

Form 990

Return of Organization Exempt From Income Tax

OMB No 1545-0047

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

2007

Open to Public Inspection

Department of the Treasury Internal Revenue Service

The organization may have to use a copy of this return to satisfy state reporting requirements

A For the 2007 calendar year, or tax year beginning 01-01-2007 and ending 12-31-2007

- B Check if applicable: Address change, Name change, Initial return, Final return, Amended return, Application pending

Please use IRS label or print or type. See Specific Instructions.

C Name of organization: Monterey Bay Aquarium Foundation. Number and street: 886 Cannery Row. City or town: Monterey, CA 93940

D Employer identification number: 94-2487469. E Telephone number: (831) 648-4800. F Accounting method: Accrual

Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ).

G Web site: www.mbayaq.org

J Organization type: 501(c)(3)

K Check here if the organization is not a 509(a)(3) supporting organization and its gross receipts are normally not more than 25,000

L Gross receipts: 184,832,013

H and I are not applicable to section 527 organizations. H(a) Is this a group return for affiliates? H(b) If "Yes" enter number of affiliates. H(c) Are all affiliates included? H(d) Is this a separate return filed by an organization covered by a group ruling? I Group Exemption Number. M Check if the organization is not required to attach Sch B

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances (See the instructions.)

Table with columns for Revenue, Expenses, and Net Assets. Rows include Contributions, Program service revenue, Membership dues, Interest on savings, Dividends, Gross rents, Other investment income, Gross amount from sales of assets, Special events, Gross sales of inventory, Other revenue, Program services, Management and general, Fundraising, Payments to affiliates, Excess or (deficit) for the year, Net assets at beginning and end of year.

**Part II Statement of Functional Expenses**

All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others (See the instructions.)

<i>Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I.</i>		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
<b>22a</b>	Grants paid from donor advised funds (attach Schedule) (cash \$ _____ noncash \$ _____) If this amount includes foreign grants, check here <input type="checkbox"/>	<b>22a</b>			
<b>22b</b>	Other grants and allocations (attach schedule) (cash \$ 426,329 noncash \$ _____) If this amount includes foreign grants, check here <input type="checkbox"/>	<b>22b</b>	426,329	426,329	
<b>23</b>	Specific assistance to individuals (attach schedule)	<b>23</b>			
<b>24</b>	Benefits paid to or for members (attach schedule)	<b>24</b>			
<b>25a</b>	Compensation of current officers, directors, key employees etc Listed in Part V-A (attach schedule)	<b>25a</b>	635,523	635,523	
<b>b</b>	Compensation of former officers, directors, key employees etc listed in Part V-B (attach schedule)	<b>25b</b>			
<b>c</b>	Compensation and other distributions not included above to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B) (attach schedule)	<b>25c</b>			
<b>26</b>	Salaries and wages of employees not included on lines 25a, b and c	<b>26</b>	17,682,438	14,705,587	2,316,139
<b>27</b>	Pension plan contributions not included on lines 25a, b and c	<b>27</b>	1,609,397	1,360,942	187,309
<b>28</b>	Employee benefits not included on lines 25a - 27	<b>28</b>	2,903,458	2,311,847	486,767
<b>29</b>	Payroll taxes	<b>29</b>	1,388,917	1,136,258	207,309
<b>30</b>	Professional fundraising fees	<b>30</b>	638,523		638,523
<b>31</b>	Accounting fees	<b>31</b>	236,141		236,141
<b>32</b>	Legal fees	<b>32</b>	182,430	134,065	48,177
<b>33</b>	Supplies	<b>33</b>	2,426,578	2,205,041	187,906
<b>34</b>	Telephone	<b>34</b>	399,233	354,936	39,466
<b>35</b>	Postage and shipping	<b>35</b>	333,885	306,641	16,465
<b>36</b>	Occupancy	<b>36</b>	1,936,517	1,697,654	236,433
<b>37</b>	Equipment rental and maintenance	<b>37</b>	1,387,166	1,293,726	91,777
<b>38</b>	Printing and publications	<b>38</b>	1,430,721	1,250,601	8,413
<b>39</b>	Travel	<b>39</b>	1,274,600	1,105,756	125,369
<b>40</b>	Conferences, conventions, and meetings	<b>40</b>	163,097	129,323	31,628
<b>41</b>	Interest	<b>41</b>			
<b>42</b>	Depreciation, depletion, etc (attach schedule)	<b>42</b>	7,087,331	6,622,896	456,606
<b>43</b>	Other expenses not covered above (itemize)				
<b>a</b>	Advertising	<b>43a</b>	2,752,523	2,674,158	75,858
<b>b</b>	Membership consulting	<b>43b</b>	149,932	149,932	
<b>c</b>	Furniture & fixtures	<b>43c</b>	684,719	636,629	47,568
<b>d</b>	Outside services	<b>43d</b>	3,264,740	2,995,421	221,409
<b>e</b>	Merchant fees	<b>43e</b>	596,909	518,128	78,781
<b>f</b>	Investment expense	<b>43f</b>	177,170		177,170
<b>g</b>	Miscellaneous expenses	<b>43g</b>	245,052	221,647	19,059
<b>44</b>	<b>Total functional expenses.</b> Add lines 22a through 43g (Organizations completing columns (B)-(D), carry these totals to lines 13-15)	<b>44</b>	50,013,329	42,237,517	5,852,492
<b>Joint Costs.</b> Check <input type="checkbox"/> if you are following SOP 98-2					

Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services?  Yes  No  
 If "Yes," enter (i) the aggregate amount of these joint costs \$ \_\_\_\_\_, (ii) the amount allocated to Program services \$ \_\_\_\_\_, (iii) the amount allocated to Management and general \$ \_\_\_\_\_, and (iv) the amount allocated to Fundraising \$ \_\_\_\_\_

**Part III Statement of Program Service Accomplishments** *(See the instructions.)*

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

What is the organization's primary exempt purpose? <b>See statement 19</b> All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable. (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)	<b>Program Service Expenses</b> (Required for 501(c)(3) and (4) orgs, and 4947(a)(1) trusts, but optional for others.)
<b>a</b> See statement 20  (Grants and allocations \$ 298,538 ) If this amount includes foreign grants, check here <input type="checkbox"/>	42,237,517
<b>b</b>  (Grants and allocations \$ ) If this amount includes foreign grants, check here <input type="checkbox"/>	
<b>c</b>  (Grants and allocations \$ ) If this amount includes foreign grants, check here <input type="checkbox"/>	
<b>d</b>  (Grants and allocations \$ ) If this amount includes foreign grants, check here <input type="checkbox"/>	
<b>e</b> Other program services (attach schedule) (Grants and allocations \$ ) If this amount includes foreign grants, check here <input type="checkbox"/>	
<b>f Total of Program Service Expenses</b> (should equal line 44, column (B), Program services) . . . .	42,237,517

**Part IV Balance Sheets (See the instructions.)**

**Note:** Where required, attached schedules and amounts within the description column should be for end-of-year amounts only.

		<b>(A)</b>		<b>(B)</b>		
		Beginning of year		End of year		
Assets	<b>45</b> Cash—non-interest-bearing . . . . .		64,467	<b>45</b>	59,434	
	<b>46</b> Savings and temporary cash investments . . . . .		2,106,242	<b>46</b>	12,266,177	
	<b>47a</b> Accounts receivable . . . . .	<b>47a</b>	1,779,944			
	<b>b</b> Less allowance for doubtful accounts . . . . .	<b>47b</b>	3,945	1,705,970	<b>47c</b>	1,775,999
	<b>48a</b> Pledges receivable . . . . .	<b>48a</b>	22,522,904			
	<b>b</b> Less allowance for doubtful accounts . . . . .	<b>48b</b>		8,021,358	<b>48c</b>	22,522,904
	<b>49</b> Grants receivable . . . . .				<b>49</b>	
	<b>50a</b> Receivables from current and former officers, directors, trustees, and key employees (attach schedule) . . . . .				<b>50a</b>	
	<b>b</b> Receivables from other disqualified persons (as defined under section 4958(c)(3)(B) (attach schedule) . . . . .				<b>50b</b>	
	<b>51a</b> Other notes and loans receivable (attach schedule) . . . . .	<b>51a</b>				
	<b>b</b> Less allowance for doubtful accounts . . . . .	<b>51b</b>			<b>51c</b>	
	<b>52</b> Inventories for sale or use . . . . .				<b>52</b>	
	<b>53</b> Prepaid expenses and deferred charges . . . . .			418,374	<b>53</b>	265,733
	<b>54a</b> Investments—publicly-traded securities <input type="checkbox"/> Cost <input type="checkbox"/> FMV				<b>54a</b>	
	<b>b</b> Investments—other securities (attach schedule) <input type="checkbox"/> Cost <input checked="" type="checkbox"/> FMV			118,363,095	<b>54b</b>	135,013,849
<b>55a</b> Investments—land, buildings, and equipment basis . . . . .	<b>55a</b>					
<b>b</b> Less accumulated depreciation (attach schedule) . . . . .	<b>55b</b>			<b>55c</b>		
<b>56</b> Investments—other (attach schedule) . . . . .				<b>56</b>		
<b>57a</b> Land, buildings, and equipment basis . . . . .	<b>57a</b>	196,743,714				
<b>b</b> Less accumulated depreciation (attach schedule) . . . . .	<b>57b</b>	83,333,869	107,732,474	<b>57c</b>	113,409,845	
<b>58</b> Other assets, including program-related investments (describe <input type="checkbox"/> _____ )			1,548,708	<b>58</b>	1,529,630	
<b>59 Total assets</b> (must equal line 74) Add lines 45 through 58 . . . . .			239,960,688	<b>59</b>	286,843,571	
Liabilities	<b>60</b> Accounts payable and accrued expenses . . . . .		3,730,283	<b>60</b>	4,374,375	
	<b>61</b> Grants payable . . . . .			<b>61</b>		
	<b>62</b> Deferred revenue . . . . .		5,188,351	<b>62</b>	6,245,084	
	<b>63</b> Loans from officers, directors, trustees, and key employees (attach schedule) . . . . .				<b>63</b>	
	<b>64a</b> Tax-exempt bond liabilities (attach schedule) . . . . .				<b>64a</b>	
	<b>b</b> Mortgages and other notes payable (attach schedule) . . . . .				<b>64b</b>	
	<b>65</b> Other liabilities (describe <input type="checkbox"/> _____ )			506,195	<b>65</b>	493,383
<b>66 Total liabilities</b> Add lines 60 through 65 . . . . .			9,424,829	<b>66</b>	11,112,842	
Net Assets or Fund Balances	<b>Organizations that follow SFAS 117, check here</b> <input checked="" type="checkbox"/> and complete lines 67 through 69 and lines 73 and 74					
	<b>67</b> Unrestricted . . . . .		213,037,582	<b>67</b>	234,560,440	
	<b>68</b> Temporarily restricted . . . . .		11,298,539	<b>68</b>	32,094,484	
	<b>69</b> Permanently restricted . . . . .		6,199,738	<b>69</b>	9,075,805	
	<b>Organizations that do not follow SFAS 117, check here</b> <input type="checkbox"/> and complete lines 70 through 74					
	<b>70</b> Capital stock, trust principal, or current funds . . . . .				<b>70</b>	
	<b>71</b> Paid-in or capital surplus, or land, building, and equipment fund . . . . .				<b>71</b>	
	<b>72</b> Retained earnings, endowment, accumulated income, or other funds . . . . .				<b>72</b>	
<b>73 Total net assets or fund balances</b> Add lines 67 through 69 or lines 70 through 72 (Column (A) must equal line 19 and column (B) must equal line 21) . . . . .			230,535,859	<b>73</b>	275,730,729	
<b>74 Total liabilities and net assets / fund balances</b> Add lines 66 and 73 . . . . .			239,960,688	<b>74</b>	286,843,571	





Part VI Other Information (continued)

82a Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?
82b If "Yes," you may indicate the value of these items here
83a Did the organization comply with the public inspection requirements for returns and exemption applications?
83b Did the organization comply with the disclosure requirements relating to quid pro quo contributions?
84a Did the organization solicit any contributions or gifts that were not tax deductible?
84b If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?
85 501(c)(4), (5), or (6) organizations. a Were substantially all dues nondeductible by members?
85b Did the organization make only in-house lobbying expenditures of \$2,000 or less?
85c Dues assessments, and similar amounts from members
85d Section 162(e) lobbying and political expenditures
85e Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices
85f Taxable amount of lobbying and political expenditures (line 85d less 85e)
85g Does the organization elect to pay the section 6033(e) tax on the amount on line 85f?
85h If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount on line 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?
86 501(c)(7) orgs. Enter a Initiation fees and capital contributions included on line 12
86b Gross receipts, included on line 12, for public use of club facilities
87 501(c)(12) orgs. Enter a Gross income from members or shareholders
87b Gross income from other sources
88a At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3?
88b At any time during the year, did the organization directly or indirectly own a controlled entity within the meaning of section 512(b)(13)?
89a 501(c)(3) organizations Enter Amount of tax imposed on the organization during the year under section 4911, section 4912, and section 4955
89b 501(c)(3) and 501(c)(4) orgs. Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year?
89c Enter Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958
89d Enter Amount of tax on line 89c, above, reimbursed by the organization
89e All organizations. At any time during the tax year was the organization a party to a prohibited tax shelter transaction?
89f All organizations. Did the organization acquire direct or indirect interest in any applicable insurance contract?
89g For supporting organizations and sponsoring organizations maintaining donor advised funds. Did the supporting organization, or a fund maintained by a sponsoring organization, have excess business holdings at any time during the year?
90a List the states with which a copy of this return is filed
90b Number of employees employed in the pay period that includes March 12, 2007
91a The books are in care of
91b At any time during the calendar year, did the organization have an interest in or a signature or other authority over a financial account in a foreign country?

