

CALIFORNIA COASTAL COMMISSION

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Hearing Date: June 6, 2018

ADMINISTRATIVE COASTAL DEVELOPMENT PERMIT

Application Number: 3-18-0318

Applicant: American Legion Post #432

Project Location: Shamel County Park, 5455 Windsor Boulevard, Cambria, San Luis Obispo County.

Project Description: Free 4th of July fair and fireworks display, including vendor booths and construction of a fireworks staging area and safety zone.

EXECUTIVE DIRECTOR'S DETERMINATION

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

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

This permit will be reported to the Commission on June 6, 2018 at the following location: Chula Vista City Council Chambers, 276 Fourth Avenue, Chula Vista

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

You must sign (see **page 11** below) the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office pursuant to Title 14 Cal. Admin. Code Sections 13150(b) and 13158. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

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

JOHN AINSWORTH
Acting Executive Director

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

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EXHIBITS

Exhibit 1: Event Location Map

Exhibit 2: Aerial Photo of Event Site

Exhibit 3: Fire Safety Zone

I. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

II. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Other Agency Approvals.** PRIOR TO THE COMMENCEMENT OF THE FIREWORKS EVENT, the Permittee shall submit to the Executive Director for review and approval evidence of all permits, permissions or approvals granted for the fireworks display from: (1) United States Coast Guard; (2) State Fire Marshall; and (3) Cambria Fire Department, as applicable. The Permittee shall inform the Executive Director of any changes to the project required by any of the above-listed agencies. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally necessary.¹
2. **Fireworks Limitations.**
 - a. **Aerial Salute Limitations.** The total number of aerial “salute” shells or devices shall not exceed 6% of the total number of aerial shells and/or special effect pyrotechnic devices combined. Aerial “salute” shells/devices shall not be launched or detonated during the first five minutes of the fireworks display.

¹ Staff has received copies of permits for the fireworks event from the Monterey Bay National Marine Sanctuary and the San Luis Obispo County Parks Department.

- 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 display is authorized to occur on July 4, 2018 and shall be limited to no longer than 20 minutes.
- 3. Clean-up and Restoration of Beach and Adjacent Ocean Waters.** FOLLOWING THE FIREWORKS EVENT, all fireworks-related debris from the launch site shall be recovered. The Permittee shall inspect the immediate upcoast and downcoast area (i.e. the beach area between the rocky outcrop downcoast and the Moonstone Beach parking lot upcoast), and the adjacent water area for a minimum of two days following the conclusion of the fireworks (i.e., through Thursday and Friday) for any remaining event debris, including but not limited to all fireworks detritus. All such debris found shall be properly disposed of and the inspections shall continue for at least 24 hours from the time that any such fireworks debris is located, and indefinitely until such inspections do not identify any more fireworks debris.
- 4. Beach Public Access.** Public access to the beach located seaward of Shamel County Park may be restricted beginning no earlier than 5:00 p.m. on the day of the event to allow for pre-fireworks display setup at the launching area and to provide a spectator safety zone during the fireworks event. The beach shall be reopened to public access immediately following the conclusion of the fireworks event.
- 5. Pre and Post-Event 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. **Marine Mammals Monitoring Report.**
 - i) Conduct a census detailing the number of all pinnipeds and otters in the impact area of the event, and in the surrounding waters, on the day prior to the fireworks display with observations to occur for no less than 30 minutes;
 - ii) Monitor, record, and report all marine mammal injury, serious injury, or mortality observed in the vicinity of the fireworks display area and in the surrounding waters. Monitoring for injury, serious injury, or mortality shall occur no later than the morning after the fireworks display, and shall occur for no less than 30 minutes;
 - iii) 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.

