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# F14a

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Staff: Kiana Ford - KF  
Staff Report: 4/22/2022  
Hearing Date: 5/13/2022

## STAFF REPORT CDP APPLICATION

**Application Number:** 3-22-0164

**Applicant:** The Crow's Nest Restaurant

**Project Location:** Sandy beach area located at the upcoast edge of the Santa Cruz Port District's Harbor Beach (next to the Harbor jetty) and seaward of The Crow's Nest Restaurant (at 2218 East Cliff Drive) in the City of Santa Cruz.

**Project Description:** Use an approximately 10,000 square-foot sandy area on the public beach fronting the restaurant for a series of free seasonal 'beach party' events that are open to the general public with food, drinks, and live entertainment (free entry, but food and drinks are for purchase) on Thursday evenings from 5:30pm to 9:30pm between May 1<sup>st</sup> through September 30<sup>th</sup>, with setup and breakdown occupying that same area from 6am the day of each event until 7am the following day.

**Staff Recommendation:** Approval with Conditions

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### SUMMARY OF STAFF RECOMMENDATION

The Crow's Nest Restaurant is a popular establishment overlooking the sandy shores of Harbor Beach adjacent to Twin Lakes State Beach at the Santa Cruz Harbor in the City of Santa Cruz. The public beach in front of the restaurant is owned by the Santa Cruz Port District, and it is a popular area for beach and coastal related activities such as general beach-going, swimming, boogie boarding, boating (catamarans), fishing, and viewing the Harbor and Monterey Bay. The Crow's Nest has hosted "beach party" events in the sand near the restaurant during the summertime since the early 1990s, some of which were permitted by the Commission, but all of which since 1999 have been unpermitted. The Crow's Nest now is applying for a new CDP to allow them to

host such annual summer beach parties on the sand seaward of the restaurant on Thursday nights from 5:30pm to 9:30pm, and from May 1<sup>st</sup> through September 30<sup>th</sup> annually. Each event would enclose an approximately 10,000 square-foot sandy area extending out some 100 feet onto the public beach (using temporary mesh fencing) and would include a stage, tables, and chairs for use within the enclosed space. Although the event itself would be for 4 hours each time, setup and breakdown of the event is proposed to occupy the same area from 6am the day of each event until 7am the following day, thus essentially occupying that area for a full day during the busy summer beach season. The events are free and open to the general public, including in terms of enjoying live entertainment, with optional food and beverage for purchase provided by The Crow's Nest.

The proposed events would provide for a jovial, visitor-serving recreational experience in an area that is a popular visitor destination, and would thus offer a new way for visitors to enjoy the beach area. At the same time, however, the events would occupy an area of public sandy beach that would otherwise be available for general beachgoing, thus reducing the area available for the beach-going public by a full day every week during the summer. In addition, the event attracts a significant number of attendees, which can significantly increase traffic and parking demand in the beach area, including on the fairly narrow neighborhood streets inland of the beach. This is a particular concern because, other than paid parking in the Port District's parking lot, the only available parking for Harbor Beach and Twin Lakes State Beach is on-street, and such parking is in very high demand already, especially during the summertime. And these beaches are extremely popular, with Twin Lakes being the most visited beach in the entire unincorporated Santa Cruz County area.

Thus, at one level, the proposed events are consistent with certain Coastal Act requirements to maximize free and lower cost public recreational access opportunities by providing a fun and free summertime beach event. On the other hand, however, the events raise questions about appropriate use of the public sandy beach commons; particularly for events that, while open to the public, are still hosted by a private commercial entity with food and drink for purchase. And they also raise questions about the manner in which they impact general beach going overall, especially in terms of their effects on beach-area parking. Staff believes that an appropriate balance can be struck here, though, where events are allowed, but their potential impacts are confined and mitigated. Such an approach can work in this situation for a number of reasons. One is that the events would occupy a relatively small portion of the sandy beach that is nearest inland commercial businesses (and furthest from the ocean) and tucked in a corner of the beach nearest the jetty that is not as popular with beachgoers. That beach area is also the most connected to said businesses and the events can better 'fit' with the character of that back beach area there. While the same probably couldn't be said for other areas of the beach, or for beaches without such an adjacent commercial component altogether, staff believes it can work here for that reason. In addition, the proposed event's once a week nature would help to limit its impacts on general summertime use. And special conditions can be applied to require the Applicant to provide free inland parking with a shuttle to help ensure the events don't adversely impact folks who are just trying to park and go to the beach, and to specify a series of related operational parameters to limit impacts otherwise (including limiting setup to no

