

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
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W 13

ADDENDUM

June 10, 2008

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: ADDENDUM TO **ITEM 13** - CEASE AND DESIST ORDER CCC-08-CD-07
(GUALALA FESTIVALS COMMITTEE)
FOR THE COMMISSION MEETING OF **June 11, 2008**

Documents Received:

Documents included in this addendum are the following letters in support of the cease and desist order:

1. Margery Anthony
2. Kristine Thomure
3. James D. Edwards
4. Richard & Jeanne Jackson
5. Ken Holmes
6. Peter & Teresa Youtz
7. Cheryl Thate Faconti
8. David Scholz
9. Francis Drouillard & Nanette Brichetto
10. Larry Jacobs
11. Jo Ann Harris
12. Mary Sue Ittner & Bob Rutemoeller
13. Linda Keir
14. Dorothy Ruef
15. Bill Perry
16. Dean Schuler

17. Julie A. Verran
18. Merry & Carter Lake
19. James Stockton
20. Julie Thayer - PRBO Conservation Science
21. Gail Hamilton
22. Cyndy Solomon
23. Daniel Taylor - Audubon California
24. Diane Hichwa - Madrone Audubon Society
25. Ursula Jones
26. Norma Jellison
27. Marge Anthony
28. Warren F. Wade - Mendocino Coast Audubon Society
29. G. Mendel Stewart - San Francisco Bay National Wildlife Refuge Complex/Fish & Wildlife Service
30. Susan Sandoval
31. Mirka Knaster
32. Richard Kuehn
33. Linda Bostwick & Mel Smith
34. John Ugoretz - CA Dept. of Fish & Game

In addition, this addendum includes a copy of a letter from Paul J. Beard of Pacific Legal Foundation, counsel for Gualala Festivals Committee to Nancy Cave, dated June 10, 2008. Attached to this letter are 11 letters in support and 2 letters from the Gualala Festivals Committee stating that the GFC will not block any trail easements during the day and that the GFC will clean up debris after the show.

Changes to staff report for CCC-08-CD-07:

Commission staff recommends revisions to the Cease and Desist Order. Language to be added is shown in *italic and underlined*, as shown below:

Page 22, new subsections to First Respondent's Defense section, should read as follows after paragraph starting "The Gualala River is within the Commission's retained permit jurisdiction (See Mendocino County Post Certification map for LCP – Exhibit 11)..."

2. *The Proposed Fireworks Display involves the Placement of Solid Material*

The launch requires the placement of solid materials on the ground so that aerial shells can be released. The shells are launched from mortars using black powder charges. The lift charge and shell are placed at the bottom of a mortar that has either been buried in the ground or affixed to a wooden rack. Therefore,

the proposed fireworks display meets the definition of development as it involves the placement of solid material on land.

3. The Proposed Fireworks Display Causes a Change in Intensity of Use of Land

The subject property is currently used as a vertical pathway to the Gualala Bluff Trail and as a parking lot for guests of the Surf Motel. The proposed display will require current use to discontinue before, during and after the event. The public may not be allowed precluded from use of the vertical pathway during any step up time and it is also possible that guests may be limited from ingress and egress from the Motel. The display will physically displace other existing uses with an entirely different sort and intensity of use. Therefore, the proposed fireworks display meets the definition of development as it causes a change in intensity of use of land.

4. The Proposed Fireworks Display causes a change in intensity of use of water or access thereto

The placement of the proposed fireworks display may result in the displacement of the public wishing to use the vertical pathway to the Gualala Bluff Trail. Use of the trail may be prohibited before and during the display. The vertical pathway provides public access to the Gualala River. Thus, the proposed display meets the definition of development because it causes a change in the intensity of use of water or access thereto.

Page 29, subsection 2.0, Identification of Subject Properties should read as follows:

One specific property where this Order applies is 39170 South Highway One, Gualala, Mendocino County, APN 145-261-12 (hereinafter "subject property"). However, this Order is not limited to that property. This Order applies to anywhere in the Coastal Zone where Respondent may seek to undertake unpermitted development of the sort described in the following section,

Page 29, subsection 3.0, Description of Threatened Unpermitted Development Activity should read as follows:

The threatened unpermitted development activity consists of the staging of a fireworks display and the launch and/or detonation of fireworks shells and other pyrotechnic devices in a manner that has the potential for significant adverse impacts to coastal resources pursuant to the Commission's Temporary Events Guidelines without the benefit of a coastal development permit from Mendocino County or from the Commission for the activity. The fireworks are currently proposed to be launched and/or detonated over the Gualala River and the Gualala River estuary.

Page 31, subsection 12.0(B) should read as follows:

B. Cease and desist from undertaking or threatening to undertake the staging of a fireworks display and the launch and/or detonation of fireworks shells and other pyrotechnic devices in the Coastal Zone *in a manner that has the potential for significant adverse impacts on coastal resources, pursuant to the Commission's Temporary Events Guidelines* without first securing Coastal Act authorization.

Page One, Substantive File Documents, No. 3 should read as follows:

3. Exhibits 1 through 14 of this staff report

Page Six, Footnote No. 2 should read as follows:

These findings also hereby incorporate by reference Section 1 of the May 30, 2008 staff report ("Staff Recommendation and Findings for Cease and Desist Order") in which these findings appear, which section is entitled "Summary of Staff Recommendation and Findings."

June 1, 2008

In Support of Item #13 of June 11 Agenda

California Coastal Commission
Attn: Peter Douglas, Executive Director
45 Fremont St., Suite 2000
San Francisco, CA 94105

Dear Commissioners:

I much appreciate your taking action in response to our report that Gualala fireworks at that time and place were detrimental to nesting seabirds in their last stand on nearby National Monument rocks.

Fireworks are also a threat to the unique fresh water lagoon formed by the Gualala River so -called "estuary".

Dr. Peter Baye's studies of latter prove that - unlike almost all of California's other estuaries - that of the Gualala River is for much of the year a closed, freshwater ecosystem, a LAGOON.

It is NOT flushed by salt water of the nearby ocean, except during the few months of the rainy season, usually starting in Oct. or so.

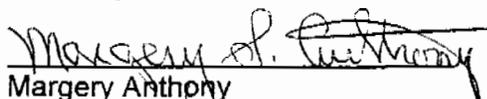
Any debris from fireworks therefore remains in the lagoon until then.

For decades, fireworks on the Fourth have been readily visible at nearby Pt. Arena's working harbor, ecologically a very different environment.

We hope you will be able to halt this July's planned fireworks on Gualala's river bluff, thus helping us protect our rich diversity of wildlife.

Many thanks for your attention and consideration.

Sincerely,


Margery Anthony
POB 1469
Gualala, CA 95445.

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JUN 03 2008

CA COASTAL COMMISSION
LEGAL DIVISION

"In support of Item 13 of the June 11th agenda."

June 1, 2008

California Coastal Commission
Attn: Peter Douglas, Executive Director
45 Fremont St., Suite 2000
San Francisco, CA 94105

Thank you for taking action on this very important issue. I am especially concerned about the effects of the night time explosions on the nesting seabirds on Gualala Point Island.

We can already see fireworks; shot off over a working harbor in Point Arena a few miles to the north. As a business owner in Gualala, I appreciate the Gualala Festivals Committee (GFC) efforts to bring business to our community. However, I don't want this to occur at the expense of our sea birds.

I live 5 miles northwest of Gualala at an elevation of 1100 feet. I could not only see the Gualala fireworks the last 2 years, but they were so loud my pets ran for cover. How could this not disturb the seabird nesting so close to the explosions?

Thank you for hearing this issue and being willing to take action, even if it is sure to be perceived as unpopular.

Thank you for helping us protect our wildlife.

Sincerely,



Kristine Thomure
P.O. Box 309
35830 Tan Bark Road
Gualala CA 95445

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CA COASTAL COMMISSION
LEGAL DIVISION

IN SUPPORT OF ITEM #13 OF THE JUNE 11TH AGENDA

June 1, 2008

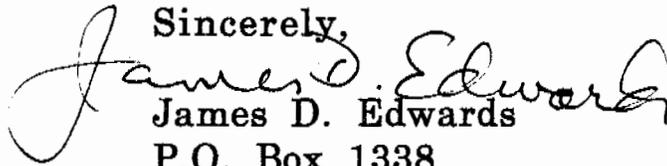
California Coastal Commission
Attn.: Peter Douglas, Executive Director
45 Fremont St., Suite 2000I
San Francisco, CA 94105

Thanks to the Coastal Commission for "stepping up to the plate" and taking action to prevent the Gualala Festival Committee (GFC) from releasing fireworks over the Gualala River estuary on July 4th. Such a fireworks display is an inappropriate activity at this time and place. I know that the Commission is under great pressure from various political groups to allow this display. Please resist such pressure!

I am a resident of the "Mendonoma Coast" and I strongly oppose this activity. Potential damage to the Gualala River Estuary and to nesting birds in the area is real. I attend the fireworks display at the Point Arena pier and appreciate that it is an environmentally acceptable alternative to the GFC's plans for Gualala.

I deeply resent the implication of the GFC and their supporters that opposition to their plans is unpatriotic and destructive of so called "property rights." Your proposed Cease and Desist order is a proper application of a balanced approach to this problem. I believe that your proposed order is clearly within the purview of the CCC. I thank you for your efforts and assure you that you have very many supporters behind you.

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JUN 03 2008

Sincerely,

James D. Edwards
P.O. Box 1338
Gualala, CA 95445

CA COASTAL COMMISSION
LEGAL DIVISION

Richard and Jeanne Jackson
Post Office Box 1029
Gualala, Ca 95445
Phone 707 884-1760

In support of Item 13
Of the June 11th agenda

California Coastal Commission
Attn.: Peter Douglas, Executive Director
45 Fremont St., Suite 2000
San Francisco, CA 94105

Dear Mr. Douglas,

We are writing to express our complete support for the cease and desist action, which would prohibit the Gualala Festivals Committee from setting off a fireworks display without applying for a CDP.

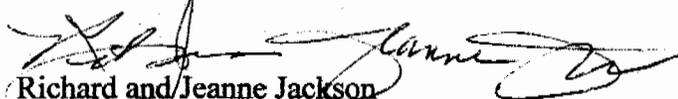
The first-ever fireworks in Gualala were set off in 2006 and caused much harm to our wildlife, particularly the nesting seabirds on Gualala Point Island. Despite the pleas of local citizens, including ourselves, the Gualala Festivals Committee arrogantly set them off again last year.

The Gualala Festivals Committee is NOT Gualala. It is a group of local landowners and businessmen. Our attempts to negotiate a 4th of July celebration that wouldn't cause harm to our wildlife were spurned.

We brought our concerns to various government agencies. Initially it looked like they would help but, in the end, none were willing to stop the fireworks display.

We understand that it is an unpopular stance to stop a fireworks display. It takes courage. We thank the CCC for its courage. We thank you for listening to the concerned residents of Gualala and our neighbors to the north and south. And we thank you for helping us protect our wildlife.

With deep appreciation,


Richard and Jeanne Jackson

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CA COASTAL COMMISSION
LEGAL DIVISION

In support of Item 13 of
the June 11th agenda

California Coastal Commission
Attn: Peter Douglas, Executive Director
45 Fremont St., Suite 2000
San Francisco, Calif. 94105

Dear Sir:

I write to thank you for your service to the state that has protected so much of the flora and fauna native to the coast of California. And also I urge you to approve a Cease and Desist order directing the Gualala Festivals Committee to delay their plan for fireworks displays over the pristine estuary at the mouth of the Gualala River. As a citizen of this region of the coast, lucky to be living at The Sea Ranch on the northern Sonoma County coast, I have over the years become increasingly aware of the importance of all animal and plant life to the health of the total environment. I don't oppose fireworks in general but believe that the evidence gathered by credible friends, neighbors, and government experts shows that this display, at this particular place and time of year is inappropriate and even harmful to portions of the marine birdlife along our coast. Our beautiful Gualala Point Regional Park, of which the estuary is a part, is a treasured natural habitat for all kinds of birds and mammals. It happens to be adjacent to the community of Gualala where a small group of entrepreneurs of the community has taken it upon themselves to organize and finance this fireworks display even in the face of objections by other members of the business community. There are also large numbers of the general populace in both Mendocino and Sonoma Counties who prefer to leave the natural environment undisturbed by the loud explosions, flashes of light and unknown chemical debris that may drift into the estuary. Your demand for a Coastal Development plan is justified in my opinion for this "new" (two years old) significant activity that affects two counties and unknown numbers of species of birds, animals and plants.

Sincerely,



Ken Holmes
P.O. Box 925
Gualala, Calif. 95445

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CA COASTAL COMMISSION
LEGAL DIVISION

In support of Agenda Item #13

To:
California Coastal Commission
Attn: Peter Douglas, Executive Director
45 Fremont St., Suite 2000
San Francisco, CA 94105

From:
Peter and Teresa Youtz
36700 Mariners Drive
PO Box 322
The Sea Ranch, California, 95497

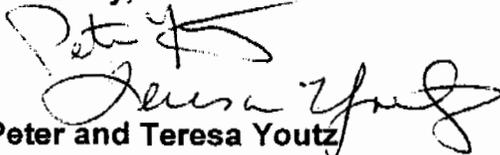
Dear Coastal Commission,

Thank you very much for considering a Cease and Desist Order in the case of Gualala Festival Committee's intention to once again hold fireworks over the Gualala River Estuary. I have followed the developments of this issue over the past two years that their fireworks have been held, and it seems clear that there is demonstrable damage to the environment caused by this event. Especially damaging is the effect on nearby nesting seabirds, as shown by the study done by the Audubon Society last year. The health of the Gualala River Estuary is also threatened by this event.

We are not opposed to fireworks in general, nor to any patriotic demonstrations, but if the Audubon Society has clear evidence that birds are harmed by such displays, they should be stopped. There is already a truly "traditional" fireworks event that takes place up the Coast over a working Harbor. There is no real community need for the GFC event, and only limited community support for it. The Gualala Festivals Committee is simply a group of individual business owners who can afford to hire lawyers. This organization does not have any official connection with the people of Gualala.

We appreciate the existence of the CCC and we value all efforts to keep our beautiful coastal environment safe for wildlife as well as humans, and to insure that future generations can enjoy the California Coast for many years to come. Again, we thank you for your commitment to Coastal environmental health for the good of all.

Sincerely,


Peter and Teresa Youtz

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CA COASTAL COMMISSION
LEGAL DIVISION

In Support of Item 13 of the June 11th agenda

Cheryl Thate Faconti
P. O. Box 1483
Gualala, CA 95445

June 1, 2008

Dear California Coastal Commission Members,

Thank you for issuing the cease and desist order directing the Gualala Festivals Committee from undertaking a fireworks display this 4th of July, without a coastal development permit.

As a full time resident of The Sea Ranch and a person who cares about wildlife, I feel it is important to address this concern. The fireworks are over the Gualala estuary and the nighttime explosions disturb nesting seabirds on nearby Gualala Point Island and are inappropriate in this locale.

There are fireworks, shot off over a working harbor, in nearby Point Arena. The fireworks in Gualala are anything but "traditional", as they have only been done for the past two years. The fireworks in Point Arena are the "tradition" in our area.

Thank you for your willingness to take action, even if it is perceived as unpopular.
Thank you for helping us protect our wildlife.

Thank you for caring.

Cheryl Thate Faconti

Cheryl Thate Faconti

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CA COASTAL COMMISSION
LEGAL DIVISION

June 2, 2008

Mr. Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Mr. Douglas,

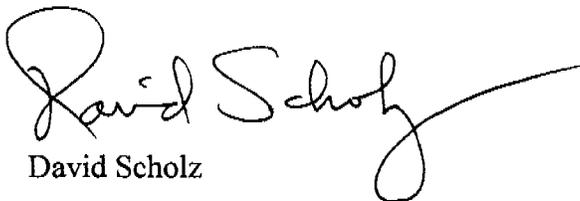
Item 13 of the Coastal Commission's June 11th meeting is due to a few local business owners using the cover of patriotism to flout the will of many of their neighbors and customers who feel that their proposed fireworks event is simply a matter of "wrong place, wrong time."

The small, growing coastal town of Gualala has as it's front yard the beautiful and fragile Gualala River Estuary. The Estuary is a vital incubator for the River's threatened (locally endangered) salmon fishery. It provides a place of shelter and food source for other coastal wildlife such as River Otters, Osprey, seals and various sea birds, some of which nest among the neighboring off-shore California Coastal Monument rock formations. And, as you know, last year's fireworks resulted in the abandonment of some of these nests.

I am writing to you with the hope that the Commission, as guardian of California's fragile and threatened natural coastline, will take the appropriate steps to put an end to this inappropriate, damaging and divisive activity.

Thank you, Mr. Douglas, for your attention to this matter and for all that you do to preserve California's magnificent coast.

Very truly yours,



David Scholz

36835 Greencroft Close
The Sea Ranch

Mail address: 1548 Klamath Drive
Sunnyvale, CA 94087

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LEGAL DIVISION

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In Support of Item 13

June 11th Agenda

Commission Cease and Desist Order

No. CCC-08-CD-07

June 2, 2008

CA COASTAL COMMISSION
LEGAL DIVISION

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Francis Drouillard
and Nanette Brichetto
2021 Shady Lane
Novato, CA 94945

Re: Gualala Fireworks

Dear Mr. Douglas,

The Gualala fireworks displays during Independence Day celebrations have been shown to cause protected sea birds on Gualala Point Island to abandon their nests, which results in predation of the abandoned eggs and chicks. Thus, the impact of Gualala's Independence Day fireworks should be construed as an illegal "take."

All attempts to work with the private Gualala Festivals Committee to develop less environmentally harmful alternatives have been met with scorn, hostility and legal confrontations. There are several good alternatives to Independence Day fireworks in Gualala that are available, namely:

- 1) Have the displays outside the nesting season on Gualala Point Island, perhaps over the Labor Day weekend, or
- 2) Have an Independence Day laser light show over the estuary/lagoon, or
- 3) Coordinate events with Point Arena, the traditional location for Independence Day fireworks along the so-called Mendonoma coast.

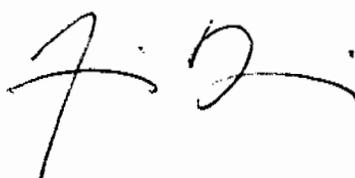
The last alternative is likely the best since it is the traditional approach and it accommodates the broadest spectrum of our coastal community. Those that want a reprieve from the hustle and bustle of the Bay Area can enjoy peace and quiet in Gualala. Those that enjoy Independence Day fireworks can go to the Point Arena where displays in the working harbor at Arena Cove do not harm natural resources.

Since other responsible federal and state agencies have failed to address the illegal takes on Gualala Point Island, we applaud the Coastal Commission's efforts to protect our natural resources within the California Coastal National Monument. Furthermore, we fully support staff's recommendation to issue a cease and desist order as well as their reasons for making that recommendation.

Again, we want to thank the Commission and its staff for addressing this issue, and encourage the Commission to approve Cease and Desist Order No. CCC-08-CD-07. We also believe it would be helpful if the Commission requested a presence by California Fish and Game wardens during Gualala's Independence Day activities.

Thank you so much for hearing us out.

Sincerely,

 for Francis Drouillard
and Nanette Brichetto

Larry Jacobs

2059 Mastlands Drive
Oakland, CA. 94611-2755
tel. 510-531-1228, fax 510-531-6558
larryjacobs@pacbell.net

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JUN 04 2008

CA COASTAL COMMISSION
LEGAL DIVISION

June 3, 2008

California Coastal Commission
Attn: Peter Douglas, Executive Director
45 Fremont St., Suite 2000
San Francisco, CA 94105

Dear Mr. Douglas;

I am writing you to urge your support for item #13 on the June 11th agenda, i.e. denying a fireworks permit to the Gualala Festivals Committee. I base this position on several grounds;

1) The estuary of the Gualala River is an unspoiled area and it could be overrun by spectators and cars. Past 'festivals' have been know to have excessive drinking of alcoholic beverages and the related unconstrained behavior usually associated with public drunkenness.

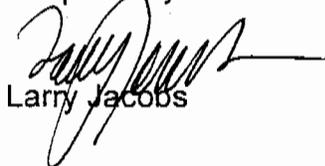
2) The long series of light bursts and sonic explosions near Gualala Point Island will have a deleterious effect on the fauna. There are over a dozen species of birds which nest on or near that point and they can't just take a night off for the Festival.

3) It is an entirely inappropriate location for a fireworks show. This has been a dry winter and the grasses are already tinder in June.

In sum, since we can see the fireworks show at Point Arena, it seems that this Gualala 'show' is unnecessary as anything but a dollars oriented tourist draw. In all good conscience, I urge you to deny the permit.

Thank you for your consideration of this matter.

Respectfully Submitted;



Larry Jacobs

N SUPPORT OF ITEM 13 JUNE 11, 2008. AGENDA

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CALIFORNIA COASTAL COMMISSION

CA COASTAL COMMISSION
LEGAL DIVISION

ATTN...PETER DOUGLAS, EX. DIRECTOR
45 FREMENT ST SUITE 2000
SAN FRANCISCO, CA 94105

RE: CEASE AND DESIST ORDER GUALALA FESTIVALS COMMITTEE...FIREWORKS DISPLAY
WITHOUT COASTAL DEVELOPMENT PERMIT

GENTLEPEOPLE:

IT IS APPRECIATED THAT YOU ARE WILLING TO PROTECT THE RIGHTS OF LOCAL PEOPLE.

I'VE LIVED AND WORKED IN GUALALA FOR OVER 35 YEARS. TRADITIONALLY ENJOYING
THE FIRWORKS HELD IN WORKING HARBOR AT PT ARENA, CA. , 15 MILES NORTH OF
GUALALA, CA. THEIR WEEKEND OF PARADE, ACTIVITIES HAVE BEEN GOING ON FOR
OVER 40-50 YEARS AND I'VE PARTICIPATED IN MANY OF THEIR ACTIVITIES.

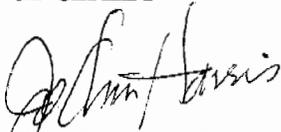
I'VE WORKED IN REAL ESTATE SALES/ AND MANAGEMENT AND HAVE NOTED THAT THE
HOMES RENTED DURING ANY HOLIDAY PERIOD, FOR PAST 40 YEARS, HAS BEEN FULL
OCCUPANCY. PEOPLE CAME TO THIS COAST AREA FOR HIKING, WALKING, BIRD
WATCHING, WHALE WATCHING, ARTS ACTIVITIES AND STARGAZING. NEVER, NEVER
HAVE THEY COME FOR FIREWORKS OVER PRIME GUALALA RIVER ESTUARY.

NOICE POLLUTION OVER UNSPOILED ESTUARY OF GUALALA RIVER PLUS ASH, PLUS
RESIDUE OF FIREWORKS DISPLAY IS TOTALLY UNNECESSARY.

FIREWORKS IN THIS LOCALE ARE TOTALLY INAPPROPRIATE.

THANK YOU FOR HELPING PROTECT THE PRECIOUS TRAIL ALONG THE BLUFF OF
GUALALA AS WELL AS PROTECTING THE WILDLIFE IN THIS AREA.

SINCERELY



JO ANN HARRIS
P O BOX 403
GUALALA, CA, 95445
(707) 884-3308

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JUN 04 2008

June 2, 2008

CA COASTAL COMMISSION
LEGAL DIVISION

Re: CCC-08-CD-07
Item 13- June 11 CCC meeting
Support Staff Position

California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105
Attn: Peter Douglas, Executive Director

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JUN 04 2008

CALIFORNIA
COASTAL COMMISSION

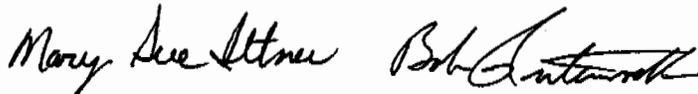
Dear Mr. Douglas and Commissioners:

We appreciate that the California Coastal Commission has been willing to consider the effects to coastal resources of shooting fireworks off in downtown Gualala in July. We have lived in Gualala since 1989 and during our time in this community have been impressed with how our community works together for the good of all. The decision of the Gualala Festivals Committee (GFC), a group who for a very long time chose to keep the names of the members a secret, to have a fireworks display has been the most divisive issue in our community that we can remember. Many people felt that a fireworks display was not in keeping with the reason why people visit this area: for peace and solitude and to enjoy the natural beauty of the area. Others felt that it was not neighborly to mount a new fireworks display since traditionally Point Arena, a short drive north, had a popular street fair and fireworks display that they solicited funds for each year.

The GFC has not been willing to accept input from any of the opponents. After they set off fireworks the first time, there were new questions about the impact on nesting birds. The very thorough seabird and marine mammal monitoring study supervised by BLM and Fish and Wildlife in 2007 validated that birds were indeed stressed by the fireworks and there was abandonment of nests as a result. There are additional concerns about the residue of the fireworks in the Gualala River, a fresh water lagoon for most of the year, an unusual coastal resource that needs to be protected. We oppose the fireworks for all these reasons.

In addition as regular users and supporters of the Gualala Bluff Trail we thought it unfortunate for the trail to be shut down at a time when there were many visitors to downtown Gualala who could enjoy the wonderful views available from it. We were very pleased last year when the Commission staff asked the GFC to apply for a CDP hoping that a compromise could be found that would prevent harm to wildlife and the Gualala River, keep the Gualala Bluff Trail open, and bring our community together once again. Instead the GFC decided to defy the Commission and shoot off fireworks without a permit and even though they were advised to apply for a permit for fireworks for future events, have not done so. We strongly support the staff report and hope the Commission will direct the Gualala Festivals Committee to cease and desist from undertaking a fireworks display over the Gualala River lagoon without the required coastal development permit.

Sincerely,



Mary Sue Ittner and Bob Rutemoeller
P.O. Box 587
Gualala, CA 95445

LINDA KEIR
P.O. Box 1505
Gualala, CA 95445

June 2, 2008

California Coastal Commission
ATTN: Peter Douglas, Executive Director

Dear CCC

This letter is to thank you for extending the Commission's protection to the California Coastal National Monument islands near Gualala. Though small, these offshore islets provide the only safe areas for seabird nesting, resting, breeding and feeding along our coast.

Humans have many alternatives for fireworks displays, but the birds do not have alternative habitats. Thank you for your courageous enforcement.
Linda Keir

This letter is in support of Item 13 on your June 11 agenda.

RECEIVED
JUN 05 2008

June 4, 2008

CA COASTAL COMMISSION
LEGAL DIVISION

California Coastal Commission
Peter Douglas, Executive Director
45 Fremont Street, Suite 2000
San Francisco CA 94105

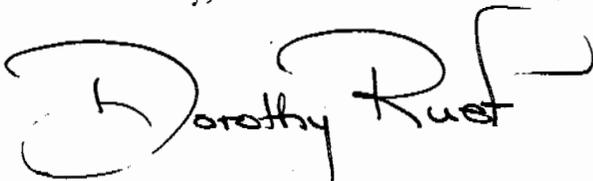
Dear Peter Douglas;

I have lived in Gualala for 36 years and enjoyed countless displays of fireworks from the Point Arena pier. I have also enjoyed equal hours quietly birdwatching in the Gualala River estuary and along its adjacent shores. Local residents are fortunate to have these activities available in two diverse, yet nearby, locales.

