

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



Th13e

Filed: 4/16/2020
Action Deadline: 10/13/2020
Staff: Katie Butler - SC
Staff Report: 6/18/2020
Hearing Date: 7/9/2020

STAFF REPORT: CDP HEARING

Application Number: 3-20-0144

Applicant: City of Pismo Beach

Project Location: Pismo Pier and over the ocean waters fronting Pomeroy Avenue and Pismo State Beach, in the City of Pismo Beach

Project Description: Free annual public Fourth of July fireworks displays, and a free one-time public fireworks display in April 2021 to celebrate the City's 75th anniversary

Staff Recommendation: Approval with Conditions.

SUMMARY OF STAFF RECOMMENDATION

The City of Pismo Beach proposes to provide annual free Fourth of July fireworks displays occurring on July 4th of each year at Pismo Pier in Pismo Beach. The events would involve the temporary siting of a fireworks safety zone/staging and launching area on the westernmost three-fourths of Pismo Pier. The fireworks displays will be launched from the pier over the ocean waters fronting Pomeroy Avenue, beginning at approximately 9:00 p.m. and lasting approximately 25 minutes. Approximately 2,100 to 2,200 aerial shells will be expended at heights ranging from 300 to 600 feet. Each display will be visible from Pismo State Beach and surrounding upcoast, downcoast, and inland locations, depending on marine layer conditions. Public access to Pismo

3-20-0144 (Pismo Beach Fireworks)

State Beach in the immediate vicinity of the pier will remain open and is not expected to be otherwise adversely impacted by the fireworks events. The City of Pismo Beach has sponsored annual Fourth of July fireworks displays for approximately 107 years, and the City began launching fireworks from the pier beginning in 1924 when the pier was rebuilt. The City estimates that anywhere from 70,000 to 100,000 people typically attend the event, depending on the day of the week that the holiday occurs, the weather, and the tides. In addition, the City proposes a free one-time public fireworks display in April 2021 (exact date still to be determined) to celebrate the City's 75th anniversary. That event will involve the same parameters as those proposed for the annual Fourth of July displays.

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service have determined that fireworks displays, such as the ones proposed here, are not likely to significantly impact the overall populations of endangered or threatened bird or mammal species. Although marine mammals are not likely to be present or impacted by the proposed fireworks displays, the Commission has historically found (in other fireworks cases) that additional measures are necessary to ensure their protection under Coastal Act Sections 30230 and 30231. Staff therefore proposes a series of special conditions to minimize the impact of the proposed events, including conditions that limit the use of large "aerial salute" shells (i.e. those that make a loud bang and a bright flash, rather than just a visual effect) that may have a greater impact on wildlife, a prohibition on the use of firework devices that include plastic or aluminum shells or casings, and requirements for extensive cleanup efforts for a minimum of two days after each event. Additionally, staff proposes to require pre- and post-event wildlife monitoring and associated reporting to ensure that area wildlife is not impacted by the events and to inform whether additional mitigation may be required to protect wildlife in the future.

In terms of public access, the proposed displays are an annual, one-day, temporary, and free public event on the Fourth of July and a one-time, temporary, and free public event on the City's 75th anniversary that will provide public recreation and enjoyment in Downtown Pismo Beach, on Pismo State Beach, and in the surrounding areas. All normally accessible areas will remain open and available to the general public throughout each event, except the westernmost portion of Pismo Pier that will be restricted beginning at 11 a.m. on the day of each event to allow for pre-display setup at the launching area and to provide a spectator safety zone during the fireworks events. The pier will be fully reopened by 10 p.m. of that same day, following dismantling and cleanup of each fireworks event. With conditions to maintain beach public access and ensure that the beach and the surrounding waters are adequately cleaned following each event, the events should not adversely affect coastal visitors generally. In fact, these displays will provide a free attraction in an urban setting capable of handling such events and their potential attendees.