III. EXECUTIVE DIRECTOR'S DETERMINATION

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

IV. FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION

A. PROJECT DESCRIPTION & LOCATION

The Applicant is proposing to provide a free, all-day 4th of July event at Shamel County Park in Cambria, San Luis Obispo County. The proposed project involves the temporary placement of vendor booths at the Park during the day and the siting of a fireworks safety zone/ staging and launching area on Shamel County Beach in the evening. Public access to the beach seaward of the Park will be maintained throughout the majority of the day. At 5:00 p.m., public access to this beach will be restricted to allow for pre-display setup at the launching area and to provide a spectator safety zone during the fireworks event (see **Exhibit 3**). This beach area will be reopened to public access immediately following the conclusion of the fireworks display.

The fireworks display will take place from the beach and over the ocean waters fronting the park, and within the boundaries of the Monterey Bay National Marine Sanctuary. The fireworks display will begin about 8:45 p.m. and will last approximately 20 minutes. The display will be visible from Shamel County Park and surrounding upcoast and downcoast locations, including neighboring Moonstone Beach, which is part of Hearst San Simeon State Park. The Applicant estimates (based on previous events) that 3,000 to 4,000 spectators will attend in total throughout the entire full-day event.

Following the event, the Permittee will perform a cleanup of all associated debris, as well as a more detailed cleanup of the beach and park the next day. This will include volunteers from the local community such as Scouts and 4-H, in addition to the fireworks staff.

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

B. MARINE RESOURCES AND WATER QUALITY

The proposed fireworks display would be launched from the beach fronting Shamel County Park (Shamel Beach) and the display will take place over the waters of Monterey Bay National

Marine Sanctuary (Sanctuary) (see **Exhibit 1**). The Sanctuary was designated as the ninth national marine sanctuary in the United States on September 18, 1992. Managed by the National Marine Sanctuary Program (NMSP) within the National Oceanic and Atmospheric Administration (NOAA), the Sanctuary adjoins 276 miles (444 km) of central California's outer coastline (overlying 25% of state coastal waters), and encompasses 5,300 square miles of ocean waters from mean high tide to an average of 25 miles offshore between Rocky Point in Marin County and Cambria in San Luis Obispo County.²

Fireworks displays have historically been conducted over Sanctuary waters as part of national and local celebrations, and to foster public use and enjoyment of the marine environment. These areas are the preferred venue for such celebrations within California because they optimize public access while avoiding fire hazards that are associated with such displays. The Sanctuary has historically expressed concern about the potential cumulative impacts to marine wildlife and the environment from fireworks displays, particularly if they proliferate to multiple sites within the Sanctuary. Because of this concern, and to provide guidance for future proposed fireworks events in the Sanctuary, in 2001 the Sanctuary developed an assessment of the impacts of fireworks displays.³ This Environmental Assessment recognized the historical use of fireworks in certain locations (including Cambria)⁴ and authorized future fireworks in four discrete areas within the Sanctuary (including Cambria), while noting that fireworks displays would be prohibited within the remainder of the Sanctuary.

On March 26, 2001, the Sanctuary requested formal programmatic consultation from the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) within the context of both the Endangered Species Act and the Marine Mammal Protection Act as to the potential for "take" of listed species and/or protected mammals due to fireworks displays within the Sanctuary's boundaries. On June 22, 2005, USFWS provided its biological opinion and concurred that the Sanctuary's authorization of fireworks events within four discrete areas⁵ within the Sanctuary would not likely substantially reduce the overall populations of endangered or threatened species located within these areas. On July 19, 2006, NMFS likewise issued a letter of authorization (LOA) to the Sanctuary authorizing professional fireworks displays within Sanctuary waters. On June 28, 2012, NMFS issued an updated LOA to the Sanctuary authorizing fireworks displays within Sanctuary waters until 2017. Both USFWS and NMFS recommended

² *Environmental Assessment of the Issuance of a Small Take Regulations and Letters of Authorization and the Issuance of National Marine Sanctuary Authorizations for Coastal Commercial Fireworks Displays Within the Monterey Bay National Marine Sanctuary, California*. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and Monterey Bay National Marine Sanctuary. June 2006.

³ *Assessment of Pyrotechnic Displays and Impacts within the Monterey Bay National Marine Sanctuary 1993-2001*, dated March 2001.