Let us not confuse one locale for the other, however. One cannot mix fireworks with bird habitat and expect the avian population to keep bouncing back.

I support your opposition of the Gualala Festival Committee's bid to bring fireworks to the Gualala River mouth, and applaud your courage in doing so. I speak for many local residents (not to mention the birds!) when I thank you for your restraint and wisdom.

Sincerely,

A handwritten signature in black ink that reads "Dorothy Ruef". The signature is written in a cursive style with a large, looping initial "D" and a stylized "Ruef".

Dorothy Ruef
32830 Highway One
Gualala CA 95445

This letter is in support of item 13 on the June 11 agenda.

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JUN 05 2008

June 6, 2008

CA COASTAL COMMISSION
LEGAL DIVISION

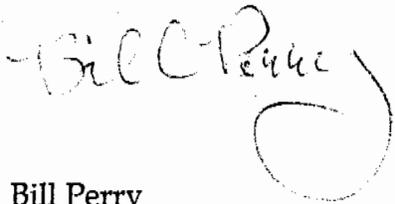
California Coastal Commission
Peter Douglas, Executive Director
45 Fremont Street, Suite 2000
San Francisco CA 94105

Sir;

Although the criticism of the recently begun fireworks in Gualala focuses on offshore rocks and islands, the Gualala Estuary, in early July, also teems with breeding and nesting wildlife of many species. The concussion and flash of fireworks terrorizes these animals as well. The Festival Committee recommends leaving pets at home, but the animals in the estuary are at home and can't escape. The shock of the fireworks in the present location is spectacular only in its ignorance.

Please do what is necessary to return the estuary to its former tranquility-and thank you for your time in hearing and considering this issue.

Sincerely,



Bill Perry
32951 Highway One
Gualala CA 95445

Dean Schuler
P.O. Box 1711
Gualala, CA 95445-1711
707-785-3415
Windnc2@hughes.net

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JUN 05 2008

CA COASTAL COMMISSION
LEGAL DIVISION

In support of Item 13 of the June 11th agenda.

June 4, 2008

California Coastal Commission
Attn: Peter Douglas, Executive Director
45 Fremont St., Suite 2000
San Francisco, CA 94105

Dear Mr. Douglas and Coastal Commissioners:

I apologize that I am not able to personally attend the meeting on June 11 in Santa Rosa to express my concerns about the proposed July 4th fireworks display presented by the Gualala Festivals Committee (GFC).

First of all, I would like to thank you for taking a stand to help the voiceless seabirds that have been directly affected by the previous 2 fireworks displays. I happen to live with a direct view of Gualala Point Island and have enjoyed for nearly 20 years the variety of seabirds and other wildlife that use it as a sanctuary to nest and roost. I moved to The Sea Ranch/Gualala area because I enjoy the peace and quiet plus the natural beauty of the surrounding area. Pt. Arena, a mere 15 miles away, has a wonderful venue for displaying fireworks that does not affect nesting seabirds as it is a working harbor with no seabird colonies in the cove and the wildlife is used to human interaction. Gualala's estuary and the nearby nesting birds are used to being undisturbed and the sudden booms and flashes of fireworks causes all sorts of havoc.

GFC's reported increase in business in Gualala due to the fireworks is unfounded and, to date, has not been substantiated by GFC. Several store owners have reported a loss in business the past 2 years. As most GFC members are large property owners within Gualala, several proprietors fear their rental agreements will be affected if they speak out against the fireworks. People come to this part of the coast for its natural beauty and wildlife, not for a 20 minute display of noise and flash. There are many other ways to display patriotism which would not cause abandonment by nesting seabirds.

Again, thank you for taking a stand in support of our wildlife; I hope you will act in concert with the California Department of Fish and Game and BLM/USFWS. Please issue the Cease and Desist Order to prevent this year's fireworks display and be prepared to follow-up with enforcement as the members of the GFC don't appear to pay attention to threats and feel as if they are above the law.

Sincerely



Dean Schuler

1 of 7

June 5, 2008

W 13, June 11, 2008

Commission Cease and Desist Order No. CCC-08-CD-07
Gualala Festivals Committee, Gualala, Mendocino County
SUPPORT STAFF

Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

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JUN 06 2008

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Douglas,

Many thanks to you and your staff for your work on this complex issue. It goes beyond fireworks. The activities of the Gualala Festivals Committee strike at the heart of the Coastal Commission's mission, the creation of viable Local Coastal Plans. In 2002, the Commission took two important actions on behalf of Gualala. It approved the Gualala Town Plan as an addition to the Mendocino County LCP, and it approved a staff letter of protest to the State Water Board re applications to extract large amounts of water from the Gualala and Albion Rivers to send south in waterbags. The waterbag proponent withdrew his application in December, 2002.

The activities of the Gualala Festivals Committee and allies, under various guises, began early in 2003 with a proposal to hold fireworks on the river-mouth barrier beach in Gualala Point Regional Park. This was rejected in both 2003 and 2004 by Sonoma County, which sent a letter citing environmental and access problems. The letter cited possible harm to birds and animals rearing young all around the estuary, and restriction of public coastal access during fireworks setup. This is important, because it shows that GFC *et al.* knew or should have known that wildlife could be harmed, but in 2005 set off simulated cannon and musket fire from downtown Gualala, fireworks on the estuary bank in 2006, and cannon during the day and fireworks at night in 2007.

Looked at in the light of the 2002 CCC documents, all the GFC *et al.* activities can be seen as attempting to roll back the Gualala Town Plan and set the stage for further large industrial schemes on the scale of the waterbag proposal.

Following this letter are five pages of relevant extracts from the Gualala Town Plan section of the Mendocino County LCP. The Commission approved the GTP in March, 2002; it is the most up-to-date part of the county LCP. The GFC fireworks and associated activities attack the town plan's goals and policies on trails, coastal access, and environmental protection.

The GTP calls for a Gualala Blufftop Trail extending clear to the Gualala River Bridge and on upriver to Gualala Arts. It also calls for development of coastal accesses north of downtown. The Redwood Coast Land Conservancy has taken up several offers to dedicate in addition to the Gualala Blufftop Trail, but because of the lawsuit against the downtown portion of the trail, and the problems with the fireworks, RCLC is hampered in its work on the other accesses, and reluctant to take on more.

2 of 7

2.

Happily, the Coastal Conservancy today announced a new grant to RCLC. The GFC activities and associated negativity have made RCLC's work more expensive, even with much local public support in donations, materials and labor. I served on the RCLC board for several years, and for several more as an advisor.

The general public has become intimidated and reluctant to use local trails, or even to walk on local streets as much as they used to. My family has lived near the fireworks launch site in downtown Gualala since 1972. I have personally witnessed a great decline in public pedestrian use in our neighborhood and throughout the community. Meanwhile, abalone hunters use many informal accesses that are not marked or officially open; this is unsafe.

The GTP calls for protection of wildlife. A dream of my late mother's was to get our yard certified as a National Wildlife Federation Habitat. I learned and listed many different species that live there for a 2006 application, which succeeded. I observed distress and declining numbers of birds and animals after the 2006 and 2007 fireworks, especially mice. They are food for hawks. This year, for the first time in a great many years, the Red-Shouldered Hawks are not here. Fewer Ospreys fly past my windows with fish for their young.

The GFC causes economic impacts. Here is just one example. The Patriot Days in 2005, which featured cannon fire and a mock gun battle on the clinic's heliport; the 2006 fireworks, and the 2007 downtown cannon blasts behind the hotel disrupted a craft and art fair that took place three times a summer for many years, around the Sundstrom Center. This year it was replaced with one fair, at Gualala Arts, well off Highway 1. The blow to local artists and crafters was such that a women's service club is trying to get another fair started, to lessen the economic hit on women.

The other GFC festival is a lighted truck parade during the winter holiday season. This may also need a permit. Large trucks speed through our neighborhood honking their horns.

Please issue the proposed Cease and Desist Order, to help insure conformance with the Gualala Town Plan and the whole county LCP.

Yours sincerely,



Julie A. Verran
P.O. Box 382
Gualala, CA 95445-0382

Enclosure: GTP extracts

Cc : R. Merrill, Eureka

LCP EXTRACTS RELEVANT TO FIREWORKS CEASE AND DESIST ORDER

County of Mendocino Coastal Element Section 4.14 - Gualala Town Plan

[...] Many coastal views are presently blocked by buildings. Some redevelopment is likely to occur on the west side of Highway 1 in the future, since several of the existing buildings do not take advantage of their spectacular settings. Future redevelopment should provide greater access to views of the river and coastline. Additionally, a public access easement has been acquired along the bluff of the Gualala River, west of the commercial district. Development of a public coastal trail within the easement will offer access to spectacular views of the river, Gualala Point beach and the Pacific Ocean.

Goal G2.1-1: To preserve and enhance the rural, coastal character of the town of Gualala, to better integrate future development with the natural surroundings, to protect and restore coastal views, and to improve public access to the coast.

There follows a section, omitted here, showing how the Gualala Town Plan changed former commercial zoning in the downtown to mixed use and planned development zonings which allow residential as a principal permitted use, and which are more restrictive than the previous zoning.

Goal G2.4-3: To provide guidelines for new development and public improvements which inspire creativity and enhance the character of Gualala's commercial district by encouraging development that is in harmony with the natural, coastal setting of the town.

Goal G2.4-4: To encourage the preservation and enhancement of coastal and river views and the provision of public access to these views.

2.6 RECREATION, COASTAL ACCESS AND TRAILS

Since the recreational demands generated by residents and visitors in the Gualala Town Plan area are met, in large part, by facilities located outside of the Town Plan area, the discussion of recreation, coastal access and trails includes areas outside of the Gualala Town Plan boundaries.

At present, Gualala has few community recreation facilities. Recreational facilities serving Gualala residents and visitors include Bower Park, a community park operated by Mendocino County, the baseball diamond on Old Stage Road, which is owned by the Arena Union Elementary School District, and Gualala Point Regional Park in Sonoma County. Access to the Gualala River for swimming, fishing and boating is obtained in several locations, by permission of the property owners or by trespass. Local residents and visitors presently use many such "informal" resources for recreation. As development intensifies, these resources may be eliminated, while at the same time, increased demands are placed on existing recreational sites.

The two special event facilities in Gualala are the Gualala Community Center and the Gualala Arts Center, both operated by private, non-profit boards. The community survey questionnaire

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Gualala Town Plan (LCP) extracts relevant to Fireworks, Page 2

for the Gualala Town Plan indicated strong interests in development of additional community/recreation facilities, including a teen center, senior center, town park, swimming pool, athletic center and library. As Gualala continues to grow, it is essential that additional community and recreation facilities be provided to serve residents and visitors.

The coastline of the Gualala area is widely varied, with rocky coves, sandy beaches, seastacks, islands, and promontories. The Coastal Element identifies ten locations for public coastal access along the twelve miles of coast extending from Iversen Road to the Gualala River (Figure 2.1).

Despite the number of coastal access points designated in the Coastal Element, coastal access is limited relative to the number of residents and visitors in Gualala and neighboring areas. The Anchor Bay Beach shoreline access is presently accessible to the general public upon payment of a day-use fee. Coastal access can be obtained at Serenisea with permission of the owners.

Prescriptive rights for shoreline access exist in two locations in the Gualala commercial district (behind the Surf Motel and immediately south of the Breakers Inn). Informal coastal access (i.e., across private property) is obtained at several other locations, including Getchell Cove, St. Orres Beach, Cooks Beach, and at the Gualala River bridge. Coastal access is also available at Gualala Point Regional Park in Sonoma County (day-use fee).

At present, there is no public access to the blufftop in the commercial district of Gualala. Although limited views of the coast are available between the buildings and across vacant parcels, the blufftop and riverbank are only accessible with the permission of private property owners. The Coastal Element addresses this problem by designating a blufftop trail, located along the bluff's edge on the western portion of the commercial properties from Seacliff Center and extending south to the Gualala River bridge (LCP Policy 4.12-13). A 25-foot wide public access easement along the top of the bluff has been obtained for much of the designated Gualala Bluff Trail.⁹

Additionally, a deed restriction has been made to ensure the continued protection of a prescriptive access easement providing vertical access to the river at the Surf Motel site. Prescriptive access has been acknowledged by the property owners and the California Coastal Commission for vertical access to the river at the Breakers Inn.

⁹A non-profit land trust, the Redwood Coast Land Conservancy, was established with a primary goal of constructing, operating and maintaining the Gualala Bluff Trail. The California Coastal Commission approved acceptance of the public access easements by the Land Conservancy.

At present in Gualala, no pedestrian access facilities connect neighborhoods, commercial areas, recreation facilities and areas of scenic beauty. A major goal of the Gualala Town Plan is to create a more pedestrian-oriented community by providing pedestrian walkways and trails. Such walkways and trails would provide increased recreational opportunities for residents and visitors, while decreasing reliance on automobile transit and relieving traffic congestion.

Goal G2.6-1 To ensure that as future development occurs within the Gualala Town Plan area, additional recreation and coastal access facilities are developed.

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Gualala Town Plan (LCP) extracts relevant to Fireworks, Page 3

Goal G2.6-2 *To encourage development of a broad range of recreational and cultural opportunities and community facilities for residents and visitors.*

Goal G2.6-3 *To encourage development of diverse opportunities for recreation and enjoyment of the natural environment by residents and visitors to the area by providing public parks, recreation facilities, and public access to beaches, the Gualala River, and areas of special natural beauty.*

Goal G2.6-4 *To encourage development of a network of pedestrian trails, bike paths and/or equestrian trails which link existing and future neighborhoods, commercial areas, and visitor accommodations to recreational facilities and areas of natural beauty.*

Goal G2.6-5 *To encourage development of the Gualala Bluff Trail within the public access easements on the bluff of the Gualala River.*

Goal G2.6-6 *To encourage development of a coastal trail which connects the Gualala and Anchor Bay commercial districts, linking the pedestrian walkways of the Gualala Highway 1 Streetscape Plan with coastal access points and trails designated on the land use plan map.*

2.7 PROTECTION OF ENVIRONMENTAL RESOURCES

The Gualala area is rich in natural resources including pure air. In the past, the timbered hillsides formed the backbone of the area's economy. Now, the scenic qualities and recreational opportunities of the area attract both residents and visitors to Gualala. A primary goal of the Mendocino County Coastal Element and the Gualala Town Plan is to concentrate development within urbanized areas, in an effort to protect resource lands in the outlying areas. At the same time, it is necessary to recognize and protect sensitive environmental resources within designated development areas.

The Gualala River estuary/lagoon is one of the primary environmental resources in the Gualala Town Plan area. It is a fragile ecosystem which provides habitat for numerous species, including the anadromous steelhead trout. The river offers numerous recreational opportunities and is a key element in scenic vistas from Highway 1 and other properties in Gualala. The Coastal Element's environmentally sensitive habitat area (ESHAs) policies apply to the Gualala River which includes the following ESHAs: anadromous fish stream, wetlands, riparian areas, habitats of rare and endangered plants and animals.

Protection of the river is offered through policies enforced by various state regulatory agencies, including its designation as a Special Treatment Area, which requires timber harvesting practices that protect the natural and scenic resources of the area. In addition to the river, sensitive resources in the Gualala Town Plan area include tide pools, the coastline, three major gulches (China, Robinson and Big Gulch), and riparian habitat associated with stream courses and wetlands.

Gualala Town Plan (LCP) extracts relevant to Fireworks, Page 4

Goal G2.7-1 *To protect land used for timber and crop production outside of the Residential Reserve area and environmental resources, including the Gualala River estuary/lagoon, stream corridors, riparian areas, and wetlands from incompatible development.*

The town of Gualala is located on the mouth of the Gualala River and offers magnificent views of the headlands, sandy beach and rocky reef of Gualala Point, the estuary/lagoon and wetlands of the Gualala River, and a broad expanse of the Pacific Ocean. Much of the viewshed is located in Sonoma County and is protected as a county park. Development on the west side of Highway 1 obscures views of the river and ocean for travellers on Highway 1 through much of the commercial district. There are several hills and plateaus in town which provide coastal views of exceptional quality, particularly on the eastern hillslopes. In turn, development on the hillsides has the potential to be highly visible from many locations.

Goal G2.7-2: *To restore, enhance and protect coastal views in the Gualala commercial district.*

Goal G2.7-3 *To ensure that water extractions do not adversely affect fisheries habitat.*

10According to Bill Cox, Fisheries Biologist at the California Department of Fish and Game, the mouth of the Gualala River is an estuary. At times, a sand bar forms, creating a lagoon. The following passage is excerpted from the "Sea Ranch Gas & Water Company Supplemental Water Supply Application 26146," prepared by Dept. of Water Resources Northern District for State Water Resources Control Board (Sept 1988): The Gualala River terminates at the ocean in what is defined as a drowned valley estuary because of its relatively deep inlet from the ocean. That the Gualala terminates in an estuary, however, applies only during the high flow periods when the river mouth is open to the ocean. During the remainder of the year, the mouth becomes a coastal lagoon, sealed off from the ocean by a barrier sandbar.

Under the Policies section of the Gualala Town Plan, this applies:

G3.4-12 *Service and loading areas shall incorporate appropriate techniques for visual and noise buffering from adjacent uses. Areas which generate objectionable noise and odors shall be located where they will not disturb occupants within, or adjacent to, the development.*

Coastal Access and Trails

G3.7-2 *The Gualala Bluff Trail shall be developed within the 25-foot wide public access easements located along the bluff edge west of Highway 1. Offers to dedicate easements for public access shall be obtained to provide for the completion of the Gualala Bluff Trail consistent with Coastal Element policies and in consultation with the Redwood Coast Land Conservancy or other managing agency for the Gualala Bluff Trail.*

G3.7-3 *The parcel located on the north bank of the Gualala River, immediately north of the Gualala River Bridge and west of Highway 1, should be acquired for protection of natural resources and public access purposes by the County, State Parks, Caltrans, a non-profit land trust, or some other public agency or private association, or managed for protection of natural*

7 of 7

Gualala Town Plan (LCP) extracts relevant to Fireworks, Page 5

resources and public access purposes by its owners. Potential development on the site includes development of the Gualala Bluff Trail; fish and wildlife habitat management; limited parking for public fishing; and access for launching small craft such as canoes, kayaks, rowboats or small boats utilizing trolling-type motors.

If and when such acquisition occurs, the parcel shall be classified as Open Space in the Land Use Plan. Prior to development of any public access facilities on the site, a management plan shall be prepared, in accordance with Coastal Element public access policies, to ensure the long-term protection of natural resources and maintenance of the property. Development of the Gualala Bluff Trail on this parcel may involve use of the Highway 1 right-of-way or acquisition of an easement along the bluff of the Lower Mill site east of Highway 1 to ensure the protection of environmentally sensitive habitat areas along the Gualala River estuary.

G3.7-4 A pedestrian and bicycle trail which links Gualala and Anchor Bay and connects to coastal access trails shown on the Land Use Plan maps shall be developed within Highway 1 and Old Coast Highway (CR #513) rights-of-way and easements acquired for public access.

G3.7-5 A pedestrian trail providing public access for fishing, hiking, and swimming shall be developed on the north side of the Gualala River from Highway 1 to the easternmost boundary of the Gualala Arts Center property. Offers to dedicate easements for lateral access shall be acquired consistent with Coastal Element access policies and Section 66478.1 et.seq. of the California Government Code. If feasible, this trail shall connect to the Gualala Bluff Trail.

G3.7-6 Based on an inventory of existing and potential trail alignments, a network of trails shall be designated which connects commercial areas, neighborhoods, visitor accommodations, areas of scenic beauty, and recreational facilities. Priority for trail alignments shall be along public and private road rights-of-way and trails that are currently in use. Access easements shall be acquired from property owners on a voluntary basis (i.e., gifts, open space and conservation easements) as conditions associated with development (i.e., deed restrictions, offers to dedicate), or by direct property acquisition. Trails shall be developed and maintained by the County, State Parks, Caltrans, a non-profit land trust, or some other public agency or private association.

G3.7-7 GMAC shall review, evaluate, and prioritize the Offers to Dedicate (OTDs) and Deed Restrictions which the Coastal Commission has obtained through the coastal permit process within the GTP planning area.

G3.8-5 The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

IN SUPPORT OF ITEM 13 June 11th Agenda

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JUN 06 2008

CA COASTAL COMMISSION
LEGAL DIVISION

June 3, 2008

Merry & Carter Lake
POB 250
The Sea Ranch, CA 95497

California Coastal Commission
Attn: Peter Douglas, Executive Director
45 Fremont St
Suite 2000
San Francisco, CA 94105

Dear Mr. Douglas,

We am writing to you to thank you for taking action to stop the fireworks display in Gualala. As residents of the coastal community, we appreciate all the natural beauty. Our 'job' as human beings is to preserve the beauty and diversity. We cannot risk the destruction of precious habitat. Nesting birds are frightened, understandably, as well as all other wildlife.

PLEASE STOP THESE NEEDLESS DISPLAYS!!! THEY PRESENT A DANGER TO OUR WILDLIFE, and ultimately to humans as well.

Respectfully yours,

Merry and Carter Lake

Merry and Carter Lake

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JUN 06 2008

IN SUPPORT OF
ITEM 13 OF THE
JUNE 11th AGENDA

June 3, 2008

CA COASTAL COMMISSION
LEGAL DIVISION

California Coastal Commission
Attn: Peter Douglas, Executive Director
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Mr. Douglas:

We live in Anchor Bay, and I've enjoyed the fun of fireworks all my life; but as part of living here on the edge of the Pacific we greatly appreciate the presence of so many hundreds of wonderful birds.

I feel it is enormously important to protect and nurture the wonderful blessing we have of our spectacular variety of beautiful, graceful, charming bird activity. To put that in jeopardy by an insensitive, thoughtless blast of one evening of fireworks in Gualala seems to be a perversion of values. And to what end?

Please prevent the 4th of July fireworks at Gualala point. Those fireworks would just be one more thing that separates those who care for and appreciate nature, history, culture and those who don't care about any of that and just want to have a loud, noisy, yahoo for a couple of hours.

Thank you for being available to help out with this. Protect our birds and other wildlife, and make our community safer and more sensitive to the things that matter and make it great to live here and to enjoy the rich natural life that we do here in this wonderful and spectacular part of the California coast.

Again, thank you for your help.

Yours truly,



James R. Stockton

PRBO Conservation Science
3820 Cypress Dr. # 11
Petaluma, CA 94954
707-781-2555
www.prbo.org

prbo

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JUN 06 2008



CA COASTAL COMMISSION
LEGAL DIVISION

2 June, 2008

California Coastal Commission
Peter Douglas, Executive Director
45 Fremont St., Suite 2000
San Francisco, CA 94105

RE: Gualala Point Island seabirds and fireworks

Dear Mr. Douglas,

I am writing on behalf of PRBO Conservation Science to provide information that may be of interest to the Commission in their deliberations on Item 13 of the June 11, 2008 Commission meeting agenda regarding fireworks and wildlife disturbance.

PRBO Conservation Science is dedicated to conserving birds, other wildlife and ecosystems through innovative scientific research and outreach. Our scientists have been conducting research in marine ecology in the North Pacific for over 30 years. Our research includes studies of bird breeding ecology at several California locations. One project involves disturbance monitoring of seabirds breeding on Alcatraz Island in San Francisco Bay. Our comments below on the current issue reflect what we have observed during our studies.

We have observed fireworks to cause disturbance to breeding and roosting seabirds on Alcatraz, including Brandt's and Pelagic Cormorants and Western Gulls. Bird responses have included flushing from roosting and nesting sites, alarm calling, being aggressive towards neighboring birds and general agitation and panic responses. We have always observed disturbance when we have monitored during fireworks displays. Impacts of disturbance can include nest exposure and predation, increased bird stress levels and associated physiological effects, interrupted care of young (feeding, brooding, etc.), and mortality of young during colony agitation. Effects of disturbance on seabirds can also be cumulative. Cumulative effects of disturbance are difficult to quantify, but can change how birds respond to future disturbance (e.g., increased sensitivity levels). Cumulative effects of disturbances over a breeding season can lead to lower reproductive success, nest abandonment, or even abandonment of an entire breeding colony.

It is difficult to compare the impact of fireworks on one breeding colony to another due to many different factors, including frequency and type of disturbance that birds may be subjected to, environmental effects increasing existing stress levels, etc. However, Alcatraz is a very urban colony; I would suspect that cormorants at a more remote colony such as Gualala Point Island in Mendocino County would be even more sensitive to disturbance. For example, incidental observations by PRBO biologists have noted that cormorants on the offshore Farallon Islands appear to be more sensitive to disturbance than those on Alcatraz.



prbo

I have looked at the report of disturbance to Gualala Point seabirds in 2007 (http://www.blm.gov/ca/st/en/prog/blm_special_areas/ccnm.html), and it appears to be a thorough monitoring effort. It is often difficult to pinpoint exact causes in our branch of marine science, since it is nearly impossible to conduct controlled experiments in the complex systems and large spatial scales in which we work. However, the photographic documentation of active cormorant nests prior to the fireworks display in 2007 and abandoned cormorant nest sites afterwards seems compelling evidence that the fireworks very likely influenced breeding birds negatively. I am unaware of any similar nest abandonment at other cormorant colonies during that period in 2007 in central California; there are several colonies that are monitored regularly, some by PRBO and some by the U.S. Fish and Wildlife Service.

Active protection of seabird colonies is critical to the maintenance of seabird populations, by providing sufficient undisturbed breeding habitat to produce young. Our studies have indicated that limiting both marine and air-based disturbance is important. Additionally, effects of human-caused disturbance on seabird breeding colonies may vary under different environmental conditions. For instance, climate variations that negatively affecting marine feeding conditions may increase birds' physiological stress levels and may intensify effects of disturbance felt by the birds, resulting in poor reproductive success, or even in nest abandonment. Brandt's Cormorants all along the coast in 2008 have been exhibiting atypical breeding behavior with sporadic repeated nesting attempts that are not very synchronously timed, and breeding numbers are down. We are currently unsure what combination of environmental factors may be causing this.

We appreciate the opportunity to comment on this issue and hope that a solution can be reached which errs on the side of caution with regards to nesting seabirds.

Sincerely,

Julie Thayer
Seabird Ecologist
707-781-2555, x317
jthayer@prbo.org

Cc: Nancy Cave, California Coastal Commission

June 6, 2008

California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

FAX 415 904-5400

Re: Commission Cease and Desist Order No. CCC-08-CD-7

Dear Commissioners,

I live in Gualala, and am one of a number of people who live here who are concerned about the (now proven) effect of fireworks on nesting birds that are in the National Monument on Gualala Pt. Island.

