

CALIFORNIA COASTAL COMMISSION

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June 13, 2007

Gualala Festivals Committee
Attn: Marshall Sayegh
P.O. Box 1415
Gualala, CA 95445

RE: Proposed Gualala Fireworks Display Scheduled for July 6, 2007

Dear Mr. Sayegh and Members of the Gualala Festivals Committee,

It has come to the attention of Coastal Commission staff that the Gualala Festivals Committee (GFC) is planning a fireworks display scheduled to take place on July 6, 2007 at 9:15 p.m. We understand that the proposed fireworks would be launched from within, or partially within, the public access easement held by the Redwood Coast Land Conservancy (RCLC) and would detonate over the Gualala River estuary.

Commission staff believes that (1) launching fireworks from within the public access easement is inconsistent with the terms and conditions of the easement, (2) the proposed fireworks display above the Gualala River estuary is a form of "development" as defined by Coastal Act Section 30106 and requires a coastal development permit, and (3) the proposed fireworks display does not qualify as a temporary event exempt from permit requirements because of its potential for adverse impacts to coastal resources.

The public access easement located along the bluff above the Gualala River was established pursuant to two coastal development permit actions (CDP). CDP No. NCR-77-C-115, granted to John and Ida Bower for a land division in 1977, provided for a 25-foot-wide lateral bluff top access easement and a five-foot-wide vertical access easement from Highway One to the mean high tide water line of the Gualala River. CDP No. NCR-80-P-75 was granted to Redwood Empire Title Company on January 14, 1981 for the construction of the Surf Supermarket. Special Condition No. 1 of CDP No. 80-P-75 required a 25-foot-wide easement "*for public access and passive recreational use*" which was recorded as an offer to dedicate an easement expressly for "*pedestrian access and use*" over the site (Book 1300 Page 579, Mendocino County). In 1994, RCLC accepted both offers to dedicate and obtained two coastal development permits from Mendocino County to construct the Gualala Bluff Trail to provide public access along the bluff. The proposed launching of fireworks from within the easement would temporarily disrupt public access to and along the trail prior to and during the fireworks display by closing a portion of the Gualala Bluff Trail to the public. Therefore, the proposed launching of fireworks from within the easement would be inconsistent with the terms and conditions of the

prior CDPs granted by the Commission and the County that strictly reserve use of the easement for public access purposes.

Furthermore, the proposed fireworks display, which involves detonating fireworks above the Gualala River estuary and temporarily restricting public access, is a form of "development" as defined by Section 30106 of the Coastal Act which states in applicable part:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land,... [emphasis added]

Fireworks debris falling within the Gualala River estuary constitutes discharge of gaseous and solid waste in coastal waters in an area of the Commission's retained permit jurisdiction. Additionally, the temporary closure of the Gualala Bluff Trail to public access constitutes a change in the intensity of use of land in an area of Mendocino County's coastal permit jurisdiction. Pursuant to Coastal Act Section 30600, any person wishing to perform or undertake development in the coastal zone is required to obtain a coastal development permit, in addition to any other permit required by law, authorizing such development before such development takes place. Therefore, even if launching fireworks from within the public access easement were consistent with the terms and conditions of the easement discussed above, a coastal development permit from both the Coastal Commission and Mendocino County would need to be obtained prior to undertaking the development. Commission staff has not received an application for a coastal development permit to conduct the fireworks display scheduled for July 6, 2007.

Commission staff further notes that the Commission's adopted "Guidelines for the Exclusion of Temporary Events from Coastal Commission Coastal Development Permit Review" set forth criteria for excluding certain temporary events located within the Commission's retained jurisdiction from coastal development permit (CDP) requirements pursuant to Coastal Act Section 30610(i). According to the guidelines, the Executive Director, or the Commission through direction to the Executive Director, may determine that a temporary event shall be subject to Commission CDP review if the Executive Director determines that unique circumstances exist relative to a particular temporary event that has the potential for significant adverse impacts on coastal resources including, but not limited to, impacts to environmentally sensitive habitat areas and/or rare or endangered species.

The site of the proposed fireworks display is located approximately one mile from Gualala Point Island which provides nesting and roosting habitat for a variety of seabirds. We understand that a similar fireworks display conducted in 2006 over the Gualala River estuary without benefit of a coastal development permit resulted in documented disturbance of seabird roosts and rookeries, including observed nest abandonment by several bird species. The Gualala River estuary also provides harbor seal haul-out sites as well as habitat for other marine mammals. Therefore, because the proposed fireworks display would be located in close proximity to known environmentally sensitive habitat areas (ESHA) and has the potential for significant adverse

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impacts to ESHA, the Executive Director has determined that the proposed temporary event is not excluded from CDP requirements.

Please be advised that as Commission staff has not received a CDP application as of the date of this letter, it is not possible for the Commission to grant a CDP prior to the proposed July 6, 2007 event date. We hope that this letter serves as guidance for appropriate planning of future events proposed by the Gualala Festivals Committee.

We understand that other resource agencies including the Department of Fish and Game, U.S. Fish and Wildlife Service, NOAA Fisheries, and Bureau of Land Management are also reviewing the proposed fireworks display for conformance with the requirements of these agencies. We encourage you to contact these agencies and the Mendocino County Planning Department regarding your proposed event to ensure that you obtain all necessary authorizations in the future.

Please contact Tiffany S. Tauber of my staff at (707) 445-7833 with questions regarding the CDP application process.

Sincerely,

ROBERT S. MERRILL
North Coast District Manager

cc: Rick Miller, Mendocino County Planning Department
Nancy Cave, Coastal Commission Enforcement Supervisor
Vicki Frey, Department of Fish and Game
Mike Pool, Bureau of Land Management
Rick Hanks, Bureau of Land Management
Gerry McChesney, US Fish and Wildlife Service
Monica DeAngelis, NOAA Fisheries
John Bower, Bower Limited Partnership
Mary Sue Ittner, Redwood Coast Land Conservancy
George Anderson, Redwood Coast Land Conservancy
Peter Baye, Friends of the Gualala River