**Part VI Other Information** (continued)

**c** At any time during the calendar year, did the organization maintain an office outside of the United States? **91c**  Yes  No

If "Yes," enter the name of the foreign country \_\_\_\_\_

**92** Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041—Check here  and enter the amount of tax-exempt interest received or accrued during the tax year **92** \_\_\_\_\_

**Part VII Analysis of Income-Producing Activities** (See the instructions.)

**Note:** Enter gross amounts unless otherwise indicated.

	Unrelated business income		Excluded by section 512, 513, or 514		(E) Related or exempt function income
	(A) Business code	(B) Amount	(C) Exclusion code	(D) Amount	
<b>93</b> Program service revenue					
<b>a</b> Admission fees					28,133,289
<b>b</b> Private event revenue	713990	123,748			1,148,981
<b>c</b> Food services	722320	4,758			669,548
<b>d</b> Other program revenue					776,479
<b>e</b> Guided tours					32,205
<b>f</b> Medicare/Medicaid payments					
<b>g</b> Fees and contracts from government agencies					
<b>94</b> Membership dues and assessments					7,865,582
<b>95</b> Interest on savings and temporary cash investments					
<b>96</b> Dividends and interest from securities			14	2,642,200	
<b>97</b> Net rental income or (loss) from real estate					
<b>a</b> debt-financed property					
<b>b</b> non debt-financed property			16	1,550,388	
<b>98</b> Net rental income or (loss) from personal property			17	123,920	
<b>99</b> Other investment income					
<b>100</b> Gain or (loss) from sales of assets other than inventory			18	10,283,367	
<b>101</b> Net income or (loss) from special events			01	31,743	
<b>102</b> Gross profit or (loss) from sales of inventory					
<b>103</b> Other revenue <b>a</b> Royalty income			15	13,025	
<b>b</b> Miscellaneous			01	34,748	
<b>c</b>					
<b>d</b>					
<b>e</b>					
<b>104</b> Subtotal (add columns (B), (D), and (E))		128,506		14,679,391	38,626,084
<b>105</b> Total (add line 104, columns (B), (D), and (E))					53,433,981

**Note:** Line 105 plus line 1e, Part I, should equal the amount on line 12, Part I.

**Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes** (See the instructions.)

Line No.	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)
	See Additional Data Table

**Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities** (See the instructions.)

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
	%			
	%			
	%			
	%			

**Part X Information Regarding Transfers Associated with Personal Benefit Contracts** (See the instructions.)

**(a)** Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?  Yes  No

**(b)** Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract?  Yes  No

**NOTE:** If "Yes" to (b), file Form 8870 and Form 4720 (see instructions).

**Part XI Information Regarding Transfers To and From Controlled Entities** Complete only if the organization is a controlling organization as defined in section 512(b)(13)

				Yes	No
<b>106</b> Did the reporting organization <b>make</b> any transfers <b>to</b> a controlled entity as defined in section 512(b)(13) of the Code? If "Yes," complete the schedule below for each controlled entity					
	(A) Name and address of each controlled entity	(B) Employer Identification Number	(C) Description of transfer	(D) Amount of transfer	
a					
b					
c					
<b>Totals</b>					

				Yes	No
<b>107</b> Did the reporting organization <b>receive</b> any transfers <b>from</b> a controlled entity as defined in section 512(b)(13) of the Code? If "Yes," complete the schedule below for each controlled entity					
	(A) Name and address of each controlled entity	(B) Employer Identification Number	(C) Description of transfer	(D) Amount of transfer	
a					
b					
c					
<b>Totals</b>					

		Yes	No
<b>108</b> Did the organization have a binding written contract in effect on August 17, 2006 covering the interests, rents, royalties and annuities described in question 107 above?			

<b>Please Sign Here</b>	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.	
	***** Signature of officer	2008-11-14 Date
	E Prohaska CFO Type or print name and title	

<b>Paid Preparer's Use Only</b>	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN (See Gen Inst W)
	Firm's name (or yours if self-employed), address, and ZIP + 4 Deloitte Tax LLP 50 Fremont Street San Francisco, CA 94105			EIN <input type="checkbox"/> Phone no <input type="checkbox"/> (415) 783-4000

**SCHEDULE A  
(Form 990 or  
990EZ)**

**Organization Exempt Under Section 501(c)(3)**

(Except Private Foundation) and Section 501(e), 501(f), 501(k),  
501(n), or 4947(a)(1) Nonexempt Charitable Trust

**Supplementary Information—(See separate instructions.)**

▶ **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

OMB No 1545-0047

**2007**

Department of the  
Treasury  
Internal Revenue  
Service

Name of the organization  
Monterey Bay Aquarium Foundation

**Employer identification number**

94-2487469

**Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees**  
(See page 1 of the instructions. List each one. If there are none, enter "None.")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
Cristina Fekeci 886 Cannery Row Monterey, CA 93940	Chief Development 40 00	176,473	35,247	370
George Michael Sutton 886 Cannery Row Monterey, CA 93940	VP of CFFO 40 00	152,750	32,608	294
Don Hughes 886 Cannery Row Monterey, CA 93940	VP of Exhibitions 40 00	149,020	26,885	838
Cynthia Vernon 886 Cannery Row Monterey, CA 93940	VP of Education 40 00	137,081	25,096	244
Teresa Jeanine Merry 886 Cannery Row Monterey, CA 93940	VP of Human Resource 40 00	135,117	31,065	257
Total number of other employees paid over \$50,000 ▶	151			

**Part II-A Compensation of the Five Highest Paid Independent Contractors for Professional Services**  
(See page 2 of the instructions. List each one (whether individual or firms). If there are none, enter "None.")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
Esherick Homsey Dodge Davis 500 Treat Avenue 201 San Francisco, CA 94110	Design development	1,299,293
Buder Engel Friends 128 King Street San Francisco, CA 94107	Ads & marketing services	509,098
SDA Teleservices Inc 101 Continental Blvd 400 El Segundo, CA 90245	Telemarketing services	439,432
Rhodes DAHL 180 East Bay Street Suite 300 Charleston, SC 29401	Project management	232,436
Headquarters Advertising Inc 888 Brannan Street San Francisco, CA 94103	Marketing services	177,019
Total number of others receiving over \$50,000 for professional services ▶	10	

**Part II-B Compensation of the Five Highest Paid Independent Contractors for Other Services**  
(List each contractor who performed services other than professional services, whether individual or firms. If there are none, enter "None". See page 2 for instructions.)

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
Frank M Booth Inc 222 Third Street Marysville, CA 95901	HVAC Plumbing	2,884,735
Stocker Allaire Inc 21 Mandeville Court Los Angeles, CA 90074	Exhibit fabrication	916,194
MC Construction Services Inc 3985 1st Street Livermore, CA 94551	Construction & repair	346,046
Covell Construction dba 1021 Benito Ave Pacific Grove, CA 93950	Construction & repair	280,056
Waterdog Products Inc 1148 Pioneer Way El Cajon, CA 92020	Tank construction	153,437
Total number of other contractors receiving over \$50,000 for other services ▶	20	

**Part III Statements About Activities** (See page 2 of the instructions.)

**Yes No**

<p><b>1</b> During the year, has the organization attempted to influence national, state, or local legislation, include any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities ▶ \$ <u>24,140</u> (Must equal amounts on line 38, Part VI-A, or line 1 of Part VI-B )</p> <p>Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A Other organizations checking "Yes" must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities</p>	<b>1</b>	Yes	
<p><b>2</b> During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? (If the answer to any question is "Yes," attach a detailed statement explaining the transactions.) 📄</p> <p><b>a</b> Sale, exchange, or leasing property?</p>	<b>2a</b>		No
<p><b>b</b> Lending of money or other extension of credit?</p>	<b>2b</b>		No
<p><b>c</b> Furnishing of goods, services, or facilities?</p>	<b>2c</b>	Yes	
<p><b>d</b> Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)? 📄</p>	<b>2d</b>	Yes	
<p><b>e</b> Transfer of any part of its income or assets?</p>	<b>2e</b>		No
<p><b>3a</b> Did the organization make grants for scholarships, fellowships, student loans, etc ? (If "Yes," attach an explanation of how the organization determines that recipients qualify to receive payments )</p>	<b>3a</b>		No
<p><b>b</b> Did the organization have a section 403(b) annuity plan for its employees?</p>	<b>3b</b>	Yes	
<p><b>c</b> Did the organization receive or hold an easement for conservation purposes, including easements to preserve open space, the environment , historic land areas or structures? If "Yes" attach a detailed statement</p>	<b>3c</b>		No
<p><b>d</b> Did the organization provide credit counseling, debt management, credit repair, or debt negotiation services?</p>	<b>3d</b>		No
<p><b>4a</b> Did the organization maintain any donor advised funds? If "Yes," complete lines 4b through 4g If "No," complete lines 4f and 4g</p>	<b>4a</b>		No
<p><b>b</b> Did the organization make any taxable distributions under section 4966?</p>	<b>4b</b>		
<p><b>c</b> Did the organization make a distribution to a donor, donor advisor, or related person?</p>	<b>4c</b>		
<p><b>d</b> Enter the total number of donor advised funds owned at the end of the tax year ▶ _____</p>			
<p><b>e</b> Enter the aggregate value of assets held in all donor advised funds owned at the end of the tax year ▶ _____</p>			
<p><b>f</b> Enter the total number of separate funds or accounts owned at the end of the tax year (excluding donor advised funds included on line 4d) where donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts ▶ <u>0</u></p>			
<p><b>g</b> Enter the aggregate value of assets held in all funds or accounts included on line 4f at the end of the tax year ▶ <u>0</u></p>			

**Part IV Reason for Non-Private Foundation Status** (See pages 4 through 7 of the instructions.)I certify that the organization is not a private foundation because it is (Please check only **ONE** applicable box )

- 5**  A church, convention of churches, or association of churches Section 170(b)(1)(A)(i)
- 6**  A school Section 170(b)(1)(A)(ii) (Also complete Part V )
- 7**  A hospital or a cooperative hospital service organization Section 170(b)(1)(A)(iii)
- 8**  A federal, state, or local government or governmental unit Section 170(b)(1)(A)(v)
- 9**  A medical research organization operated in conjunction with a hospital Section 170(b)(1)(A)(iii) **Enter the hospital's name, city, and state**  \_\_\_\_\_
- 10**  An organization operated for the benefit of a college or university owned or operated by a governmental unit Section 170(b)(1)(A)(iv) (Also complete the **Support Schedule** in Part IV-A)
- 11a**  An organization that normally receives a substantial part of its support from a governmental unit or from the general public Section 170(b)(1)(A)(vi) (Also complete the **Support Schedule** in Part IV-A)
- 11b**  A community trust Section 170(b)(1)(A)(vi) (Also complete the **Support Schedule** in Part IV-A)
- 12**  An organization that normally receives **(1) more than 33 1/3%** of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc , functions—subject to certain exceptions, and **(2) no more than 33 1/3%** of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975 See section 509(a)(2) (Also complete the **Support Schedule** in Part IV-A )
- 13**  An organization that is not controlled by any disqualified persons (other than foundation managers) and otherwise meets the requirements of section 509(a)(3) Check the box that describes the type of supporting organization
- Type I     Type II     Type III - Functionally Integrated     Type III - Other