The members of the Gualala Festivals Committee are used to having their own way here. The local paper tends to support what they want, but at least the Editor prints letters with opposing viewpoints. This was not the case with the Santa Rosa Press Democrat. Letters specifically addressing and refuting the serious misinformation about the Bureau of Land Management's study contained in the Pacific Legal Foundation's article in the "Close to Home" column were not printed.

Members of the Sea Ranch (which is, except for a county border, part of our community), were vilified by members of the Gualala Festival Committee at a town meeting last year. Many local people do not want the fireworks, including the many businesses that lost a lot of money on what had been traditionally one of the best weekends of the year.

The Sea Ranch Stewardship Task Force for the protection of seabirds and wildlife in the National Monument was recently given an award for their work by Rick Hanks, the Manager of the Bureau of Land Management's California Coastal National Monument for "invaluable assistance in monitoring seabirds and marine life on the rocks and islands of the Sonoma County coast". These are not mean people out to spoil the Gualala Festivals Committee's fun, and those of us in Gualala are not being "led" by a group of Sea Ranchers as reported in an article in the Press Democrat.

Thank you for taking on what the local and county government will not.

Sincerely,



Gail Hamilton
PO Box 455
Gualala, CA 95445
707 884-3807

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JUN 06 2008

CALIFORNIA
COASTAL COMMISSION

In support of Item 13 of the June 11th agenda.

California Coastal Commission
Attn: Peter Douglas, Executive Director
45 Fremont St., Suite 2000
San Francisco, CA 94105

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CA COASTAL COMMISSION
LEGAL DIVISION

Dear Sir,

Thank you for considering action against the Gualala Festival Committee's Fireworks display on July 4th on the bluff overlooking the Gualala River. I am very concerned about the effects of the noise of the display on the nesting seabirds on Bird Rock off shore. I believe the birds should be protected.

The Gualala Festival Committee (GFC) is a self appointed group of business owners who for the past two years have taken it upon themselves to stage 4th of July events in Gualala. The fireworks, have taken place during the past two years despite a petition signed by 200 + people in 2006 and 2007 who were concerned about the effects on the nesting sea birds.

An Independence Day fireworks display is held every year in Pt. Arena which is 12 miles north of Gualala. They have been held there every year for many years, so I feel that we don't need another display especially when our seabirds could be affected.

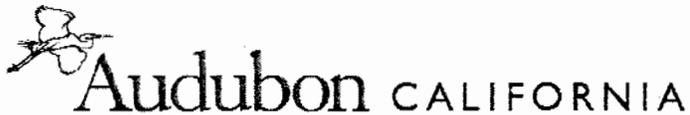
Thank you



Cyndy Solomon

46531 Fish Rock Rd.

Gualala, CA



765 University Avenue
Sacramento, California 95825
Tel: 916-649-7600
Fax: 916-649-7667
www.audubon.org

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CA COASTAL COMMISSION
LEGAL DIVISION

June 9, 2008

Mr. Patrick Kruer, Chairman
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: **Staff Recommendation and Findings for Cease and Desist Order: CCC-08-CD-07,
Gualala Festivals Committee**

Dear Chairman Kruer and Members of the Commission:

On behalf of Audubon California, our 48 local chapters and more than 100,000 members and friends statewide we support and urge your adoption of the above mentioned Cease and Desist Order. It is appropriate for the Commission to exert its full administrative, regulatory and enforcement authority to make certain that the events of the July 2007 fireworks display, which led to a significant impact on nesting seabirds, does not re-occur.

Our science staff reviewed the "*Seabird and Marine Mammal Monitoring Response to a Fireworks Display at Gualala Point Island, Sonoma County, CA, May to August, 2007*" by USDI Bureau of Land Management and the Fish and Wildlife Service and The Sea Ranch California Coastal National Monument Stewardship Task Force. The report is impressive in its scope and detail. Based on our detailed review the bird related impacts present significant and unacceptable threat to California's environment, especially in the area within the jurisdiction of the California Coastal Commission. Without hesitation we conclude that nest abandonment by Brandt's Cormorants observed in the study is significant and very likely points to similar impacts by other species less observable in the area.

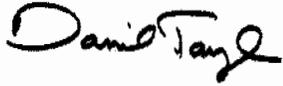
While it is not likely that this particular event will not cause extinction of any species, the bird populations included in the study do not have options for other places to breed. We are observing a disturbing trend in the health and overall viability of seabird nesting colonies that depend on rocky offshore habitats along the California coast due quite probably to changing food regimes linked to ocean conditions. Additional stresses in their habitat will only worsen these trends.

We are very disappointed that the Gualala Festivals Committee chose to ignore the law and are apparently proceeding with their event again this year. It is now clear their actions led to a diminishment of value of an important wildlife resource. This must not happen again. While we voice our strong opposition to any re-occurrence of last year's experience we would be pleased to help identify alternatives to an over-water fireworks display during the most sensitive time of the year for breeding seabirds.

Some may argue that this situation pits the needs of the environment against the important and valued tradition of fireworks in celebration of America's independence. This is a false choice. On July 4th as Americans we

celebrate freedom through our independence as a nation. But freedom comes with responsibility to those with whom we live, stewardship for the environment and respect for the rule of law. Clearly it is not responsible for us to knowingly harm the environment when alternatives are so readily available.

Thank you for your consideration of our views.

A handwritten signature in black ink that reads "Daniel Taylor". The signature is written in a cursive style with a large, prominent 'D' and 'T'.

Daniel Taylor
Director of Public Policy

Cc: Peter Douglas, Executive Director, California Coastal Commission
Nancy Cave, Northern California Supervisor Enforcement Program, California Coastal Commission
Madrone Audubon Society

RECEIVED
JUN 09 2008

CA COASTAL COMMISSION
LEGAL DIVISION

Madrone Audubon Society
P.O. Box 1911
Santa Rosa, CA 95402
4 June, 2008

California Coastal Commission
Peter Douglas, Executive Director
45 Fremont St., Suite 2000
San Francisco, CA 94105

**RE: In support of Agenda Item 13 of June 11, 2008
Gualala Point Island**

Dear Mr. Douglas and Members of the California Coastal Commission,

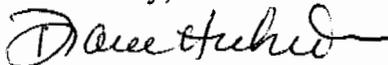
I am writing on behalf of Madrone Audubon Society and its nearly 1800 members in Sonoma County. We thank the California Coastal Commission for stepping forward to protect the environment of northwestern Sonoma County and the environs of Mendocino County immediately to our north. We have the responsibility to protect that area of our county and of the California Coastal National Monument and stop disturbance of the wildlife there. Through your action we have the opportunity to protect the seabirds from a recent discretionary activity of fireworks that is being promoted by a small group of individuals, Gualala Festivals Committee, at the expense of many.

Madrone Audubon Society members and other birders of the area participated in a study in 2007 that is continuing in 2008 to document scientifically the behavior of birds and marine mammals using Gualala Point Island, during their nesting season and during any disturbances that occur during the observation period.

We want to confirm that birds are nesting on the island now. On May 7, 2008 we observed the first nest of Brandt's Cormorants visible from our vantage point. There are nests of Brandt's Cormorants, Western Gulls, Pigeon Guillemots, and Black Oystercatcher at this time. Dr. Gerard McChesney has done the USFWS yearly flight along the coast to photograph colonies of seabirds and covered the area of Gualala Point Island on June 3, 2008. He has indicated that the number of Brandt's Cormorants' nests on this stretch of coast is down significantly despite the appearance of good ocean conditions for feeding. For this reason, minimizing factors known to disturb nesting assumes an even greater importance.

We support your action of Agenda Item 13 and thank you again for protecting coastal resources for all the citizens of California.

Sincerely,



Diane Hichwa
Conservation Chair of Madrone Audubon Society

Ursula Jones

134 Sunset View Road
Los Gatos, CA 95038
June 7, 2008

California Coastal Commission
Att: Peter Douglas, Executive Director

45 Fremont St., Suite 2000
San Francisco, CA 94105
Re: Fireworks in Gualala

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JUN 09 2008

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Douglas,

as a former 10-year resident of The Sea Ranch and a current property owner in Gualala, I have fought against the fireworks since the idea was first raised in 2003 or 2004. That shows that the applicants are wrong to call it "traditional".

What is traditional is the fact that the fireworks have always been held one or two days late in Point Arena, 15 miles to the North – the delay allows "more bang for the buck".

I am very familiar with Gualala Point Island, having walked the coastal bluff for many years. The mixed bird colony is very unique since the birds can breed there undisturbed by terrestrial predators, without being submitted to "shock and awe". I think that is more important than giving tourists a few minutes of "oohs and ahs".

The whole fireworks proposal was originally cooked up by the Redwood Coast Chamber of Commerce. One of the current proponents has a long-standing feud against the city of Point Arena, so it is about local politics more than anything else. And the breeding birds are the innocent victims.

I strongly urge the California Coastal Commission to decide against the fireworks.

Sincerely,

Ursula Jones



RECEIVED

NORMA L JELLISON



P O BOX 1636 ◆ BODEGA BAY, CA 94923
Home Phone/Fax (707) 875-3799

JUN 09 2008

CALIFORNIA
COASTAL COMMISSION

Chair Kruer and Commissioners:

I am writing regarding Item 13. **Commission Cease and Desist Order No. CCC-08-CD-07 (Gualala Festivals Committee, Gualala, Mendocino County)**. Public hearing and Commission action on proposed Cease and Desist Order directing the Gualala Festivals Committee to cease and desist from undertaking or threatening to undertake development without the necessary coastal development permit, including, but not limited to, conducting a fireworks display over the Gualala River estuary or 39170 South Highway One, Gualala, Mendocino County (APN 145-261-12) (NC-SF)

I support the staff report and findings and request that the Commission take the action to issue a Cease and Desist Order to the Gualala Festivals Committee and the property owners where the planned 2008 July 4th fireworks display will be conducted.

The proposed 2008 fireworks are a Demonstrated Adverse Effect on nesting seabirds and form a basis for issuing a Cease and Desist Order:

During the 2007 fireworks display, a monitoring study was undertaken of Gualala Point Island. The island is a California Coastal National Monument and provides habitat for colonial nesting seabirds, many of which are endangered or threatened under both State and Federal Endangered Species Acts.

The final report on the 2007 fireworks display was prepared by US Fish and Wildlife Services seabird biologist Gerry McChesney and the Bureau of Land Management ecologist Jim Weigand. Before publication this report was peer reviewed by Point Reyes Bird Observatory and US Fish and Wildlife Service. It was then released as a scientific treatise. The report is solid science.

Chief among the seabirds monitored during the 2007 fireworks were Brandt's Cormorants, which have a long, late nesting season such that in early July, Brandt's Cormorants still have eggs or chicks that have not fledged on their nests. Associated with the 2007 fireworks display, nest abandonment occurred and eggs and chick demise by predators occurred due to the nests being unprotected by adults. The 2007 fireworks thus constituted a Demonstrated Adverse Effect on these endangered seabirds and the proposed 2008 fireworks will similarly constitute a Demonstrated Adverse Effect.

The Gualala River estuary and environs are both an ESHA and the offshore island - Gualala Point Island is a designated CA Coastal Ntl Monument. These fireworks would be a significant adverse impact to ESHA, marine resources and the biological productivity of coastal waters.

The findings of the 2007 monitoring report by USFWS and BLM is one basis upon which the Commission is mandated to require that the Gualala Festival Committee apply for a Coastal Development Permit (CDP) for the 2008 fireworks display. Having elected not to apply for a CDP, the findings form one basis for the Commission to issue a Cease and Desist Order for the 2008 fireworks display.

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CALIFORNIA
COASTAL COMMISSION

Fireworks are Development under the Coastal Act. The GFC having not applied for same and intending to go forward with the fireworks display, is a basis for the Commission issuing the Cease and Desist Order:

The fireworks display activity in 2007 and the same activity planned for 2008 were without the benefit of application for a Coastal Development Permit or the granting of one. The 2007 activity and that planned for 2008 did and will harm resources within the coastal zone.

The fireworks display clearly constitutes a discharge of gaseous and solid waste into coastal waters (fireworks) and a change in intensity of land use and access as a portion of the Coastal Trail - the Gualala Bluff trail - will be blocked from public access during the fireworks. This constitutes development under the Coastal Act, Sec 30600.

Further, blocking of public access to the Coastal Trail - the Gualala Bluff Trail is unacceptable, illegal without permit under the Act and previously authorized coastal development permits. This forms another basis which mandates the CCC to take action to issue the Cease and Desist Order, the Festival Committee having refused to seek a Coastal Development Permit, as required under the Act.

Please do not give credence to the assertions that this fireworks display is an all or nothing situation with no alternatives to having a celebration of July 4th. The Mendonoma (Mendocino-Sonoma) coastal community has historically (as early as 1984) enjoyed fireworks in Point Arena cove, a commercial harbor without nearby nesting seabird colonies.

The Gualala Festivals Committee, is a small group of local business owners that seem to have usurped authority. They have created a donneybrook and much community upset by making their decision to host the fireworks in defiance of the Coastal Act requirements for permits a (false) cause celebre of patriotism. I believe the community will happily travel 16 miles back to the original location of celebrating the 4th of July. Sad that these folks are being manipulated by the Pacific Legal Foundation to attack and defy the CCC and the Coastal Act. The money would be better spent supporting a relocation of the fireworks.

Thank you for issuing the Cease and Desist Order.

Yours truly,



Norma Jellison

C: Peter Douglas, Executive Director
Charles Lester, Senior Deputy Director

Rita Babaran

From: Nancy Cave
Sent: Tuesday, June 10, 2008 10:45 AM
To: Rita Babaran
Subject: FW: RIGHTS of citizen owners of County and Federal public lands

email correspondence - Nancy

-----Original Message-----

From: marge [mailto:marganth@mcn.org]
Sent: Tuesday, June 10, 2008 9:42 AM
To: Nancy Cave
Cc: marganth@mcn.org
Subject: RIGHTS of citizen owners of County and Federal public lands

GFC and its lawyers from Pacific Legal Foundation have sent articles to various newspapers, stressing GFC property rights and value of fireworks for tourism.

Surely property rights end at individual property boundaries
(or community boundary IF most of Gualala wanted fireworks. - many do not).

Fireworks by their nature drop solid waste beyond those boundaries.

Explosive noise also cannot be contained..

With respect to their claim that fireworks essential for tourism value:

More people in the U.S. go outdoors and travel to enjoy WATCHING wildlife than all who buy hunting and/or fishing licenses,
so our richly diverse wildlife from steelhead to seabirds should have the most sustained tourism value.

Gualala seems to be sending widespread message that they favor fireworks over any concern/respect for wildlife.

Since The Pacific Legal Foundation has threatened the CCC with a Restraining Order regarding Gualala's right to shoot fireworks with resultant debris falling into the
Gualala Lagoon -and probably the Sonoma Co. Regional Park just west of it,

We thank the CCC for defending the RIGHTS of citizen owners of those areas.

The line dividing Sonoma and Mendocino counties runs down center of Gualala River. - Gualala doesn't own ANY of the river and its Lagoon, so has NO RIGHTS to dump
debris there.

.The public also owns the CA Coastal National Monument, which was set up to protect nesting and roosting seabirds so we also have RIGHTS to protest anything
disturbing those birds.

If Gualala were to shoot rockets, etc. up ONLY over Gualala the GFC MIGHT have the right to inflict that debris and explosive noise on everyone and their pets. IN
Gualala.

But since those explosive sounds reverberate well beyond Gualala's boundaries, again they are violating the RIGHTS of their NEIGHBORS and owners of public lands
without consultation, permission, nor any concern - just hostile claims of THEIR rights.

Many of us public owners are very grateful to the CCC for carrying out its mandated implementation of the Coastal Act.

because the GFC and Gualala's rights STOP at their boundaries- well short of the publicly- owned Lagoon, Regional Park and CA Coastal National Monument.- all
impacted to some degree

by Gualala fireworks in 2006 and 2007

Thank you for your attention and concern,

Sincerely,
Marge Anthony
POB 1259
Gualala, CA 95445



MENDOCINO COAST AUDUBON SOCIETY

POST OFFICE BOX 2297
FORT BRAGG, CA 95432

RECEIVED
JUN 10 2008

June 7, 2008

California Coastal Commission
Peter Douglas, Executive Director
45 Fremont Street, Suite 2000
San Francisco, CA 94105

CA COASTAL COMMISSION
LEGAL DIVISION

David Jensen
President

Tony Eppstein
Vice-President

Tanya Smart
Secretary

Judy Steele
Treasurer

Board Members:
Jeanne Coleman
Charlene McAllister
Art Morley
Don Shephard
Virginia Wade
Warren Wade

Re: Cease and Desist Order CCC-08-CD-07

Dear Mr. Douglas:

The Mendocino Coast Audubon Society continues to be concerned about the proposed Fourth of July fireworks near Gualala Point Island. We support the Coastal Commission ruling requiring a Coastal Development Permit for this activity, and recommend that no such permit be issued until it is shown that the effects of the fireworks on the seabirds can be mitigated. Since no CDP has been requested for 2008, we agree that a cease and desist order should be issued to the Gualala Festivals Committee, such order be enforced with legal action if necessary.

The 2007 surveys of seabird nesting on Gualala Point Island were carefully and thoroughly done, as reported in http://www.blm.gov/ca/st/en/prog/blm_special_areas/ccnm.html. These surveys showed that nearly ten percent of the Brandt's Cormorant nests on the Island were abandoned shortly after July 6th, most probably as a result of the 2007 fireworks. The Brandt's Cormorant is a federally protected species of concern.

The cumulative effect of human activity on seabirds has heavily reduced their numbers and their breeding success over the relatively short period since European colonists came to the new world. The high rate of nest abandonment in 2007 presages the total loss of the Gualala Point Colony in the near future if the Gualala fireworks continue as planned.

We believe that there are several good alternatives to launching fireworks over the Gualala River. The displays could be relocated to the northern side of Gualala, and launched to the north, or better yet, a combined Point Arena - Gualala display could be held in Point Arena Harbor where fireworks have been enjoyed since 1984 with minimal harm to seabirds.

Sincerely,

Warren F. Wade, Conservation Chair



United States Department of the Interior



FISH AND WILDLIFE SERVICE
San Francisco Bay National Wildlife Refuge Complex
9500 Thornton Avenue
Newark, California 94560

RECEIVED
JUN 10 2008

June 9, 2008

California Coastal Commission
Attn: Nancy Cave
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

CA COASTAL COMMISSION
LEGAL DIVISION

RE: Gualala fireworks display

Dear Commission Members,

The U.S. Fish and Wildlife Service would like to express concern about upcoming planned fireworks displays in the vicinity of the town of Gualala, the Gualala River mouth, and Gualala Point Island, Mendocino and Sonoma counties. This area is important for certain sensitive species of wildlife, particularly breeding and roosting seabirds and harbor seals. Gualala Point Island is an important seabird breeding colony for Brandt's Cormorants and Western Gulls, with smaller numbers of nesting Pelagic Cormorants, Black Oystercatchers, and Pigeon Guillemots. The island also serves as an important roosting site for endangered Brown Pelicans, and is used as a haul-out for harbor seals. The cliffs and islets along the Gualala coast between Collins Landing and the Gualala River mouth are important nesting areas for Pelagic Cormorants and Pigeon Guillemots. The waters just off the Gualala River mouth are a foraging and staging area for a small population of threatened Marbled Murrelets, seabirds that nest in old-growth forests but otherwise live in nearshore ocean waters. Murrelets have been nearly eliminated from the southern Mendocino and Sonoma County coasts, and the Gualala River mouth birds are some of the last remaining in that region.

Seabirds and marine mammals are well-known for their sensitivity to human disturbance. Close approaches from humans on foot, boats or aircraft, and loud noises, have been recorded to cause large-scale disturbances that can lead to nest or site abandonment. As recorded in a report by the U.S. Bureau of Land Management and U.S. Fish and Wildlife Service (Weigand and McChesney 2008), the Gualala Point Island seabird colony was monitored before, during and after the Gualala Festival Committee's fireworks display on 6 July 2007. This monitoring documented significant disturbance to the nesting seabirds there. In addition to the disturbance recorded during the fireworks display, monitoring demonstrated a high rate of Brandt's Cormorant nest abandonment in the days immediately following the fireworks display. Much, if not all, of this abandonment was apparently due to disturbance caused by the fireworks display.

We understand the public interest and value of Independence Day celebrations, including fireworks displays. However, such activities should be conducted when and where they pose

TAKE PRIDE[®]
IN AMERICA 

Commission Members

Page 2

June 9, 2008

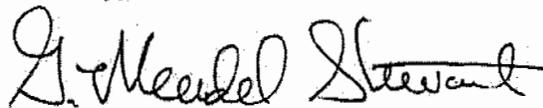
little to no risk to natural resources. Unfortunately, the location of the Gualala Festival Committee's fireworks display in 2007 was within a very sensitive wildlife area with documented significant disturbance. Other sensitive resources in the area, such as threatened Marbled Murrelets, were not monitored and also may have been affected.

The Brandt's Cormorant colony on Gualala Point Island is one of only a few located along the coast between Point Arena and Bodega Bay. This species is more common along other portions of the California coast but is more limited by available nesting habitat in that region. As described in Weigand and McChesney (2008), the Gualala Point Island cormorant colony has declined substantially over the past two decades. Thus, protection of the colony is important to prevent extirpation and allow numbers to be restored. The colony also has significant public viewing and educational value because of its close proximity to mainland vantage points.

A survey conducted by the U.S. Fish and Wildlife Service and other cooperators on June 2, 2008 counted 62 Brandt's Cormorant nests on Gualala Point Island. This count is only slightly lower than at this time in 2007, despite greatly reduced numbers in 2008 at many other colonies in northern and central California. Thus, this colony continues to be important in the region.

Thank you for your time and consideration. If you have any questions, please contact Gerry Gerry McChesney of my staff at (510) 792-0717, x222 or gerry_mcchesney@fws.gov.

Sincerely,



G. Mendel Stewart
Manager, San Francisco Bay National Wildlife Refuge Complex

cc via email: Ryan Olah, Ecological Services Office, Sacramento, CA
Rick Hanks, Manager, California Coastal National Monument

June 4, 2008

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JUN 10 2008

CA COASTAL COMMISSION
LEGAL DIVISION

California Coastal Commission
Attn: Peter Douglas, Executive Director
45 Fremont Street, Suite 2000
San Francisco
California 94105

Re: In support of Item 13 on the June 11th Agenda

Dear Mr Douglas:

I am a resident of Gualala and I oppose the plan of the Gualala Festivals Committee to continue setting off fireworks into the Gualala River estuary during nesting bird season.

The Gualala Festival Committee arose from the mists of oblivion and started imposing "festivals" on our small community three years ago (beginning with revolutionary war reenactments!). GFC is made up of a small group of men who think they know what is best for everyone else and therefore have no need to consult with the rest of the community. They try to say that just the residents of The Sea Ranch oppose the fireworks, but that is incorrect. They claim it benefits local merchants, but that is incorrect. And of course, they go to the fall back of most bullies these days, it is patriotic.

My main point of opposition is the presence of nesting bird. Why even take a chance on disturbing them? I have suggested that they shoot off their explosives on Labor Day when the birds are gone. That suggestion has been ignored.

Their attorneys claim that this is a Gualala tradition. It is not. The tradition is to go to the fireworks display in Point Arena, our next closest town that has had fireworks displays for as long as I can remember. I have found no one who can explain why we need to compete with Point Arena.

We live just above town, south of China Gulch. Each explosion reverberates through our forest as a deafening sound. It is painful to me as a human, and I cannot imagine how it sound to the many bird species and deer, raccoon, skunks, and others who share the land with us. It saddens me.

Please recommend that the California Coastal Commissioners vote to impose a Cease and Desist Order on the GFC on June 11.

Thank you for your assistance in this matter that effects both the community and its environment.

Sincerely,

Susan Sandoval
P.O.Box 430
40900 Old Stage Road
Gualala, CA 95445



MIRKA KNASTER, Ph.D.
2059 Mastlands Drive
Oakland, CA 94611-2755
510-531-7172 ph
510-531-6558 fax
Knaster@aol.com

RECEIVED

JUN 10 2008

CALIFORNIA
COASTAL COMMISSION

6 June 2008

California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

attn: Peter Douglas, Executive Director

Dear Members of the California Coastal Commission,

This letter is in support of the cease and desist order regarding Gualala's fireworks program. As a birder who participates in the coastal monitoring program at Sea Ranch, I am well aware of the nesting birds on the island off Gualala Point and the havoc that fireworks wreak on them. In short, frightened by the explosive sounds and lights, they abandon their nests.

Fireworks are not a traditional practice at Gualala, but they are at Pt. Arena, where they take place over an open harbor. Pt. Arena is within easy driving distance for Gualala residents, so I don't see the necessity of repeating the event in Gualala, where they endanger the birds. I trust you will act accordingly to protect the birds along the coast.

Thank you for your attention as well as many years of effort to preserve our coast.

Respectfully yours,

Mirka Knaster

Mirka Knaster

P.O. Box 261

Sea Ranch, CA 95497

Richard Kuehn
P. O. Box 1711
Gualala, CA 95445-1711
June 9, 2008

RECEIVED
JUN 10 2008

CA COASTAL COMMISSION
LEGAL DIVISION

California Coastal Commission
Peter Douglas, Executive Director
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RE: In Support of Agenda Item 13 on June 11, 2008 Meeting – **Commission Cease and Desist Order No. CCC-08-CD-07 (Gualala Festivals Committee, Gualala, Mendocino County.)**

Dear Mr. Douglas,

While I am Co-chair of The Sea Ranch California Coastal National Monument Stewardship Task Force, a member of the Mendocino Coast Audubon Society Conservation Committee, and a Life Member of the Sierra Club, I am writing this letter in support of the Staff's recommendation regarding Item 13 on the June 11th Agenda as an ordinary citizen of the great State of California, who happens to be fortunate enough to live on the coast where I love hiking along the ocean and observing the wildlife.

Because our home at The Sea Ranch, completed in 1989, has an unobstructed view of Gualala Point Island and because I have knowledge about and an understanding of the lives of the seabirds nesting on it, as soon as I learned of the Gualala Festivals Committee's intent to display fireworks over Gualala in 2006 from an e-mail from Bill McCarthy, member of the Gualala Municipal Advisory Council (GMAC), to The Sea Ranch ListServ June 13, 2006, I attempted to engage Marshall Sayegh and other members of the (GFC) in an educational dialogue. Despite 3 separate offers to meet, I received no response from Marshall or any members of the GFC. Therefore, I sent an e-mail post June 15, 2006 that advised the following-

"Gualala Point Island, which is located less than a mile from the estuary, currently has 5 species of nesting birds: Brandt's Cormorants, Pelagic Cormorants, Black Oystercatchers, Pigeon Guillemots and Western Gulls. On any given night this time of year, it is a temporary refuge to upwards of 250 Brown Pelicans. While none of these species is currently 'endangered', these birds are NOT used to loud blasts and bright lights at night, nor do they usually fly at night. The proposed location for the July 2nd fireworks display is a recipe for disaster: broken eggs, dislodged nestlings and deserted nests."