earlier than 1pm the day of events, ADA requirements, signage and outreach, cleanup requirements, waste reduction measures (including no plastics), noise limitations, etc.).

As so conditioned, staff believes that the project can provide a new visitor serving opportunity at this popular beach area, and that it can be done in a manner that respects general beachgoing needs at the same time, consistent with the Coastal Act. Therefore, staff recommends that the Commission approve a CDP as conditioned. The motion and resolution to implement this recommendation are found on **page 5** below.

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## 1. 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 3-22-0164 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:*** *The Commission hereby approves Coastal Development Permit Number 3-22-0164 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.*

## 2. 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.
- 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.

### 3. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Approved Project.** This CDP authorizes the Permittee to use a portion of the public sandy beach fronting the Crow's Nest Restaurant (see Exhibit 4) for a weekly 'beach party' event with food, drinks, and live entertainment on Thursdays from 5:30pm to 9:30pm between May 1<sup>st</sup> and September 30<sup>th</sup> on the Santa Cruz Port District's Harbor Beach adjacent to Twin Lakes State Beach in the City of Santa Cruz subject to the CDP terms and conditions.
- 2. CDP Duration.** This CDP shall expire on December 31, 2022 unless the Permittee requests that the Executive Director extend that expiration date before December 31, 2022. If such a request is made, it shall only be accepted by the Executive Director if it is accompanied by an assessment of the prior year's operations and their effect on coastal resources, and shall not be considered timely accepted without same. Such assessment shall identify and describe each event undertaken under the CDP, and all steps taken to ensure that such events were consistent with the CDP and its terms and conditions. At a minimum, such assessment shall include a narrative description (with both objective and subjective analysis), photos (in jpg electronic format) taken from the same locations each time to facilitate comparison with the naked eye, and other materials sufficient to cover all aspects of the approved project, including not only the beach party area and its parameters, but also parking/shuttle operations, signage and advertising. If the Executive Director determines that the approved project continues to operate in a manner that is consistent with the CDP's terms and conditions, including that it does not lead to any unforeseen and/or unaddressed adverse coastal resource impacts, then the Executive Director can extend the CDP's expiration date in yearly increments of up to 5 years at a time (e.g., such extension would extend the expiration to December 31st, and between years 2023 and 2027, if requested prior to December 31, 2022 and granted by the Executive Director). Subsequent Executive Director expiration extensions are also allowed under the same criteria, where the required assessment shall cover all years of event operation since the last assessment, and shall provide past assessments as appendices).
- 3. Beach Party Parameters.**
  - a. Beach Party Area.** All beach party activities on the beach shall be limited to the Beach Party Area shown in Exhibit 4, and are prohibited outside of that area. The maximum area allowed for beach party activities is approximately 10,000 square feet, extending about 100 feet onto the beach and buffered approximately 25 feet from the volleyball courts (see Exhibit 4). Such area shall be demarcated by a low mesh fence/barrier (or equivalent) that is sited and designed to limit its impacts on public views as much as possible (e.g., see through, colors that limit obtrusiveness, etc.), and shall provide an opening into that area that is at least 20 feet wide.
  - b. ADA.** The Permittee shall provide ADA-compliant access commensurate with ADA-compliant demand within the Beach Party Area, and initially shall provide

such access for at least 5 individuals.