**Provide the following information about the supported organizations. (see page 7 of the instructions.)**

(a) Name(s) of supported organization(s)	(b) Employer identification number	(c) Type of organization (described in lines 5 through 12 above or IRC section)	(d) Is the supported organization listed in the supporting organization's governing documents?		(e) Amount of support?
			Yes	No	
<b>Total</b>					<input type="checkbox"/>

- 14**  An organization organized and operated to test for public safety Section 509(a)(4) (See page 7 of the instructions )

**Part IV-A Support Schedule** (Complete only if you checked a box on line 10, 11, or 12 ) **Use cash method of accounting.**

**Note:** You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.

Calendar year (or fiscal year beginning in)	(a) 2006	(b) 2005	(c) 2004	(d) 2003	(e) Total
<b>15</b> Gifts, grants, and contributions received (Do not include unusual grants See line 28 )	11,644,551	13,389,687	17,245,332	8,367,478	50,647,048
<b>16</b> Membership fees received	7,141,121	6,671,912	6,090,455	5,034,939	24,938,427
<b>17</b> Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc , purpose	26,743,797	22,160,069	25,517,738	26,125,506	100,547,110
<b>18</b> Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975	4,972,415	7,138,851	5,030,189	2,870,959	20,012,414
<b>19</b> Net income from unrelated business activities not included in line 18					0
<b>20</b> Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					0
<b>21</b> The value of services or facilities furnished to the organization by a governmental unit without charge Do not include the value of services or facilities generally furnished to the public without charge					0
<b>22</b> Other income Attach a schedule Do not include gain or (loss) from sale of capital assets	109,402	870,721	530,698	456,347	1,967,168
<b>23</b> Total of lines 15 through 22	50,611,286	50,231,240	54,414,412	42,855,229	198,112,167
<b>24</b> Line 23 minus line 17	23,867,489	28,071,171	28,896,674	16,729,723	97,565,057
<b>25</b> Enter 1% of line 23	506,113	502,312	544,144	428,552	
<b>26 Organizations described on lines 10 or 11:</b> <b>a</b> Enter 2% of amount in column (e), line 24					<b>26a</b>
<b>b</b> Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 2002 through 2005 exceeded the amount shown in line 26a <b>Do not file this list with your return.</b> Enter the total of all these excess amounts					<b>26b</b> 0
<b>c</b> Total support for section 509(a)(1) test Enter line 24, column (e)					<b>26c</b>
<b>d</b> Add Amounts from column (e) for lines 18 _____ 19 _____ 22 _____ 26b _____					<b>26d</b>
<b>e</b> Public support (line 26c minus line 26d total)					<b>26e</b>
<b>f</b> <b>Public support percentage (line 26e (numerator) divided by line 26c (denominator))</b>					<b>26f</b>
<b>27 Organizations described on line 12:</b> <b>a</b> For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of, and total amounts received in each year from, each "disqualified person " <b>Do not file this list with your return.</b> Enter the sum of such amounts for each year (2006) <u>3,337,707</u> (2005) <u>3,377,720</u> (2004) <u>2,809,085</u> (2003) <u>706,886</u>					
<b>b</b> For any amount included in line 17 that was received from each person (other than "disqualified persons"), prepare a list for your records to show the name of, and amount received for each year, that was more than the <b>larger</b> of <b>(1)</b> the amount on line 25 for the year or <b>(2)</b> \$5,000 (Include in the list organizations described in lines 5 through 11b, as well as individuals ) <b>Do not file this list with your return.</b> After computing the difference between the amount received and the larger amount described in <b>(1)</b> or <b>(2)</b> , enter the sum of these differences (the excess amounts) for each year (2006) _____ (2005) _____ (2004) _____ (2003) _____					
<b>c</b> Add Amounts from column (e) for lines 15 <u>50,647,048</u> 16 <u>24,938,427</u> 17 <u>100,547,110</u> 20 <u>0</u> 21 <u>0</u>					<b>27c</b> 176,132,585
<b>d</b> Add Line 27a total <u>10,231,398</u> and line 27b total _____					<b>27d</b> 10,231,398
<b>e</b> Public support (line 27c total minus line 27d total)					<b>27e</b> 165,901,187
<b>f</b> Total support for section 509(a)(2) test Enter amount from line 23, column (e) <b>27f</b> 198,112,167					
<b>g</b> <b>Public support percentage (line 27e (numerator) divided by line 27f (denominator))</b>					<b>27g</b> 8374 10 %
<b>h</b> <b>Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))</b>					<b>27h</b> 1010 16 %
<b>28 Unusual Grants:</b> For an organization described in line 10, 11, or 12 that received any unusual grants during 2002 through 2005, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant <b>Do not file this list with your return.</b> Do not include these grants in line 15					

**Part V Private School Questionnaire** (See page 7 of the instructions.)**(To be completed ONLY by schools that checked the box on line 6 in Part IV)**

		Yes	No
<b>29</b>	Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?		
<b>30</b>	Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?		
<b>31</b>	Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves? If "Yes," please describe, if "No," please explain (If you need more space, attach a separate statement )		
<b>32</b>	Does the organization maintain the following		
<b>a</b>	Records indicating the racial composition of the student body, faculty, and administrative staff?		
<b>b</b>	Records documenting that scholarships and other financial assistance are awarded on racially nondiscriminatory basis?		
<b>c</b>	Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?		
<b>d</b>	Copies of all material used by the organization or on its behalf to solicit contributions?		
	If you answered "No" to any of the above, please explain (If you need more space, attach a separate statement )		
<b>33</b>	Does the organization discriminate by race in any way with respect to		
<b>a</b>	Students' rights or privileges?		
<b>b</b>	Admissions policies?		
<b>c</b>	Employment of faculty or administrative staff?		
<b>d</b>	Scholarships or other financial assistance?		
<b>e</b>	Educational policies?		
<b>f</b>	Use of facilities?		
<b>g</b>	Athletic programs?		
<b>h</b>	Other extracurricular activities?		
	If you answered "Yes" to any of the above, please explain (If you need more space, attach a separate statement )		
<b>34a</b>	Does the organization receive any financial aid or assistance from a governmental agency?		
<b>b</b>	Has the organization's right to such aid ever been revoked or suspended? If you answered "Yes" to either 34a or b, please explain using an attached statement		
<b>35</b>	Does the organization certify that it has complied with the applicable requirements of sections 4 01 through 4 05 of Rev Proc 75-50, 1975-2 C B 587, covering racial nondiscrimination? If "No," attach an explanation		

**Part VI-A Lobbying Expenditures by Electing Public Charities** (See page 9 of the instructions.)(To be completed **ONLY** by an eligible organization that filed Form 5768)Check  **a** if the organization belongs to an affiliated group Check  **b** if you checked "a" and "limited control" provisions apply

<b>Limits on Lobbying Expenditures</b>		<b>(a)</b> Affiliated group totals	<b>(b)</b> To be completed for all electing organizations
(The term "expenditures" means amounts paid or incurred )			
<b>36</b>	Total lobbying expenditures to influence public opinion (grassroots lobbying)	<b>36</b>	3,856
<b>37</b>	Total lobbying expenditures to influence a legislative body (direct lobbying)	<b>37</b>	20,284
<b>38</b>	Total lobbying expenditures (add lines 36 and 37)	<b>38</b>	24,140
<b>39</b>	Other exempt purpose expenditures	<b>39</b>	49,587,843
<b>40</b>	Total exempt purpose expenditures (add lines 38 and 39)	<b>40</b>	49,611,983
<b>41</b>	Lobbying nontaxable amount Enter the amount from the following table— <b>If the amount on line 40 is—</b> <b>The lobbying nontaxable amount is—</b> Not over \$500,000                                      20% of the amount on line 40 Over \$500,000 but not over \$1,000,000        \$100,000 plus 15% of the excess over \$500,000 Over \$1,000,000 but not over \$1,500,000     \$175,000 plus 10% of the excess over \$1,000,000 Over \$1,500,000 but not over \$17,000,000    \$225,000 plus 5% of the excess over \$1,500,000 Over \$17,000,000                                    \$1,000,000	<b>41</b>	1,000,000
<b>42</b>	Grassroots nontaxable amount (enter 25% of line 41)	<b>42</b>	250,000
<b>43</b>	Subtract line 42 from line 36 Enter -0- if line 42 is more than line 36	<b>43</b>	0
<b>44</b>	Subtract line 41 from line 38 Enter -0- if line 41 is more than line 38	<b>44</b>	0
<b>Caution:</b> If there is an amount on either line 43 or line 44, you must file Form 4720.			

**4-Year Averaging Period Under Section 501(h)**(Some organizations that made a section 501(h) election do not have to complete all of the five columns below  
See the instructions for lines 45 through 50 on page 11 of the instructions )

Calendar year (or fiscal year beginning in) ▶	Lobbying Expenditures During 4-Year Averaging Period				
	(a) 2007	(b) 2006	(c) 2005	(d) 2004	(e) Total
<b>45</b> Lobbying nontaxable amount	1,000,000	1,000,000	1,000,000	1,000,000	4,000,000
<b>46</b> Lobbying ceiling amount (150% of line 45(e))					6,000,000
<b>47</b> Total lobbying expenditures	24,140	138,455	6,354	0	168,949
<b>48</b> Grassroots nontaxable amount	250,000	250,000	250,000	250,000	1,000,000
<b>49</b> Grassroots ceiling amount (150% of line 48(e))					1,500,000
<b>50</b> Grassroots lobbying expenditures	3,856	115,337	0	0	119,193

**Part VI-B Lobbying Activity by Nonelecting Public Charities**

(For reporting only by organizations that did not complete Part VI-A) (See page 11 of the instructions.)

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of	Yes	No	Amount
<b>a</b> Volunteers			
<b>b</b> Paid staff or management (Include compensation in expenses reported on lines <b>c</b> through <b>h</b> .)			
<b>c</b> Media advertisements			
<b>d</b> Mailings to members, legislators, or the public			
<b>e</b> Publications, or published or broadcast statements			
<b>f</b> Grants to other organizations for lobbying purposes			
<b>g</b> Direct contact with legislators, their staffs, government officials, or a legislative body			
<b>h</b> Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means			
<b>i</b> Total lobbying expenditures (Add lines <b>c</b> through <b>h</b> .)			
If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities			



Form 4562

Depreciation and Amortization (Including Information on Listed Property)

OMB No 1545-0172

2007

Department of the Treasury Internal Revenue Service

See separate instructions. Attach to your tax return.

Attachment Sequence No 67

Table with 3 columns: Name(s) shown on return, Business or activity to which this form relates, Identifying number.

Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

Table with 5 rows for Part I calculations: 1 Maximum amount, 2 Total cost, 3 Threshold cost, 4 Reduction in limitation, 5 Dollar limitation.

Table with 13 rows for Part II calculations: 6-13 (a) Description of property, (b) Cost, (c) Elected cost, 7-13 (a) Description of property, (b) Cost, (c) Elected cost.

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property)

Table with 4 rows for Part II calculations: 14 Special allowance, 15 Property subject to section 168(f)(1) election, 16 Other depreciation.

Part III MACRS Depreciation (Do not include listed property.)

Section A

Table with 2 rows for Part III Section A: 17 MACRS deductions, 18 Grouping assets.

Table with 7 columns: (a) Classification of property, (b) Month and year placed in service, (c) Basis for depreciation, (d) Recovery period, (e) Convention, (f) Method, (g) Depreciation deduction.

Section C—Assets Placed in Service During 2007 Tax Year Using the Alternative Depreciation System

Table with 3 rows for Section C: 20a Class life, b 12-year, c 40-year.

Part IV Summary (see instructions)

Table with 3 rows for Part IV Summary: 21 Listed property, 22 Total, 23 For assets shown above.