Please note, that I was actually in error as the California subspecies of the Brown Pelican IS still on the State and Federal Endangered Species List.

The Gualala Festivals Committee proceeded anyway with the fireworks display on July 2, 2006. In my absence, friends of mine, Marge Anthony, Linda Keir and Shirley Chatalian, personally observed and documented the noisy disturbance to the nesting seabirds.

When GFC announced their intent to hold fireworks in 2007, I voiced my concern again. But when it was announced at a May 18, 2007 Point Arena CCM Gateway Meeting that 2 days earlier, May 16, 2007, it

had been decided in a meeting between members of the GFC, Mendocino County Supervisor David Colfax and representatives of the Bureau of Land Management and the California Coastal National Monument, that a scientific study of the effects of the fireworks on the nesting birds of Gualala Point Island would be performed, I decided to become involved with The Sea Ranch CCNM Stewardship Task Force, which assisted BLM/USFWS with the study, as The Sea Ranch Association is a Steward of the off-shore CCNM.

As Gerard McChesney, Staff Seabird Biologist for the US Fish and Wildlife Service, and Jim Weigand, Staff Ecologist, concluded the fireworks had had an impact upon nesting seabirds in their Final Report entitled Seabird and Marine Mammal Monitoring and Response to a Fireworks Display, 12 February 2008, available online at -

http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/coastal_monument.Par.31821.File.dat/Master%20Seabird%20Monitoring%20Final%20Report_2008.pdf, I expected members of the Gualala Festivals Committee to finally understand WHY we'd suggested they NOT shoot fireworks during seabird nesting season.

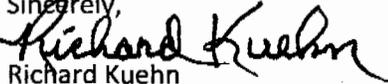
However, when it became apparent scientific documentation of disturbance wouldn't sway this group, I was amongst the many coastal residents from both Mendocino and Sonoma County who attended the California Coastal Commission meeting in San Francisco City Hall on December 14, 2007 and asked the Commission to become involved. I observed Commissioner Steve Blank try and impress upon Marshall Sayegh the ramifications to the Gualala Festivals Committee if they failed to file for a CDP.

But I've learned members of the GFC believe they are above the law and have failed to apply for a CDP as directed. Unfortunately, this leaves the California Coastal Commission with few options if they desire to uphold the Coastal Act and protect the seabirds nesting on Gualala Point Island in 2008, as this is now underway again. (Please see the included 2 photos of Gualala Point Island taken 2 June 2008 during the joint USFWS, CDFG, and UC Santa Cruz aerial survey of California seabird colonies showing the colony of Brandt's Cormorants that I obtained from Gerry McChesney, Seabird Biologist for the USFWS, attached to a June 8, 2008, e-mail.)

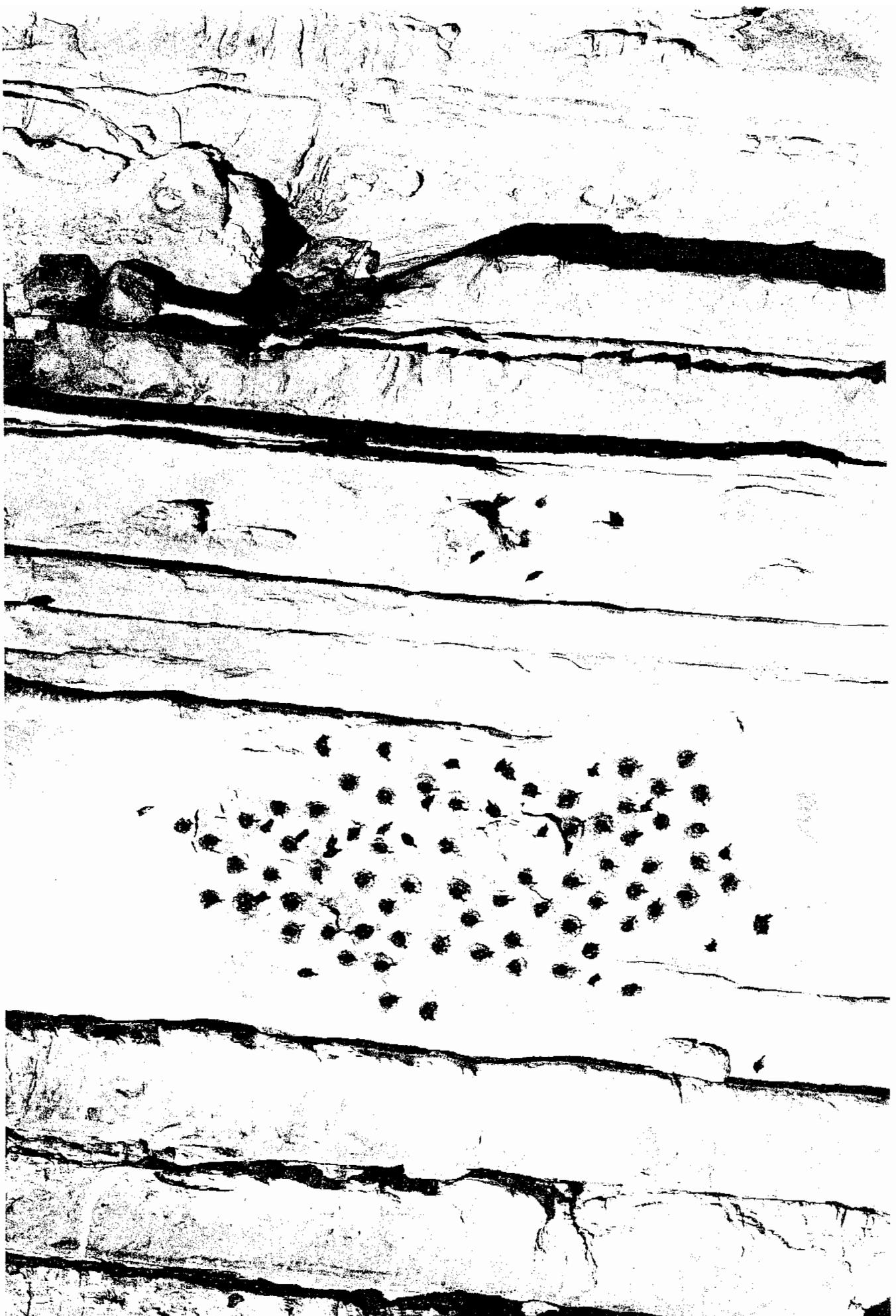
As the effect on the nesting seabirds is only one of the issues involved, I trust others will write regarding the closure of the RCLC Bluff Trail and the chemical residue and debris deposited in the Gualala River Lagoon, home to salmonids, at the time of this fireworks display. Because of all of these issues, I encourage the Commissioners to adopt the Staff recommendation and issue the Cease and Desist Order on June 11th. I also suggest you be prepared to follow it up with an enforcement action in conjunction with the California Department of Fish and Game and other law enforcement officers.

I'm sure the majority of the citizens of California join me in thanking you, your Staff and the Commissioners for their efforts to protect our coastal resources EVERYDAY and please know that I consider your actions VERY patriotic.

Sincerely,


Richard Kuehn

CC: Nancy Cave, CCC Enforcement; Mike Reilly, CCC Member





In support of Item 13 of the June 11th agenda.

California Coastal Commission
Attn: Peter Douglas, Executive Director
45 Fremont St., Suite 2000
San Francisco, CA 94105

RECEIVED
JUN 10 2008

June 6, 2008

CA COASTAL COMMISSION
LEGAL DIVISION

Linda Bostwick
Mel Smith
P. O. Box 954
Point Arena, CA 95468

RE: Gualala Fireworks

Dear Mr. Douglas:

We are writing to express our concern regarding the fireworks display scheduled to occur in Gualala, Mendocino County on the 4th of July week end. For the past 2 years there has been fireworks shot off at the Gualala River over an unspoiled estuary towards the Pacific Ocean. Unfortunately the fireworks occur while numerous species of birds are nesting on the small islands immediately adjacent to the river and coast. It has been documented that nesting birds are frightened off their nests in the night and some abandoning their nests and young due to the loud and bright explosions. The Gualala River and Estuary is beautiful, unspoiled and natural. It is our opinion that it is inappropriate shoot fireworks off along this pristine area. We would like to point out that fireworks have been offered in Point Arena, from the working pier and harbor, for many years. Point Arena is located a short 15 minute drive north of Gualala and available to coastal residents. We feel strongly that our wildlife must be protected. We thank the California Coastal Commission for hearing our concerns, and for your willingness to take action to protect our vulnerable wildlife.

Most sincerely,



Linda Bostwick
Mel Smith

Nancy Cave

From: John Ugoretz [jugoretz@dfg.ca.gov]
Sent: Monday, June 09, 2008 1:43 PM
To: Nancy Cave
Cc: Brian Naslund; Becky Ota; Vicki Frey
Subject: Gualala Festivals Committee Action

Dear Nancy,

Thank you for your recent contacts regarding a Cease and Desist Order to Gualala Festivals Committee for a fireworks display over the Gualala estuary. Unfortunately, Department of Fish and Game staff will not be available to attend the public hearing on June 11, 2008.

You may indicate to the Coastal Commission that the Department's position on this activity has not changed from that outlined in the June 2007 letter to the Gualala Festivals Committee. However, at this time, the Department has decided to pursue a non-enforcement action on this issue. We will contact the Committee directly and inform them of changes they need to make to limit the potential recurrence of witnessed impacts and to offer our assistance in developing a plan that will allow them to avoid future violations.

We hope to work together with the Gualala community to ensure adequate protection of the State's living resources while allowing for public celebration of our Nation's independence. The Department will certainly keep you informed of any developments and welcomes your input on this important matter.

Sincerely,

John Ugoretz
Habitat Conservation Program Manager, Marine Region
California Department of Fish and Game
1933 Cliff Drive, Suite 9
Santa Barbara, CA 93109
Office (805) 893-5822
Cell - (805) 338-3905
jugoretz@dfg.ca.gov
www.dfg.ca.gov/marine



RECEIVED
JUN 10 2008

PACIFIC LEGAL FOUNDATION
CA COASTAL COMMISSION
LEGAL DIVISION

June 10, 2008

Ms. Nancy L. Cave
Northern California Supervisor
Enforcement Program
California Coastal Commission
45 Fremont Street, Suite 200
San Francisco, California 94105-2219

VIA FACSIMILE: (415) 904-5400

Re: Cease-and-Desist Order CCC-08-CD-07

Dear Ms. Cave:

Attached please find correspondence from business persons in Gualala, California, pertaining to the California Coastal Commission's June 11, 2008, cease-and-desist proceedings. Also included is a statement by the authorized representative of Gualala Festivals Committee, Marshall Sayegh, stating that the fireworks display will not, under any circumstances, interfere with the public easement on the private property being used as a launch site.

As you instructed, we are faxing these letters to you for inclusion in the record. The originals will be sent, under separate cover, by the Gualala Festivals Commission to Bob Merrill in the North Coast District Office.

If you have any questions, please let me know. Thank you for your attention to this matter.

Sincerely,

PAUL J. BEARD II
Attorney for Gualala Festivals Committee

Enclosures

Gualala Festivals Committee
PO Box 1415
Gualala, CA 95445

June 9, 2008

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Bob Merrill, District Manager
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 95501

Re. ~~Cross and Desist~~ Order CCC-08-CD-07, Gualala Festivals Committee Fireworks Display

Honorable Commissioners and Mr. Merrill,

Our Gualala 150th Anniversary Fireworks Display will not block any trail easements or access to the RCLC Trail during the day. We will not begin our show until after the dusk closure of the trail.

Sincerely,



Marshall Sayegh, Gualala Festivals Committee

Adventure Rents
 PO Box 489
 Gualala, CA 95445
 707-884-4386

June, 2008

California Coastal Commission
 45 Fremont Street
 Suite 2000
 San Francisco, CA 94105-2219

Bob Merrill, District Manager
 North Coast District Office
 710 E. Street, Suite 200
 Eureka, CA 95501

Re: Cease-and-Desist Order OCC-08-CD-07, Gualala Festivals Committee Fireworks Display

Honorable Commissioners and Mr. Merrill,

We write in strong support of the Gualala Festivals Committee's Fourth-of-July fireworks display.

We own or represent a group of businesses in Gualala, California. Our businesses range from hotel, restaurant, boat rentals, internet providers, and hospitality services. We operate our businesses in the area where the Independence Day celebration and fireworks display are set to take place.

We believe our businesses benefitted significantly from the Gualala Independence Day celebration in general, and the fireworks display in particular, in both 2006 and 2007. The display itself attracted many Gualala residents and tourists to the downtown area, allowing them an opportunity to patronize our businesses and enjoy the coast. The display provided a wonderful opportunity for the community to celebrate the Fourth of July.

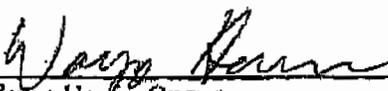
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We strongly support the Gualala Festivals Committee's planned display of fireworks on July 4, 2008. We believe the display will attract residents and tourists to downtown Gualala. Not only will our businesses benefit from the display's attraction, but we relish yet another opportunity to watch the fireworks display with family and friends and celebrate this Nation's birth. Moreover, it will allow many of us to access and enjoy our beautiful coast from private property -- an opportunity we otherwise would not have but for the display.

In the past, the fireworks display was conducted in a very safe manner and, as far as we know, caused no injury to any person or coastal resources. In fact, the Gualala Festivals Committee was diligent in cleaning up any debris in the area after the display. The Gualala Festivals Committee truly is a community-spirited group that should be commended. And there is no doubt in our minds that the display planned for the Fourth of July will be short, safe, and truly enjoyable.

As interested residents and business owners from Gualala, we request that the Commission decide against issuing a cease-and-desist order stopping the display from going forward. We are all very excited about the Independence Day celebration -- in particular, the popular fireworks display -- and we know that there are countless Gualala residents and tourists who are looking forward to another spectacular show this Fourth of July.

Sincerely,



 Wayne Harris, Owner

Celebration Connection
PO Box 1462
Gualala, CA 95445
707-864-4231

June, 2008

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Bob Merrill, District Manager
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 95501

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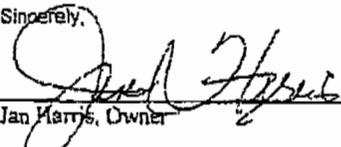
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Sincerely,



Jan Harris, Owner

Jay Baker True Value Hardware
PO Box 589
Gualala, CA 95445
707-884-3534

June, 2008

California Coastal Commission
45 Fremont Street
Suite 2009
San Francisco, CA 94105-2219

Bob Merrill, District Manager
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 95501

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Sincerely,



Jayce Baker

Jacks Gualala Pharmacy
 PO Box 773
 Gualala, CA 95445
 707-884-4107

June, 2008

California Coastal Commission
 45 Fremont Street
 Suite 200Q
 San Francisco, CA 94105-2219

Bob Merrill, District Manager
 North Coast District Office
 710 E. Street, Suite 200
 Eureka, CA 95501

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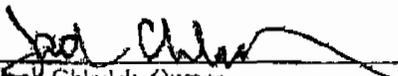
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Sincerely,


 Jack Chladek, Owner

Jan Harris
45450 Pacific Woods Road
Gualala, CA 95445
707-884-4231

June 9, 2008

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Bob Merrill, District Manager
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 95501

Re: Cease-and-Desist Order CCC-08-CD-07, Gualala Festival Committee Fireworks Display

Honorable Commissioners and Mr. Merrill,

I write in strong support of the Gualala Festival Committee's Fourth-of-July fireworks display.

As former Executive Director of the Redwood Coast Chamber of Commerce during the GFC sponsored fireworks shows of 2006 and 2007, my job description included answering the Chamber of Commerce phone and responding to Chamber emails directed to the Chamber office. In addition, the Board of Directors of the Chamber of Commerce authorized posting the Chamber's 800 number on the GFC website in response to inquiries about the Gualala fireworks and other activities on the Mendocino Coast as a service to visitors and locals alike.

During that time period, the Chamber had approximately 150 business members throughout the Redwood "Mendocino" Coast area, from Fort Ross in Sonoma County to Irish Beach in Mendocino County. Nearly 100 of those businesses were in Gualala.

In 2007, July 4th was on a Wednesday, and it would not be a "long weekend" holiday for many. As in the previous year, the GFC deferred to Point Arena for the "first pick" of dates for the fireworks, and Point Arena picked Saturday evening, July 7. Thus, the GFC took Friday, July 6, a holiday for some, if indeed not all potential visitors. Until word of a Gualala Fireworks show emerged, there were precious few inquiries to the Redwood Coast Chamber of Commerce as to accommodations for the weekend. When the press release was issued by the GFC, the phones began to ring. I personally answered numerous calls and emails from potential visitors to the Mendocino Coast, inquiring about the verity of this information. For many, the very fact of TWO fireworks shows in neighboring communities on adjacent evenings was a draw. For others, having a site that allowed family members to view the fireworks without having to trek a mile each way was enticing. At first I was delighted to say "yes, indeed", but then stories of the Gualala fireworks controversy implied that the show was in question. Primarily due to the action of the California Coastal Commission, I could not in good conscience affirm

that the Gualala fireworks show would take place until late June. Local lodging owners and managers contacted me as well, and reported their own stories of having to book "tentativo" reservations or process cancellations.

At this point I should address some of the advantages to both Gualala businesses and the spectators, in having a professional pyrotechnic display to culminate Gualala's Independence Day celebrations.

- One of the main advantages of a display launched from downtown Gualala is the sweeping viewing area from downtown business establishments and their parking areas, "uptown" areas of Gualala and the adjacent hill areas, including the northernmost edge of Sonoma County. The capacity of the viewing area has not been maximized. Even with over 4,000 spectators per event, there was ample space for all without undue crowding, indicating this event's ability to grow in future years.
- There is considerable parking and multiple viewing areas on private property generously provided by Gualala property owners. The local Churches were able to offer their spectacular viewpoints to parishioners and others. Other business owners offered open areas to the crowds for blankets and lawn chairs.
- There are many places where senior citizens, the physically challenged and others with "special needs" can enjoy a comfortable and safe viewing area, whether in a local business or inside a family vehicle with handicapped facilities accessible nearby.
- The size of the viewing area produced only minor congestion following the event. Pre-show crowds grew at a steady pace and everyone seemed congenial, excitedly anticipating the evening's fireworks show. Business was brisk at shops that stayed open late. While the display itself lasted more minutes, the ambience was one of camaraderie, and one had a strong sense of common bond with one's fellow citizens. Following both shows, my personal observation was of an affable, patient, throng. The mild vehicular congestion did not involve honking of horns or shouting, and was ably directed by South Coast VFD volunteers. Folks waited politely in queue, and within a short amount of time, the roadways and parking lots were back to normal.
- There is immediate accessibility to emergency services. While the large viewing footprint and only minor congestion following the event reduces the likelihood of an incident, if one did occur, emergency medical, rescue and fire services are moments away.
- The contribution of the local South Coast Fire & Rescue handling traffic control and the Gualala Lions Club helping facilitate post-event clean-up add greatly to the safety, efficiency and efficacy of the event.

Every community, whether or not they have local government, has the right to express the patriotism and joy of celebration of its citizenry and visitors on our nation's birthday. The Independence holiday has long been symbolic of America...country...community...and family. The addition of a short, professionally operated fireworks display to climax the day's celebrations is the dream of small towns and villages countrywide. Through the organization of the GFC and the generosity of both the committee and local businesses and residents, Gualala has been able to fulfill that dream. Almost 10,000 people were able to enjoy the last two year's displays in safety and comfort. The influx of visitors and locals alike helped foster local revenue. There were no accidents or incidents. The 2007 show was made quieter with no "percussion only" shots or pre-show "salutes" for the very purpose of lessening impact on domestic animals and wildlife. The California Humane Society supported the Gualala show and had a presence passing out brochures about caring for pets and domestic animals during fireworks displays.

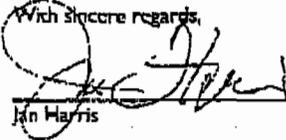
2008 is Gualala's Sesquicentennial celebrating 150 years of existence. This yet unincorporated village was established in 1858 by virtue of land sales by the area's then main landowner, Cyrus Robinson. At

the entrance to Gualala stands a sign carved with the words "GUALALA est. 1858", which has stood for at least the 30 years I've been a resident.

Beginning with Memorial weekend and continuing through Labor Day weekend, Gualala village will be decked with flags along Highway 1, with a special decorating contest for local businesses being held on the July 4th weekend. The GFC has already contacted downtown businesses to participate in an All-American Celebration of the July 4th holiday, with various business owners hosting eating contests, Action Network facilitating old-fashioned games for children, the SCVFD donating a dunk tank (the GFC has invited local and county dignitaries to be "dunkees"), a local restaurant will again be hosting Second Annual "Pirate's Faire", and the climax of the day is planned for a professional, safe and spectacular fireworks display for all.

Gualala's and the neighboring fireworks displays in Bodega Bay, Point Arena and Fort Bragg do not constitute development. To maintain that Gualala's fireworks show does is disingenuous!

With sincere regards,



Ian Harris

29 Year Gualala Resident 1979-2008
15 year downtown Gualala business owner 1994-2008
Redwood Coast Chamber of Commerce Board President 2000-2004
Redwood Coast Chamber of Commerce Executive Director 2004-2007

Gualala Country Inn

www.gualala.com

P.O. Box 697
Gualala, CA 95445
countryinn@gualala.com

Toll free: 800-564-4466
Local: 707-884-1343
FAX: 707-884-1018

10 June 2008

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Bob Merrill, District Manager
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 95501

Re: Cease-and-Desist Order CCC-08-CD-07, Gualala Festivals Committee Fireworks Display

Honorable Commissioners and Mr. Merrill,

We write in strong support of the Gualala Festivals Committee's Fourth-of-July fireworks display. We own or represent a group of businesses in Gualala, California. Our businesses range from hotel, restaurant, boat rentals, internet providers, and hospitality services. We operate our businesses in the area where the Independence Day celebration and fireworks display are set to take place.

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Richard L. Lucas
Asst. Manager



Gualala Sport & Tackle
PO Box 424
Gualala CA 95445
Phone: 884-4247

June, 2008

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2210

Bob Merrill, District Manager
North Coast District Office
710 E Street, Suite 200
Eureka, CA 95601

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Sincerely,



Yecira White

Seacliff on the Bluff
PO Box 1317
Gualala, CA 95445
707-884-1213

June, 2008

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Bob Merrill, District Manager
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 95501

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Sincerely,



Cathy Jarrell, Site Manager

Toms Plumbing
PO Box 92
Gualala, CA 95445
707-884-3818

June, 2008

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

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We own or represent a group of businesses in Gualala, California. Our businesses range from hotel, restaurant, boat rentals, internet providers, and hospitality services. We operate our businesses in the area where the Independence Day celebration and fireworks display are set to take place.

We believe our businesses benefitted significantly from the Gualala Independence Day celebration in general, and the fireworks display in particular, in both 2006 and 2007. The display itself attracted many Gualala residents and tourists to the downtown area, allowing them an opportunity to patronage our businesses and enjoy the coast. The display provided a wonderful opportunity for the community to celebrate the Fourth of July.

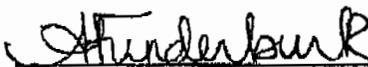
We also believe our businesses suffered pecuniary harm after your staff claimed that the Gualala Festivals Committee needed a coastal development permit for its 2007 fireworks display. For example, the mere threat of a cease-and-desist order in 2007 – just weeks before the display was set to take place – caused many to cancel their hotel reservations. The number of people who would have come to Gualala to watch the display, but who did not because they believed it would not go forward, is incalculable. The loss in business patronage cannot be measured.

We strongly support the Gualala Festivals Committee's planned display of fireworks on July 4, 2008. We believe the display will attract residents and tourists to downtown Gualala. Not only will our businesses benefit from the display's attraction, but we relish yet another opportunity to watch the fireworks display with family and friends and celebrate this Nation's birth. Moreover, it will allow many of us to access and enjoy our beautiful coast from private property -- an opportunity we otherwise would not have but for the display.

In the past, the fireworks display was conducted in a very safe manner and, as far as we know, caused no injury to any person or coastal resources. In fact, the Gualala Festivals Committee was diligent in cleaning up any debris in the area after the display. The Gualala Festivals Committee truly is a community-spirited group that should be commended. And there is no doubt in our minds that the display planned for the Fourth of July will be short, safe, and truly enjoyable.

As interested residents and business owners from Gualala, we request that the Commission decide against issuing a cease-and-desist order stopping the display from going forward. We are all very excited about the Independence Day celebration -- in particular, the popular fireworks display -- and we know that there are countless Gualala residents and tourists who are looking forward to another spectacular show this Fourth of July.

Sincerely,



Adele Funderburk, Office Manager

Bones Roadhouse
38921 Sedalia Dr
Gualala, CA 95445
707-884-1188

June, 2008

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Bob Merrill, District Manager
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 95501

Re: Cease-and-Desist Order CCC-08-CD-07, Gualala Festivals Committee Fireworks Display

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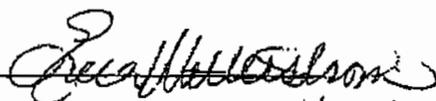
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Sincerely,

Michael Thomas, Owner


Erica Wetterstrom (Manager)



June, 2008

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Bob Merrill, District Manager
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 95501

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Page 1 of 2

P O Box 148 • 37250 Church Street • Gualala, CA 95445-0148
707-884-4181 • Fax 707-884-4183

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Sincerely,



Sidney R. Waterman

President

Waterman Racing Components, Inc.

Page 2 of 2

P O Box 148 • 37250 Church Street • Gualala, CA 95445-0148
707-884-4181 • Fax 707-884-4183

Gualala Festivals Committee
PO Box 1415
Gualala, CA 95445

June 9, 2008

Ms. Laura L. Mueller;
PO Box 1511
Gualala, CA 95445
Redwood Coast Land Conservancy

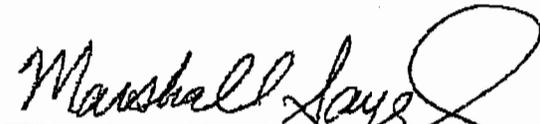
Dear Ms. Mueller:

In response on your concern that the GFC will close the bluff trail, please be advised that the GFC will not be closing the bluff trail at any time during the upcoming 4th of July festival. We have worked out other arrangements, so this will not be necessary.

Regarding the clean up, Sid Waterman his wife Judy as well as 12 members of the Lions club diligently cleaned up the parking lot behind the Surf Super in both 2006 & 2007. The GFC received a letter from the RCLC in 2007 and I will quote the exact wording used:

RCLC greatly appreciated the careful easement clean up of fireworks debris and residue resulting from last years display. We have confidence that the GFC will make a similar effort this year. Signed by Georg R Anderson RCLC President.