With respect to fire hazards, staff seeks to impose special conditions to require the

3-20-0144 (Pismo Beach Fireworks)

Applicant to obtain authorization from the Pismo Beach Fire Department/California Department of Forestry and Fire Protection (CAL FIRE) prior to each fireworks display to ensure adequate precautions are taken to protect against potential fire hazards. In addition, Pismo Beach Fire Department/CAL FIRE officials will be on hand at each event to monitor the fireworks through set up, the display itself, and take down.

Therefore, as conditioned, the project is consistent with the Coastal Act, and staff recommends **approval** of the CDP. The motion is found on page 5 below.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....	5
II. STANDARD CONDITIONS.....	5
III. SPECIAL CONDITIONS	6
IV. FINDINGS AND DECLARATIONS	9
A. PROJECT LOCATION AND DESCRIPTION	9
B. STANDARD OF REVIEW	9
C. MARINE RESOURCES AND WATER QUALITY	10
D. PUBLIC ACCESS AND RECREATION	13
E. FIRE HAZARDS	15
F. MINOR CHANGES	16
G. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY	16
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	17
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	17
APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS....	17

EXHIBITS

Exhibit 1 – Regional Location Map

Exhibit 2 – Fireworks Events Location

Exhibit 3 – Pismo Pier Fireworks Launch and Closure Areas

3-20-0144 (Pismo Beach Fireworks)

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 affirmative vote of a majority of the Commissioners present.

Motion: I move that the Commission **approve** Coastal Development Permit Number 3-20-0144 pursuant to the staff recommendation, and I recommend a **yes** vote.

Resolution to Approve CDP: The Commission hereby approves Coastal Development Permit Number 3-20-0144 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 or 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.

3-20-0144 (Pismo Beach Fireworks)

- 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. Permit Duration and Allowable Extensions.** This CDP shall be valid for five annual Fourth of July fireworks events to take place through and including July 4, 2025, and one 75th anniversary fireworks event in April 2021 (exact date still to be determined). The approval for an annual Fourth of July fireworks event allowed under this CDP, as conditioned, may be extended in a maximum of five-year increments after July 4, 2025 (e.g., through July 4, 2030, through July 4, 2035, etc.) subject to Executive Director review and approval with verification that: the Permittee has secured the "Other Agency Approvals" required in Special Condition 2; there are no changed circumstances associated with the event that may affect the consistency of the event with the policies of Chapter 3 of the Coastal Act, and; that the terms and conditions of this CDP remain adequate to protect coastal resources. For such extension(s), the Permittee must provide evidence that there are no changed circumstances with respect to this approved CDP's terms and conditions, including to the adequacy of marine resource and water quality protections. The Permittee must request Executive Director review and approval of the extension at least three months prior to the next proposed event. If the Executive Director determines that extension pursuant to the procedure above is not appropriate due to failure to meet the above-specified criteria, the Permittee shall submit a complete CDP application for Commission review to authorize future fireworks events.
- 2. Other Agency Approvals.** PRIOR TO THE COMMENCEMENT OF EACH 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) CAL FIRE/Pismo Beach Fire Department; (3) United States Fish and Wildlife Service; (4) National Marine Fisheries Service; and (5) California Department of Fish and Wildlife, as applicable. If any of the above listed agencies requires a change to the project as currently approved, or requires a change to any future fireworks event approved by this permit, the Permittee shall inform the Executive Director of those changes. Such changes shall not be incorporated into the project until the Permittee obtains an amendment to this coastal development permit from the Coastal Commission, unless the Executive Director determines that no amendment is legally necessary.
- 3. Fireworks Limitations.**

3-20-0144 (Pismo Beach Fireworks)