**Additional Data**

**Software ID:**  
**Software Version:**  
**EIN:** 94-2487469  
**Name:** Monterey Bay Aquarium Foundation

**Form 990, Part V-A - Current Officers, Directors, Trustees, and Key Employees:**

<b>(A) Name and address</b>	<b>(B) Title and average hours per week devoted to position</b>	<b>(C) Compensation (If not paid, enter -0-.)</b>	<b>(D) Contributions to employee benefit plans &amp; deferred compensation plans</b>	<b>(E) Expense account and other allowances</b>
Peter S Bing MD 886 Cannery Row Monterey, CA 93940	Chairman 1 00	0	0	0
Julie Packard 886 Cannery Row Monterey, CA 93940	Director Executor 28 00	210,114	38,540	458
Roberta Buffet Bialek 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Susan Ford Dorsey 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Jane Lubchenko PHD 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Marcia McNutt PHD 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Basil Mills 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Stephen C Neal 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Susan Orr 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
James E Canales 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0

**Form 990, Part V-A - Current Officers, Directors, Trustees, and Key Employees:**

<b>(A) Name and address</b>	<b>(B) Title and average hours per week devoted to position</b>	<b>(C) Compensation (If not paid, enter -0-.)</b>	<b>(D) Contributions to employee benefit plans &amp; deferred compensation plans</b>	<b>(E) Expense account and other allowances</b>
Margaret Rogers 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Diane K Siri 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Gordon R Smith 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Jane Steel 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
The Honorable Lydia M Villarreal 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
The Honorable Leon E Panetta 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Mark Wan 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Pietro Parravano 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
Barbara Wright 886 Cannery Row Monterey, CA 93940	Secretary 1 00	0	0	0
Meg Caldwell 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0

**Form 990, Part V-A - Current Officers, Directors, Trustees, and Key Employees:**

<b>(A) Name and address</b>	<b>(B) Title and average hours per week devoted to position</b>	<b>(C) Compensation (If not paid, enter -0-.)</b>	<b>(D) Contributions to employee benefit plans &amp; deferred compensation plans</b>	<b>(E) Expense account and other allowances</b>
Paul L Davies III 886 Cannery Row Monterey, CA 93940	Trustee 1 00	0	0	0
James Hekkers 886 Cannery Row Monterey, CA 93940	Managing Director 40 00	234,494	33,946	1,418
Edward E Prohaska 886 Cannery Row Monterey, CA 93940	CFO 40 00	103,350	13,042	161

**Form 990, Part VIII - Relationship of Activities to the Accomplishment of Exempt Purposes:**

<b>Line No.</b> ▼	<b>Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes).</b>
93a	Admissions revenue supports the cost of operating and maintaining the Aquarium, including the living exhibit galleries. The Aquarium is the primary vehicle for fulfilling our mission of inspiring conservation of oceans by providing a first-hand experience with ocean life.
93b	Private events held at the Aquarium afford visitors an opportunity to experience the Aquarium's living exhibits, educational content, and programming outside of regular public hours.
93c	Aquarium food services promote ocean conservation and sustainability by adhering to guidelines developed by the Aquarium's Seafood Watch program. Offering food and beverage to daytime guests allows them to extend the length of their stay, with additional opportunities for exposure to educational and other mission-related messages. The Aquarium's food services are provided by a company that is a leader in the sustainable seafood movement, and as such, promotes the Aquarium's mission to inspire conservation of the oceans.
93d	Symposium, workshop and experiential learning programs provide enriching learning experiences for smaller groups - experiences beyond those available to general aquarium visitors. Chief among them is Aquarium Adventures, a suite of public programs that offer surface-SCUBA experiences for young people, Sailing Adventures science excursions on Monterey Bay, behind-the-scenes tours and other special offerings for families and children. The annual Cooking for Solutions culinary events draw a direct connection between fishing and farming practices and the health of ocean ecosystems.
93e	Guided tours heighten the visitor's educational experience by providing interpretation of the Aquarium's exhibits, support functions and research and conservation activities.
94	Members receive unlimited visitation to the Aquarium, and publications containing news and information about the Aquarium, its exhibits and research efforts, as well as other marine conservation information. This revenue provides important funding for operating and maintaining the Aquarium facilities, exhibits and programs.

Part V Listed Property (Include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A-Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed? Yes No 24b If "Yes," is the evidence written? Yes No

Table with 9 columns: (a) Type of property, (b) Date placed in service, (c) Business/investment use percentage, (d) Cost or other basis, (e) Basis for depreciation, (f) Recovery period, (g) Method/Convention, (h) Depreciation/deduction, (i) Elected section 179 cost. Includes rows 25-29 for special allowance, 50%+ use, and 50% or less use.

Section B-Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

Table for Section B with 6 main columns: (a) Vehicle 1, (b) Vehicle 2, (c) Vehicle 3, (d) Vehicle 4, (e) Vehicle 5, (f) Vehicle 6. Rows 30-36 cover total miles driven and personal use availability.

Section C-Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons (see instructions)

Table for Section C with 2 columns: Yes, No. Rows 37-41 cover policy statements and requirements for employer-provided vehicles.

Part VI Amortization

Table for Section VI with 6 columns: (a) Description of costs, (b) Date amortization begins, (c) Amortizable amount, (d) Code section, (e) Amortization period or percentage, (f) Amortization for this year. Includes rows 42-44.

## TY 2007 Cash Grants Paid Schedule

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Class of Activity	Recipient's name	Address	Amount	Relationship
Pelagic Field Research	Stanford University	651 Serra St 260 Stanford, CA 94305	57,628	None
Law Book Chapter on Eco-system based management	Vermont Law School	PO Box 96 South Royalton, VT 05068	7,500	None
Law Book Chapter on Eco-system based management	Perkins Coie LLP	607 Fourteenth Street NW Suite 800 Washington, DC 20005	7,500	None
Conference Support	Inter-American Tropical Tuna Commission	8604 La Jolla Shores Drive La Jolla, CA 92037	550	None
Conference Support	California Environmental Associates	423 Washington Street 3rd Floor San Francisco, CA 94111	170,360	None
White Shark Field Research Support	CSU-Long Beach	6300 East State University Drive 332 Long Beach, CA 90815	19,000	None
Tagging Research	Stanford University (Hopkins Marine Station)	651 Serra St 260 Stanford, CA 94305	30,000	None
Mobulid Research	Oscar Sosa-Nishizaki	PO Box 434844 San Ysidro, CA 92143	6,000	None

<b>Class of Activity</b>	<b>Recipient's name</b>	<b>Address</b>	<b>Amount</b>	<b>Relationship</b>
Sustainable Seafood Support	Bon Appetit Management Co Foundation	100 Hamilton Ave Suite 300 Palo Alto, CA 94301	127,791	None

## TY 2007 Depreciation and Depletion Schedule

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Note: To capture the full content of this document, please select landscape mode (11" x 8.5") when printing.

### TY 2007 Gain/Loss from Sale of Other Assets Schedule

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Name	Date Acquired	How Acquired	Date Sold	Purchaser Name	Gross Sales Price	Basis	Basis Method	Sales Expenses	Total (net)	Accumulated Depreciation
Sale of other asset	2005-01	PURCHASED	2007-01		1,522	224,959		0	-223,437	

**TY 2007 Gain/Loss from Sale of Public Securities Schedule****Name:** Monterey Bay Aquarium Foundation**EIN:** 94-2487469**Gross Sales Price:** 99,534,872**Basis:** 89,028,068**Sales Expenses:** 0**Total (net):** 10,506,804

## TY 2007 General Explanation Attachment

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Identifier	Return Reference	Explanation
		<p>Statement of the Organization's Primary Exempt Purpose The mission of the Monterey Bay Aquarium is to inspire conservation of the oceans First and foremost, we inspire our visitors with engaging exhibits and programs focused on encounters with living creatures and their habitats In 2007, we served over 1.8 million visitors with experiences that stimulate the intellectual and emotional connections to the natural world, which are essential to caring about the oceans and the life in them Today, our mission is more urgent than ever Worldwide, the oceans are in peril, their wildlife and habitats threatened by the ever-increasing pace of human activity We risk losing vital natural systems that sustain us all We believe humankind can turn this tide, arrest these damaging trends and eventually restore our fisheries and ocean habitats if people everywhere adopt an ethic of value, stewardship and action on behalf of the oceans We are committed to building this constituency and inspiring action for ocean conservation</p>

Identifier	Return Reference	Explanation
		<p>Statement of the Organization's Exempt Purpose Achievements Live exhibits are the vehicle through which we inspire a love of the oceans in our visitors. In 2007, we placed a third white shark on long-term exhibit when we introduced a young male into our Outer Bay exhibit. On August 28, we released him on February 5, 2008. It marks the third time in four years that we have exhibited a white shark and then returned it to the wild. The white shark was on exhibit for 152 days, and was seen by nearly 650,000 people. Before his release, we fitted the young shark with two electronic tags: one that relayed near real-time data about his travels for about eight months, and a second that collected detailed information on his movements for five months. This second tag popped off the shark on schedule and was recovered by the research team in June. The data we recovered from the tag revealed it traveled about 40 miles a day between Monterey Bay and into the Sea of Cortez. Since 2002, we've invested hundreds of hours of staff time and more than \$1 million in white shark field research projects in a greater effort to understand these mysterious - and threatened - predators. Because white shark populations are under enormous and wide-ranging environmental pressures, the more we can learn about these magnificent animals, the more we can do to protect them.</p> <p>We went Wild About Otters with our first special exhibition to feature live mammals - freshwater otters - and the first to showcase tropical freshwater fishes, amphibians and reptiles. Visitors love watching the playful antics of six African spotted-necked otters (plus a pup introduced in December) and four Asian small-clawed otters, as well as the fishes, vine snakes and exotic frogs that share their native lake and river habitats. Wild About Otters takes our conservation messages beyond the oceans. Aquariumally, actor and wildlife conservation advocate John Cleese narrates video clips throughout the exhibit about the global importance of clean water and how lakes, rivers and oceans are all connected. In the fall we invited visitors on deep-sea adventures when we opened "Mission to the Deep: Exploring the Ocean with the Monterey Bay Aquarium Research Institute." The new permanent exhibit draws visitors into the exciting world of MBARI, our sister research institute, by combining stunning high-definition video footage with interactive computer animations of undersea robots and other high-tech tools that help the MBARI team explore the largest and most mysterious habitat on Earth. And we launched a dramatic expansion of the award-winning "Splash Zone" family exhibit, which has been drawing praise since it first opened in April 2000. The new and larger galleries explore three ocean habitats - the Enchanted Kelp Forest, Coral Reef Kingdom and Rugged Rocky Shore - by combining new interactive experiences and new living species with visitor favorites from the original galleries. The wonder of "Splash Zone" is one reason Parents Magazine named us the best aquarium for families in the United States in 2007. In June, we introduced a new daily program that features Makana, the only Laysan albatross at any zoo or aquarium in the world. Bringing visitors face to face with Makana helps us illustrate the global threat posed to marine life from plastics pollution. Makana - her name means "gift" in Hawaiian - began life on Midway Atoll National Wildlife Refuge. Because she injured a wing as a chick, she couldn't return to the wild. On Midway Atoll, the main breeding ground for Laysan albatross, plastic debris kills 40 percent of the chicks hatched each year. Their stomachs are choked with trash their foraging parents collect by mistake to feed their young. When we show visitors a plastic tube of debris taken from the carcass of a Laysan chick, the impact is palpable. Through her regal presence, Makana lets people see the grace of a species that glides effortlessly over the waves for months on end. We know that an education based on discovery and joy does more to instill passion for the natural world in our youth than any standardized test. That's why our education and outreach programs remain a top priority, both in focus and funding. Our connections with the Hispanic community continue to strengthen and grow, building a strong new constituency for the oceans. By building these relationships over time, the total number of Hispanic visitors to the Aquarium has more than doubled since 1998. Surveys showed that during their visits, 90 percent learn new conservation information, 85 percent are inspired to protect the oceans and 28 percent take home a Seafood Watch consumer guide. During our 2007 Fiesta del Mar celebration, we honored the Mexican "lucha libre" wrestler El Hijo del Santo (Son of the Saint) with our "Heroe del Medio Ambiente" (Hero of the Environment) award in recognition of his commitment to defend the oceans and battle the "enemies of the sea." The masked wrestler drew a large and a</p>