We again will do an exelempary job as has been done in the past. Should one of the RCLC members wish to observe that the clean up is done to their satisfaction, we are more than willing to comply.



Marshall Sayegh, Gualala Festivals Committee

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



Item W 13

Staff: Nancy Cave-SF
Staff Report: May 30, 2008
Hearing Date: June 11-13, 2008

STAFF RECOMMENDATION AND FINDINGS FOR CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-08-CD-07

RELATED VIOLATION FILE: V-1-07-018

PROPERTY LOCATION: In the vicinity of the Gualala River Estuary and 39170 South Highway One, Gualala, Mendocino County, APN 145-261-012

PROPERTY OWNER: Eric and Caron Cogdill

VIOLATOR: Gualala Festivals Committee

VIOLATION DESCRIPTION: Unpermitted Proposed Fireworks Display for Friday, July 4, 2008, in an area and manner that presents the potential for significant adverse impacts on coastal resources.

PERSONS SUBJECT TO THESE ORDERS: 1. Gualala Festivals Committee members

SUBSTANTIVE FILE DOCUMENTS:

1. Notice of Intent to Commence Cease and Desist Order Proceedings, 4/1/08
2. Public Documents contained in Cease and Desist Order File No. CCC-08-CD-07
3. Exhibits 1 through 13 of this staff report
4. *Seabird and Marine Mammal Monitoring and Response to a Fireworks Display at Gualala Point Island, Sonoma County, California, May to August 2007*, James F. Weigand and Gerard J. McChesney, United States Department of the Interior, Bureau of Land Management, and Fish and Wildlife Service, February 12, 2008
5. CDP No. 3-03-034 as amended

6. *Environmental Assessment of the Issuance of a Small Take Regulations and Letters of Authorization and the Issuance of National Marine Sanctuary Authorizations for Coastal Commercial Fireworks Displays within the Monterey Bay National Marine Sanctuary, California* by National Oceanic and Atmospheric Administration, National Marine Fisheries Service and Monterey Bay National Marine Sanctuary, June 2006
7. CDP No. NCR-77-C115
8. Office of Press Secretary, the White House, Press Release, January 11, 2000, *Establishment of the California Coastal National Monument – A Presidential Proclamation*

CEQA STATUS:

Exempt (CEQA Guidelines (CG) §§ 15060(c) (2) and (3) and 15061(c) (3)) and Categorically Exempt (CG §§ 15061(b) (2), 15307, 15308 and 15321).

I. SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

This matter involves the planned commencement of an organized fireworks display scheduled to take place on Friday, July 4, 2008. The Gualala Festivals Committee, a private committee formed by local business and property owners, has announced and advertised its intention to launch fireworks from 39170 South Highway One, Gualala, Mendocino County, APN 145-261-012 (subject property).¹ The subject property is encumbered by a vertical and lateral public access easement held by the Redwood Coast Land Conservancy (RCLC). The easements were dedicated to comply with requirements of permits issued by the Commission over 25 years ago. The vertical easement is located within an existing parking lot for patrons of the Surf Motel, which is also located at the subject property, and continues down the bluff face to the mean high water line of the Gualala River. It connects with a lateral bluff top trail managed by RCLC and running within the lateral easement; both trails are open for use by the public.

¹ Initially, the GFC announced their intention to launch fireworks from 39250 South Highway One, Gualala, Mendocino County, APNs 145-261-05 and 145-261-13. However, John Bower of Bower Limited Partnership, owner of 39250 South Highway One, withdrew his permission for his property to be used as a launch location in April. On May 8, 2008, the GFC communicated to Commission staff that they were now planning to use a new location, at 39170 South Highway One, Gualala, Mendocino County, APN 145-261-12.

The fireworks would be launched somewhere on the subject property and would detonate over the Gualala River Estuary and near Gualala Point Island in Sonoma County. The fireworks will affect environmentally sensitive habitat and marine and water resources. The Gualala River Estuary is a breeding ground for threatened Coho salmon and steelhead trout as well as other local fish. Ospreys, great blue herons, egrets, and river otters fish in the river and its estuary. The Gualala River Estuary is also the home of a remnant population of marbled murrelets, one of three remaining known locations of murrelets in Southern Mendocino, Sonoma, and Marin Counties. Marbled murrelets are classified as endangered under the State Endangered Species Act and as threatened under the Federal Endangered Species Act.

Gualala Point Island is part of the California Coastal National Monument. At the edge of the mainland, the California Coastal National Monument - the islands, rocks, exposed reefs, and pinnacles off the coast above mean high tide - provides havens for significant populations of sea mammals and birds. These exposed areas are part of a narrow and important flight lane in the Pacific Flyway, providing essential habitat for feeding, perching, nesting, and shelter. Gualala Point Island is the home of several nesting seabird colonies, including but not limited to Brandt's cormorants, Pelagic cormorants, pigeon guillemots, western gulls and black oystercatchers. As discussed more fully herein, a similar fireworks display occurred in approximately the same location last year and had a demonstrated adverse effect on the nesting birds, including most likely causing actual nest abandonment and consumption of abandoned eggs and/or juvenile chicks by predators, a permanent impact (See Exhibit 14 and Substantive File Document No. 4 – *Seabird and Marine Mammal Monitoring and Response to a Fireworks Display at Gualala Point Island, Sonoma County, California, May to August 2007*, James F. Weigand and Gerard J. McChesney, United States Department of the Interior, Bureau of Land Management, and Fish and Wildlife Service, February 12, 2008).

On April 1, 2008, after several failed attempts to convince the GFC to apply for a coastal development permit ("CDP") for its proposed fireworks display, the Executive Director issued a Notice of Intent to Commence Cease and Desist Order Proceedings to the Gualala Festivals Committee ("GFC") and Bower Limited Partnership, regarding the proposed July 4, 2008 fireworks display. At that time, the GFC had indicated that it was planning to launch the fireworks from property owned by Bower Limited Partnership at 39250 South Highway One in Gualala (APN 145-261-0130). Bower Limited Partnership subsequently withdrew permission for use of its property located at 39250 South Highway One in Gualala and, as a consequence, is no longer subject to this proceeding.

In his April 1, 2008 letter, the Executive Director indicated Commission staff's willingness to discuss possible alternatives for a celebration designed to avoid adverse impacts to nesting seabird colonies and encouraged the GFC to contact staff to discuss those alternatives (which included, among other proposals, having a laser light show in lieu of a fireworks display). The GFC did not contact Commission staff to discuss possible alternatives as suggested by the Commission's Executive Director.

The GFC submitted a Statement of Defense form on April 21, 2008, and has indicated it will not seek a CDP for the planned July 4, 2008 fireworks display, despite being repeatedly informed by Commission staff and the Commission itself in 2007, and by the Executive Director on April 1, 2008, that a CDP is required for the fireworks display. On April 29, 2008, John Bower of Bower Limited Partnership formally withdrew his permission for the GFC to use his property as its launch site. On May 8, 2008, lawyers for the GFC told Commission staff that the GFC still planned to pursue its fireworks display (without a CDP) in the Coastal Zone, and, further, that they had now identified a new location for the launching of the fireworks display, 39170 South Highway One, property owned by Eric and Caron Cogdill.

In order to avoid irreparable harm to coastal resources including wildlife (as further discussed herein) in the Coastal Zone, staff recommends that the Commission approve Cease and Desist Order CCC-08-CD-07 (hereinafter "Order") to require the Gualala Festivals Committee to cease and desist from undertaking, or threatening to undertake, (1) the proposed fireworks display, or any other type of non-exempt development, without the requisite Coastal Act authorization, or (2) any other activity that is inconsistent with a CDP previously issued by the Commission.

The unpermitted activity that the GFC is presently threatening to undertake involves the installation of a fireworks display and detonation of fireworks over the Gualala River Estuary. The unpermitted activity includes the placement of solid material on land and the discharge of gaseous and solid waste into coastal waters and constitutes a change in intensity of use of both land and water or access thereto, and therefore constitutes "development" as defined in Section 30106 of the Coastal Act, and as is discussed more fully herein. The GFC has failed to obtain a CDP for this development as required by Section 30600 of the Coastal Act.

As noted herein, the Commission has received CDP applications for other fireworks displays and has, through the permit review process, been able to evaluate the details of each proposal in light of the Coastal Act policies and been able to conditionally approved CDPs for such events or been able to determine that the proposed fireworks display is exempt because it is a temporary event that does not impact coastal resources.

Presumably, as occurred last year, the launching of fireworks will temporarily disrupt public access to and along the Gualala Bluff Trail prior to and during the fireworks display by closing a portion of the Gualala Bluff Trail to the public. The proposed activity is inconsistent with the requirements of coastal permits issued by the Commission because it will prohibit public use of the trail easements mandated by prior Commission permits before and during the display. Therefore, not only is the falling debris within the Commission's retained jurisdiction, but the aspect of the alleged violation involving the set-up of the launch site and the launching of the fireworks is also, at least in part, subject to the Commission's direct enforcement jurisdiction, as it involves actions inconsistent with coastal permits issued by the Commission.

The Commission may issue a Cease and Desist Order under Section 30810 to direct the GFC to cease and desist from undertaking development without a coastal development permit, or from undertaking any activity inconsistent with a permit previously issued by the Commission, and the Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order are outlined in California Code of Regulations, Title 14 ("14 CCR") Section 13185.

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which time Staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13186, adopting the standards set forth in Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motion below, per the Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order.

III. STAFF RECOMMENDATIONS

Staff recommends that the Commission adopt the following motion:

1. Motion

I move that the Commission issue Cease and Desist Order No. CCC-08-CD-07 pursuant to the staff recommendation.

Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Cease and Desist Order

The Commission hereby issues Cease and Desist Order No. CCC-08-CD-07, as set forth below, and adopts the findings set forth below on grounds that the Gualala Festivals Committee is threatening to undertake non-exempt "development," as that term is defined by section 30106 of the Coastal Act, without a coastal development permit as is required by section 30600 of the Coastal Act, and is threatening to undertake activities that are inconsistent with one or more permits previously issued by the Commission.

IV. FINDINGS FOR CEASE AND DESIST ORDER NO. CCC-08-CD-07²

A. Description of Threatened Unpermitted Development

The threatened development, which is the subject matter of this Order, consists of the Gualala Festivals Committee's announcement that it plans on conducting a fireworks display within the Coastal Zone, and actions to be taken by the GFC. The fireworks display is currently proposed to be launched on Friday, July 4, 2008 from a location with a vertical and lateral public access trail easement and over the Gualala River estuary (Exhibit 1). The threatened development involves the placement of solid material, the release of solid and gaseous material, and a change in the intensity of use of water or of access thereto, thereby constituting development and requiring a coastal development permit. The Gualala Festivals Committee has not applied for or received a CDP for this activity.

B. Description of Activities Inconsistent with Prior Permits

Presumably, as occurred last year, the launching of fireworks will temporarily disrupt public access to and along the Gualala Bluff Trail prior to and during the fireworks display by closing a portion of the Gualala Bluff Trail to the public. The proposed activity is also inconsistent with the requirements of coastal permits previously issued by the Commission because it will prohibit public use of the trail easements before and during the display. A CDP previously issued by the Commission required the provision of vertical and lateral access on the subject property. CDP No. NCR-77-C-115 specifically required that the area of the access easements be open to the public and prohibited impeding public access. Therefore, at least the aspects of the alleged violation involving the set-up of the launch site and the launching of the fireworks or

² These findings also hereby incorporate by reference Section I of the May 29, 2008 staff report ("Staff Recommendation and Findings for Cease and Desist Order") in which these findings appear, which section is entitled "Summary of Staff Recommendation and Findings."

otherwise adversely affecting the easements are also a violation of the Coastal Act, as it involves actions inconsistent with coastal permits previously issued by the Commission.

C. History of Violation

On July 2, 2006, the Gualala Festivals Committee commenced its first “Patriot Days” fireworks display over the Gualala Estuary. The Gualala Festivals Committee did not obtain a CDP for this activity and the Coastal Commission as well as other agencies like the Department of Fish and Game received several phone calls complaining about the fireworks display and its perceived impact on nesting seabirds found on Gualala Point Island.

In June, 2007, Commission staff became aware that the Gualala Festivals Committee was planning a second fireworks display to take place on Friday July 6, 2007. The plan was to launch the fireworks for this display in or immediately adjacent to a lateral public access trail located above the Gualala River and estuary. On June 13, 2007, the Commission’s North Coast District Manager, Robert Merrill, contacted the Gualala Festivals Committee and informed the GFC that the fireworks display constituted development and needed a coastal development permit (CDP) (Exhibit 2). In conversations with the GFC and its representative, and before the Commission during the North District Director’s report in December, 2007 (GFC representatives were present and submitted public testimony), Commission staff urged the GFC to consider other means to celebrate, such as conducting a laser light show in lieu of launching fireworks, or relocating the fireworks display to a location where the display would not impact coastal resources.

GFC did not discuss alternatives with Commission staff and did not seek a CDP, and on June 29, 2007, the Commission’s Enforcement Division staff notified the GFC that the Commission still considers the fireworks event development that requires a CDP. Commission staff explained that if the GFC proceeded in the absence of a CDP, a violation of the Coastal Act would occur and therefore GFC proceeded at its own risk of additional action by the Commission (Exhibit 3). Commission staff brought up the monitoring protocol developed by the Bureau of Land Management (“BLM”) to collect data to determine whether the July 6, 2007 display would cause adverse impacts to occur to coastal resources, noting that it was already being implemented to generate baseline data in advance of the planned fireworks program. The Commission’s June 29, 2007 letter also noted a letter of concern submitted by the State Department of Fish and Game dated June 22, 2007, regarding the 2007 fireworks event, and raised specific concerns regarding this activity in this specific location at this time of year (Exhibit 4). The Department of Fish and Game’s June 22, 2007 letter to Marshall Sayegh of the Gualala Festivals Committee states that:

Gualala Point Island and the seaside cliffs to the north and south of Gualala are established nesting sites for many migratory seabird species, such as Pigeon Guillemot, Pelagic Cormorant, Black Oystercatcher, and Brandt’s Cormorant. Brown Pelicans, an endangered species, use the island as a roost at night.

Marbled Murrelets, another endangered species, are also observed in the ocean near Gualala at dawn and dusk every year at this time. Both of these endangered species, and the nesting birds, could potentially be impacted by the fireworks display.

Observations of Gualala Point Island during the 2006 fireworks display suggest that roosting Brown Pelicans, nesting Pigeon Guillemots, Pelagic Cormorants, Brandt's Cormorants, Black Oystercatchers, and Western Gulls on Gualala Point Island were disturbed. According to anecdotal information, these birds were disturbed enough by the fireworks display to fly off the island and abandon their roosts and nests at night. Disruption and nest abandonment can lead to mortality of eggs and/or chicks left behind in the unprotected nests.

If nest abandonment and mortality of seabirds occurs due to the fireworks display, then the GFC could be in violation of California Code of Regulations, Title 14 §251.1.

California Code of Regulations, Title 14 §251.1, states that:

“Except as otherwise authorized in these regulations or in the Fish and Game Code, no person shall harass, herd, or drive any game or nongame bird or mammal or furbearing mammal. For the purposes of this section, harass is defined as an intentional act which disrupts an animal’s normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering...”

The Department recommends that the GFC find an alternate location for the fireworks display where disturbance of wildlife is avoided. Anything that the GFC could do to minimize or avoid the impact to the nesting and roosting birds on Gualala Point Island would be beneficial.

The Commission’s June 29, 2007 letter further stated: “The Coastal Commission will review the results of the monitoring protocol if the July 6, 2007 event is held and will consult with CDFG to determine whether or not adverse impacts to coastal resources have occurred as a result of the unpermitted activity.”

The June 29, 2007 letter also advised the GFC that they should apply for a CDP before going forward with any development activity within the Commission’s jurisdiction, and stated that the Commission expected the GFC to apply for a CDP well in advance of any proposed event that includes fireworks launched over the Gualala River in the future. In order to facilitate future coordination and allow time to work on alternatives, which would not harm the nesting birds, the Commission’s letter stated that the GFC should apply for a CDP no later than February 2008 if they wished to pursue a fireworks event in July 2008.

On July 6, 2007, the GFC launched a fireworks display from the planned location adjacent to a public access easement held by the Redwood Coast Land Conservancy. Public use of the public access easement was halted prior to sunset so that the fireworks display could be installed. The fireworks were detonated over the Gualala River estuary. The Bureau of Land Management (BLM) and the United States Fish and Wildlife Service (USFWS) monitored the impact of the detonated fireworks on the nesting seabird colonies found on Gualala Point Island. The BLM conducted this monitoring effort in cooperation with the USFWS and the State Department of Fish and Game. Monitoring was conducted between May 30, 2007 and August 30, 2007 to gain baseline information on seabird use of Gualala Point Island, which is near the communities of Gualala and Sea Ranch in Sonoma County (Gualala Point Island is located in Sonoma County; the GFC fireworks were launched from Mendocino County). Monitoring was conducted before, during, and after the fireworks display held on July 6, 2007. The monitoring was designed to determine whether or not the display had effects on six species of nesting seabirds and one marine mammal species. Monitoring, including photography, observation, and audio recording was conducted by the BLM along with volunteers, using a protocol developed and supervised by wildlife specialists from the BLM and USFWS.

Monitoring in the period surrounding the fireworks display showed the species most affected by the detonated fireworks was Brandt's cormorants, which were actively nesting leading up to the event. Ten nests were abandoned. Any eggs and/or juvenile chicks left in the abandoned nests were attacked and consumed and/or killed by predators³. The report concludes that the nests had been abandoned most likely as a result of the fireworks display.

RCLC representatives reported to Commission staff that the 2007 fireworks display also resulted in the closure of the lateral Gualala Bluff Top Trail before dusk and that after the display, RCLC representatives found solid debris from the fireworks within the easement and upon the bluffs above the Gualala River (Exhibit 5).

At the Commission's December 2007 meeting held in San Francisco, the North Coast District Director discussed the BLM/USFWS draft monitoring report as part of his district director's report for the North Coast District. Representatives from the BLM and USFWS were present and provided public comment on the District Director's report. The USFWS staff present at the hearing, Gerard J. McChesney, one of the co-authors of the "Seabird and Marine Mammal Monitoring and Response to a Fireworks Display at Gualala Point Island, Sonoma County, California, May to August 2007," affirmed the above-referenced nest abandonment and concluded the abandonment is the result of the 2007 fireworks display. Members of the public also addressed the Commission both opposed and in support of the fireworks event. After hearing public comment, the Commission asked the representatives of the GFC who were present at the hearing to apply for a CDP for any planned 2008 fireworks and, as stated in the Commission's June 29, 2007 letter, asked that the GFC CDP application be submitted no later than

³ The impacts from predators upon the eggs and/or juvenile chicks, therefore, constitutes a permanent impact upon the nesting seabird colony.

February 2008. The Commission staff hoped to avoid adverse effects on wildlife by discussing further with the GFC a change in timing or location for the fireworks display, or a change in the precise type of event (for example, conducting a laser light show in lieu of fireworks display), and believed the GFC's submittal of a CDP application by February 2008 would allow that discussion to occur well before any planned activity by the GFC for 2008.

The BLM and USFWS conducted several public meetings on the draft monitoring report. The BLM met with residents of Sea Ranch and Gualala as well as with the Gualala Festivals Committee. The BLM also met with relevant federal and state resource agency representatives. According to BLM staff, representatives of the GFC stated that the draft monitoring report contained many flaws and erroneous information. The BLM invited GFC and any other interested parties to submit specific evidence of the cited flaws and erroneous information, and the GFC failed to do so. On February 12, 2008, the BLM and USFWS published a final Monitoring Report regarding the impact of the 2007 fireworks display on nesting seabird colonies on Gualala Point Island.

The GFC did not file a CDP application by February 2008 and has not submitted a CDP application as of the date of this report. As of May 28, 2008, the GFC website (<http://www.gualalafestivals.org>) has a posted announcement: "Coming up.....4th of July Fireworks 2008!" In addition, the GFC announced in an article published on March 7, 2008, in the Independent Coast Observer, that "its fireworks will take place over Gualala on Friday, July 4, 2008." On April 18, 2008, the Pacific Legal Foundation, representing the GFC, stated that the GFC is "planning a fireworks display scheduled to take place on Friday, July 4, 2008." On April 29, 2008, John Bower, of Bower Limited Partnership, formally withdrew his permission for the GFC to use his property as its launch site. On May 8, 2008, the Pacific Legal Foundation contacted the Commission and identified a new location for the fireworks display and confirmed the GFC's intent to proceed without a coastal development permit. Therefore, it appears that the GFC is indeed planning to have a fireworks display in the Coastal Zone on July 4, 2008.

Notice of Intent to Commence Cease and Desist Order Proceedings

On April 1, 2008, pursuant to 14 CCR Section 13181, the Executive Director of the Commission issued a *Notice of Intent to Commence Cease and Desist Order Proceedings* ("NOI") to commence order proceedings under the Coastal Act (Exhibit 6). The NOI, which was sent to both the Gualala Festivals Committee, and to Bower Limited Partnership, included a thorough explanation of why the subject activity is development under the Coastal Act and how such activity meets the criteria of Section 30810 of the Coastal Act that must be satisfied to commence proceedings for issuance of a cease and desist order.

In accordance with Section 13181(a) of the Commission's regulations, the GFC and Bower Limited Partnership were provided the opportunity to respond to the Commission staff's allegations as set forth in the NOI by completing a Statement of Defense form (hereinafter "SOD"). The GFC and Bower Limited Partnership were required to submit

the SOD by no later than April 21, 2008, under the applicable regulations. On April 21, 2008, Pacific Legal Foundation submitted a SOD on behalf of Gualala Festivals Committee (Exhibit 7).

On April 4, 2008, James F. King, on behalf of Bower Limited Partnership, submitted a letter to the Executive Director of the Commission stating that Bower Limited Partnership "...intends to comply with the Coastal Act and with all other California and federal laws concerning use of its properties." (Exhibit 8). On April 24, 2008, John H. Bower, on behalf of Bower Limited Partnership, submitted a letter to the Commission that states the following (Exhibit 9):

Bower Limited Partnership will not allow the Gualala Festivals Committee, or any other entity, to conduct a fireworks display on or from the Subject Property [39250 South Highway One] or on any other of its properties located within the Coastal Zone...unless and until the entity wishing to undertake a fireworks display has either (a) obtained a Coastal Development Permit from the Coastal Commission or confirmation from the Commission that no such permit is necessary; or (b) a court of competent jurisdiction has made a final determination that no such permit is necessary. As used in the preceding sentence, 'final determination' means a final order or judgment of a California court which either has been affirmed on appeal, or has become final because the time for appealing the order has expired.

It is no longer necessary to proceed with the issuance of an order to Bower Limited Partnership since they have agreed not to proceed with development without a CDP or a determination that no CDP is necessary.

However, on May 9, 2008, in a telephone conversation with Commission staff, and by letter on May 16, 2008, Pacific Legal Foundation, on behalf of the Gualala Festivals Committee, announced that a new location had been identified for the GFC's planned July 4, 2008 fireworks display, and confirmed that the launch site is in the Coastal Zone and that the fireworks display will detonate over the Gualala River in a location which would have the same effects on the nesting bird populations (Exhibit 10).

Because the Gualala Festivals Committee has stated its intention to proceed with the fireworks display within the Coastal Zone without first obtaining a CDP determination from the Commission, it is necessary for the Commission to issue a Cease and Desist Order.

D. Basis for Issuance of Order

The statutory authority for issuance of this Cease and Desist Order is provided in section 30810 of the Coastal Act, which states, in relevant part:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity

that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program . . . or any requirements of [the Coastal Act] which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

(1) The local government . . . requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

(2) The commission requests and the local government...declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...

The following paragraphs set forth the basis for the issuance of the Cease and Desist Order by providing substantial evidence that the development meets all of the required grounds listed in Sections 30810 for the Commission to issue a Cease and Desist Order.

i. The Gualala Festivals Committee is threatening to undertake an activity that requires a permit from the Commission without securing a permit

The Commission has not issued a CDP to authorize the proposed July 4, 2008 fireworks display, nor has the GFC applied for one. Section 30600 of the Coastal Act requires that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP. "Development" is defined by Section 30106 of the Coastal Act which states:

"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...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...

Development requires a coastal development permit in accordance with Section 30600 of the Act, which provides in pertinent part:

"... in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person... wishing to

perform or undertake any development in the coastal zone... shall obtain a coastal development permit.”

The threatened activities fall within the definition of development under the Coastal Act in a number of ways. The threatened unpermitted development activity includes the placement of solid material at the launch site. It also involves a change in intensity of use of the land at the launch site, which is currently used as a vertical and lateral public access trail, as well as a parking lot for guests at the Surf Motel. The threatened unpermitted development activity also involves a change in the access to water through prohibiting public use of the vertical access easement prior to dusk. All three of these aspects of the planned event fall within different sections of the above-referenced definition of development and would occur on land subject to the County's permit jurisdiction. The County has declined to act to enforce its permit requirements for the threatened unpermitted development, and pursuant to Section 30810 (a) (2), the Commission may issue an order to enforce the permit requirements of the County's LCP.

The threatened unpermitted development involves the discharge and/or disposal of gaseous and/or solid waste into coastal waters. The discharge and/or disposal will occur within the Commission's retained CDP jurisdiction, pursuant to Coastal Act Section 30519(b), and pursuant to Section 30810, the Commission may issue an order to enforce its own CDP requirements.

In addition, the threatened unpermitted development will also cause a temporary change in the intensity of use of water or of access thereto. The threatened unpermitted development does not qualify for an exemption from CDP requirements under the Commission's Temporary Events Guidelines because the Executive Director has determined that the planned event and its associated activities involve unique and changing circumstances that have the potential to either directly or indirectly cause significant adverse impacts to environmentally sensitive habitat areas, rare or endangered species, and other coastal resources such as public access opportunities, marine resources, and biological resources (Exhibit 2).