- a. **Aerial Salute Limitations.** The total number of aerial “salute” shells or devices used in each fireworks event 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 each 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 display is authorized to occur on July 4, 2021, 2022, 2023, 2024, and 2025, and once in April 2021. Extensions to these July 4th years may be granted by the Executive Director subject to the requirements of Special Condition 1. Each of these fireworks displays shall be limited to no longer than 25 minutes.
- 4. Clean-up and Restoration of Beach and Adjacent Ocean Waters.** FOLLOWING EACH 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., at a minimum, the beach area between Main Street upcoast and Stimson Avenue downcoast – see **Exhibit 2**), and the adjacent water area for a minimum of two days following the conclusion of each fireworks event 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.
- 5. Public Access.** Public access to Pismo State Beach and other areas in the vicinity of the pier (e.g. the beachfront promenade) shall be maintained at all times. Public access to Pismo Pier may be restricted as shown in **Exhibit 3** beginning at 11 a.m. on the day of each fireworks event to allow for pre-fireworks display setup at the launching area and to provide a spectator safety zone during each fireworks event. The pier shall be reopened to public access by 10 p.m. of that same day following the removal of the fireworks setup, including the launching and safety equipment.
- 6. Pre- and Post-Event Monitoring Report.** WITHIN 60 DAYS OF THE CONCLUSION OF EACH EVENT, the Permittee shall submit a Pre- and Post-Event Monitoring Report, prepared by a qualified biologist, to the Executive Director for

3-20-0144 (Pismo Beach Fireworks)

review and approval. The Report shall, at a minimum, include:

a. Marine Mammals Monitoring Report.

- i) The results of a census detailing the number of all pinnipeds and otters in the impact area of the event, i.e. Pismo State Beach in the downtown area and in the waters around Pismo Pier, on the day prior to each fireworks display with observations to occur for no less than 30 minutes;
- ii) A record and description of all marine mammal injuries, serious injuries, or mortalities observed in the vicinity of the impact area of the event, i.e. Pismo State Beach in the downtown area and in the waters around Pismo Pier. Monitoring for injury, serious injury, or mortality shall occur no later than the morning after each fireworks display, and shall occur for no less than 30 minutes;
- iii) An analysis of the data collected indicating whether, and to what extent, each event had an impact, if any, on marine mammals.

7. 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.

8. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the Permittee acknowledges and agrees (i) that the approved development involves potentially hazardous activities; (ii) to assume the risks to the Permittee and property that may be affected by this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

IV.FINDINGS AND DECLARATIONS

A. Project Location and Description

The City of Pismo Beach proposes to provide annual free Fourth of July fireworks displays occurring on July 4th of each year at Pismo Pier in Pismo Beach. The events would involve the temporary siting of a fireworks safety zone/staging and launching area on the westernmost three-fourths portion of Pismo Pier. Public access to Pismo State Beach in the immediate vicinity of the pier will be maintained before and during each event and is not expected to be otherwise impacted. The City of Pismo Beach has sponsored annual Fourth of July fireworks displays for approximately 107 years, and the City began launching fireworks from the pier beginning in 1924 when the pier was rebuilt. The City estimates that anywhere from 70,000 to 100,000 people typically attend the event, depending on the day of the week that the holiday occurs, the weather, and the tides. In addition, the City proposes a free one-time public fireworks display in April 2021 to celebrate the City's 75th anniversary. That event will involve the same parameters as those proposed for the annual Fourth of July displays.

Each fireworks display will take place from the pier over the ocean waters fronting Pomeroy Avenue, beginning at approximately 9:00 p.m. and lasting approximately 25 minutes. Approximately 2,100 to 2,200 aerial shells will be expended at heights ranging from 300 to 600 feet. A test shell will be expended prior to the start of the event to disperse birds in the immediate vicinity. The displays will be visible from Pismo State Beach and surrounding upcoast, downcoast, and inland locations, depending on marine layer conditions. The Pismo Beach Fire Department will be present and involved at each step of the event, from the time the fireworks enter the city limits to the conclusion of the ignition of all aerial shells.

Following each event, the City will perform a cleanup of all associated debris, including a detailed cleanup of the beach the following morning beginning at approximately 6:00 a.m. This will include City staff and volunteers from the community in addition to the fireworks company staff.

Please refer to **Exhibit 1** for a regional location map and **Exhibit 2** for an aerial photo of the project site that shows the location of the proposed events. See **Exhibit 3** for the fireworks launch and closure areas.