Identifier	Return Reference	Explanation
		<p>appreciative crowd, and El Hijo del Santo worked with our staff to create a Spanish-language public service video promoting ocean conservation. In 2007, our educators worked with more than 71,000 students and 1,200 teachers. For the schoolchildren, we facilitated field trips and supplemented classroom education with hands-on learning experiences. For the teachers, we provided engaging marine sciences institutes and workshops, and kept in touch throughout the year in many ways. We continued to build our long-term partnership, called Mary Campo (from Field to Sea), with the people of Watsonville and Pajaro, and the roots of this conservation education and outreach program are growing strong. Our goal is to foster ocean conservation as a cultural norm in these predominantly Hispanic farming communities. The best example of Mary Campo successes lie in our Watsonville Area Teens Conserving Habitats (WATCH) collaboration. Launched in 2006 at Pajaro Valley High School, the environmental education activities and field projects attract a growing number of students. Some who've completed the program praise our educators for sharing their passion and commitment to the environment. Some caught the same spark in their classrooms and carried it further - to peers and friends, their homes and their communities. Some have also become part of the Aquarium family, sharing what they've learned with our guests as student guides. Beyond the classroom, Young Women in Science program celebrated its eighth year of teaching under-served young women 12 to 14 years of age that science careers can be fun and rewarding. In addition to working with female scientists from around the area, participants were guided by an ever-growing number of program "graduates" - mentors who return to further encourage their younger peers. In 2007, the Association of Zoos &amp; Aquariums recognized this program as a significant achievement in promoting outreach to diverse audiences. In 2007, our website (<a href="http://www.montereybayaquarium.org">www.montereybayaquarium.org</a>) provided a significant educational resource for audiences beyond our walls with over 11.5 million online visitors - a 39% increase compared to 2006. Both on our website and in the aquarium, we provide information and experiences that empower our visitors to move beyond caring about the oceans to caring for the oceans. Our Center for the Future of the Oceans identifies relevant and timely conservation issues, takes positions, and communicate those positions to the public and, when appropriate, policy makers. The aquarium and our Center for the Future of the Oceans accomplished great things in 2007. In September, after a four-year effort in which we played a significant part, California formally established the nation's largest network of marine protected areas on the central California coast. The network of 29 protected areas covers approximately 204 square miles (or 18 percent) of state waters along a 200-mile stretch of the central coast. It includes 85 square miles of no-take state marine reserves. This is the first installment in a landmark effort to establish a network of marine protected areas along the entire California coast under the Marine Life Protection Act (MLPA) of 1999. Transforming the seafood market in ways that reward sustainable fishing and aquaculture practices remains the primary goal of our signature Seafood Watch program. We made great strides in 2007. During the year, we distributed more than 12.5 million Seafood Watch consumer pocket guides through 170 partner organizations nationwide. That number included 9.5 million pocket guides inserted in Happy Feet DVDs sold in the United States and Canada. We also made our recommendations available to users of mobile devices with Internet access. Our partnerships with major seafood buyers, like Compass Group North America and ARAMARK, a world leader in professional services, will have a significant impact on global fisheries. A half-dozen Hilton and Doubletree hotels in Southern California adopted sustainable seafood policies because of relationships forged during our 2007 Sustainable Foods Institute for media and Cooking for Solutions public events that drew more than 6,000 participants. Locally, our Seafood Watch restaurant partnership program has grown to include more than 50 establishments that have pledged to serve seafood only from sustainable sources. In 2007, our researchers and our research partners made significant contributions to a fundamental understanding of key species like sea otters, white sharks and bluefin tuna. The environmental threats facing sea otters in coastal California, the migrations of adult and juvenile white sharks, and the migratory routes, feeding grounds and spawning areas of bluefin tuna are being defined more clearly as a result of this work. And the scientific understanding generated by these initiatives offers a basis for management decisions and policy reform to safeguard these majestic ocean animals. The skills of our veterinary and an</p>

Identifier	Return Reference	Explanation
		<p>imal care staff allow ed the sea otter recovery team to implant tracking tags in dozens of healthy adults and pups during the year - an invaluable contribution to this research As the primary California center to receive and care for stranded sea otters, w e're also usin g new diagnostic tools to document in detail the health problems affecting otters Our TRCC partnership w ith Stanford continued to generate important data about the migrations of an other threatened top predator Atlantic bluefin tuna population Tagging of more than 1,00 0 adult bluefins over the past 15 years has documented and confirmed in exhaustive detail the existence of tw o distinct bluefin populations in the North Atlantic, the mixing of tho se populations on feeding grounds, and their fidelity to separate breeding grounds in the Gulf of Mexico and the Mediterranean In so many ways, every day of the year, the Monterey B ay Aquarium inspires, engages and empow ers people to create a future w ith healthy oceans We are changing the w ay people think about their relationship to the oceans Working toget her - our staff, visitors, members, and business donors - w e are making a difference</p>

Identifier	Return Reference	Explanation
		Form 990, Part V-A In 2007, the Foundation paid the premium of \$46,475 on directors and officers insurance treated as nontaxable fringe benefits

<b>Identifier</b>	<b>Return Reference</b>	<b>Explanation</b>
		Schedule A, Part IV-A The year 2004 was the first year the lobbying election under Section 501(h) was effective. The organization had no lobbying expenditures in 2004, \$6,354 in 2005, \$138,455 in 2006 and \$24,140 in 2007.

## TY 2007 Investments - Securities Schedule

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Description	Book Value	Cost/FMV
Money market funds	1,709,649	F
Commonfund investments	133,304,200	F

**TY 2007 Land etc. Schedule**

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

<b>Category/Item</b>	<b>Cost/Other Basis</b>	<b>Accumulated Depreciation</b>	<b>Book Value</b>
Land Improvements	756,385	579,878	176,507
Buildings	124,376,373	51,764,725	72,611,648
Exhibits	33,388,786	13,913,943	19,474,843
Equipment	21,434,533	17,075,323	4,359,210
Construction-in-progress	6,703,759		6,703,759
Land	10,083,878		10,083,878

## TY 2007 Other Assets Schedule

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Description	Beginning of Year Amount	End of Year Amount
Intercompany receivable	212,979	0
Beneficial interest in split-interest agreements	1,335,729	1,369,967
Employee relocation loan	0	159,663

## TY 2007 Other Changes in Net Assets Schedule

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Description	Amount
Unrealized gain on investments	559,697
Miscellaneous adjustment	5,537

## TY 2007 Other Expenses Included Schedule

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Description	Amount
Commercial property rental expense	2,428
Member event expense reclass	3,199
Loss on disposal of fixed assets	223,437

**TY 2007 Other Expenses  
Not Included Schedule**

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Description	Amount
Food service expense reclass	535,104
Special events expense reclass	97,680
Miscellaneous	19,602

## TY 2007 Other Liabilities Schedule

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Description	Beginning of Year Amount	End of Year Amount
Gift annuity liability	506,195	493,383

**TY 2007 Other Revenues Included Schedule****Name:** Monterey Bay Aquarium Foundation**EIN:** 94-2487469

<b>Description</b>	<b>Amount</b>
Net revenue of subsidiary	741,597
Commercial property rental expense	2,428
Member event expense reclass	3,199
Loss on disposal of fixed assets	223,437

**TY 2007 Other Revenues  
Not Included Schedule****Name:** Monterey Bay Aquarium Foundation**EIN:** 94-2487469

<b>Description</b>	<b>Amount</b>
Food service expense reclass	535,104
MBASS Aquarium supporting organization grant	2,791,340
Special event expense reclass	97,680
Miscellaneous	19,607

## TY 2007 Relationship Schedule

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Person Name / Business Name	Title or Role	Person Name 2 / Business Name 2	Title or Role 2	Relationship
Julie Packard	Executive Director	Susan Orr	Trustee	Board members Julie Packard and Susan Orr are family members

## TY 2007 Special Events Schedule

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Event Name	Gross Receipts	Contributions	Gross Revenue	Direct Expense	Net Income (Loss)
Jazz Club at the Aquarium	52,635	0	52,635	46,051	6,584
Hallow een Party	40,006	0	40,006	14,847	25,159

## TY 2007 Other Income Schedule

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Description	2006	2005	2004	2003	Total
Reimbursement					
Food services		870,721	530,698	456,347	1,857,766
Miscellaneous	109,402				109,402

## TY 2007 Self Dealing Statement

**Name:** Monterey Bay Aquarium Foundation

**EIN:** 94-2487469

Line Number	Explanation
2c	<p>Stephen Neal, a member of the law firm of Cooley Godward LLP, is a member of the Aquarium's Board of Trustees. Certain members of the firm provided various pro bono legal services to the Aquarium. Barbara P. Wright is the Aquarium's Secretary and Legal Counsel. She provides legal services to the Aquarium through the law firm of Finch, Montgomery, Wright &amp; Emmer, of which she is a partner. Fees for these services are paid to the firm and are for legal services, not for services in her capacity as an officer. Fees paid and expenses reimbursed to the firm in 2007 were \$36,795</p>

**AMENDED AND RESTATED**

**BYLAWS**

OF

**THE MONTEREY BAY AQUARIUM FOUNDATION**  
a California Nonprofit Public Benefit Corporation

**ARTICLE I**  
**NAME**

The name of this Corporation is THE MONTEREY BAY AQUARIUM FOUNDATION.

**ARTICLE II**  
**OFFICES**

**Section 1. Principal Office.** This Corporation's principal office is located at 886 Cannery Row, Monterey, California 93940.

**Section 2. Change of Address.** The Board of Trustees is granted full power and authority to change the principal office from one location to another. Any such change shall be noted by the Secretary in the Minutes of the Board of Trustees.

**ARTICLE III**  
**OBJECTIVES AND PURPOSES**

This Corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c) (3) of the Internal Revenue Code or the corresponding provision of any future United States internal revenue law (the "Code"). The objectives and purposes of this Corporation are to receive and maintain a fund or funds of real or personal property, or both, and to use and apply the income therefrom and the principal thereof exclusively for charitable purposes, including but not limited to: (a) the construction, operation and maintenance of an aquarium located in the County of Monterey, State of California, for the benefit, education and enjoyment of the public; (b) the increase of knowledge about the natural environment focusing on, without being limited to, the Monterey Bay, the Monterey Bay Canyon, and the California coastline; (c) the conduct of scientific research in the natural sciences; (d) the study and interpretation of man's interaction with the environment; and (e) the advancement of education and science.

**ARTICLE IV**  
**NONPARTISAN ACTIVITIES**

**Section 1.** This Corporation has been formed under the California Nonprofit Public Benefit Corporation Law for charitable purposes and it shall be nonprofit and nonpartisan. No substantial part of the activities of this Corporation shall consist of the publication or dissemination of materials with the purpose of attempting to influence legislation. This Corporation shall not

directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office.

**Section 2.** This Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not consistent with its status as a tax-exempt nonprofit charitable organization and in furtherance of the purposes described above.

## **ARTICLE V DEDICATION OF ASSETS**

The properties and assets of this Corporation are irrevocably dedicated to charitable purposes within the meaning of Section 501(c) (3) of the Internal Revenue Code and meeting the requirements for exemption provided by Section 23701d and Section 214 of the California Revenue and Taxation Code, as such code sections may be amended from time to time.

## **ARTICLE VI MEMBERSHIP**

**Section 1. Members Prohibited.** This Corporation shall have no members.

**Section 2. Effect of Prohibition.** All rights which would otherwise vest in the members under the laws of the State of California shall vest in the Board of Trustees. Therefore, any action which would otherwise require approval by the majority of all members or approval by the members shall require only approval of the Board of Trustees.

## **ARTICLE VII BOARD OF TRUSTEES**

**Section 1. General Powers.** Subject to the provisions of the California Nonprofit Benefit Corporation Law and any limitations in the Articles of Incorporation and these Bylaws, this Corporation's activities and affairs, shall be conducted, and all corporate powers shall be exercised, by or under the direction of the Board of Trustees.

**Section 2. Specific Powers.** Without prejudice to the general powers set forth above, but subject to the same limitations, the Board of Trustees shall have the power to:

(a) Select and remove all of the officers, agents, and employees of the Corporation; prescribe powers and duties for them that are consistent with the law, with the Articles of Incorporation, and with these Bylaws; and fix their compensation.

(b) Conduct, manage and control the affairs and activities of this Corporation, and make such rules and regulations consistent with the law, the Articles of Incorporation, or these Bylaws, as the Trustees deem best.

(c) Change the principal office in the State of California from one location to another; cause this Corporation to be qualified to conduct its activities in any other state, territory, dependency, or country; conduct its activities within or outside California; and designate any place within or outside California for holding any meeting of the Board.

(d) Adopt, make, and use a corporate seal, and alter the form of the seal.