The launch requires the placement of solid materials on the ground so that aerial shells can be released. The launch will result in a change in intensity of use of the land because there will be increased activity within the existing vertical easement in order to set up the display and during the display. The subject property contains an opened, currently used public vertical and lateral access trail. Although the Commission lacks specific details of the planned event, due to the GFC's refusal to submit a permit application or otherwise provide such information, the July 4, 2008 fireworks display will presumably result in the public not being allowed to use the vertical and lateral trail before and during the display, as was the case in July 2007. Currently, the public is allowed to utilize the trails from dawn until dusk. The threatened unpermitted development activity will result in closure of the trail before dusk, constituting a change in intensity of use of access to the Gualala River. Finally, the launch will result in debris falling from the launched shells onto the lateral trail, the bluffs above the Gualala River,

and into the Gualala River. Therefore, for all these reasons, the threatened activity constitutes “development” and is subject to the coastal development permit requirements of Section 30600(a) of the Coastal Act.

ii. The Gualala Festivals Committee is threatening to undertake an activity that is inconsistent with a permit previously issued by the Commission

The threatened unpermitted development activity appears also to be inconsistent with a permit previously issued by the Commission (CDP No. NCR-77-C-115), which requires the provision of vertical and lateral access on the subject property. CDP No. NCR-77-C-115 required recognition and creation of general rights of public access over these areas. It required recognition of an existing vertical accessway (and agreement specifically that the permittee and its successors would not impede it) and creation of the lateral accessway (through an offer to dedicate the lateral access easement). Pursuant to Section 30810 of the Act, the Commission may issue an order if someone threatens to undertake any activity that may be inconsistent with any permit previously issued by the Commission.

iii. Summary of Bases for Issuance of Order

As noted above, a CDP has not been issued to authorize the planned 2008 fireworks display. For these reasons, the Commission finds that the criteria of Section 30810(a) of the Coastal Act have been satisfied as the GFC is threatening to undertake an activity that requires a permit from the Commission without obtaining the permit, and which is inconsistent with a permit previously issued by the Commission. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act to address the threatened undertaking of the unpermitted development and activities by the GFC.

E. Potential Resource Concerns

It should be noted that identification of specific resource concerns is not an element that is required for the issuance of a Cease and Desist Order. That is, the Commission does not have to find that the nature of the threatened unpermitted development activity is inconsistent with the Chapter 3 policies of the Coastal Act to issue a Cease and Desist Order under the Coastal Act (Section 30810). However, this section is provided as background information. The Commission finds that the unpermitted development raises issues of concern with Chapter 3 policies of the Coastal Act regarding the protection of coastal access, the protection of marine resources, the biological productivity of coastal waters, and possibly environmentally sensitive habitat areas.

1. The Unpermitted Development Would Interfere with Public Access

The public access trails located on the subject property and along the bluffs above the Gualala River were formalized pursuant to the requirements of CDP No. NCR-77-C-

115, granted to John and Ida Bower in 1977, to authorize a land division. In compliance with conditions of approval of that permit, the Bowers offered to dedicate 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 line of the Gualala River. In 1994, the Redwood Coast Land Conservancy accepted the offer to dedicate the vertical and lateral access easements and obtained a coastal development permit from Mendocino County to construct the Gualala Bluff Trail to provide public access along the bluff⁴. The proposed launching of fireworks will 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. The proposed activity is inconsistent with the requirements of CDP No. NCR-77-C-115 because it will prohibit public use of the trail easements before and during the fireworks display.

2. The Unpermitted Development Would Adversely Affect Marine Resources, the Biological Productivity of Coastal Waters, and Environmentally Sensitive Habitat Areas

The threatened activities would adversely affect coastal resources in a number of ways. The Gualala River is a breeding ground for the threatened coho salmon and steelhead trout as well as other local fish. Coho salmon and steelhead trout exist both in marine waters and in fresh water. According to USFWS staff, a remnant population of marbled murrelets exists in the Gualala River estuary. Marbled Murrelets are designated an endangered species under the California Endangered Species Act and a threatened species under the Federal Endangered Species Act. Ospreys, great blue herons, egrets, and river otters fish in the river and its estuary. The Gualala River estuary provides harbor seal haul-out sites as well as habitat for other marine mammals. The proposed fireworks display could impact the breeding grounds for the threatened Coho salmon, steelhead trout, and could have impacts on the remnant population of marbled murrelets as well as other marine and fresh water species.

Environmentally Sensitive Habitat Areas (ESHA) are defined on page 38 of the Mendocino County LUP as:

Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Coastal Zoning Code Section 20.496.010 “Environmentally Sensitive Habitat and other Resource Areas—Purpose” states:

...Environmentally Sensitive Habitat Areas (ESHA’s) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands,

⁴ The vertical easement is located within an existing parking lot for the Surf Motel. The easement is not marked as a separate trail through the parking lot; the public walks anywhere in the parking lot to get to the lateral bluff top trail.

riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.

The site of the proposed launching of the fireworks display is near the bluffs above the Gualala River estuary. The launch site for the proposed fireworks display is approximately one mile from Gualala Point Island, part of the California Coastal National Monument. The California Coastal National Monument (CCNM) was established by then President Clinton by Presidential Proclamation issued on January 11, 2000. The stated purpose of the CCNM is to elevate the protection of “all unappropriated or unreserved lands and interests in lands owned or controlled by the United States in the form of islands, rocks, exposed reefs, and pinnacles above mean high tide within 12 nautical miles of the shoreline of the State of California.” The CCNM is arguably the Nation’s most unique national monument. It consists of rocks, a network of more than 20,000 of them, located off of the 1,100 miles of the California coastline from San Diego to the Oregon border. The CCNM is among the most viewed but the least recognized of any of the Nation’s national monuments (Bureau of Land Management website: <http://www.blm.gov/ca>; see also Substantive File Document No. 8).

Gualala Point Island, part of the CCNM, provides nesting and roosting habitat for a variety of seabirds. The brown pelican roosts on Gualala Point Island. The brown pelican is listed as endangered under both State and Federal Endangered Species Acts. Geologic factors combine to make Gualala Point Island a unique and favorable habitat for colonial seabirds. For example, Gualala Point Island is part of the Gualala Block, a narrow crustal sliver that extends roughly from Point Arena in Mendocino County south to Fort Ross in Sonoma County. The Gualala Block consists predominantly of sedimentary formations deposited originally hundreds of miles south of their current location and subsequently transported northward along the San Andreas Fault System. The Gualala Block is the most northerly large assemblage of rocks on the west side of the San Andreas Fault. Additionally, the large-scale movement has brought to the Gualala area some rocks, such as limestones, that are uncommon along the northern California Coast. Gualala Point Island bedrock consists of interbedded shales and massive sandstones of the Paleocene-Eocene German Rancho formation. However, crustal deformation associated with northward transport of the Gualala Block has caused the bedding planes to twist and become vertical. The result is a corrugated effect to the rocks, with the softer shales eroding more rapidly than the massive resistant sandstones. Crevices that form between the interbedded rock layers form nesting sites for pigeon guillemots (*Ceppus columba*) and rock ledges create nesting habitat for Pelagic cormorants (*Phalacrocorax penicillatus*). Brandt’s cormorants nest primarily on the limestone flats of Gualala Point Island.

The 2007 unpermitted fireworks display conducted by the GFC resulted in documented disturbance of seabird roosts and rookeries, including observed abandonment by Brandt’s cormorants. Any eggs and/or juvenile chicks left in the abandoned nests were attacked by predators. Therefore, because the threatened unpermitted development activity would be located in close proximity to known environmentally sensitive habitat areas (Gualala River estuary and Gualala Point Island) that provides habitat to

endangered and threatened species, and has the potential for significant adverse impacts to ESHA, marine resources and the biological productivity of coastal waters, the Commission finds that the threatened activity could be inconsistent with Chapter 3 resource policies (Sections 30230, 30231, and 30240).

F. California Environmental Quality Act (CEQA)

The Commission finds that issuance of Cease and Desist Order CCC-08-CD-07 is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for multiple reasons, including that it will not have any significant adverse effects on the environment, within the meaning of CEQA. The Order is exempt from CEQA based on Sections 15061(b) (3) and is categorically exempt based on sections 15061(b) (2), 15307, 15308 and 15321 of the CEQA Guidelines (Title 14 of the California Code of Regulations).

G. Findings of Fact

1. The Gualala Festivals Committee (GFC) is planning a fireworks display scheduled to take place on Friday, July 4, 2008 in the Coastal Zone, as defined in the Coastal Act. The GFC is a private committee formed by local business and property owners.
2. The planned fireworks display is development under Section 30106 of the Coastal Act as it consists of the placement of solid material, and the discharge or disposal of gaseous and/or solid waste in the Coastal Zone.
3. The planned fireworks display is development under Section 30106 of the Coastal Act, as it consists of a change in the intensity of use of water or of access thereto, since the display would be launched over a public vertical and lateral access trail held by the Redwood Coast Land Conservancy.
4. The proposed fireworks display will be launched in the Coastal Zone, currently planned to be from 39170 South Highway One, Gualala, Mendocino County, Assessors Parcel Number 145-261-02 (subject property).
5. Eric and Caron Cogdill own the subject property.
6. The proposed fireworks display will be launched over two public access easements held by the Redwood Coast Land Conservancy.
7. The proposed fireworks display will prohibit public use of the two public access easements prior to dusk.
8. The proposed fireworks display may be inconsistent with the terms and conditions of the easement as required by the Commission in CDP No. NCR-77-C-115.

9. The proposed fireworks display will detonate over the Gualala River estuary.
10. The GFC has not obtained a CDP nor has it submitted a Coastal Development Permit (CDP) application.
11. As of May 28, 2008, the GFC still has not submitted a CDP application to the Commission for a fireworks display planned for July 4, 2008.
12. A permit has not been issued to authorize the threatened development activity, the planned fireworks display.
13. Gualala Point Island is part of the California Coastal National Monument established by Presidential Proclamation on January 11, 2000.
14. The stated purpose of the California Coastal National Monument is to elevate the protection of "all unappropriated or unreserved lands and interest in lands owned or controlled by the United States in the form of islands, rocks, exposed reefs, and pinnacles above mean high tide within 12 nautical miles of the shoreline of the State of California."
15. The Presidential Proclamation recognizes a need to protect the California Coastal National Monument's overwhelming scenic quality and natural beauty and it specifically directs the protection of the geologic formations and the habitat that these rocks and islands provide for seabirds, sea mammals, and other plant and animal life within this portion of the coastal intertidal zone.
16. The California Coastal National Monument is recognized by Presidential Proclamation as containing "irreplaceable scientific values vital to protecting the fragile ecosystems of the California coastline."
17. Gualala Point Island is located just offshore at the northern border of Sonoma County. The island is situated approximately 1.8 km southwest from the Gualala Festivals Committee's planned 2008 fireworks display launch site located on a bluff top above the mouth of the Gualala River in the unincorporated community of Gualala, Mendocino County.
18. The 2007 fireworks display in this vicinity had a demonstrated adverse effect on nesting birds on Gualala Point Island.

H. Respondent's Defenses and Commission's Response

The original recipients of the Executive Director's *Notice of Intent to Commence Cease and Desist Order Proceedings* (the Gualala Festivals Committee and Bower Limited Partnership) were provided the opportunity to identify their defenses to the issuance of the Order in a written Statement of Defense, as provided in the Commission's

Regulations. On April 18, 2008, Graham Owen of the Pacific Legal Foundation (“PLF”), representing the Gualala Festivals Committee (“Respondent”), submitted a Statement of Defense. The letter from Mr. Owen is included as Exhibit 7 of this Staff Report.

As a courtesy to the Respondent, the Commission is responding to issues otherwise raised by the GFC and previous counsel in correspondence submitted in 2007, which Mr. Owen included as an enclosure to his April 18, 2008 letter.

The Respondent’s primary argument is that the planned fireworks display does not constitute “development” as defined by Section 30106 of the Coastal Act and that therefore the Commission lacks jurisdiction to issue the Cease and Desist Order.

1. The Respondent’s Defense

“It is denied that alleged fireworks debris falling within the Gualala River estuary constitutes discharge of gaseous waste in coastal waters in an area of the Commission’s retained permit jurisdiction” (April 18, 2008 Statement of Defense letter at 3).

“It is denied that alleged fireworks debris falling within the Gualala River estuary constitutes discharge of solid waste in coastal waters in an area of the Commission’s retained permit jurisdiction” (April 18, 2008 Statement of Defense letter at 3).

“It continues to be the position of Gualala Festivals Committee that the display is not “development” and that, as a result, the Commission may not require a coastal development permit for it” (May 16, 2008 PLF letter).

“The Commission lacks jurisdiction to issue a cease and desist order against the fireworks display. The display is not ‘development’ under section under 30106 of the Coastal Act.” (April 18, 2008 PLF letter)

Commission’s Response

The proposed fireworks display is development as defined by Section 30106 because it involves the placement of solid material, the discharge of gaseous and/or solid waste, the change in intensity of use of the land at the launch site, and a change in intensity of water or of access thereto.

1. Fireworks debris falling within the Gualala River estuary does constitute a discharge of both solid and gaseous waste in coastal waters in an area of the Commission’s retained permit jurisdiction.

Respondent’s claims to the contrary are not explained but could be based upon any one of several distinct propositions. Each of those potential alleged propositions is separately repudiated below.

(a) The debris material that falls to Earth is solid and/or gaseous.

Professional pyrotechnic devices used in firework displays can be grouped into three general categories: aerial shells (paper and cardboard spheres or cylinders ranging from 2 inches to 12 inches in diameter and filled with incendiary materials), low-level comet and multi-shot devices similar to over-the-counter fireworks such as roman candles, and set piece displays that are mostly static in nature and are mounted on the ground (*Environmental Assessment Of The Issuance Of A Small Take Regulations And Letters Of Authorization And The Issuance Of National Marine Sanctuary Authorizations For Coastal Commercial Fireworks Displays Within The Monterey Bay National Marine Sanctuary, California*, by National Oceanic and Atmospheric Administration, National Marine Fisheries Service and Monterey Bay National Marine Sanctuary, June 2006 – See Substantive File Documents No. 6).

The GFC has not provided the Commission with any specifics regarding the type of devices to be used in its fireworks display, with the exception of stating in their May 16, 2008 letter from the Pacific Legal Foundation that the “fireworks must be reduced from the three-inch shells used in previous years to shells that will likely not exceed two-and-a-half-inches due to the physical characteristics of the launch site property.” (May 16, 2008 letter to Nancy Cave from Graham Owen of PLF – Exhibit 10).

Aerial shells are launched from tubes (called mortars), using black powder charges, to altitudes of 200 to 1000 feet where they explode and ignite internal burst charges and incendiary chemicals. Most of the incendiary elements and shell casings burn up in the atmosphere; however, portions of the casings and some internal structural components and chemical residue fall back to the ground or water, depending on prevailing winds. An aerial shell casing is constructed of paper/cardboard or plastic and may include some plastic or paper internal components used to compartmentalize chemicals within the shell. Within the shell casing is a burst charge (usually black powder) and a recipe of various chemical pellets (stars) that emit prescribed colors when ignited. Commonly used chemicals for the manufacturing of pyrotechnic devices include: potassium chlorate, potassium perchlorate, potassium nitrate, sodium benzoate, sodium oxalate, ammonium perchlorate, strontium nitrate, strontium carbonate, sulfur, charcoal, copper oxide, polyvinyl chloride, iron, titanium, shellac, dextrine, phenolic resin, and aluminum.

Attached to the bottom of an aerial shell is a lift charge of black powder. The lift charge and shell are placed at the bottom of a mortar that has been buried in the ground or affixed to a wooden rack. A fuse attached to the lift charge is ignited with an electric charge or heat source, the lift charge explodes, and propels the shell through the mortar tube and into the air to a height determined by the amount of powder in the lift charge and the weight of the shell. As the shell travels skyward, a time-delay secondary fuse is burning that eventually ignites the burst charge within the shell at peak altitude. The burst charge detonates, igniting and scattering the stars, which may, in turn, possess small secondary explosions. Shells can be launched one at a time or in a barrage of

simultaneous or quick succession launches. They are designed to detonate between 200 and 1000 feet above ground level. In addition to color shells, a typical fireworks display will usually include a number of aerial "salute" shells. The primary purpose of salute shells is to announce the beginning and end of the show and produce a loud percussive audible effect. These shells are typically two to three inches in diameter and packed with black powder to produce a punctuated explosive burst at high altitude.

Thus, fireworks displays that involve the use of shells result in solid and/or gaseous debris falling to the earth after the launching, and therefore, the fireworks display is a form of development as defined in Section 30106 of the Coastal Act.

(b) The solid and/or gaseous debris material that falls to Earth constitutes "waste" that is being disposed or discharged.

Waste is not defined in the Coastal Act. Waste is defined by dictionary.com (<http://dictionary.reference.com/browse/waste>) to include "anything unused, unproductive, or not properly utilized"; and "anything left over or superfluous, as excess material or by-products, not of use for the work in hand." The state Hazardous Waste Control Act, Cal. Health & Safety Code sections 25100 *et seq.*, defines waste, in section 25124, in part, as follows:

- (a) ...any solid, liquid, semisolid, or contained gaseous discarded material that is not excluded by this chapter or by regulations adopted pursuant to this chapter.
- (b) For purposes of subdivision (a), a discarded material is any material that is any of the following:
 - (1) Relinquished by being any of the following:
 - (A) Disposed of,
 - (B) Burned or incinerated...

Since the fireworks are burned and the remains are allowed to dissipate, the fireworks are relinquished by being both burned and disposed of. The proposed fireworks display is solid material placed within the Coastal Zone and is considered display until it finishes burning, at which point the debris will fall back to Earth. The debris that falls back to Earth satisfies most of the alternative dictionary.com criteria, any one of which is individually sufficient, as well, as it is unused, unproductive, left over or superfluous, excess material or by-products, and it is not of use for the work of displaying fireworks. There is also no question that the waste is being discharged or disposed, as Respondent will be launching the fireworks with the knowledge and intent that the remains after the explosion will be introduced into and dissipate in the coastal environment.

(c) The solid and/or gaseous waste that is to be discharged in coastal waters is in an area of the Commission's retained permit jurisdiction.

The Gualala River is within the Commission's retained permit jurisdiction (See Mendocino County Post Certification Map for LCP – Exhibit 11). Respondent has not, and cannot, point to any evidence to the contrary.

Further, the Commission has requested and the County of Mendocino is unable to take timely action and has declined to act to enforce County permit requirements for the planned activity. Therefore, in accordance with Section 30810(a) (2), the Commission may issue this Order to enforce the permit requirements of the Mendocino County Local Coastal Program (Exhibit 12).

2. The Respondent's Defense

Although not raised as a defense in the Statement of Defense submitted by Respondent, counsel for the Respondent has asked Commission staff about its regulations concerning temporary events, so as a courtesy, Commission staff is providing relevant analysis of this issue. The Respondent does not include any statements in their submitted Statement of Defense Form regarding whether or not the subject development activity is a temporary event. However, the Commission includes the following response due to the earlier inquiry made by counsel for Respondent.

Commission's Response

The Commission's June 13, 2007 letter stated that the proposed fireworks display did not qualify as a temporary event exempted from coastal development permit requirements because of its potential for adverse impacts to coastal resources. As defined in Section 30106 of the Coastal Act, "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; ...change in the density or intensity of use of land, change in the intensity of use of water, or of access thereto...

Fireworks debris falling within the Gualala River estuary constitutes discharge of gaseous and/or solid waste in coastal waters in an area of the Commission's retained coastal development permit jurisdiction. Additionally the temporary closure of the vertical and the lateral trail known as the Gualala Bluff Trail to public access constitutes a change in intensity of use of land or water or access thereto in an area of Mendocino County's coastal permit jurisdiction. The temporary closure of the two trails also conflicts with a previous CDP issued by the Commission. Pursuant to Section 30600 of the Coastal Act, 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. A

coastal development permit from both the Coastal Commission and Mendocino County would need to be obtained prior to undertaking the subject development activity. The Commission has not received an application for a CDP to conduct the fireworks display and the County has not notified the Commission of any permit application submitted to the County.

The Commission 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 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 (Exhibit 13). Section III of the Guidelines states:

The Executive Director, or the Commission through direction to the Executive Director, may determine that a temporary event shall be subject to Commission coastal development permit review, even if the criteria in Section II are not met, if the Executive Director or the Commission determines that unique or changing circumstances exist relative to a particular temporary event that have the potential for significant adverse impacts on coastal resources. Such circumstances may include the following:

- b) The event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as defined in Section V. of these guidelines;*

Section V of the Temporary Events Guidelines provides the following relevant definition:

- c) "Coastal Resources" include, but are not limited to, public access opportunities, visitor and recreational facilities, water-oriented activities, marine resources, biological resources, environmentally sensitive habitat areas, agricultural lands, and archaeological or paleontological resources.*

The planned fireworks display will impact public access opportunities as well as marine resources, biological resources and environmentally sensitive habitat areas. In addition, the planned fireworks display will impact the marbled murrelet, a State and Federally listed endangered species. As indicated by staff at USFWS, and by the 2007 letter from the State Department of Fish Game there is a remnant population of marbled murrelets in the Gualala River estuary. In addition, brown pelicans roost on Gualala Point Island.

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. Previous unpermitted displays have resulted in documented disturbance of seabird roosts and rookeries, including observed nest abandonment. Any eggs and/or juvenile chicks have been attacked by predators. The Gualala River Estuary also provides harbor seal haul-out sites as well as habitat for other marine mammals. According to USFWS, the Gualala River Estuary is the home of a remnant population of marbled murrelets, one of only three populations of marbled murrelets known to exist in Southern Mendocino, Sonoma or Marin Counties. Therefore, because the proposed fireworks display would be located in close proximity to known environmentally sensitive habitat areas (ESHA), has the potential for significant adverse impacts to ESHA, and will impact endangered and threatened species, the Executive Director has determined that the proposed 2008 fireworks display, while arguably a temporary event, is not excluded from CDP requirements. On June 13, 2007, the Commission's North Coast District Manager, Robert Merrill sent a letter to the GFC which states in relevant part:

...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...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 impacts to ESHA, the Executive Director has determined that the proposed temporary event is not excluded from CDP requirements (See Exhibit 2, June 13, 2007 letter to GFC)

The Respondent has refused to submit a CDP application or an application for a temporary event exclusion; thus, the Commission has been unable to analyze the specific details of the planned display, or to more fully assess the proposed development's consistency or inconsistency with Chapter 3 policies contained in the Coastal Act.

The planned fireworks display will be launched on land subject to Mendocino County coastal permit requirements and will launch over water subject to the Coastal Commission's retained coastal permit requirements. In accordance with Sections 30809 and 30810, if the Executive Director determines, or the Commission after a public hearing determines that any person is threatening to undertake any activity that may require a permit from the Commission without securing a permit, or which is inconsistent with any permit issued by the Commission, the Executive Director or the Commission may issue an order directing that person to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program if the Commission requests and the local government declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

Mendocino County has declined to and is unable to timely act with respect to this threatened unpermitted activity. Thus, the Commission has the authority to issue a

cease and desist order both for the certified local government for unpermitted development activities occurring within its coastal permit jurisdiction and for the Commission's retained coastal permit jurisdiction.

3. The Respondent's Defense

"No publication or report prepared by the California Coastal Commission has ever found any fireworks display to be a "development" pursuant to Section 30106 of the Public Resource Code." (June 23, 2007 letter from Keith Faulder to Nancy Cave)

The Respondent's counsel (PLF) has included with the submitted Statement of Defense, material submitted last year by the GFC, which includes an argument, in that previous material, that the Commission has issued CDPs for fireworks displays in the past.

Commission's Response

Even if the Commission hasn't specifically analyzed this issue in its prior regulation of fireworks displays by stating that a fireworks display is "development," that finding has been implicit in multiple Commission actions. The Commission has asserted jurisdiction over, and processed coastal development permit applications for, fireworks displays that involve impacts to public use of sandy beaches or other public access areas. The Commission has issued CDPs subject to special conditions of approval or has waived permit requirements when it has determined that, based upon the submitted application, that the specific planned event before it will not raise issues of consistency with relevant Chapter 3 policies. In none of the past CDP decisions on proposed fireworks displays that the Commission staff located was the issue of whether or not fireworks displays constituted development disputed by the applicants. Consequently the Commission's findings do not discuss a dispute over whether or not the proposed fireworks displays constitute development.

For example, on May 8, 2003, the Commission conditionally approved CDP Application No. 3-03-034 submitted by Monte Foundation Fireworks. Monte Foundation Fireworks applied for a CDP to close Seacliff State Beach to allow a fee-based fair and fireworks display. The Commission attached conditions requiring cleanup after the event, including but not limited to all fireworks detritus, post-event monitoring, and submittal of CDP applications for future displays. On March 28, 2007, the Monte Foundation Fireworks applied for an amendment to CDP No. 3-03-034 to extend the CDP expiration date to December 31, 2010 to allow for annual fall events. The Commission granted the amendment subject to conditions requiring a safety zone, continued "through" public access to the beach during the event, cleanup and restoration of the Seacliff State Beach, other agency approvals (including Monterey Bay National Marine Sanctuary, National Marine Fisheries Service and USFWS), a post-event monitoring report, and event description. In addition, the Commission attached two conditions of interest to the subject pending enforcement action. First, it required the applicant to prepare an analysis by a qualified coastal biologist detailing the effect of the event on both any

wildlife in the bluffs and/or trees above Seacliff State Beach or on the sandy beach itself, and on any marine wildlife in the immediate vicinity of Seacliff State Beach pier and cement ship:

...Such analysis shall at a minimum: (1) identify a baseline condition of wildlife present in the event vicinity (through species lists, species counts, site mapping, etc.) developed through field work completed in advance of the event; (2) describe wildlife movement from field observations during the day of the event, including detailed description of the 2 hour time period prior to the event (when the pre-event bird warning activities are required) through the 2 hour time period immediately following the cessation of fireworks; (3) identify any adverse impacts to wildlife due to the event; (4) include follow-up field work and monitoring at regular intervals for a minimum of one month following the event to compare the post-event condition to the baseline condition in all baseline categories; and (5) include recommended event modifications meant to avoid and/or lessen the adverse effect of any identified negative impact on wildlife.

In addition, the Commission required the fireworks display portion of any single year's event to be subject to the following parameters:

- (b) **Device Maximum.** No more than a total maximum of 950 aerial shells and/or special effect pyrotechnic devices shall be launched and/or detonated.
- (c) **Aerial Salute Limitations.** The total number of "aerial salute" shells or devices shall not exceed 6% of the total number of aerial shells and/or special effect pyrotechnic devices combined. Aerial salute shells/devices shall not be launched or detonated during the first five minutes of the fireworks display.
- (d) **Plastic Labels and Wrapping Removed.** All plastic labels and wrappings shall be removed from all aerial shells and special effect pyrotechnic devices before they are launched or detonated.
- (e) **Prohibited Devices.** Aerial shells and/or special effect pyrotechnic devices that include a plastic outer casing and/or non-biodegradable inner components that make up more than 5% of the mass of the shell/device shall be prohibited.

The Commission's referenced action on CDP 3-03-034 including amendments demonstrates the Commission's exercise of jurisdiction over and concern regarding the discharge of solid and/or gaseous waste in the form of fireworks, and that conditions were required to address Chapter 3 coastal resource policy concerns.

In another decision in 2003, the City of Morro Bay requested a Commission determination as to whether or not the City's proposed fireworks display would qualify as a temporary event. Due to concerns raised by the Audubon Society and by the Commission, the City proactively took action to move the display from the planned location near Morro Rock where there are nesting falcons and western snowy plovers to

another location within the bay where there is less potential for disturbance to avian and marine species. The City also offered to implement a number of measures to direct access away from sensitive areas, provide information to attendees regarding the sensitivity of the area, clean up after the display, and to allow third party monitoring of sensitive sites in conjunction with the Audubon Society and relevant state agencies. Based upon the City's actions specifically taken to address Coastal Act concerns, the Commission determined the event qualified as a temporary event and no CDP was required.