B. Standard of Review

The proposed project is located within the Commission's retained/original CDP jurisdiction area because it is located on the Pismo Pier over public trust lands and over open ocean waters, and thus the standard of review is Chapter 3 of the Coastal Act,

3-20-0144 (Pismo Beach Fireworks)

with the City of Pismo Beach Local Coastal Program (LCP) policies and standards providing guidance.

C. Marine Resources and Water Quality

Coastal Act Sections 30230 and 30231 protect marine and inland watercourse biological resources, stating:

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.

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.

The proposed fireworks displays would be launched from the Pismo Pier and the displays will take place over the waters of the Pacific Ocean (see **Exhibits 1, 2, and 3**). Fireworks displays have historically been conducted in California coastal communities 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.

Such fireworks displays have the potential to impact wildlife in the surrounding area. In particular, they can affect sensitive marine mammal and bird species. Marine mammals and other wildlife 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 the types of pyrotechnic devices, altitude of explosion, etc. The impact area is defined as the area where sound, light, and debris will directly impact marine organisms and habitats. It may be that marine mammals and other wildlife avoid or temporarily depart the impact area

3-20-0144 (Pismo Beach Fireworks)

during the hours immediately prior to the beginning of the fireworks displays due to increased human recreational activities associated with the overall celebration event (noise, boating, kayaking, fishing, diving, swimming, surfing, picnicking, beach combing, tidepooling, etc.). As a fireworks presentation progresses, most marine mammals and birds generally evacuate the impact area.

The City consulted with the National Marine Fisheries Service (NMFS) within the context of the Marine Mammal Protection Act (MMPA) as to the potential for “take” of listed species and/or protected mammals due to the proposed fireworks displays. According to the City, marine mammals have rarely been observed in the pier area, particularly in the summer months when large numbers of tourists visit Pismo State Beach and the downtown area. NMFS staff indicated that authorization under the MMPA would not be necessary if marine mammals do not regularly frequent the area (specifically pinnipeds hauling out on the shore or on in-water structures that may be harassed from project activities (i.e., any part of the project from set up, firing the fireworks, marine debris landing in the ocean or on shore, take down, and clean up). NMFS staff has required City staff to immediately contact the NMFS’s regional stranding coordinator in the unlikely event of a marine mammal injury or death as a result of the project, and the City has agreed to do so.¹

Although marine mammals are not likely to be present and impacted by the proposed fireworks displays, the Commission has historically found (in other fireworks cases) that additional measures are necessary to ensure protection of marine mammals, consistent with Coastal Act Sections 30230 and 30231. **Special Conditions 3(d) and 6** address potential impacts associated with noise, light, and debris by limiting the length of each fireworks display to a maximum of 25 minutes, and by requiring a pre-event census of marine mammals in the vicinity of the pier, along with a post-event evaluation to determine if any injury or mortality to these species occurred. **Special Condition 6** also requires submittal of a monitoring report within 60 days of the conclusion of each event. The marine mammal censuses and monitoring reports will provide valuable information that may be used to determine the Coastal Act consistency of future proposed CDPs for fireworks displays at this location, including provision of different or additional appropriate mitigation as necessary.

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 less impactful 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

¹ Email from Laura McCue, National Marine Fisheries Service, to Matt Downing, City of Pismo Beach Planning Manager, April 1, 2020.

3-20-0144 (Pismo Beach Fireworks)

exacerbate impacts. Such limitations are 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. those that make a loud bang and a bright flash, rather than just a visual 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 each fireworks display (see **Special Condition 3(a)**).

Event debris from a fireworks program can impair water quality as well as harm wildlife that may ingest and/or become entangled in such debris. Fireworks debris that may enter the ocean include fireworks casings, 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 and aluminum, are likely to persist in the marine environment for lengthy periods if they are not washed ashore and/or removed by personnel. In previous permits for fireworks programs, the Commission has prohibited the use of specific pyrotechnic devices, such as those containing an outer plastic casing and/or other non-biodegradable inner components that exceed 5 percent of the mass of the device, and has required that all plastic and aluminum labels and wrappings be removed from the pyrotechnic shells before they are launched. **Special Conditions 3(b)** and **3(c)** incorporate these prohibitions into this permit. Additionally, **Special Condition 4** requires the Permittee to inspect the upcoast and downcoast beach areas (at a minimum between Main Street upcoast and Stimson Avenue downcoast, as shown in **Exhibit 2**) and the adjacent ocean waters for a minimum of two days following the conclusion of each fireworks event to look for any remaining event debris, including, but not limited to, all fireworks detritus, and also to properly dispose of all debris. The City has also proposed to perform a cleanup of all associated debris, including a detailed cleanup of the beach area the following morning after each event that will include City staff and volunteers from the community in addition to the fireworks company staff.