(e) Borrow money and incur indebtedness on behalf of this Corporation and cause to be executed and delivered for the purposes of this Corporation, in the Corporation's name, promissory notes, bonds, debentures, deeds of trust, mortgages, hypothecations, pledges, and other evidences of debt and securities; provided, however, that any proposed actions to borrow money or incur indebtedness shall require approval by affirmative vote of three-quarters of the Trustees then in office.

**Section 3. Delegation.** Except as otherwise provided in these Bylaws or by applicable law, the Board of Trustees may, by resolution duly adopted by it, delegate its powers and the management of the activities of this Corporation to particular Trustees or Committees of the Board, or to other committees however composed, or to officers or employees of this Corporation; provided, however, that the activities and affairs of this Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board of Trustees. No delegation of authority by the Board of Trustees to particular Trustees, Committees of the Board, other committees, officers, employees, or anyone else shall preclude the Board of Trustees from exercising the authority required to meet its responsibility for the conduct of the activities and affairs of this Corporation.

**Section 4. Definition of Trustee.** For the purposes of these Bylaws, the term "Trustees" shall specifically refer to the directors of this Corporation as that term is defined in the California Nonprofit Public Benefit Corporations Code. The Trustees shall be known collectively as the Board of Trustees (the "Board").

**Section 5. Classes of Trustees.** This Corporation shall have three (3) classes of Trustees entitled to vote, namely, Founding Trustees, General Trustees, and Ex Officio Trustees. To express this Corporation's gratitude and respect for retiring Trustees, the Board may create a non-voting honorary position of Trustee Emeritus. The Board may also create a non-voting honorary position of Board Fellow for students.

**Section 6. Authorized Number of Trustees and Qualifications.** This Corporation shall have not less than three (3) nor more than twenty-five (25) authorized Trustees, up to four (4) of whom may be Founding Trustees, one (1) of whom shall be the President of this Corporation as an Ex Officio Trustee (unless the President is a Founding Trustee), one (1) of whom shall be the President of the Monterey Bay Aquarium Research Institute ("MBARI") as an Ex Officio Trustee, and the balance of whom shall be General Trustees. The exact number of authorized Trustees shall be set within these limits by resolution of the Board and reflected in the Minutes. The Trustees of this Corporation need not be residents of the State of California. The Trustees shall have sufficient interest in and appropriate experience to enable them to contribute to and further the purposes of this Corporation.

**Section 7. Nomination.** Any person qualified to be a Trustee under Section 6 of this Article VII may be nominated by the method of nomination authorized by the Board.

**Section 8. Election and Term of Office of Trustees.**

(a) **Election.** The Board shall be self perpetuating, and a Trustee shall serve until a vacancy occurs as described in Section 10 of this Article VII.

(b) **Term.** The term of office of Founding Trustees and General Trustees shall be for three (3) years each, commencing with the Board meeting at which such Trustee is elected (unless a later date is specified), and expiring at the Board meeting three (3) years after the date such Trustee's term began.

(c) **Founding Trustees.** The four children of the founders, David and Lucile Packard, were members of the initial Board. They shall constitute the Founding Trustees, and may serve unlimited terms of office. The Founding Trustees are: Julie Packard, Nancy Packard Burnett, Susan Packard Orr, and David Woodley Packard.

(d) **Ex Officio Trustees.** The term of office of the President of this Corporation as an Ex Officio Trustee shall be concurrent with his or her term of office as President. The term of office of the President of MBARI as an Ex Officio Trustee of this Corporation shall be concurrent with his or her term of office as President of MBARI.

(e) **General Trustees.** No General Trustee shall serve more than four (4) consecutive complete terms of three (3) years in office. Under compelling circumstances, however, a General Trustee may be elected for additional consecutive term or terms of office if the Board approves the waiver of the four (4) three-year term limit with respect to such Trustee by affirmative vote of two-thirds of the Trustees then in office. The Board's approval shall be reflected in the Minutes of the meeting of the Board at which such Trustee is being elected, or by unanimous written consent of the other Trustees then in office. A General Trustee who has served four (4) three-year terms may be nominated to serve again after at least a one (1) year absence from the Board.

**Section 9. Restrictions on Interested Persons as Trustees.** Not more than forty-nine percent (49%) of the persons serving on the Board at any time may be interested persons. An "interested person" is: (a) any person currently being compensated by this Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor or otherwise, excluding any reasonable compensation paid to a Trustee as Trustee; or (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person. However, any violation of the provisions of this Section 9 shall not affect the validity or enforceability of any transaction entered into by this Corporation.

**Section 10. Vacancies in the Board.**

(a) **Events Causing Vacancies.** Vacancies in the Board shall exist on the death, resignation, or removal of any Trustee; if the authorized number of Trustees is increased; or if the full number of authorized Trustees is not elected by the Board.

(b) **Resignation of Trustees.** Except as provided in this Section 10(b), any Trustee may resign by giving written notice to the Chairman of the Board, the President, the Secretary, or the Board. The resignation shall be effective when the notice is given unless the notice specifies a later

date for the resignation to become effective. If the resignation is effective on at a later date, the Board may select a successor to take office as of the date when the resignation becomes effective. A Trustee shall not resign if this Corporation would then be left without a duly elected Trustee or Trustees in charge of its affairs, except upon notice to the Attorney General of California.

(c) **Filling Vacancies.** Vacancies in the Board shall be filled by a majority vote of the remaining Trustees then in office, whether or not less than a quorum, or by a sole remaining Trustee. A General Trustee elected to fill the remaining term of a prior General Trustee shall hold office until the expiration of the term of the prior General Trustee.

(d) **No Vacancy on Reduction of Number of Trustees.** No reduction of the authorized number of Trustees shall have the effect of removing any Trustee before the Trustee's term of office expires.

#### **Section 11. Removal of Trustees.**

(a) **With Cause.** The Board may declare vacant the office of a Trustee on the occurrence of any of the following events:

- (i) The Trustee has been declared of unsound mind by a final order of court;
- (ii) The Trustee has been convicted of a felony; or
- (iii) The Trustee has been found by a final order or judgment of any court to have breached any duty arising under Chapter 2, Article 3 of the California Nonprofit Public Benefit Corporation Law Section 5230 et seq., as amended from time to time.

(b) **Without Cause.** Any Trustee may be removed without cause if such removal is approved by the vote of two-thirds of the Trustees then in office.

#### **Section 12. Annual and Regular Meetings.**

(a) **Annual Meeting.** The annual meeting of the Board for the purpose of electing Trustees and officers, and for such other matters as may come before the Board shall be held on such date, and at such time and place in the month of May or June in each year as may be designated by the Board or by the Chairman of the Board.

(b) **Regular Meetings.** Regular meetings of the Board shall be held on the dates and at the times designated by the Board or the Chairman of the Board.

(c) **Place.** Meetings of the Board shall be held at any place within or outside California that has been designated from time to time by the Board or the Chairman of the Board. In the absence of such designation, the annual and regular meetings of the Board shall be held at the principal office of this Corporation.

(d) **Notice.** Notice of each annual and regular meeting of the Board shall be mailed by the Secretary of this Corporation to the last known post office address of each Trustee not less than fourteen (14) days before the meeting, and such notice shall state the place, day, and time thereof.

**Section 13. Special Meetings.**

(a) **Authority to Call.** Special meetings of the Board for any purpose may be called at any time by the Chairman of the Board, the President, or any Vice President, the Secretary, or any two Trustees. Special meetings shall be held at any place that has been designated in the notice of the meeting, or, if not stated in the notice, at the principal office of this Corporation. Notwithstanding the above provisions of this Section 13, a regular or special meeting of the Board may be held at any place consented to in writing by all of the Trustees, before, during, or after the meeting. If the consents are given, they shall be filed with the Minutes of the meeting.

(b) **Manner of Giving Notice.** Notice of the date, time and place of special meetings shall be given to each Trustee by one of the following methods: (i) personal delivery of written notice; (ii) first-class mail, postage prepaid; (iii) express delivery service which could reasonably be expected to deliver that notice promptly to the Trustee's address, charges prepaid; (iv) telephone, either by speaking directly to the Trustee or to a person at the Trustee's office or home who would reasonably be expected to communicate that notice promptly to the Trustee, or by leaving a message on a voice message system or other system or technology designed to record and communicate messages; (v) electronic transmission, either directly to the Trustee or to a person at the Trustee's office or home who would reasonably be expected to communicate the notice promptly to the Trustee; (vi) facsimile; (vii) electronic mail; or (viii) other electronic means of communication. All such notices shall be given or sent to the Trustee's address, telephone number, or electronic mail address as shown on the records of this Corporation.

(c) **Time Requirements of Notice.** Notices sent by first-class mail shall be deposited in the United States mails at least fourteen (14) days before the date set for the special meeting. Notices given by personal delivery, express delivery, telephone (including a voice message system), facsimile, electronic mail, or other electronic means of communication shall be delivered, telephoned, or sent, respectively, at least forty-eight (48) hours before the time set for the meeting.

(d) **Notice Contents.** The notice shall state the date and time of the special meeting, and the place if the place is other than the principal office of this Corporation.

**Section 14. Meetings by Telephone or Other Communications Equipment.** Members of the Board may participate in any Board or Committee meeting through use of conference telephone, electronic video screen communication, or other communications equipment. Participation in a meeting through use of conference telephone, electronic video screen communication, or other communications equipment constitutes presence in person at that meeting if all of the following apply:

(a) Each member participating in the meeting can communicate with all of the other participating members concurrently;

(b) Each member is provided the means of participating in all matters before the Board or Committee, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by this Corporation; and

(c) This Corporation adopts and implements some means of verifying all of the following: (i) a person participating in the meeting is a Trustee or other person entitled to participate

in the Board or Committee meeting; (ii) the person participating in the meeting confirms that no unauthorized person is privy to the meeting; and (iii) all actions of, or votes by, the Board or Committee are taken or cast only by the Trustees and not by persons who are not Trustees.

**Section 15. Quorum.** The majority of the authorized number of Trustees shall constitute a quorum of the Board for the transaction of the affairs of this Corporation, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the Trustees present at a meeting duly held at which a quorum is present shall be the act of the Board, subject to the more stringent provisions of the Articles of Incorporation, these Bylaws, or the California Nonprofit Public Benefit Corporation Law, including those provisions relating to: (a) approval of contracts or transactions in which a Trustee has a direct or indirect material financial interest; (b) approval of certain transactions between entities having common trustees or directors; (c) creation of and appointments to Committees of the Board; and (d) indemnification of Trustees. The Board may continue to transact the affairs of this Corporation at any meeting at which a quorum is initially present, despite the withdrawal of some Trustees, if any action taken or decision made is approved by at least a majority of the required quorum for that meeting, or such greater number as may be required by law, the Articles of Incorporation, or these Bylaws.

**Section 16. Waiver of Notice.** Notice of a meeting need not be given to any Trustee who before, during, or after the meeting signs: (a) a waiver of notice, (b) a written consent to the holding of the meeting, or (c) an approval of the Minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the Minutes of the meeting. Notice of a meeting need not be given to any Trustee who attends the meeting and does not protest, before or at the commencement of the meeting, the lack of adequate notice to him or her.

**Section 17. Conduct of Meetings.** The Chairman of the Board or, in his or her absence, the Vice Chairman, if any, or the President or any Trustee selected by the Trustees present shall preside at meetings of the Board. The Secretary of this Corporation or, in the Secretary's absence, the Assistant Secretary, if any, or any person appointed by the presiding officer shall act as Secretary of the meeting.

**Section 18. Adjournment.** A majority of the Trustees present at any meeting of the Board, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of adjournment need not be given unless the meeting is adjourned for more than twenty-four (24) hours. If the meeting is adjourned for more than twenty-four (24) hours, personal notice of the date, time and place of the adjourned meeting shall be given at least forty-eight (48) hours prior to the time of the adjourned meeting to the Trustees who were not present at the time of adjournment.

**Section 19. Action Without Meeting.** Any action that the Board is required or permitted to take may be taken by the Board without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such written consent may be executed in counterparts. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent (or consents) shall be delivered to the Secretary of this Corporation and filed with the Minutes of the Board. For the purposes of this Article VII Section 19 only, "all members of the Board" shall not include any "interested director" as defined in Section 5233 of the California Nonprofit Public Benefit Corporation Law, as amended from time to time.