⁴ "The site has been used annually for Independence Day fireworks displays on July 4. The launch site is on a sandy beach at Shamel County Park. The small aerial display lasts approximately 20 minutes. The aerial shells are aimed to the west. The marine venue 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."

⁵ 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.

that the Sanctuary include appropriate mitigation and conservation measures when authorizing fireworks displays within the Sanctuary to minimize or avoid impacts to special status species. Both the Commission and the Sanctuary have authorized fireworks within Sanctuary waters based in part on the Assessment and its recommendations.⁶

Marine mammals can be impacted by fireworks displays in three ways: light, sound, and debris. The primary causes of disturbance are light flashes and sound effects from exploding fireworks. The impact area is affected by certain variables including type of pyrotechnic device, altitude of explosion, etc. The impact area is defined as the area where sound, light, and debris will directly impact marine organisms and habitats. **Special Conditions 2(d)** and **5** target to limit these impacts by limiting the length of the fireworks display to a maximum of 20 minutes, and by requiring a pre-event census of marine mammals in the vicinity of the project site to be done, along with a post-event evaluation to determine if any injury or mortality to these species occurred. **Special Condition 5** also requires submittal of a monitoring report within 60 days of conclusion of 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.

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

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

⁶ See, for example, CDPs 3-00-117, 3-01-058, 3-02-027, 3-03-034, 3-03-034-A1, 3-03-034-A2 and 3-14-1013 (Monte Foundation Fireworks at Seacliff State Beach and Capitola) as well as CDPs 3-09-016 (City of Capitola), 3-13-0960 and 3-16-0391 (City of Santa Cruz).

Shamel County Park, the adjacent stretch of beach, and the adjacent ocean waters for a minimum of two days following the conclusion of the fireworks program to look for any remaining event debris, including but not limited to all fireworks detritus, and also to properly dispose of all debris. The Applicant has also agreed to clean up the area immediately following the fireworks display, and has historically received help from members of the community, such as Scouts and 4-H, to aid in cleanup during the days following the event.

In terms of potential impacts to pinnipeds from the fireworks display, according to the Environmental Assessment, sea lions have been observed evacuating haul-out areas upon initial detonation of fireworks, and then returning to the haul-out sites within 4 to 15 hours following the end of the fireworks display. Harbor seals have been seen to remain in the water after initial fireworks detonation around the haul-out site. Sea lions in general are more tolerant of noise and visual disturbances than harbor seals - adult sea lions have likely habituated to many sources of disturbance and are therefore much more tolerant to nearby human activities. For both pinniped species, pups and juveniles are more likely to be harassed when exposed to disturbance than older animals. In general, marine wildlife depart or avoid surface waters and haul-out sites within a 1000-yard radius of the center of the impact area during fireworks displays. Regarding specific impacts to pinnipeds during the proposed fireworks event, the aforementioned Environmental Assessment states that the authorized launch site in Cambria includes low concentrations of sea lions and moderate numbers of sea otters and harbor seals (Sanctuary staff has estimated that an average of zero sea lions and 20 harbor seals may be present during the fireworks display). With respect to elephant seals, although it is possible for individual elephant seals to enter the area from breeding sites north of the park, it is highly unlikely that this will occur given that elephant seal breeding occurs in the winter and the fireworks display in Cambria is limited to the summer. In any event, marine mammals and other wildlife may avoid or temporarily depart the impact area during the hours immediately prior to the beginning of the fireworks display due to increased human recreational activities associated with the overall celebration event (noise, boating, kayaking, fishing, diving, swimming, surfing, picnicking, beach combing, tidepooling, etc.), and as a fireworks presentation progresses, most marine mammals and birds generally evacuate the impact area.

In terms of potential bird impacts, the event is expected to have little to no impact to birds. Non-nesting marine birds (especially pelicans, cormorants, and gulls) are among the first wildlife to evacuate the area at the start of fireworks displays. Past observations by Sanctuary staff indicate that virtually all birds within the impact area depart in a burst of flight within one minute of the start of a fireworks display, including low-level displays. Due to the nature of the project, these impacts would be temporary and short term. Birds would be expected to retreat from the area when the fireworks start, and to return afterwards.