In terms of potential bird impacts, the City consulted with the U.S. Fish and Wildlife Service (USFWS) within the context of the Endangered Species Act. USFWS staff indicated that the primary listed birds of concern in the project area are California least tern and western snowy plover, but that neither are known to nest in the immediate area, although least terns may forage in the nearby Pismo Creek mouth. Snowy plovers nest at Ocean Dunes State Vehicular Recreation Area to the south, but typically are not present in the northern part of that park in July. For non-listed birds, USFWS staff indicated that there would not likely be breeding issues on the beach in the vicinity of the pier, and that birds in the area would be expected to hunker down, be displaced, or

3-20-0144 (Pismo Beach Fireworks)

flush during the events and return on their own accord afterwards.² Due to the nature of the displays, these impacts would be temporary and short term.

Finally, to ensure semi-regular evaluation of potential impacts to marine species from the annual fireworks event and continued consistency with Coastal Act marine resource protection requirements, **Special Condition 1** states that the Commission's approval allows for five annual Fourth of July fireworks displays through the July 4, 2024 event (as well as the one-time 75th anniversary event in 2021). **Special Condition 1** allows the Executive Director to extend this approval for five-year increments if: the Applicant has secured the "Other Agency Approvals" required in Special Condition 2; there are no changed circumstances that may affect the consistency of the event with the policies of Chapter 3 of the Coastal Act; and that the terms and conditions of this CDP remain adequate to protect coastal resources. If the Executive Director determines that Commission re-review of the project is warranted for a proposed CDP extension, if, for instance, there was new information regarding the impacts of firework displays on coastal resources or new mitigation measures are identified that are necessary to address such impacts, **Special Condition 1** requires the Applicant to submit a new CDP application to authorize future fireworks events.

As conditioned, the Commission finds that the proposed fireworks events will not significantly impact marine resources and preserve water quality in the vicinity of the Pismo Pier. Thus, the project is consistent with the marine resource protection policies of the Coastal Act.

D. Public Access and Recreation

As the project site is located between the first public road and the sea, this application analyzed under 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:

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.

² Email from Lena Chang, USFWS Senior Fish & Wildlife Biologist, to Matt Downing, City of Pismo Beach Planning Manager, April 10, 2020.

3-20-0144 (Pismo Beach Fireworks)

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.

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

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.

30252: The location and amount of new development should maintain and enhance public access to the coast by... providing non-automobile circulation within the developments ...

The proposed fireworks displays consist of annual one-day, temporary, and free public event on the Fourth of July and a one-time, temporary, and free public event on the City's 75th anniversary in April 2021. These displays will provide public recreation and enjoyment in downtown Pismo Beach, on Pismo State Beach, and in the surrounding areas.

All normally accessible areas on Pismo State Beach and in the downtown area (including the beachfront promenade) will remain open and available to the general public throughout the event. The westernmost three-fourths of Pismo Pier will be temporarily closed to the public in order to site the fireworks safety zone/staging and launching area. This closure will last for only as long as necessary to set up, perform the display, and clean up the event (see **Exhibit 3**). The pier will be fully reopened to public access immediately following the removal of the fireworks equipment from each event (see **Special Condition 5**). Public access to the beach in the vicinity of the pier will not be impacted. Moreover, a primary purpose of the annual fireworks events is to encourage public access and recreation at the beach (and each event will also provide a unique visual coastal recreational experience that typically only occurs once per year), notwithstanding that execution of each event requires closure of part of the pier for a launching area and safety zone. As such, the events should not adversely affect coastal visitors generally, and in fact will provide a free attraction in an urban setting capable of handling such events and potential attendees, consistent with Coastal Act Section 30252(3).