In each of these cases, the Commission was able to analyze the situation and impacts on coastal resources in the context of the CDP process, and to fashion a permit and conditions to address Coastal Act concerns. This is precisely the process envisioned by the Coastal Act. However, in the subject proceeding, the Respondent has refused to submit a CDP permit application either for a temporary event determination or for a CDP, despite being informed of the need to do so since June 13, 2007. The Commission has repeatedly asked the GFC to submit a CDP application so that it might determine whether or not the proposed fireworks display can be found consistent with Chapter 3 of the Coastal Act. The only information provided to the Commission is identification of the property address where the display will be located, which was orally provided in a telephone conversation with Commission staff on May 8, 2008, and in a letter dated May 18, 2008, the Respondent has stated that the fireworks "must be reduced from the three-inch shells used in previous years to shells that will likely not exceed two-and-a-half inches due to the physical characteristics of the launch site property." The Commission has no other information concerning the quantity or size of shells and/or other pyrotechnic devices, and has not been given precise information concerning how and where the planned fireworks display will be launched and/or detonated. Additionally, the Commission does not know the duration of the event, or whether or not aerial shells or aerial salute shells will be utilized. Since the Respondent has not submitted a CDP application for a permit for any of the past events or for the planned event, the Commission generally lacks any historical information concerning the past events and what types of devices were utilized. In fact, the most detailed analysis available of the project and its impacts comes not from the GFC, but from the monitoring done in 2007 by the Federal Department of the Interior agencies, the Bureau of Land Management and the Fish and Wildlife Service. This information, as discussed above, in fact indicates that there were, and are likely to be again in 2008, significant impacts to coastal resources.

The Commission finds that the CDP examples submitted by the Respondent with its Statement of Defense provide historical support and evidence of consistency in the Commission's determination that the planned fireworks display constitutes development and therefore requires a CDP determination from the Commission.

Exhibit List

Exhibit Number	Description
1.	Site Map and Location
2.	Letter from Robert Merrill to Gualala Festivals Committee 6/13/07
3.	Letter from Nancy Cave to Keith Faulder on behalf of GFC 6/29/07
4.	Letter from Department of Fish and Game to GFC 6/22/07
5.	Letter from Redwood Coast Land Conservancy to GFC 5/28/08
6.	Notification of Intent to Commence Cease and Desist Order Proceedings 4/01/08
7.	Response Letter from Pacific Legal Foundation on behalf of GFC to NOI dated 4/18/08 received on 4/21/08
8.	Letter from James King on behalf of John Bower to Peter Douglas 4/04/08
9.	Letter from John Bower of Bower Limited Partnership to Nancy Cave 4/24/08
10.	Letter from PLF on behalf of GFC to Nancy Cave 5/16/08
11.	Post Certification Map for Southern Mendocino County – Gualala area
12.	Letter from Jo Ginsberg to Ray Hall 5/29/08
13.	Memo from Peter Douglas to Planning Directors of Coastal Cities and Counties Re: Regulation of Temporary Events in the Coastal Zone 1/23/96
14.	Seabird and Marine Mammal Monitoring and Response to a Fireworks Display at Gualala Point Island, Sonoma County, California, May to August 2007, James F. Weigand and Gerard J. McChesney, United States Department of the Interior, Bureau of Land Management, and Fish and Wildlife Service, February 12, 2008

Staff recommends that the Commission issue the following Cease and Desist Order:

CEASE AND DESIST ORDER NO. CCC-08-CD-07

1.0 **PERSONS SUBJECT TO THESE ORDER**

The persons subject to Cease and Desist Order No. CCC-08-CD-07 (hereinafter, "Order") are members of the Gualala Festivals Committee, their employees, agents, contractors, and anyone acting in concert with the foregoing, and successors in interest (hereinafter, "Respondent").

2.0 **IDENTIFICATION OF SUBJECT PROPERTIES**

One specific property that is subject to this Order is located at 39170 South Highway One, Gualala, Mendocino County, APN 145-261-12 (hereinafter, "subject property"). However, this Order is not limited to that property. This Order applies to anywhere in the Coastal Zone where Respondent may seek to undertake unpermitted development of the sort described in the following section.

3.0 **DESCRIPTION OF THREATENED UNPERMITTED DEVELOPMENT ACTIVITY**

The threatened unpermitted development activity consists of the staging of a fireworks display and the launch and/or detonation of firework shells and other pyrotechnic devices on the specific subject property identified in the prior section without the benefit of a coastal development permit from Mendocino County or from the Commission for the activity. The fireworks will be launched and/or detonated over the Gualala River and the Gualala River estuary.

4.0 **COMMISSION AUTHORITY TO ACT**

The Commission is issuing this Order pursuant its authority under Sections 30810 of the Public Resources Code.

5.0 **FINDINGS**

This Order is being issued on the basis of the findings adopted by the Commission on June 11, 2008, as set forth in the foregoing document entitled: **STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST ORDER**, and Exhibits thereto.

6.0 **EFFECTIVE DATE**

This Order shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

7.0 COMPLIANCE OBLIGATION

Strict compliance with the terms and conditions of this Order is required. If the Respondent fails to comply with the requirements of this Order, it will constitute a violation of this Order and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which compliance failure persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act, including exemplary damages under Section 30822.

8.0 APPEALS AND STAY RESOLUTION

Pursuant to Public Resources Code Section 30803(b), the Respondent, against whom this Order is issued, may file a petition with the Superior Court for a stay of this Order.

9.0 GOVERNMENT LIABILITY

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by the Respondent in carrying out activities authorized under this Order, nor shall the State of California be held as a party to any contract entered into by the Respondent or its agents in carrying out activities pursuant to this Order.

10.0 GOVERNING LAW

This Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

11.0 NO LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Order.

12.0 CEASE AND DESIST ORDER

Pursuant to its authority under Public Resources Code Section 30810, the California Coastal Commission hereby authorizes and orders Respondent to:

- A. Cease and desist from undertaking or threatening to undertake any activity that requires a permit from the Commission, including the launching of fireworks that will detonate over the Gualala River estuary, without first securing the required Coastal Act authorization.

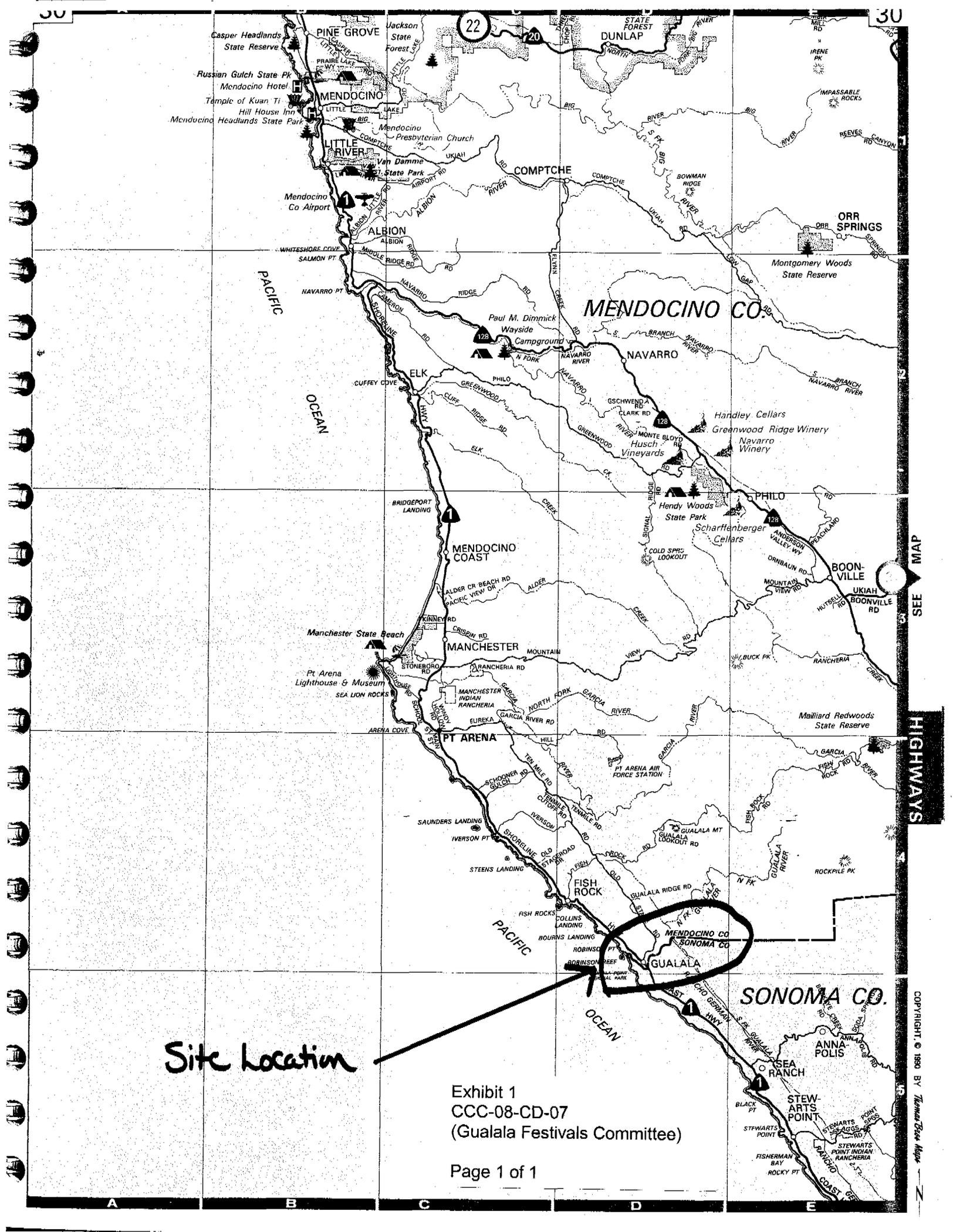
- B. Cease and desist from undertaking or threatening to undertake the staging of a fireworks display and the launch and/or detonation of firework shells and other pyrotechnic devices in the Coastal Zone without first securing Coastal Act authorization.

- C. Cease and desist from undertaking or threatening to undertake any further unpermitted development activity on the subject property or within the Coastal Zone, which would have effects on coastal resources or from undertaking activities which are inconsistent with permits previously issued by the Commission.

Issued this 11th day of June, 2008 in Santa Rosa, California

Peter M. Douglas, Executive Director
California Coastal Commission

Date



Site Location

Exhibit 1
 CCC-08-CD-07
 (Gualala Festivals Committee)

Page 1 of 1

SEE MAP

HIGHWAYS

COPYRIGHT © 1990 BY Thomas Don Map

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908



June 13, 2007

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

Exhibit 2
CCC-08-CD-07
(Gualala Festivals Committee)

Page 1 of 3

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 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

Exhibit 2
CCC-08-CD-07
(Gualala Festivals Committee)

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



June 29, 2007

[Sent by FAX & Regular Mail]

Keith Faulder, Attorney at Law
705 North State Street #238
Ukiah, CA 95482

RE: Proposed Gualala Fireworks Display Scheduled for July 6, 2007; your letter dated June 23, 2007 on behalf of the Gualala Festivals Committee

Dear Mr. Faulder:

Thank you for your letter dated June 23, 2007, written on behalf of the Gualala Festivals Committee, concerning the proposed fireworks display scheduled to take place in Gualala on July 6, 2007. As you know, the Coastal Commission has contacted the Gualala Festivals Committee by letter dated June 13, 2007, regarding the fact that the Commission considers the fireworks event to constitute "development" as defined by Section 30106 of the Coastal Act, requiring a Coastal Development Permit (CDP) pursuant to Section 30600 of the Act.

In your letter dated June 23, 2007, you indicate that the Gualala Festivals Committee has moved the fireworks display out of the public access easement located along the bluff above the Gualala River. It is my understanding that the fireworks display will be placed on property owned by Bower Limited Partnership close to and adjacent to the easement. Further, you have indicated that public access to the easement area will not be closed or blocked by the Gualala Festivals Committee during the fireworks event.

As we discussed over the telephone June 28, 2007, you have clarified that the Gualala Festivals Committee will not block or close public access to the easement area before, during or after the launch of the fireworks on July 6, 2007. You did state that you were unsure of what actions the Fire Department might take with respect to use of the easement. The Commission expects the Gualala Festivals Committee will take measures to clean up the easement and the immediate vicinity of the display, and that any impacts to the improved trail implemented by the Redwood Coast Land Conservancy, holders of the easement, will be rectified and restored. Based on these representations, the Executive Director has tentatively determined that he will not issue an Executive Director Cease and Desist order to the Gualala Festivals Committee with respect to the July 6, 2007 fireworks display.

However, the Commission still considers the fireworks event development that requires a CDP. If the Gualala Festivals Committee proceeds in the absence of a CDP, a violation of the California Coastal Act will have occurred and therefore the Gualala Festivals Committee proceeds at its own risk of additional action by the Coastal Commission. We are aware of the letter written by the California Department of Fish and Game (CDFG) dated June 22, 2007. In

Exhibit 3
CCC-08-CD-07
(Gualala Festivals Committee)

that letter, CDFG states, "If nest abandonment and mortality of seabirds occurs due to the fireworks display, then the GFC could be in violation of California Code of Regulations, Title 14 §251.1." We are also aware that the Bureau of Land Management (BLM) has developed and will implement a monitoring protocol to collect data to determine whether or not this year's display has impacts on nesting bird habitat. The Coastal Commission will review the results of the monitoring protocol if the July 6, 2007 event is held, and consult with CDFG to determine whether or not adverse impacts to coastal resources has occurred as a result of unpermitted development.

The Gualala Festivals Committee should apply for a CDP before going forward with any defined development activity within the Commission's jurisdiction. On that note, we expect the Gualala Festivals Committee to apply for a CDP with our North Coast District Office well in advance of any proposed event that includes fireworks launched over the Gualala River in the future. For example, if the Gualala Festivals Committee wishes to launch fireworks in July 2008, the Committee should apply for a CDP no later than February 2008. That will allow the Commission and the Committee adequate processing time before the planned event.

If you or your clients have any additional concerns regarding this letter, please do not hesitate to contact me at 415-904-5290.

Sincerely,

Nancy L. Cave
Northern California Supervisor
Enforcement Program

Cc: Peter Douglas, Executive Director
Lisa Haage, Chief of Enforcement
Robert Merrill, North Coast District Office Manager
Rick Miller, Mendocino County Planning Department
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
Marshall Sayegh, Gualala Festivals Committee
George Anderson, Redwood Coast Land Conservancy
Peter Baye, Friends of the Gualala River

Exhibit 3
CCC-08-CD-07
(Gualala Festivals Committee)



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>
1416 Ninth Street
Sacramento, CA 95814
(916) 657-2355



June 22, 2007

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

Dear Mr. Sayegh:

The Department of Fish and Game (Department) has become aware of the Gualala Festivals Committee (GFC) intent to host a fireworks display in Gualala, California on July 6, 2007. The Department understands that the GFC hosted a fireworks display in 2006. The launch site in Gualala was a parking lot adjacent to the western bluff over the Gualala River Estuary and approximately one mile from Gualala Point Island. As a trustee agency for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. In this capacity, the Department administers the California Endangered Species Act, the Native Plant Protection Act, and other provisions of the California Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction the Department has the following concerns about the GFC fireworks display.

Gualala Point Island and the seaside cliffs to the north and south of Gualala are established nesting sites for many migratory seabird species, such as Pigeon Guillemot, Pelagic Cormorant, Black Oystercatcher, and Brandt's Cormorant. Brown Pelicans, an endangered species, use the island as a roost at night. Marbled Murrelets, another endangered species, are also observed in the ocean near Gualala at dawn and dusk every year at this time. Both of these endangered species, and the nesting birds, could potentially be impacted by the fireworks display.

Observations of Gualala Point Island during the 2006 fireworks display suggest that roosting Brown Pelicans, nesting Pigeon Guillemots, Pelagic Cormorants, Brandt's Cormorants, Black Oystercatchers, and Western Gulls on Gualala Point Island were disturbed. According to anecdotal information, these birds were disturbed enough by the fireworks display to fly off the island and abandon their roosts and nests at night. Disruption and nest abandonment can lead to mortality of eggs and/or chicks left behind in the unprotected nests.

If nest abandonment and mortality of seabirds occurs due to the fireworks display, then the GFC could be in violation of California Code of Regulations, Title 14 §251.1.

California Code of Regulations, Title 14 §251.1, states that:

Marshall Sayegh
Page 2 of 2
June 22, 2007

"Except as otherwise authorized in these regulations or in the Fish and Game Code, no person shall harass, herd or drive any game or nongame bird or mammal or furbearing mammal. For the purposes of this section, harass is defined as an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering. This section does not apply to a landowner or tenant who drives or herds birds or mammals for the purpose of preventing damage to private or public property, including aquaculture and agriculture crops."

The Department recommends that the GFC find an alternate location for the fireworks display where disturbance of wildlife is avoided. Anything that the GFC could do to minimize or avoid the impact to the nesting and roosting birds on Gualala Point Island would be beneficial. As always, Department personnel are available to discuss our comments, concerns, and recommendations in greater detail. To discuss this issue further, please contact Ms. Vicki Frey, Environmental Scientist, 619 2nd St., Eureka, CA. 95501, (707) 445-7830.

Sincerely,



Tony Warrington
Regional Manager, Marine Region

cc: Mr. Bob Merrill
California Coastal Commission
710 E Street
Eureka, CA 95501

Mr. Herrick Hanks
California Coastal National Monument Manager
U.S. Bureau of Land Management
299 Foam St.
Monterey, CA 93940

Mr. Gerry McChesney
U.S. Fish and Wildlife Service
9500 Thornton Ave
Newark, CA 94560

Ms. Becky Ota, Department of Fish and Game
Belmont, California

Ms. Esther Burkett, DFG Wildlife Branch
Sacramento, California

Ms. Vicki Frey, Department of Fish and Game
Eureka, California

Exhibit 4
CCC-08-CD-07
(Gualala Festivals Committee)



REDWOOD COAST LAND CONSERVANCY

Dedicated to protection of open spaces and natural resources from the Navarro to the Russian rivers

P.O. Box 1511, Gualala, CA 95445-1511 • (707) 785-3327 • email: rclc@mcn.org • www.rc-lc.org

May 28, 2008

Gualala Festivals Committee
P.O. Box 1415
Gualala, CA 95445

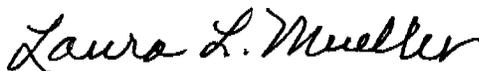
Dear Sirs:

It has come to our attention that the Gualala Festivals Committee (GFC) plans to use the Surf Motel property to launch the 2008 Independence Day fireworks display. As the GFC is aware, the Redwood Coast Land Conservancy (RCLC) holds a California Coastal Commission easement encompassing the Gualala Bluff Trail which extends along the bluff side of the Surf Motel property and a public access easement through the motel parking area. RCLC has not been informed regarding where on the property GFC intends to launch the fireworks. As the entity responsible for maintaining the trail easement and its various elements, please be advised that RCLC does not grant GFC use of the easements it holds for setting up or launching the 2008 Independence Day fireworks display. We trust that GFC will be able to locate another site on the property suitable for the launching of the fireworks display.

RCLC would also appreciate knowing at what time on July 4, 2008 the Gualala Festivals Committee plans to curtail public access to the trail segment that extends along the Surf Motel property. While RCLC fully understands GFC and its fireworks contractor need to make certain the display is safe, we also expect that GFC will be sensitive to leaving public access on the easement open as long as possible thereby allowing local people and visitors full enjoyment of the bluff area's natural beauty.

RCLC appreciates the GFC's removal of most of the fireworks debris and residue resulting from last year's display. However RCLC was required to clear away several pieces of debris left at the site. We have confidence that GFC will attempt to remove all debris this year.

Sincerely,



Laura L. Mueller, RCLC President

Cc. Eric Cogdill, Surf Motel
Nancy Cave, California Coastal Commission

Exhibit 5
CCC-08-CD-07
(Gualala Festivals Committee)

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



Via Certified and Regular Mail

April 1, 2008

Gualala Festivals Committee
Attention: Marshall Sayegh
P.O. Box 1415
Gualala, CA 95445
Certified Mail No. 70071490000087989319

John Bower
P.O. Box 1000
Gualala, CA 95445
Certified Mail No. 70071490000087989302

Keith Faulder, Attorney at Law
705 North State Street – # 238
Ukiah, CA 95482
Certified Mail No. 70071490000087989296

Subject: Notice of Intent to Commence Cease and Desist Order Proceedings

Violation No.: V-1-07-018 (Gualala Festivals Committee)

Subject Property: Gualala River estuary and 39250 South Highway One, Gualala, Mendocino County, APN 145-261-05 and APN 145-261-13

Violation Description: Proposed Gualala Festivals Committee Fireworks Display scheduled for July, 2008

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

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order to require you to cease and desist from conducting any unpermitted development on the subject property.

The California Coastal Act¹ was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive

¹ The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code, and thus to the Coastal Act, unless otherwise indicated.

Exhibit 6
CCC-08-CD-07
(Gualala Festivals Committee)

planning and regulatory program designed to manage conservation and development of coastal resources. The Commission is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

It has come to the attention of the Commission that the Gualala Festivals Committee ("GFC") is planning a fireworks display scheduled to take place on Friday, July 4, 2008. Marshall Sayegh has been identified as the authorized contact person for the GFC. We understand that the proposed fireworks would be launched from 39250 South Highway One, Gualala (APNs 145-261-05 and 145-261-13), over a public access easement held by the Redwood Coast Land Conservancy (RCLC), and would detonate over the Gualala River estuary and near Gualala Point Island in Sonoma County ("subject property"). John Bower is the fee title owner of the property from which the fireworks would be launched. Gualala Point Island is the home of several nesting seabird colonies, including but not limited to Brandt's Cormorants, Pelagic Cormorants, Western Gulls and Black Oystercatchers.

History

On July 6, 2007, the GFC conducted a fireworks display from a location adjacent to the RCLC public access easement. The fireworks were detonated over the Gualala River estuary. The Commission learned of the GFC's plans in advance and contacted the GFC by letter dated June 13, 2007, and by letter dated June 29, 2007, informing the GFC that the fireworks display constituted development and needed a coastal development permit ("CDP"). Since the GFC did not obtain a CDP before the event, the Commission notified the GFC that it proceeds at its own risk of additional enforcement action by the Commission.

The July 6, 2007 fireworks display caused a visible response by nesting seabirds on Gualala Point Island. Digiscoped and infra-red photography during the 6 July 2007 fireworks display showed that Brandt's Cormorants quickly changed from resting to erect postures at the first fireworks, followed by birds moving about or departing from the island. Western Gulls also flushed, circled and called during the fireworks display. 90 Brandt's Cormorant nests were documented on Gualala Point Island during the 2007 nesting season monitoring study conducted by the Bureau of Land Management and the United States Fish and Wildlife Service. During the study period, seven nests (35% of total nest failures) were abandoned in the two days between July 5 and July 7, 2007. Another seven nests were abandoned between July 7 and July 12, 2007. These losses contrast with the abandonment of only six nests (30% of total nest failures) for the 30-day period from June 5 to July 5, 2007. The high rate of Brandt's Cormorant nest abandonment between July 5 and July 7, 2007, and possibly nest abandonment from July 7 to July 12, 2007, likely resulted from the July 6 fireworks disturbance.

The Commission's June 13, 2007 letter noted that the proposed fireworks display above the Gualala River estuary would constitute a form of "development" as defined by the Coastal Act (see section 30106) that requires a CDP, in part because the proposed fireworks display does not qualify as a temporary event exempt from CDP requirements due to its unique potential for adverse impacts to coastal resources. 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.

Exhibit 6
CCC-08-CD-07
(Gualala Festivals Committee)

The Commission's June 29, 2007 letter stated that the Commission still considered the proposed fireworks event to be "development" that requires a CDP and stated that if the GFC were to proceed in the absence of a CDP, it would be in violation of the Coastal Act, and therefore the GFC would be proceeding at its own risk of additional action by the Commission. The Commission's June 29, 2007 letter required the GFC to obtain a CDP before going forward with any defined development activity within the Commission's permit jurisdiction. In addition, the letter pointed out that if the GFC wished to launch fireworks in July 2008, the GFC should apply for a CDP no later than February 2008. If the GFC applied for a CDP by February 2008, the Commission predicted that it would have adequate permit application processing time before any planned July 2008 event.

The GFC did not submit a CDP application by February 29, 2008. As of today's date the GFC still has not yet submitted a CDP application to the Commission for a fireworks event in July 2008.

The GFC website (<http://www.gualalafestivals.org>) has a posted announcement: "Coming up.....4th of July Fireworks 2008!" In addition, the GFC announced in an article published on March 7, 2008, in the Independent Coast Observer, that "its fireworks will take place over Gualala on Friday, July 4, 2008." Therefore, it appears that the GFC is indeed planning to have a fireworks display on July 4, 2008.

As discussed in our two previous letters to Mr. Faulder and to Mr. Sayegh on June 13, 2007, and on June 29, 2007, and as briefly discussed below, the proposed activity is clearly within the definition of "development" (Section 30106 of the Coastal Act) and therefore requires a coastal development permit. No such permit was obtained from the Commission. Because the GFC and the owner of the property from which the fireworks would be launched, John Bower, have failed to obtain such a CDP, and because the GFC has publicly announced its intention to proceed with a fireworks display on July 4, 2008, I am commencing proceedings for issuance of a Cease and Desist Order as described below.

Cease and Desist Order

The Coastal Commission has not issued a coastal development permit to authorize the proposed July 4, 2008 fireworks display, nor has one been applied for by the GFC or by John Bower.

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

I am issuing this Notice of Intent to commence Cease and Desist Order proceedings to require the GFC to cease and desist from undertaking or threatening to undertake development on the subject property unless authorized through a Coastal Development Permit or expressly recognized by the Commission as exempt.

Exhibit 6
CCC-08-CD-07
(Gualala Festivals Committee)

Section 30600 of the Coastal Act requires that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. "Development" is defined by Section 30106 of the Coastal Act, which states:

"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, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973...

Development requires a coastal development permit in accordance with Section 30600 of the Coastal Act, which provides in pertinent part:

"...in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person...wishing to perform or undertake any development in the coastal zone...shall obtain a coastal development permit."

The unpermitted activity includes the discharge of gaseous and solid waste into coastal waters, so it fits within the definition of "development" and therefore is subject to the permit requirements of Section 30600(a) of the Coastal Act. As noted above, a coastal development permit has not been issued to authorize the subject development activity.

For these reasons, the criteria of Section 30810(a) of the Coastal Act have been met, and I am sending this letter to notify you that I will be initiating proceedings for the Commission to determine whether to issue a Cease and Desist Order.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act.