- c. **Structures.** Small stages, platforms, speakers, tables, chairs, and other such minor structures associated with beach party activities on the beach shall be allowed within the Beach Party Area, but only in a manner that ensures safe use, ingress, and egress from the area. Enclosed tents and equivalent more major structures shall be prohibited.
- d. **General Public Use.** The beach party shall be open to the general public without a fee, and without any purchase requirement. The Permittee may charge for food and drinks, but other charges are prohibited.
- e. **Signage.** Signs that describe beach party use and associated parameters shall be provided on beach party days (but are not authorized on other days) at a sufficient number of locations near the Beach Party Area to ensure users understand the approved project and its use parameters, and at the same time to limit any coastal resource impacts of the signs otherwise. At a minimum, signs shall be located in the parking lot area, at the perimeter of the Beach Party Area, and along the beach walkways. PRIOR TO THE FIRST BEACH PARTY, the Permittee shall submit a sign plan to the Executive Director for review and approval.
- f. **Setup/Breakdown.** The Permittee is allowed to set up the beach party itself within the Beach Party Area (including demarcation barriers, stages, platforms, tables, and chairs) starting as late as possible on beach party days and no earlier than 1pm, and all such materials shall be removed from the beach and the beach returned to its pre-beach party condition or better (and at the least where the area is free of non-sand materials) by 7am the following morning. The Beach Party Area and all amenities shall be available for free for general public use during all setup hours, and signage shall be provided stating as much.
- g. **Noise.** All beach party related noise (including but not limited to amplified music) shall be consistent with, and shall not exceed maximum allowed noise levels of all applicable City of Santa Cruz LCP and Santa Cruz County LCP noise provisions. The Permittee shall take all necessary measures to monitor and manage noise levels to meet such requirements during each event.
- h. **Waste Reduction.** All food/drink containers and related materials (including but not limited to hot and cold cups, beverage lids, cutlery, and straws) shall be consistent with the City of Santa Cruz's Environmentally Acceptable Packaging and Products Ordinance, including requiring biodegradable/compostable and plastic-free materials for single-use items.
- i. **Trash/Compost/Recycling.** The Permittee is responsible for collecting, composting, disposing, and recycling (as applicable) all beach party user materials (including all food/drink containers and related materials) during and after each event, and shall provide adequate collection receptacles in the Beach Party Area commensurate with expected use levels, and shall provide adequate

servicing of said receptacles to avoid materials spilling over onto the beach. At the conclusion of each event, the Permittee is responsible for ensuring all beach party user materials and receptacles have been removed from the Beach Party Area and disposed of, composted, and/or recycled appropriately.

- 4. Parking/Shuttle Parameters.** Vehicle parking for the approved project shall be accommodated on Santa Cruz County property leased by the Santa Cruz Port District at the corner of 7th Avenue and Brommer Street, where the Permittee shall then shuttle Beach Party attendees (via van, bus, or equivalent) to and from the Beach Party Area. Additional vehicle parking can be provided via the Permittee's allotted parking areas in the Port District parking lots, but such parking is discouraged. The Permittee shall also provide adequate bicycle parking facilities near the Beach Party Area commensurate with expected use, and shall take measures to encourage the use of the inland parking/shuttle and alternative transportation options such as biking and ridesharing. PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit a Parking/Shuttle Plan to the Executive Director for review and approval that accounts for all of the above. Such plan shall identify all vehicular and bicycle parking areas, all shuttle operations (including timing, where shuttle operations are limited to 4:30pm to 11pm on beach party days), and all signage (at a sufficient number of locations to ensure users clearly understand parking and shuttle operations, while limiting any coastal resource impacts of the signs otherwise) associated with parking and shuttle operations. Such Plan shall be submitted with evidence of Port District review and approval, and shall provide that all such parking/shuttle is provided free of charge, shall describe the manner in which shuttle service and use is maximized by beach party patrons (e.g., advertising, incentives, etc.), shall describe measures to facilitate bike and ridesharing access, and shall be coordinated with the Port District's water taxi service as much as possible. The Permittee shall not identify any other parking supply for the beach party in any venue (e.g., advertisements, social media, etc.).
- 5. Outreach Parameters.** All beach party outreach (including all announcements, advertisements, social media, etc.) shall be accommodated only in a manner that is consistent with this CDP and its terms and conditions, and outreach that is not consistent (including related to hours, occupancy, use terms, parking supply, shuttles, etc.) shall be prohibited.
- 6. Minor Adjustments.** Minor adjustments to the terms and conditions of this CDP may be allowed by the Executive Director if the Executive Director determines that such adjustments: (1) are reasonable and necessary; (2) do not adversely impact coastal resources; and (3) do not legally require a CDP amendment.
- 7. Assumption of Risk.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, in relation to this CDP and the development that it authorizes: (a) to assume all risks; (b) to unconditionally waive any claim of damage and/or liability against the Commission and/or its officers, employees, agents, successors and/or assigns; (c) to indemnify and hold harmless the Commission and its officers, employees, agents, successors and/or assigns 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, including as it relates to any damages to public and/or private properties and/or personal injury; and (d) that any adverse effects to property or people caused by the development shall be fully the responsibility of the Permittee.