The 25-minute fireworks displays may temporarily impact the ability of potential boaters to use ocean waters offshore of the beach during the time of the events, but the impact

3-20-0144 (Pismo Beach Fireworks)

will be negligible because of the short duration of the events. Further, U.S. Coast Guard approval is required prior to each event and this approval is conditioned on the provision of evidence of U.S. Coast Guard approval prior to each event (see **Special Condition 2**).

The main public access issue in this case stems from the cleanup of any fireworks and/or event debris following the events. 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, debris may continue to be present even after initial cleanup activities. Remnant debris on the beach and in the water inhibits public use and enjoyment of those areas. 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 and aluminum 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 each 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 ensure continued public access, **Special Condition 4** requires the Applicant to clean up the area immediately following each event and to inspect and clean up the beach and surrounding waters of any remaining event fireworks detritus and other event debris for at least two days following each event.

Taking into account the above conditions to maintain beach public access, to limit certain types of shell materials, and to ensure that the beach and the surrounding waters are adequately cleaned up following each event, the proposed project, as conditioned, is consistent with the above-cited Coastal Act public access and recreation policies (**Special Conditions 3, 4, and 5**).

E. Fire Hazards

Coastal Act Section 30253(a) requires that fire risks be minimized and states:

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

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 over the water from the Pismo Pier 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 has obtained authorization from the Pismo Beach Fire Department/CAL FIRE for the displays based on the following conditions: (1) CAL FIRE will review the products to be used with the pyrotechnic company prior to

3-20-0144 (Pismo Beach Fireworks)

purchase; (2) the site where the event occurs is owned and operated by the City; (3) CAL FIRE will inspect the site prior to the pyrotechnics' arrival and, once arrived, will perform a safety equipment check; (4) CAL FIRE will conduct a safety briefing for pyrotechnic company staff and verify applicable company licenses; (5) CAL FIRE will inspect set up; (6) CAL FIRE staff will be present prior to, during, and after each event; and (7) CAL FIRE will conduct a briefing after the event with the pyrotechnic operator.³ To ensure consistency with Coastal Act Section 30253(a), this approval is conditioned for evidence of CAL FIRE authorization prior to each event (see **Special Condition 2**).

F. Minor Changes

This CDP authorizes the project as proposed by the City of Pismo Beach except as modified by the special conditions. Any project changes, including with respect to any Executive Director-approved reports required pursuant to the special conditions, shall require an amendment to this CDP, unless the Executive Director determines that no amendment is legally necessary (**Special Condition 7**).

G. Assumption of Risk, Waiver of Liability and Indemnity

Applicants are regularly required to acknowledge inherent hazards and agree to waive any claims of liability on the part of the Commission for allowing potentially hazardous development to proceed. This allows for such potentially hazardous development or events, such as a fireworks display, to occur while avoiding placing the economic burden for damages onto the people of the State of California. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see **Special Condition 8**).

In addition, Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its actions on pending CDP applications in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 8** requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts.

³ Letter from Dennis Byrnes, CAL FIRE/Pismo Beach Fire Department Fire Captain/Inspector, to Matt Downing, City of Pismo Beach Planning Manager, March 27, 2020.

H. California Environmental Quality Act (CEQA)

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

The City of Pismo Beach, acting as the CEQA lead agency, found the proposed project to be categorically exempt under CEQA Guidelines Sections 15304(e) (minor temporary use of land having negligible or no permanent effects on the environment) and 15323 (normal operations of existing facilities for public gatherings). 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. All public comments received to date have been addressed in the findings above, which are incorporated herein in their entirety by reference.

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

Appendix A – Substantive File Documents⁴

- CDP 3-20-0144 file

Appendix B – Staff Contact with Agencies and Groups

- City of Pismo Beach Planning Department

⁴ These documents are available for review in the Commission's Central Coast District office.