**Section 20. Fees and Compensation of Trustees.** Each Trustee may be reimbursed for reasonable expenses incurred in attending meetings of the Board or Committees. The Trustees, other than the President of this Corporation as Founding Trustee or Ex Officio Trustee, shall serve without compensation. The Trustee who is serving as President of this Corporation may receive such compensation for his or her services as Trustee and as an officer as the Board may determine by resolution to be fair, just, and reasonable to this Corporation. Nothing contained in these Bylaws shall be construed to preclude any Trustee from serving this Corporation in any other capacity as an officer, employee, or agent, and receiving reasonable compensation for such services.

## **ARTICLE VIII COMMITTEES**

**Section 1. Committees of the Board.** Each Committee of the Board shall consist of two (2) or more Trustees, to serve at the pleasure of the Board. Except as otherwise specified in the Articles of Incorporation or these Bylaws, appointments to a Committee of the Board shall be by majority vote of the Trustees then in office.

(a) **Standing Committees.** This Corporation shall have two (2) standing Committees of the Board, namely, the Finance Committee, and the Audit Committee.

(b) **Additional Committees.** The Board, by resolution, may create one or more additional Committees of the Board, and may prescribe the responsibilities thereof, as the Board from time to time may determine.

(c) **Nondelegable Powers.** The Board may delegate to any Committee of the Board, by resolution, any of the authority of the Board, except that the Board shall not delegate the authority to:

- (i) Fill vacancies on the Board or in any Committee of the Board;
- (ii) Fix compensation of the Trustees for serving on the Board or on any committee;
- (iii) Amend or repeal these Bylaws or adopt new Bylaws;
- (iv) Amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (v) Appoint any other Committees of the Board or appoint the members of Committees of the Board;
- (vi) Expend corporate funds to support a nominee for Trustee after there are more people nominated for Trustee than can be elected;
- (vii) Approve any potentially self-dealing transaction: (1) to which this Corporation is a party and in which one or more Trustees has a material financial interest; or (2) between this Corporation and an entity in which one or more of this Corporation's Trustees has a material financial interest, except as special approval is provided for in Section 5233(d)(3) of the

California Nonprofit Public Benefit Corporation Law, and as may not be prohibited under Section 4941(d) of the Internal Revenue Code, as such code sections may be amended from time to time.

**Section 2. Finance Committee.** The Finance Committee of the Board shall consist of at least two (2) Trustees. The Finance Committee shall have the duties and shall exercise the powers prescribed by the Board.

**Section 3. Audit Committee.** The Audit Committee of the Board shall consist of at least two (2) Trustees. Members of the Audit Committee shall not have a material financial interest in any entity doing business with this Corporation. The President shall not be a member of the Audit Committee. The chairperson of the Audit Committee shall not be a member of the Finance Committee and less than one-half of the members of the Audit Committee may also be members of the Finance Committee. The Audit Committee shall have the duties and shall exercise the powers provided in the Bylaws and prescribed by the Board, including but not limited to the following:

- (a) To nominate, for approval by the Board, the firm of independent auditors to be retained or terminated by the Corporation, and negotiate the independent auditors' compensation, on behalf of the Board;
- (b) To review and determine whether to accept or reject the audit; and
- (c) To review any nonaudit services to be performed by the auditing firm, determine that such services conform with standards for auditor independence, and approve the engagement of the auditing firm to perform nonauditing services.

**Section 4. Appointment of Committees of the Board.**

(a) Except as otherwise set forth in these Bylaws, the Chair and members of all Committees of the Board shall be appointed by majority vote of the Trustees then in office as provided in Section 5212 of the Nonprofit Public Benefit Corporation Law. Committee members shall serve at the pleasure of the Board and any person may be removed as a member of any Committee at any time. The Board may fill any vacancies that may exist on any Committee at any time. The duties and powers of all Committees of the Board shall be subject to the limitations with respect to the nondelegable powers listed in Article VIII, Section 1(c) of these Bylaws and to the limitations contained in the Nonprofit Public Benefit Corporation Law, or imposed by the Articles of Incorporation, or otherwise imposed by these Bylaws.

(b) Persons who are not members of the Board may be appointed as nonvoting advisors to Committees of the Board, upon such terms and conditions as the Board may determine, provided, however, that such advisors shall not vote on any matter wherein the Committee has been delegated power to act on behalf of the Board.

**Section 5. Term of Office of Committee Members.** Each Trustee may serve as a member of a Committee of the Board at the pleasure of the Board, but not to exceed such Committee member's term as a Trustee.

**Section 6. Meetings and Actions of Committees of the Board.** Meetings and actions of Committees of the Board shall be governed by, held, and taken in accordance with the provisions

of Article VII of these Bylaws, concerning meetings and other Board actions, with such changes in the context of these Bylaws as are necessary to substitute the Committee and its members for the Board and its members, except that the time for regular meetings of the Committees may be determined either by resolution of the Board, or if none, by resolution of the Committee. Special meetings of the Committees may also be called by resolution of the Board. Minutes shall be kept of each meeting of any Committee of the Board and shall be filed with the corporate records. All actions by any Committee of the Board shall be reported to the Board at the next meeting thereof, and, insofar as rights of third parties shall not be affected thereby, shall be subject to revision, and alteration, or revocation by the Board. The Board may adopt rules for the governance of any Committee consistent with the provisions of these Bylaws, or if none, the Committee may adopt such rules.

## **ARTICLE IX OFFICERS**

**Section 1. Number and Titles.** The officers of this Corporation shall be a Chairman of the Board, a President, a Secretary, and a Chief Financial Officer. This Corporation may also have, at the discretion of the Board, one or more Vice Chairmen, one or more Vice Presidents, and such other officers with such titles and duties as may be appointed in accordance with Section 2 and Section 3 of this Article IX. Any number of offices may be held by the same person, except that neither the Secretary nor the Chief Financial Officer shall serve concurrently as either the President or the Chairman of the Board. The President shall be a voting member of the Board. The other officers may be but are not required to be members of the Board.

**Section 2. Appointment of Officers.** The officers of this Corporation, except those appointed in accordance with the provisions of Section 3 of this Article IX, shall be chosen by and shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment. The Board may appoint one or more Assistant Secretaries or Assistant Financial Officers. Such assistants shall perform such duties as shall be assigned to them from time to time by the Secretary or the Chief Financial Officer, respectively, or by the President, or the Board.

**Section 3. Subordinate Officers.** The Board may appoint and may authorize the President to appoint any other officers that the activities of this Corporation may require. Each such officer shall have the title, hold office for the period, have the authority, and perform the duties specified in the Bylaws or determined from time to time by the Board.

**Section 4. Removal of Officers.** Without prejudice to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board at any meeting of the Board, and also, by the President if the officer was chosen by the President.

**Section 5. Resignation of Officers.** Any officer may resign at any time by giving written notice to this Corporation. The resignation shall take effect as of the date the notice is received or at any later date specified in the notice; and, unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall be without prejudice to the rights, if any, of this Corporation under any contract to which the officer is a party.

**Section 6. Vacancies in Offices.** A vacancy in any office shall be filled only in the manner prescribed by these Bylaws for regular appointments to that office.

**Section 7. Responsibilities of Officers.**

(a) **Chairman of the Board.** The Chairman of the Board shall, if present, preside at meetings of the Board, and shall exercise and perform such other powers and duties as may be assigned to the Chairman by the Board from time to time or as prescribed by these Bylaws. If the Chairman of the Board is not a member of a Committee of the Board, the Chairman may attend Committee meetings and vote on Committee actions, unless otherwise limited by the California Nonprofit Corporations Law, the Nonprofit Integrity Act of 2004, these Bylaws, the Committee Charters, or the Conflict of Interest Policy adopted by the Board of Trustees. If there is no President, the Chairman of the Board shall also be the general manager and chief executive officer of this Corporation, and shall have the powers and duties of the President prescribed by these Bylaws.

(b) **President.** Subject to the control of the Board and the powers of the Chairman of the Board, the President shall be the general manager and chief executive officer of the Corporation. The President may be referred to as the Executive Director or such other title determined by the Board. Subject to the control of the Board, the President shall have general supervision, direction, and control of the activities, affairs, and other officers of this Corporation. The President shall sign or countersign all contracts and other instruments of this Corporation authorized by the Board, except as otherwise directed by the Board. In the absence of the Chairman of the Board, and the Vice Chairman, if any, the President shall preside at meetings of the Board. The President shall make such reports to the Board as the President may deem necessary, and perform such other duties and exercise such other powers as may be prescribed from time to time by the Board. The President shall be an ex officio voting member of all Committees of the Board, unless otherwise limited by the California Nonprofit Corporation Law, the Nonprofit Integrity Act of 2004, these Bylaws, the relevant Committee Charter, or the Conflict of Interest Policy adopted by the Board of Trustees. The Board shall review and approve the compensation, including benefits, of the President to assure that it is fair, just and reasonable to this Corporation. Review and approval shall occur initially upon the hiring of the President, whenever the President's term of employment, if any, is renewed or extended, and whenever the President's compensation is modified. Review and approval shall not be required if a modification of compensation or benefits extends to substantially all employees. A Committee of the Board may review the President's compensation, however, authority to approve the President's compensation is reserved for the Board.

(c) **Vice Presidents.** In the absence or disability of the President, the Vice Presidents, if any are appointed, in order of their rank as fixed by the Board or, if not ranked, the Vice President designated by the Board, shall perform all the duties of the President, other than serving as a voting Trustee. A Vice President may be referred to as the Managing Director or such other title determined by the Board. A Vice President so acting shall have all the powers of, and be subject to all the restrictions on, the President. A Vice President shall have such other powers and perform such other duties as may be prescribed by the Board. A Vice President may also exercise any of the functions of the President which the President may request or which these Bylaws provide may be performed by a Vice President.

(d) **Secretary.** The Secretary shall issue, or cause to be issued, notices of all meetings of the Board and any Committees as required by law or these Bylaws. The Secretary shall keep, or cause to be kept, at the principal office of this Corporation, or such other place as the Board may order, a book of Minutes of all meetings of the Board and its Committees, the Articles of Incorporation, and these Bylaws, as amended from time to time. The Secretary shall have charge of the corporate seal and the corporate minute books, and shall sign instruments with the President requiring the signatures of the President and the Secretary. The Secretary shall make such reports and perform such other and further duties incident to the office of Secretary as may be required by the law, these Bylaws, or as may be prescribed or required from time to time by the Board.

(e) **Chief Financial Officer.** The Chief Financial Officer shall have the custody of all moneys and securities of this Corporation, and shall be responsible for the safekeeping of the securities, unless by resolution of the Board a securities committee, securities custodian, or other agency shall be appointed to have the custody of all or a portion of the securities. The Chief Financial Officer shall have general charge of keeping expenditures and commitments within the limits or authorizations approved by the Board. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, in typed form or in any other form capable of being converted into typed form, adequate and correct books and records of account of the properties and financial transactions of this Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, and losses. The Chief Financial Officer shall: (i) deposit, or cause to be deposited, all moneys and other valuables in the name and to the credit of this Corporation with such depositories as the Board may designate; (ii) disburse the funds of this Corporation as the Board may order; (iii) render to the Chairman of the Board, the President, and the Trustees, on request, an account of all transactions as Chief Financial Officer and of the financial condition of this Corporation; and (iv) have such other powers and perform such further duties as may be required by law, these Bylaws, or as may be prescribed or required from time to time by the Board. If required by the Board, the Chief Financial Officer shall give bond in such amount and with such security as shall be specified from time to time by the Board, conditioned on the faithful performance of the Chief Financial Officer's duties. The Board, or a duly authorized Committee of the Board, shall review and approve the compensation, including benefits, of the Chief Financial Officer to assure that it is fair, just and reasonable to this Corporation. Review and approval shall occur initially upon the hiring of the Chief Financial Officer, whenever the Chief Financial Officer's term of employment, if any, is renewed or extended, and whenever the Chief Financial Officer's compensation is modified. Review and approval shall not be required if a modification of compensation or benefits extends to substantially all employees.

## **ARTICLE X FINANCE**

**Section 1. Custodian of Securities.** The Board may from time to time appoint one or more banks or trust companies doing business in California or elsewhere to act as custodian of any securities for a reasonable compensation, and exercise in respect thereof such powers as may be conferred by resolution of the Board. The Board may remove any securities custodian at any time. The Chief Financial Officer shall be relieved of all responsibility for any securities committed by the Board to the custody of any securities custodian.