- 8. Litigation.** The Permittee shall reimburse the Commission in full for all Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (a) charged by the Office of the Attorney General; and/or (b) required by a court) that the Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Commission, its officers, employees, agents, successors and/or assigns challenging the approval or issuance of this CDP, the interpretation and/or enforcement of CDP terms and conditions, or any other matter related to this CDP. The Permittee shall reimburse the Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission, its officers, employees, agents, successors and/or assigns.

#### 4. FINDINGS AND DECLARATIONS

##### **A. Project Location and Description**

The Santa Cruz Harbor is owned and operated by the Santa Cruz Port District and located at the downcoast border of the City of Santa Cruz, and it includes approximately 38 acres of land-based facilities and some 52 acres of docks, channels, and vessel operation areas in the water. The Harbor property also includes almost 3.5 acres of sandy beach, known as Harbor Beach, that is located between the downcoast harbor jetty (that helps form the entrance channel to the harbor) and the beginning of California Department of Parks and Recreation's larger Twin Lakes State Beach (roughly starting at the intersection of 5th Avenue and East Cliff Drive). Just inland of Harbor Beach is roughly 40,000 square feet of commercial space in two two-story buildings housing a variety of restaurants, retail shops, and other businesses, including The Crow's Nest Restaurant nearest the jetty.<sup>1</sup> See Exhibit 1 and Exhibit 2 for a location map and site area photos.

A weekly summer beach party event organized by The Crow's Nest has been occurring on Harbor Beach in a variety of formats since the early 1990s, with a two-year hiatus in 2020 and 2021 due to the COVID-19 pandemic. Starting in 1993, tables and chairs were erected on the sandy beach in front of the restaurant and beach party events took place with approval by the Port District, which was then under the assumption that such activities could be allowed if the District determined that they were consistent with the parameters of the City of Santa Cruz LCP's Harbor Development Plan. However, that Plan does not actually authorize development, rather it is an LCP-level blueprint for evaluating development,<sup>2</sup> and thus the beach party operated without benefit of a CDP

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<sup>1</sup> The Crow's Nest has a lease with the Port District and has been a visitor-serving facility since 1969.

<sup>2</sup> And the LCP's Harbor Development Plan is only advisory in any case because the Harbor, including its former tidelands that have been filled and are now occupied by land-based Harbor facilities, is entirely

until 1995 when the Commission approved CDP 3-95-010. That CDP initially authorized a weekly summertime beach party for three years, which term was subsequently extended to 1999 (via CDP amendment 3-95-010-A2). Although the CDP expired in 1999, the event continued to take place weekly during the summertime without benefit of a CDP until 2019,<sup>3</sup> but no such events have occurred since that time. In any case, the beach party events may have started fairly small, but they became very popular and well-attended, occupying a fairly large area and adding live music in addition to food and beverages for sale. See Exhibit 3 for photos of past events.

