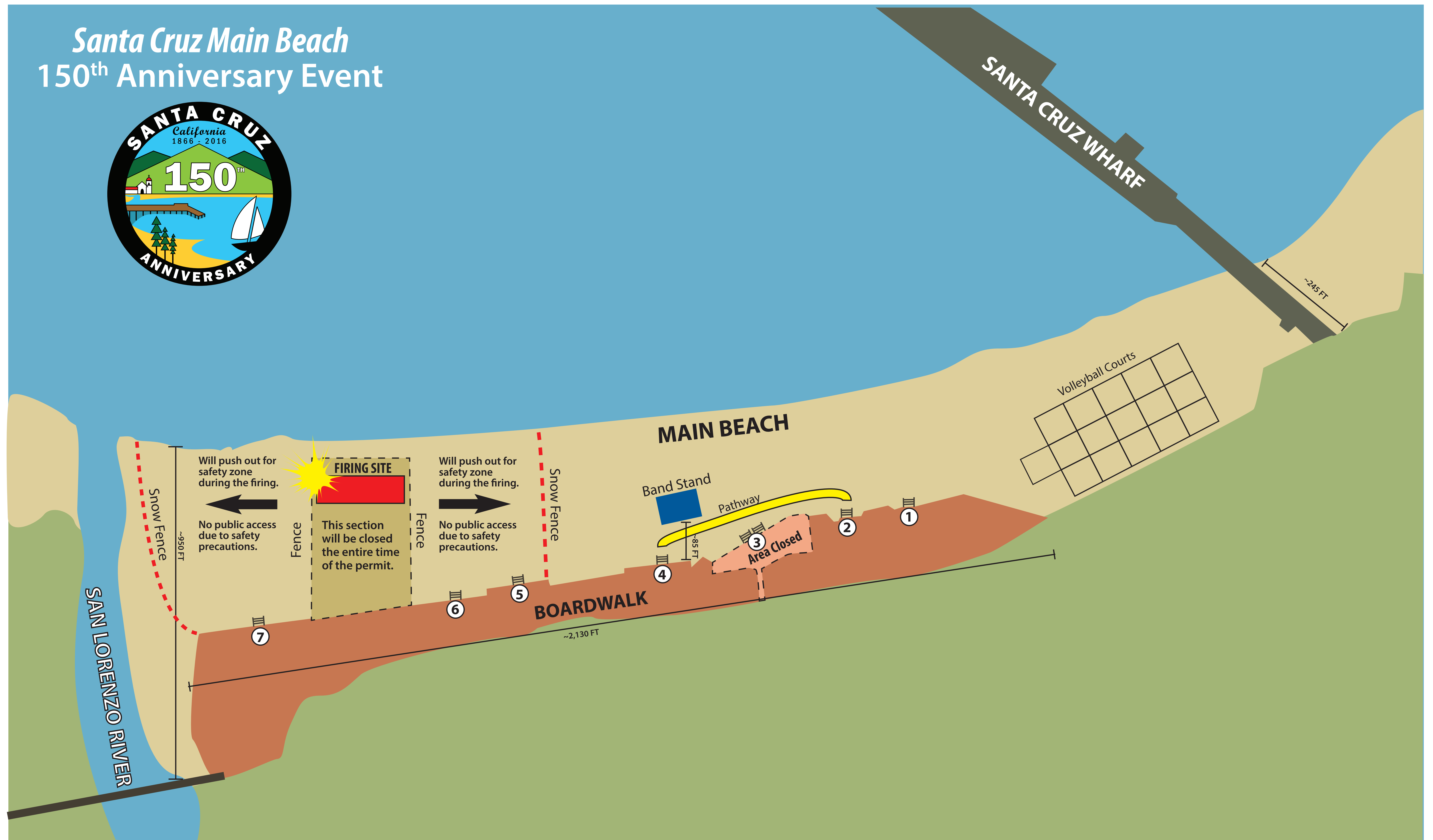


**Santa Cruz Main Beach
150th Anniversary Event**



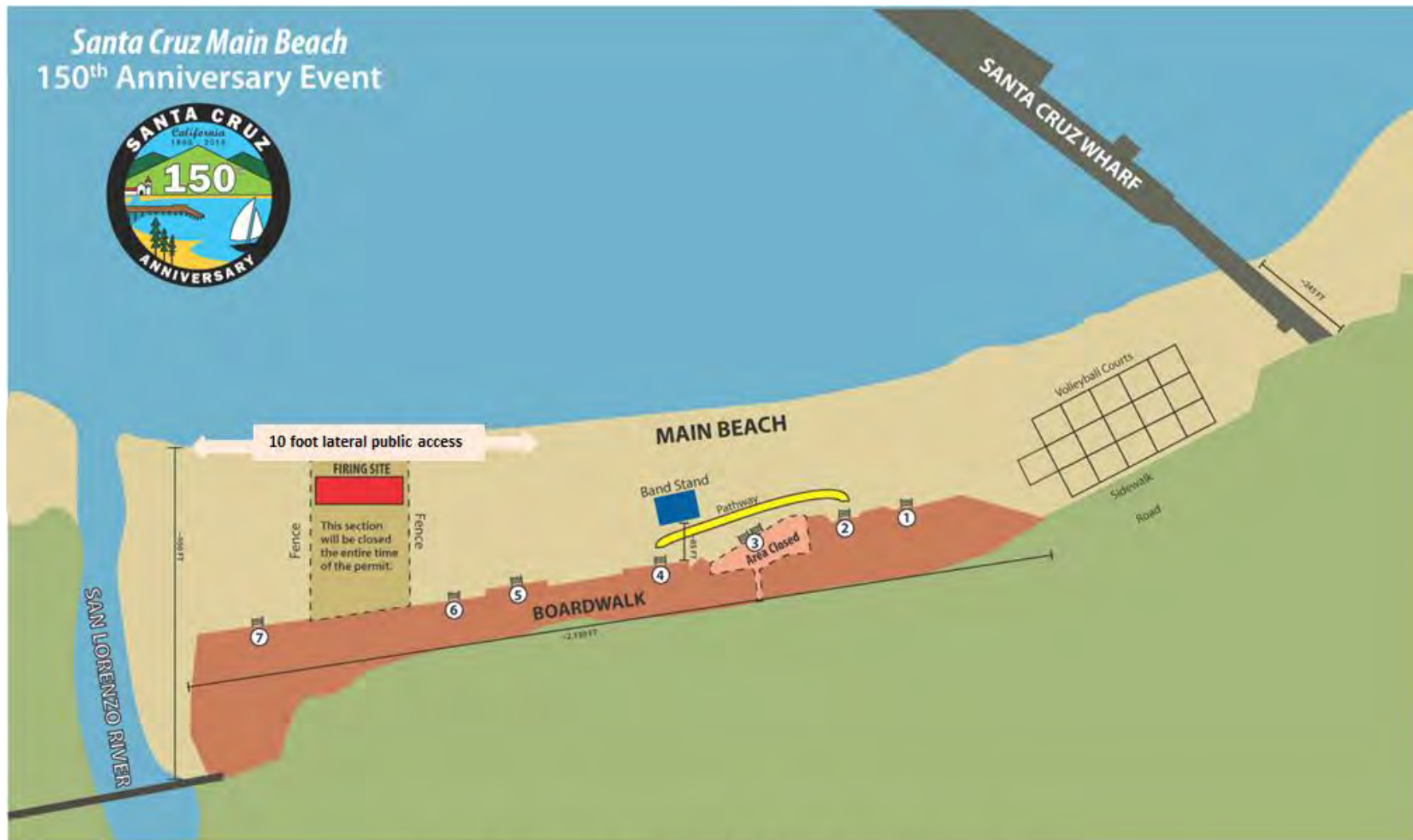
Day of Setup / Pre Firework Show
First light until an hour before dusk.

Santa Cruz Main Beach 150th Anniversary Event



Safety Zone During Firework Show 1 Hour before dusk until end of firework show.

**Santa Cruz Main Beach
150th Anniversary Event**



Post Firing / Break Down

End of firework show until mortars are removed from site.