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

C. PUBLIC ACCESS

As the project site is located between the first public road and the sea, the main issues raised by this application are consistency with the public access and recreation policies of the Coastal Act (Sections 30210, 30211, 30213, 30221, and 30252(3)). These policies protect the beach (and

access to and along it) and offshore waters for public access and recreation purposes, including lower-cost access and recreational opportunities.

The proposed fireworks display is a one-time, temporary and free public event that will provide public recreation and enjoyment at Shamel County Park and on the adjacent beach. All normally accessible areas, including the beach located seaward of the Park, will remain open and available to the general public throughout the majority of the day. At 5:00 p.m., public access to this beach will be restricted to allow for pre-display setup at the launching area and to provide a spectator safety zone during the fireworks event (see **Exhibit 3**). This beach area will be reopened to public access immediately following the conclusion of the fireworks display (see **Special Condition 4**).

Potential impacts to public parking will be offset by a free trolley shuttle that will run every hour from 11:00 a.m. to 7:00 p.m. along Main Street and Moonstone Beach Drive to Shamel County Park. As such, the event should not adversely affect coastal visitors generally, and in fact will provide a free attraction to them in an urban setting capable of handling such an event and potential attendees.

The 20-minute fireworks display would temporarily impact the ability of potential boaters to use ocean waters offshore of the beach during the time of the event but the impact will be negligible because the duration of the event is so short. However, U.S. Coast Guard approval is required. Therefore, this approval is conditioned for evidence of U.S. Coast Guard approval prior to the event (see **Special Condition 1**).

The main public access issue in this case is really with respect 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 it is possible that event attendees may leave other debris as well. Given that some debris may float, it may be that debris continues to be present even following initial cleanup activities. Some debris of this type can be avoided by simply prohibiting certain pyrotechnic devices (such as those that contain an outer plastic casing), and by requiring that all plastic labels and wrappings be removed from the pyrotechnic shells before they are launched. In addition, the Commission's experience with nearby fireworks events has been that aggressive and focused clean-up following the event is adequate to ensure that beach and offshore waters are returned to their pre-event state in a relatively short period of time. To combat this issue, this approval is conditioned for the Applicant to clean up the area immediately following the event and to inspect and clean up the beach and surrounding waters of any remaining event fireworks detritus and other event debris for two days following the event, i.e., Monday through Tuesday, as outlined in **Special Condition 3**.

Lastly, with conditions to maintain beach public access and to limit certain types of shell materials and ensure that the beach, the Park, 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 (**Special Conditions 1, 3, and 4**).

D. FIRE HAZARDS

Launching fireworks during the summer fire season raises the question of whether such an activity could increase fire hazard. In this case, the fireworks would be launched from the beach

and over the water and viewed from surrounding public and residential areas. There is also the potential for a misfire of some sort landing on nearby buildings or in other developed areas. The Applicant will obtain authorization from the Cambria Fire Department and the State Fire Marshall for the proposed fireworks display to ensure adequate precautions are taken to protect against fire hazard. In addition, Cambria Fire Department officials will be on hand to monitor the fireworks through set up, the display itself, and take down of the firing and during the display. Coastal Act Section 30253 requires that fire risks be minimized. Therefore, this approval is conditioned for evidence of Cambria Fire Department approval (see **Special Condition 1**).

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. In this case, the County determined that the project does not require CEQA review.

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

V. ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE

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

Name and Signature of Permittee Terry Farrell, American Legion Post #432)

Date of Signature

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS⁷

- *Environmental Assessment of the Issuance of a Small Take Regulations and Letters of Authorization and the Issuance of National Marine Sanctuary Authorizations for Coastal Commercial Fireworks Displays Within the Monterey Bay National Marine Sanctuary, California.* National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and Monterey Bay National Marine Sanctuary. June 2006.

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- San Luis Obispo County Parks and Recreation Department Staff

⁷ These documents are available for review in the Commission's Central Coast District office.