The Crow's Nest, with the permission of the Santa Cruz Port District,<sup>4</sup> proposes to host such annual summer beach parties on the sand seaward of the restaurant on Thursday nights from 5:30pm to 9:30pm, and from May 1<sup>st</sup> through September 30<sup>th</sup> annually. Each event would enclose an approximately 10,000 square-foot sandy area extending about 100 feet onto the public beach using temporary mesh fencing, and would include a stage, tables and chairs for use within the enclosed space (see proposed event area in Exhibit 4). Although the event itself would be for 4 hours each time, setup and breakdown of the event would occupy the same area from 6am the day of each event until 7am the following day, thus essentially occupying that area for a full day during the busy summer beach season. The events would be free and open to the general public, including in terms of enjoying live entertainment and bringing their own food and drinks, with optional food and drink for purchase provided by The Crow's Nest. The Applicant would remove all event furnishings and clean up the beach following each event, and also proposes to operate a remote parking lot with shuttle service, including both vehicular shuttles and collaboration with the Port District's water taxi operation.<sup>5</sup>

## **B. Standard of Review**

The proposed project site, and all of the Santa Cruz Harbor, is located within the Commission's retained CDP jurisdiction area. The standard of review for development

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located within the Coastal Commission's retained CDP jurisdiction where the Coastal Act is the legal standard of review.

<sup>3</sup> Although the CDP is clear on these dates, the Applicant indicates that it was mistakenly under the impression that additional CDP permitting was not necessary.

<sup>4</sup> The Port District has approved the use of Harbor Beach for the Applicant's weekly summer beach party event on Thursday nights, including allowing for alcohol sales and live entertainment. The Port District required the Applicant to limit encroachment on existing beach user (including avoiding the sand volleyball courts and catamaran storage); to prohibit tents, shelters, or temporary structures greater than 10 feet by 10 feet; to prohibit obstruction of the ADA sand pathway; to limit event setup to the designated area; to ensure unrestricted general public access into, through, and around the event area; to remove all garbage, litter, and debris from Port District property; and to check in with the Port District office prior to setup. Other Port District requirements include conditions for the event to provide valet service and/or shuttles to remote parking; to contact Santa Cruz County about modifying parking signs to include language prohibiting parking in residential neighborhoods; to continue clean up the morning after the event into surrounding neighborhoods; to add information to the Crow's Nest website regarding off-site parking and shuttles; to retain at least one security person to patrol neighborhoods during the event; and to ensure that noise levels do not exceed maximum allowances set by the City of Santa Cruz.

<sup>5</sup> The Port District operates a free water taxi during busy times of the year, typically in and around the summer season, that transports users from one side of the Harbor to the other, as well as from the inner Harbor area to the area nearest the shoreline (and near the Crow's Nest Restaurant).

in that area is Chapter 3 of the Coastal Act with the City of Santa Cruz LCP, including its Harbor Development Plan, providing non-binding guidance.

## **C. CDP Determination**

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

#### ***Applicable Coastal Act Provisions***

The Coastal Act grants a high priority to public recreational access uses and activities to and along the coast. The Act protects and encourages lower-cost visitor and recreational facilities where feasible and states a preference for developments providing public recreational opportunities. In addition, the Coastal Act requires that oceanfront land and upland areas suitable for recreational use be protected for recreational uses. Specifically, Coastal Act Sections 30210 through 30224 specifically protect public access and recreation, and other Coastal Act provisions are also relevant. 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. Development providing public recreational opportunities are preferred...*

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

**Section 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.*

**Section 30222.** *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or*

*general commercial development, but not over agriculture or coastal-dependent industry.*

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

**Section 30240(b).** *Development in areas adjacent to ... 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 ... recreation areas.*

**Section 30252.** *The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

These overlapping Coastal Act policies clearly protect public recreational access to and along the beach/shoreline and to offshore waters for public recreational access purposes, particularly free and low-cost access. The Coastal Act's access and recreation policies provide significant direction regarding not only protecting public recreational access, but also by requiring that access is provided and maximized. Specifically, Coastal Act Section 30210 requires that maximum public access and recreational opportunities be provided. This direction to maximize access and recreational opportunities represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply provide access to and along the coast, and not enough to simply protect such access; rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction with respect to projects along the California coast that raise public access and recreation issues, such as this one.