**Section 2. Execution of Instruments.** All conveyances, contracts and other instruments shall be signed by the President or such other officers designated by the Board, and be

attested by the Secretary or Assistant Secretary, provided that the Board shall have power to designate and authorize any other officers or agents to execute any instruments as may be provided by resolutions from time to time adopted by the Board.

**Section 3. Banks, Checks, and Wire Transfers.** The moneys of this Corporation shall be deposited in such manner as the Board shall designate, in such banks or trust companies as the Board shall direct, and shall be drawn out only by checks, direct deposits, or wire transfers all of which shall be authorized and approved by such persons and in such manner as may be provided by resolutions from time to time adopted by the Board.

**Section 4. Annual Audited Financial Statements.** Annual financial statements shall be prepared using generally accepted accounting principles and shall be audited by an independent certified public accountant or firm in conformity with generally accepted auditing standards. The Board shall approve the retention and termination of the independent auditor. The annual audited financial statements shall be made available to the California Attorney General and to the public no later than nine (9) months after the end of this Corporation's fiscal year.

## ARTICLE XI RECORDS AND REPORTS

**Section 1. Maintenance of Corporate Records.** This Corporation shall keep at its principal office the original or a copy of the Articles of Incorporation and Bylaws, as amended from time to time. The accounting books, records, and Minutes of proceedings of the Board and any Committee(s) of the Board shall be kept at such place or places designated by the Board, or, in the absence of such designation, at the principal office of this Corporation. The Minutes shall be kept in typed form, and the accounting books and records shall be kept either in typed form, or in any other form capable of being converted into typed form, or in any combination of the two.

**Section 2. Inspection by Trustees.** Every Trustee shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of this Corporation and each of its subsidiary corporations, if any. This inspection by a Trustee may be made in person or by the Trustee's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

**Section 3. Annual Report.** To the extent required by the law or determined by the Board, the Board shall cause an annual report to be prepared after the close of this Corporation's fiscal year, and provided to the Trustees and others who request it in writing. The annual report shall be accompanied by the report of the independent accountants. The annual report may be sent by electronic transmission, if approved by the Board. The annual report shall contain the following information in reasonable detail:

(a) The assets and liabilities, including the trust funds, of this Corporation as of the end of the fiscal year.

(b) The principal changes in assets and liabilities, including trust funds, during the fiscal year.

(c) The revenue or receipts of this Corporation, both unrestricted and restricted to particular purposes, for the fiscal year.

(d) The expenses or disbursements of this Corporation, for both general and restricted purposes, during the fiscal year.

(e) Any information required by Section 6322 of the California Nonprofit Public Benefit Corporation Law.

**Section 4. Annual Statement of Certain Transactions and Indemnifications.** As part of the annual report to the Trustees, or as a separate document if no annual report is issued, this Corporation shall annually prepare and furnish to each Trustee a statement of any transaction or indemnification in which this Corporation was a party, and in which an "interested person" (any Trustee or officer of this Corporation, or its subsidiary, if any) had a direct or indirect material financial interest, as required under Section 6322 of the California Nonprofit Public Benefit Corporation Law. For the purpose of this statement, a mere common directorship is not a material financial interest. This statement may be sent by electronic transmission, if approved by the Board.

## **ARTICLE XII INDEMNIFICATION**

**Section 1. Interpretation.** This Article XII shall be interpreted to grant this Corporation the power to indemnify its agents as defined herein to the maximum extent permitted under the California Corporations Code, as amended from time to time. The following sections of this Article XII are included herein for reference and not by limitation.

**Section 2. Definitions.** For the purpose of this Article XII:

(a) "**agent**" means any person who is or was a Trustee, officer, employee, or other agent of this Corporation, or is, or was serving, at the request of this Corporation as a trustee, director, officer, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, or other enterprise;

(b) "**proceeding**" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and

(c) "**expenses**" includes without limitation all attorneys' fees, costs, and any other expenses incurred in the defense of any claims or proceedings against an agent by reason of the agent's position or relationship as agent, and all attorneys' fees, costs, and other expenses incurred in establishing a right to indemnification under this Article XII.

**Section 3. Indemnification in Actions Brought by Third Parties.** This Corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding (other than an action described in Section 4 of this Article XII) by reason of the fact that such person is or was an agent of this Corporation, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of this Corporation. In the case of a criminal proceeding, such person must also have had

no reasonable cause to believe that the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of this Corporation, or that the person had reasonable cause to believe that the person's conduct was unlawful.

**Section 4. Indemnification in Actions by or in the Right of this Corporation.** This Corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action by or in the right of this Corporation, or brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law, or brought by the Attorney General, or brought by a person granted relator status by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that such person is or was an agent of this Corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action, if such person acted in good faith, in a manner such person believed to be in the best interests of this Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. However, no indemnification shall be made under this Section 4:

- (a) In respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to this Corporation in the performance of such person's duty to this Corporation, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;
- (b) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or
- (c) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval, unless it is settled with the approval of the Attorney General.

**Section 5. Indemnification Against Expenses.** To the extent that an agent of this Corporation has been successful on the merits in the defense of any proceeding referred to in Section 3 or Section 4 of this Article XII, or in the defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection with such defense.

**Section 6. Required Determinations.** Except as provided in Section 5 of this Article XII, any indemnification under this Article XII shall be made by this Corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Section 3 or Section 4 of this Article XII, by:

- (a) A majority vote of a quorum of the Board consisting of Trustees who are not parties to such proceeding; or

(b) The court in which such proceeding is or was pending. The court's determination may be made on application brought by this Corporation, the agent, the attorney, or other person rendering services in connection with the defense, whether or not the application by the agent, attorney, or other person is opposed by this Corporation.

**Section 7. Advance of Expenses.** This Corporation may advance expenses incurred in defending any proceeding to an agent before the final disposition of the matter, if the Corporation receives an undertaking by or on behalf of the agent to repay the advance. The undertaking shall require the agent to repay all expenses advanced unless the court, the Attorney General, or the Board ultimately determines that the agent is entitled to be indemnified in accordance with this Article XII.

**Section 8. Limitations.** No provision made by this Corporation to indemnify its Trustees or officers for the defense of any proceeding, whether contained in the Articles of Incorporation, these Bylaws, a resolution of the Board, an agreement or otherwise shall be valid unless consistent with this Article XII and the California Nonprofit Public Benefit Corporation Law, and the Internal Revenue Code.

**Section 9. Contractual Rights of Persons Other Than Trustees Officers.** Nothing contained in this Article XII shall affect any right to indemnification to which persons other than Trustees and officers of this Corporation, or any subsidiary hereof, may be benefited by contract or otherwise.

**Section 10. Forms of Indemnification Not Permitted.** No advance or indemnification shall be made under this Article XII, except as provided in Section 5 or Section 6(b), in any circumstance in which it appears:

(a) That the indemnification or advance would be inconsistent with a provision of the Articles of Incorporation, these Bylaws, a resolution of the Board, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred, or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That the indemnification or advance would be inconsistent with any condition expressly imposed by a court in approving a settlement.

**Section 11. Insurance.** This Corporation shall have power to purchase and maintain insurance on behalf of any agent of this Corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not this Corporation would have the power to indemnify the agent against such liability under the provisions of this Article XII. However, this Corporation shall have no power to purchase and maintain such insurance to indemnify any agent of this Corporation for a violation of Section 5233 of the California Nonprofit Public Benefit Corporation Law, as amended from time to time. Subject to applicable law (including but not limited to legal restrictions on use of this Corporation's assets), required findings by or on behalf of this Corporation, any applicable federal or state tax laws (including, if this Corporation holds assets upon charitable trusts, its status with respect to such assets), and to the laws referred to in Section 13 of this Article XII, this Corporation shall use reasonable efforts in good faith to obtain and maintain general liability insurance (to the extent generally available on commercially reasonable terms) on behalf of the Trustees and officers,

including but not limited to insurance as contemplated by Section 5047.5 of the California Nonprofit Public Benefit Corporation Law.

**Section 12. Nonapplicability to Fiduciaries of Employee Benefit Plans.** This Article XII does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in such person's fiduciary capacity, even though such person may also be an agent of this Corporation as defined in Section 2 of this Article XII. This Corporation shall have power to indemnify such trustee, investment manager, or other fiduciary, including the power to purchase and maintain insurance on behalf of any fiduciary of such plans, to the extent permitted by Section 207(f) of the California General Corporation law, as amended from time to time.

**Section 13. Federal and State Exculpatory Provisions.** Nothing in this Article XII shall limit or otherwise adversely affect the rights of qualifying agents of this Corporation under the Federal Volunteer Protection Act of 1997, Section 5047.5 of the California Nonprofit Public Benefit Corporation Law, or similar provisions of other laws or public policies limiting such liability, as now in effect or as any thereof may be amended.

**Section 14. Separability.** Each and every paragraph, sentence, term, and provision of this Article XII is separate and distinct so that if any paragraph, sentence, term, or provision shall be held to be invalid or unenforceable for any reason, its invalidity or unenforceability shall not affect the validity or enforceability of any other paragraph, sentence, term, or provision of this Article XII. To the extent required, any paragraph, sentence, term, or provision of this Article XII may be modified by a court of competent jurisdiction to preserve its validity and to provide the claimant with the broadest possible indemnification permitted under applicable law, subject to the limitations set forth in this Article XII and any agreement between this Corporation and the claimant.

### **ARTICLE XIII EMERGENCY PROVISIONS**

**Section 1. General.** The provisions of this Article XIII shall be operative only during a national emergency declared by the President of the United States or the person performing the President's functions, or in the event of an attack on the United States, or during a catastrophe, disaster, or emergency condition making it impossible or impracticable for this Corporation to conduct its business without recourse to the provisions of this Article XIII. The provisions of this Article XIII in that event shall override all other provisions in these Bylaws in conflict with any provisions of this Article XIII, and shall remain operative as long as it remains impossible or impracticable to continue the business of this Corporation otherwise, but thereafter shall be inoperative. All actions taken in good faith pursuant to these provisions, however, shall thereafter remain in full force and effect unless and until revoked by action taken pursuant to the provisions of the Bylaws other than those contained in this Article XIII.

**Section 2. Unavailable Trustees.** All Trustees of this Corporation who are not available to perform their duties as Trustees, or whose whereabouts are unknown, shall automatically cease to be Trustees, with the same effect as if they had resigned as Trustees, for as long as their unavailability continues.

**Section 3. Authorized Number of Trustees.** The authorized number of Trustees shall be the number of Trustees remaining after eliminating those who have ceased to be Trustees pursuant to Section 2 of this Article XIII.

**Section 4. Quorum.** The majority of the authorized number of Trustees described in Section 3 of this Article XIII shall constitute a quorum of the Board for transaction of business during the emergency.

**Section 5. Trustees Becoming Available.** Any person who has ceased to be a Trustee pursuant to the provisions of Section 2 of this Article XIII and who thereafter becomes available to serve as a Trustee shall automatically resume performing the duties and exercising the powers of a Trustee, unless the term of office of that person has expired in accordance with its original terms.

**Section 6. Alternate Officers or Agents.** The Board, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during the emergency any or all officers or agents of this Corporation shall for any reason be unavailable or rendered incapable of discharging their duties. The Board, either before or during any such emergency, may, effective in the emergency, change the principal office of this Corporation, or designate several alternative offices, or authorize the officers so to do.

#### **ARTICLE XIV CONSTRUCTION AND DEFINITIONS**

Unless the context requires otherwise, the general provisions, rules of construction, and definitions contained in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, the singular includes the plural, the plural includes the singular, and the term "person" includes both a legal entity and a natural person.

#### **ARTICLE XV AMENDMENTS BY BOARD**

New Bylaws may be adopted, or these Bylaws may be amended, restated, or repealed by the affirmative vote of three-quarters of the Trustees then in office.

**CERTIFICATE OF SECRETARY**

**THE MONTEREY BAY AQUARIUM FOUNDATION**

a California Nonprofit Public Benefit Corporation

I certify that, I am the presently elected and acting Secretary of this Corporation and that the foregoing Bylaws consisting of nineteen (19) pages, are the Amended and Restated Bylaws of this Corporation as duly adopted at the meeting of the Board of Trustees held on November 30, 2007.

Dated: November 30, 2007

/s/ BARBARA P. WRIGHT  
BARBARA P. WRIGHT, Secretary