### **Analysis**

The proposed events would be located in a highly popular beach area with numerous water-oriented and visitor-serving recreational opportunities for the general public. In particular, Harbor Beach provides general sandy beach access, but it also accommodates four first-come first-serve volleyball courts and catamaran launching, all in walk-up proximity to restaurants, markets, restrooms, and boat/equipment rentals. Harbor Beach is also particularly appealing to families with younger children as it is in the lee of the Harbor jetty, which tends to limit the size and power of waves at the water's edge as compared to the rest of the beach heading downcoast. Harbor Beach

extends into downcoast Twin Lakes State Beach (with the transition point roughly at the intersection of 5th Avenue and East Cliff Drive), which provides general sandy beach access all the way to Black Point,<sup>6</sup> about a half mile away, but generally without the various amenities available or nearby at Harbor Beach. These beaches are extremely popular, with Twin Lakes being the most visited beach in the entire unincorporated Santa Cruz County area, and an extremely popular location for beach bonfires. The beaches are completely open for general public use,<sup>7</sup> with visitors able to picnic on the sand, walk down to the ocean, and explore the jetty for fishing and views of the channel/boating activities as well as the iconic Walton Lighthouse on the end of the upcoast jetty. In short, the project area is a significant public recreational access destination that is heavily used by the general public, and there are currently no commercial endeavors located on the beach.

The proposed Crow's Nest beach party events would provide a new no-cost public access opportunity in the above-described beach area. Attendees would be able to listen to music, and to purchase food and drinks (both alcoholic and non-alcoholic beverages) if they desired, in a summer beach atmosphere. No purchase would be necessary to attend and enjoy the events, and all visitors would be welcome to come enjoy the space and entertainment without buying food or drinks (and can even bring their own, including both alcoholic and non-alcoholic beverages, if they wish). Thus, proposed events would provide for a jovial, visitor-serving recreational experience in an area that is a popular visitor destination, and would thus offer a new way for visitors to enjoy the beach area. At the same time, however, the events would occupy an area of public sandy beach that would otherwise be available for general beachgoing, thus reducing the area available for the beach-going public by a full day every week during the summer. In addition, the event attracts a significant number of attendees, which can significantly increase traffic and parking demand in the beach area, including on the fairly narrow neighborhood streets in the area. This is a particular concern because, other than paid parking in the Port District's parking lot, the only available parking for Harbor Beach and Twin Lakes State Beach is on-street, and such parking is in very high demand already, especially during the summertime. And as indicated, these beaches are extremely popular visitor destinations.

Thus, at one level, the proposed events are consistent with certain Coastal Act requirements to maximize free and lower cost public recreational access opportunities by providing a fun and free summertime beach event. On the other hand, however, the events raise questions about appropriate use of the public sandy beach commons; particularly for events that, while open to the public, are still hosted by a private commercial entity with food and drink for purchase. And they also raise questions about the manner in which they impact general beach going overall, especially in terms of their effects on beach-area parking. The Commission believes, however, that an appropriate balance can be struck here, where events are allowed, but their potential

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<sup>6</sup> So named historically by sailors as the point was seen as darker from the ocean compared to surrounding landforms.

<sup>7</sup> Note that both beaches are currently posted as closed from 10pm to 6am, and such nighttime closures are enforced, but neither such closure has ever been recognized by a CDP.

impacts are confined and mitigated. Such an approach can work in this situation for a number of reasons.

First, in terms of the proposed project area itself, although it would usurp some 10,000 square feet of sandy beach space on a weekly basis in the summertime, such area is both relatively small in relation to the rest of the beach, and it is nearest inland commercial businesses (and furthest from the ocean) and tucked in a corner of the inland beach nearest the jetty that is not as popular with beachgoers (see Exhibit 4). That beach area is also the most connected to said businesses and can better 'fit' with the character of that back beach area. While the same probably couldn't be said for other areas of the beach, or for beaches without such an adjacent commercial component altogether, the Commission believes that this area makes sense for an activity like this if other issues can be resolved. As long as the events are limited to this space, including offset from the volleyball courts by at least 25 feet, then potential public recreational access impacts are reduced just through such siting.

Second, the events would take place between 5:30 and 9:30pm on one day of the week (Thursday). While still a popular beach-going time, especially during summertime when the days are longer,<sup>8</sup> it is less popular as a general rule than the time around the middle of the day and early afternoon. As such, the 'overlap' period of time is fairly limited, and will help to limit any impacts as a result. In addition, the events would also avoid the prime summertime weekend beach use hours, and thus would not conflict at all on those important beach days. That said, while the events are later in the afternoon/evening, the proposed setup period gives some pause, because it would start as early as 6am, meaning that that area of beach would be occupied by event paraphernalia and surrounded by a mesh barrier all day on event days. Such impact is offset partially by the fact that the area would still be available for public use even before the event, but it would not be open beach, and fencing and commercial vestiges (e.g., stages, tables, chairs, employees setting up, etc.) lead to a perception that the area is off-limits, even with signage. Toward this end, this approval is conditioned to limit the time of setup to as late as possible, and with a start no earlier than 1pm (see Special Condition 2).

Third, in terms of event parking, it is clear from past events and their impacts on public parking and congestion in the beach area that a different approach is needed, especially given the lack of available public parking options. The concern being that event attendees will take available public parking away from general beach goers who are not attendees, thus reducing general public beach access. To improve parking access and limit congestion during the event, several steps are necessary. The first is the use of remote parking areas and shuttles. The Port District leases land from Santa Cruz County at the corner of 7th Avenue and Brommer Street (about three-quarters of a mile inland, and outside of the more congested beach area) that is easily accessed by visitors without getting into the beach area itself, and can serve as a free remote parking area. Users can then be shuttled for free to and from the beach party from that area. In addition, the users who park in this area (and/or down in the Upper Harbor parking lots accessed from it) can also have the option of taking the Port District's water taxi. In

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<sup>8</sup> Sunsets in the middle of summer can be as late as 8:30pm or so in Santa Cruz.

addition, bike and ridesharing can also be emphasized, and bike parking provided near the event. Provided that event parking needs are addressed in these ways, the kinds of adverse public access impacts seen in the past can largely be avoided. See Special Condition 4.

And finally, as long as the beach party events are appropriately circumscribed to avoid other impacts, they can provide an enjoyable experience for attendees without significantly adversely impacting other beach users or coastal resources. In particular, the area allotted to the event needs to be specified, ADA-compliant access needs to be provided, small structures at ground level can be allowed but not larger ones that will 'loom over' the beach,<sup>9</sup> appropriate signage and outreach to fully alert the general public as to the nature of the event needs to be provided, beach area cleanup needs to be ensured, noise needs to be limited to acceptable levels, waste reduction measures need to be applied (including avoidance of plastics, and all trash, compost, and recycling needs to be properly addressed. See Special Conditions 3 and 5.

Historically, the Crow's Nest beach party has been generally well received in the community as a unique and inclusive event in the Santa Cruz beach area. As so conditioned, it can fit well into the character of the Harbor Beach area, it can address past problems, and it can enhance public access by providing a unique and no cost visitor opportunity. As such, the conditioned project can be found consistent with the public recreational access provisions cited above.

## **2. Other**

### ***CDP Duration***

Although the project can be found Coastal Act consistent, as described above, it has also historically led to coastal resource problems that were both unpermitted and unabated. As a result, it is appropriate to limit this authorization to ensure that the event unfolds as the Commission expects, and that the Permittee operates the events consistent with all CDP terms and conditions. Thus, Special Condition 1 authorizes the beach party events as described, and Special Condition 2 limits the duration of the CDP through the end of 2022. If the Applicant wishes to extend the CDP past that time, Special Condition 2 specifies the parameters for doing so. Critical to any extension is an assessment of the prior year's operations and their effect on coastal resources, including clearly describing each event, steps taken to ensure that such events were consistent with the CDP, and providing supporting documentation (such as narrative explanations and photos) that covers all aspects of the approved project (including not only the beach party area and its parameters, but also parking/shuttle operations,

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<sup>9</sup> Including to protect public views and to ensure that the events are subordinated to their beach setting, as is required by Coastal Act Section 30251, which states: "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting."

signage and advertising). If the Executive Director determines that the approved project continues to operate in a manner that is consistent with the CDP's terms and conditions, including that it does not lead to any unforeseen and/or unaddressed adverse coastal resource impacts, then the Executive Director can extend the CDP's expiration date in yearly increments of up to 5 years at a time (e.g., such extension would extend the expiration to December 31st, and between years 2023 and 2027, if requested prior to December 31, 2022 and granted by the Executive Director). Subsequent Executive Director expiration extensions are also allowed under the same criteria, where the required assessment must cover all years of event operation since the last assessment, and provide past assessments as appendices. See Special Condition 2.

### ***Minor Modifications***

It is anticipated that the Applicant may need or want to make minor modifications to the approved project. Such potential changes are expected as more is learned from implementing the events, and can be appropriate adaptations to help reduce any impacts and to make sure events flow smoothly. To account for this, Special Condition 3 allows minor adjustments if the Executive Director determines that such adjustments are reasonable and necessary, do not adversely impact coastal resources, and do not legally require a CDP amendment.

### ***Assumption of Risk***

While the Commission has identified and addressed expected coastal resource impacts from the proposed development, it needs to be clear that the Commission is not assuming any risks for same. Rather, it is this Applicant's responsibility to accept and assume all risks that might be engendered by the development as conditioned, and to unconditionally waive any claim of damage and/or liability against the Commission and/or its officers, employees, agents, successors and/or assigns; to indemnify and hold harmless the Commission and its officers, employees, agents, successors and/or assigns 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, including as it relates to any damages to public and/or private properties and/or personal injury; and to accept full responsibility for any adverse effects to property or people caused by the development. See Special Condition 7.

### ***Reimbursement***

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 the pending CDP applications in the event that the Commission's action is challenged by a party other than the Applicants. 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 Applicants challenging the approval or issuance of this CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts (see Special Condition 8).



### **3. California Environmental Quality Act (CEQA)**

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. The City of Santa Cruz, acting as lead CEQA agency, found the project to be categorically exempt from the provisions of CEQA pursuant to Sections 15301 (Existing Facility, Class 1), 15304 (Minor Alteration to Land (e)), 15305 (Minor Alteration to Land Use (d)), and 15311 (Accessory Structure), and thus the City did not identify any significant adverse environmental effects from the proposed project.

The Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has analyzed the relevant coastal resource issues with the proposal and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. Further, all public comments received to date have been addressed in the preceding findings, which are incorporated herein in their entirety by reference.

Accordingly, the Commission finds that only as modified and conditioned herein will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, 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).

## **5. APPENDICES**

### **A. Appendix A – Substantive File Documents<sup>10</sup>**

- CDP File 3-95-10

### **B. Appendix B – Staff Contact with Agencies and Groups**

- City of Santa Cruz Community Development Department
- Santa Cruz Port District

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<sup>10</sup> These documents are available for review in the Commission's Central Coast District office in Santa Cruz.