Response Procedure

In accordance with Section 13181(a) of the Commission's regulations (codified in Title 14 of the California Code of Regulations), you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form, including identification of issues and materials for Commission consideration, and documents and issues that you would like the Commission to consider, must be returned to the Commission's San Francisco office, directed to the attention of Nancy Cave, using the address provided on the letterhead, no later than April 21, 2008.**

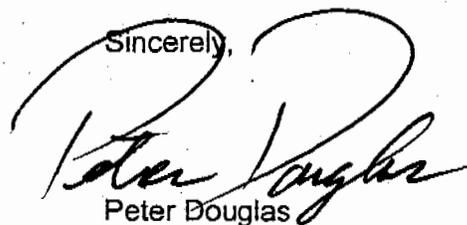
Exhibit 6
CCC-08-CD-07
(Gualala Festivals Committee)

Civil Fines

Please be advised that Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each violation. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists. Section 30821.6 provides that a violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which each violation persists.

The Commission staff intends to schedule the hearing on the proposed Cease and Desist Order during the Commission meeting that is scheduled for May 7-9, 2008 in Los Angeles County. We prefer to resolve violations amicably and would welcome the opportunity to discuss the need for a CDP with you. The Commission is also willing to discuss possible alternatives for a celebration designed to avoid adverse impacts to nesting seabird colonies on Gualala Point Island. If you have any questions regarding this letter, please contact Nancy Cave of my staff at 415-904-5290 or send correspondence to her attention at the address listed on the letterhead when you receive this letter.

Sincerely,



Peter Douglas
Executive Director

Encl. Statement of Defense Form for Cease and Desist Order

cc: Lisa Haage, Chief of Enforcement
Robert Merrill, North Coast District Manager
Nancy Cave, Northern California Enforcement Supervisor
Alex Helperin, Staff Counsel

Exhibit 6
CCC-08-CD-07
(Gualala Festivals Committee)



PACIFIC LEGAL FOUNDATION

April 18, 2008

RECEIVED
APR 21 2008
CA COASTAL COMMISSION
LEGAL DIVISION

Ms. Nancy Cave
Legal Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

VIA FEDERAL EXPRESS

Re: Gualala Festivals Committee

Exhibit 7
CCC-08-CD-07
(Gualala Festivals Committee)

Dear Ms. Cave:

Page 1 of 20

**STATEMENT OF DEFENSE
of Gualala Festivals Committee
Alleged Violation No: V-1-07-018**

1. Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in such document):

The Notice of Intent to Commence Cease and Desist Order Proceedings does not contain paragraph numbers, so a hand-numbered copy is included with this Statement of Defense for the Commission's reference.

Paragraph 3

The Gualala Festivals Committee (GFC) is planning a fireworks display scheduled to take place on Friday, July 4, 2008.

Marshall Sayegh is the authorized contact person for the GFC.

The proposed fireworks would be launched from 39250 South Highway One, Gualala.

The fireworks will be launched over a public access easement held by the Redwood Coast Land Conservancy (RCLC).

The fireworks will detonate over the Gualala River estuary.

John Bower is the fee title owner of the property from which GFC plans to launch the fireworks.

Paragraph 4

On July 6, 2007, GFC conducted a fireworks display from a location adjacent to the RCLC public access easement.

The fireworks were detonated over the Gualala River estuary.

The Commission learned of GFC's plans in advance of the fireworks display.

The Commission contacted GFC by letter dated June 13, 2007, and by letter dated June 29, 2007. With respect to the Executive Director's characterization of the content of the letters, the letters speak for themselves.

Paragraph 6

With respect to the Executive Director's characterization of the content of the Commission's June 13, 2007, letter, the letter speaks for itself.

Paragraph 7

With respect to the Executive Director's characterization of the content of the Commission's June 29, 2007, letter, the letter speaks for itself.

Paragraph 8

GFC did not submit a Coastal Development Permit (CDP) application by February 29, 2008. GFC still has not yet submitted a CDP application to the Commission for a fireworks event in July 2008.

Paragraph 9

GFC is planning to have a fireworks display on July 4, 2008.

Paragraph 11

The Coastal Commission has not issued a coastal development permit to authorize the proposed July 4, 2008, fireworks display, nor has one been applied for by the GFC or by John Bower.

Paragraph 16

A coastal development permit has not been issued to authorize development activity.

2. **Facts or allegations contained in the notice of intent that you deny (with specific reference to the paragraph number in such document):**

Paragraph 2

It is denied that GFC or its members intend to conduct any unpermitted development.

Paragraph 3

It is denied that the fireworks will detonate "near" Gualala Point Island in Sonoma County.

Paragraph 6

It is denied that alleged fireworks debris falling within the Gualala River estuary constitutes discharge of gaseous waste in coastal waters in an area of the Commission's retained permit jurisdiction.

It is denied that alleged fireworks debris falling within the Gualala River estuary constitutes discharge of solid waste in coastal waters in an area of the Commission's retained permit jurisdiction.

3. **Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to the paragraph number in such document):**

Paragraph 3

Gualala Point Island is the home of several nesting seabird colonies.

Paragraph 6

For lack of personal knowledge, paragraph 6 is denied in its entirety.

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can):**

The Commission lacks jurisdiction to issue a cease-and-desist order against the fireworks display. The display is not "development" under section under 30106 of the Coastal Act.

5. **Any other information, statement, etc. that you want to offer or make:**

GFC is represented by counsel and a copy of any further correspondence regarding the planned July 4, 2008, fireworks display should be directed to Graham Owen at Pacific Legal Foundation, 3900 Lennane Drive, Suite 200, Sacramento, California 95834.

6. **Documents, exhibits, declarations under penalty of perjury, or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (please list in chronological order by date, author, and title and enclose a copy with this completed form):**

(1) June 26, 2007, Keith Faulder, Letter to Nancy Cave, Enforcement Supervisor, California Coastal Commission (with exhibits)

(2) June 29, 2007, Letter from Nancy Cave to Keith Faulder

Sincerely,



GRAHAM OWEN
Attorney

Enclosures

Exhibit 7
CCC-08-CD-07
(Gualala Festivals Committee)

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



PARAGRAPHS HAND-NUMBERED

Via Certified and Regular Mail

April 1, 2008

Gualala Festivals Committee
Attention: Marshall Sayegh
P.O. Box 1415
Gualala, CA 95445
Certified Mail No. 70071490000087989319

John Bower
P.O. Box 1000
Gualala, CA 95445
Certified Mail No. 70071490000087989302

Keith Faulder, Attorney at Law
705 North State Street - # 238
Ukiah, CA 95482
Certified Mail No. 70071490000087989296

Subject: **Notice of Intent to Commence Cease and Desist Order Proceedings**

Violation No.: V-1-07-018 (Gualala Festivals Committee)

Subject Property: Gualala River estuary and 39250 South Highway One, Gualala, Mendocino County, APN 145-261-05 and APN 145-261-13

Violation Description: Proposed Gualala Festivals Committee Fireworks Display scheduled for July, 2008

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

1 The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order to require you to cease and desist from conducting any unpermitted development on the subject property.

2 The California Coastal Act¹ was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100 mile coastline through implementation of a comprehensive

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Exhibit 7
CCC-08-CD-07
(Gualala Festivals Committee)

V-1-07-018; NOI for CDO
April 1, 2008
Page 2 of 5

planning and regulatory program designed to manage conservation and development of coastal resources. The Commission is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

- 3 It has come to the attention of the Commission that the Gualala Festivals Committee ("GFC") is planning a fireworks display scheduled to take place on Friday, July 4, 2008. Marshall Sayegh has been identified as the authorized contact person for the GFC. We understand that the proposed fireworks would be launched from 39250 South Highway One, Gualala (APNs 145-261-05 and 145-261-13), over a public access easement held by the Redwood Coast Land Conservancy (RCLC), and would detonate over the Gualala River estuary and near Gualala Point Island in Sonoma County ("subject property"). John Bower is the fee title owner of the property from which the fireworks would be launched. Gualala Point Island is the home of several nesting seabird colonies, including but not limited to Brandt's Cormorants, Pelagic Cormorants, Western Gulls and Black Oystercatchers.

History

- 4 On July 6, 2007, the GFC conducted a fireworks display from a location adjacent to the RCLC public access easement. The fireworks were detonated over the Gualala River estuary. The Commission learned of the GFC's plans in advance and contacted the GFC by letter dated June 13, 2007, and by letter dated June 29, 2007, informing the GFC that the fireworks display constituted development and needed a coastal development permit ("CDP"). Since the GFC did not obtain a CDP before the event, the Commission notified the GFC that it proceeds at its own risk of additional enforcement action by the Commission.
- 5 The July 6, 2007 fireworks display caused a visible response by nesting seabirds on Gualala Point Island. Digiscoped and infra-red photography during the 6 July 2007 fireworks display showed that Brandt's Cormorants quickly changed from resting to erect postures at the first fireworks, followed by birds moving about or departing from the island. Western Gulls also flushed, circled and called during the fireworks display. 90 Brandt's Cormorant nests were documented on Gualala Point Island during the 2007 nesting season monitoring study conducted by the Bureau of Land Management and the United States Fish and Wildlife Service. During the study period, seven nests (35% of total nest failures) were abandoned in the two days between July 5 and July 7, 2007. Another seven nests were abandoned between July 7 and July 12, 2007. These losses contrast with the abandonment of only six nests (30% of total nest failures) for the 30-day period from June 5 to July 5, 2007. The high rate of Brandt's Cormorant nest abandonment between July 5 and July 7, 2007, and possibly nest abandonment from July 7 to July 12, 2007, likely resulted from the July 6 fireworks disturbance.
- 6 The Commission's June 13, 2007 letter noted that the proposed fireworks display above the Gualala River estuary would constitute a form of "development" as defined by the Coastal Act (see section 30106) that requires a CDP, in part because the proposed fireworks display does not qualify as a temporary event exempt from CDP requirements due to its unique potential for adverse impacts to coastal resources. 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.

Exhibit 7
CCC-08-CD-07
(Gualala Festivals Committee)

V-1-07-018; NOI for CDO
April 1, 2008
Page 3 of 5

- 7 The Commission's June 29, 2007 letter stated that the Commission still considered the proposed fireworks event to be "development" that requires a CDP and stated that if the GFC were to proceed in the absence of a CDP, it would be in violation of the Coastal Act, and therefore the GFC would be proceeding at its own risk of additional action by the Commission. The Commission's June 29, 2007 letter required the GFC to obtain a CDP before going forward with any defined development activity within the Commission's permit jurisdiction. In addition, the letter pointed out that if the GFC wished to launch fireworks in July 2008, the GFC should apply for a CDP no later than February 2008. If the GFC applied for a CDP by February 2008, the Commission predicted that it would have adequate permit application processing time before any planned July 2008 event.
- 8 The GFC did not submit a CDP application by February 29, 2008. As of today's date the GFC still has not yet submitted a CDP application to the Commission for a fireworks event in July 2008.
- 9 The GFC website (<http://www.gualalafestivals.org>) has a posted announcement: "Coming up.....4th of July Fireworks 2008!" In addition, the GFC announced in an article published on March 7, 2008, in the Independent Coast Observer, that "its fireworks will take place over Gualala on Friday, July 4, 2008." Therefore, it appears that the GFC is indeed planning to have a fireworks display on July 4, 2008.
- 10 As discussed in our two previous letters to Mr. Faulder and to Mr. Sayegh on June 13, 2007, and on June 29, 2007, and as briefly discussed below, the proposed activity is clearly within the definition of "development" (Section 30106 of the Coastal Act) and therefore requires a coastal development permit. No such permit was obtained from the Commission. Because the GFC and the owner of the property from which the fireworks would be launched, John Bower, have failed to obtain such a CDP, and because the GFC has publicly announced its intention to proceed with a fireworks display on July 4, 2008, I am commencing proceedings for issuance of a Cease and Desist Order as described below.

Cease and Desist Order

- 11 The Coastal Commission has not issued a coastal development permit to authorize the proposed July 4, 2008 fireworks display, nor has one been applied for by the GFC or by John Bower.
- 12 The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

- 13 I am issuing this Notice of Intent to commence Cease and Desist Order proceedings to require the GFC to cease and desist from undertaking or threatening to undertake development on the subject property unless authorized through a Coastal Development Permit or expressly recognized by the Commission as exempt.

Exhibit 7
CCC-08-CD-07
(Gualala Festivals Committee)

V-1-07-018; NOI for CDO

April 1, 2008

Page 4 of 5

- 14 Section 30600 of the Coastal Act requires that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. "Development" is defined by Section 30106 of the Coastal Act, which states:

"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, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973...

- 15 Development requires a coastal development permit in accordance with Section 30600 of the Coastal Act, which provides in pertinent part:

"...in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person...wishing to perform or undertake any development in the coastal zone...shall obtain a coastal development permit."

- 16 The unpermitted activity includes the discharge of gaseous and solid waste into coastal waters, so it fits within the definition of "development" and therefore is subject to the permit requirements of Section 30600(a) of the Coastal Act. As noted above, a coastal development permit has not been issued to authorize the subject development activity.

- 17 For these reasons, the criteria of Section 30810(a) of the Coastal Act have been met, and I am sending this letter to notify you that I will be initiating proceedings for the Commission to determine whether to issue a Cease and Desist Order.

- 18 Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act.

Response Procedure

- 19 In accordance with Section 13181(a) of the Commission's regulations (codified in Title 14 of the California Code of Regulations), you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form, including identification of issues and materials for Commission consideration, and documents and issues that you would like the Commission to consider, must be returned to the Commission's San Francisco office, 1000 Market Street, 15th Floor, San Francisco, CA 94102, or Nancy Cave, using the address provided on the letterhead, no later than April 21, 2008.**

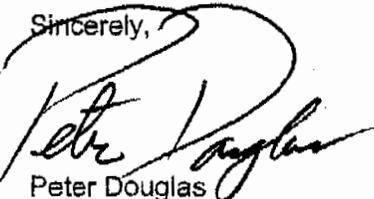
Exhibit 7
CCC-08-CD-07
(Gualala Festivals Committee)

V-1-07-018; NOI for CDO
April 1, 2008
Page 5 of 5

Civil Fines

20 Please be advised that Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each violation. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists. Section 30821.6 provides that a violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which each violation persists.

21 The Commission staff intends to schedule the hearing on the proposed Cease and Desist Order during the Commission meeting that is scheduled for May 7-9, 2008 in Los Angeles County. We prefer to resolve violations amicably and would welcome the opportunity to discuss the need for a CDP with you. The Commission is also willing to discuss possible alternatives for a celebration designed to avoid adverse impacts to nesting seabird colonies on Gualala Point Island. If you have any questions regarding this letter, please contact Nancy Cave of my staff at 415-904-5290 or send correspondence to her attention at the address listed on the letterhead when you receive this letter.

Sincerely,

Peter Douglas
Executive Director

Encl. Statement of Defense Form for Cease and Desist Order

cc: Lisa Haage, Chief of Enforcement
Robert Merrill, North Coast District Manager
Nancy Cave, Northern California Enforcement Supervisor
Alex Helperin, Staff Counsel

Exhibit 7
CCC-08-CD-07
(Gualala Festivals Committee)

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by a notice of intent to initiate cease and desist order proceedings before the Commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the Commission's laws or a Commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it **no later than April 21, 2008** to the Commission's enforcement staff at the following address:

**Nancy Cave, Legal Division,
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105**

If you have any questions, please contact Nancy Cave at (415) 904-5220.

Keith Faulder
Attorney at Law

PMB: 705 North State Street, #238
Ukiah, CA 95482
707.548.7976
gualalapatriotdays@faulderlaw.com

June 23, 2007

Nancy Cave
Enforcement Supervisor
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Ms. Cave:

Thank you for your telephone call on Friday, June 22, 2007. This letter is intended to memorialize our phone conversation, as well as give you specific answers to specific questions you asked during that phone call that I did not have at the time.

As we discussed during that call, I did receive a copy of a letter from Robert S. Merrill, dated June 13, 2007. [Attached as Exhibit 1] I did not respond to that letter because it did not request a response, and I did not have any "questions regarding the CDP application process." At your request, I will address the contents of that letter in this correspondence with you.

As an aside, it is unfortunate that your office will not communicate by electronic mail. Most of the documentation requested by you is available in electronic format, so I could have simply emailed them to you as attachments. I hope you may be able to impress upon the policy makers in your office the considerable cost, both to the environment and the public, when so much paper is used to communicate with the Commission.

First, on behalf of the citizens of Gualala, thank you for the concern and commitment shown by the California Coastal Commission to protect and preserve our coastal access, resources, and environment. The people of Gualala and the members of the Gualala Festivals Committee share your concern, and they have shared the commitment to protect and preserve the Gualala River and Gualala coastal zone for years, if not their

entire lives. The citizens of Gualala will continue with that commitment, and they look forward to your continued cooperation in that pursuit.

The citizens of Gualala love their small community, their river, and their coast. The people of Gualala, as rugged and independent as the land in which they live, have been taking care of their community and their environment since the 1860's, with very little help during that time from any county, state, or federal agencies [See Exhibit 2].

Once a year, like communities large and small, up and down the coast of California, and across the United States, the people of Gualala celebrate Independence Day. The people of Gualala, however, celebrate Independence Day in a unique and very special way: Gualala Patriot Days.

Gualala Patriot Days is organized and funded, again without any county, state, or federal support, by the Gualala Festivals Committee, which itself is comprised of local business and property owners whose stated intent is "to bring our community, families, friends and visitors together in the spirit of fun" [See Exhibit 3]. Gualala Patriot Days does just that, and much, much more.

The Gualala Patriot Days celebration is certainly fun [See Exhibits 4, 5, & 6], and it does bring together the members of the local community in the spirit of fun [See Exhibit 7]. Patriot Days are also important to the people of Gualala to help them to reconnect with the larger surrounding community to which they also belong [See Exhibit 8].

Mendocino County Sheriff Tom Allman, California Highway Patrol Commander Ray Madrigal, Mendocino County Supervisor David Colfax, the United States Marine Color Guard [one of only 11 cities in California to be so honored], and many other prominent government and community members will join the people of Gualala during Patriot Days to help them celebrate their vibrant sense of local community, and to reemphasize their connection with that larger community and shared national identity.

Gualala Patriot Days, however, are not only a celebration, they are a reminder of the history, honor, and sacrifice that others have made that allow us to celebrate our national and individual independence in the first place.

The Gualala Patriot Days website provides an excellent history behind the celebration of Independence Day; the Declaration of Independence [See Exhibit 9], the cost of the War for Independence in American lives [See Exhibit 10], the voices of the people who lived, fought, and died in the War for Independence [See Exhibit 11], and the heavy price paid by the 56 signers of the Declaration of Independence [See Exhibit 12]. It also contains a treasure of information about how one can become involved in the local community and future celebrations [See Exhibits 13].

The Gualala Patriot Days celebration takes giant steps past the website. Gualala Patriot Days takes the War for Independence from the inert pages of the history books and, for three days, brings it back to life through live reenactments and community interaction. What makes the Gualala Patriot Days unique is that every man, woman, and child with an imagination and a willingness to use it can join in and actively participate in the celebration [See Exhibit 14].

So, why are fireworks a part of the celebration? Fireworks and Independence Day are melded in our national consciousness. One can hardly conceive of a Fourth of July celebration without fireworks. And, to quote John Adams in letter to his wife, Abigail, in 1776:

“[Our Country’s] founding ought to be solemnized with pomp and parade, with shows, games, sports, guns, bonfires, and illuminations from one end of this continent to the other from this moment forward forever more.”

The date and time of the fireworks display has been widely publicized for July 6th, 2007, at 9:15 p.m. in downtown Gualala. [See Exhibit 15] All of the permits, licenses, and insurance required by law have been obtained at a cost of approximately \$12,000.00.

The fireworks display will last approximately 10 minutes [See Exhibit 16].

As you can see from Exhibit 16, the information in Mr. Merrill's June 13, 2007, letter describing (1) the site of the fireworks display, (2) the detonation of the fireworks, and (3) the alleged "closing a portion of the Gualala Bluff Trail to the public" is incorrect.

The fireworks will not be launched from any public access easement over the Gualala River, nor will public access to any easement be closed or blocked by the Gualala Festivals Committee during the launch of the fireworks.

In addition, Mr. Merrill's current position that the scheduled fireworks display is a form of "development" pursuant to Section 30106 of the Public Resources Code is not supported by the evidence, the cited statute, any case authority referencing that statute, or any of the many prior Commission rulings regarding California fireworks displays.

Three other local fireworks displays, in Bodega Bay on July 1st and in Fort Bragg and Point Arena on July 7th, did not require any Commission "development" permits based on the interpretation that a fireworks display was a "development" pursuant to Section 30106 of the Public Resources Code [See Exhibit 17].

No publication or report prepared by the California Coastal Commission has ever found any fireworks display to be a "development" pursuant to Section 30106 of the Public Resources Code [See Exhibit 18].

In August of 2000, the Commission granted a permit for a private fundraiser on a *public* beach in Santa Cruz that included a fireworks display launched from a *public* pier and detonated over the Pacific Ocean. Although the Commission required a development permit for the closure of an area of public beach and the public pier, it did not find that launching fireworks over the Pacific Ocean was a "development" [Exhibit 19].

Later, in January of 2002, the Commission addressed whether or not a development permit was required for SeaWorld in San Diego. The Commission found that SeaWorld launched 150 fireworks displays each year over Mission Bay Park. The Commission found that "Due to the potential, but undocumented adverse impacts to water quality, air quality and biological resources associated with the fireworks displays" the 150 per year fireworks displays would be "allowed to continue [without a "development" permit] for five years" and "will be re-evaluated at that time".

No finding was ever made by the Commission that the 150 fireworks displays a year constituted a "development" pursuant to Section 30106 of the Public Resources Code [Exhibit 20]. The five year period expired in January of 2007, but no new findings have been reported or published by the Commission.

Significantly, in August of 2006, the Commission found that the imposition of a curfew in a park in Coronado was unlawful "Because of the excellent views across the San Diego Bay from the park, it is used for viewing fireworks celebrations that occur throughout the year. The City indicated that fireworks usually start around 9:20 p.m. and last 20 to 30 minutes. . . ."

In the next paragraph the Commission cited section 30210 of the Public Resources Code:

"In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, . . . and recreational opportunities [i.e., viewing fireworks] shall be provided for all the people consistent with public safety need and the need to protect public rights, rights of private property owners, and natural resource areas from overuse."

The Commission then found that "The park's outstanding asset is its view of downtown San Diego, and that [sic] what the site is used most for. As such, prohibiting access from 9 p.m. to 10 p.m., typical firework viewing hours, will have a significant impact on public recreational use of the site" [See Exhibit 21].

Review of the California Coastal Commission Enforcement Program Annual Report [last published in 2004], shows no enforcement of a fireworks display as a "development" pursuant to Section 30106 of the Public Resources Code was reported [See Exhibit 22].

For these reasons, it is abundantly clear that a development permit is not required for the Gualala Patriot Days' fireworks display pursuant to Section 30106 of the Public Resources Code because (1) no fireworks are being launched from within the public access easement, (2) the 10 minute firework display itself does not constitute any statutory form of "development" consistent with any previous Commission findings or any citable case authority [other than Mr. Merrill's singular interpretation of the Gualala Patriot Days' fireworks display as a "development"].

The fact that the site of the fireworks display is located approximately one mile from Gualala Point Island does not give the Commission the statutory authority to require the Gualala Festivals Committee to obtain a development permit.

Mr. Merrill's statement that a fireworks display in 2006 "resulted in a documented disturbance of seabird roosts and rookeries, including observed nest abandonment by several bird species" is not documented. If any such disturbance occurred, it may well have been caused by the disturbing presence of the alleged observers, but the alleged "disturbance" is not "documented" in any report that has been made a matter of public record.

Gualala Point Island is part of the California Coastal National Monument, and thus under federal jurisdiction, specifically the Bureau of Land Management [BLM]. If any previous fireworks display in Gualala "resulted in a documented disturbance of seabird roosts and rookeries, including observed nest abandonment by several bird species", that agency certainly would have documented it. That agency has not.

In fact, on June 6, 2007, Rich Burns, Ukiah Field Manager of BLM, reported in a letter to Tony Warrington, Regional Manager of the California Department of Fish and Game, "a once-a-year fireworks display in July over the estuary of the Gualala River does not meet the threshold of violating either the ESA or the MBTA . . . the Gualala fireworks are designed to entertain the public and not harass wildlife/seabirds" [See Exhibit 23].

On June 18, 2007, agents of the federal Bureau of Land Management and the California Department of Fish and Game [either unaware or unconvinced of the "documented" disturbances claimed in Mr. Merrill's June 13, 2007, letter] met to develop a protocol to monitor seabirds in response to "the need to know how a holiday fireworks display in the town of Gualala . . . affects seabird colonies and marine mammals on nearby rock islands . . ." [See Exhibit 24].

Finally, in June of 2006, a 43 page study by the federal National Oceanic and Atmospheric Administration [NOAA], the National Marine Fisheries Service [NMFS], and the Monterey Bay National Marine Sanctuary [MBNMS], based on 12 years of continuous monitoring of "commercial fireworks displays [at the coastal cities of

Monterey, Pacific Grove, Capitola, and Santa Cruz] for potential impacts to marine life and habitats” found that “Wildlife activity nearest to disturbance areas returns to normal (pre-display species distribution, abundance, and activity patterns) within 12 hours, and no signs of wildlife injury or mortality have ever been discovered as a result of managed fireworks displays.”

The 2006 federal NOAA, NMFS, and MBNMS study “found only one (10 year) scientific study directed specifically at the potential impacts of chemical residue from fireworks upon the environment” that concluded the “environmental impacts from fireworks decomposition products typically will be negligible in locations that conduct fireworks displays infrequently”.

The 2006 federal NOAA, NMFS, and MBNMS study determined that “Based on the findings of this report, the lack of any evidence that fireworks displays within the [Monterey Bay] sanctuary have degraded water quality, and the fact that the chemical byproducts of less frequent fireworks displays in an open marine system are even less likely to accumulate to a harmful level than those described in this report, NMFS and MBNMS believe that chemical residue from fireworks does not pose a significant risk to the marine environment. No negative impacts to water quality have been detected.”

The 2006 federal NOAA, NMFS, and MBNMS study also determined that, despite over 67 fireworks displays within the Monterey Bay National Marine Sanctuary, “No long term effects on the population of [pinnipeds] have been noted, and, in fact, the California sea lion population has increased and is growing. . . .”

The same 2006 federal NOAA, NMFS, and MBNMS study also made the following relevant, perhaps even startling, finding:

“The marine venue is the preferred site for fireworks displays in coastal areas, in part due to the considerable reduction of fire hazard by siting the aerial debris fallout zone over ocean waters. While there is no guarantee that all airborne embers will fall into the water, siting is managed for that intent. The coastal areas of California generally receive more moisture than the interior areas and are inherently less prone to wildfire than the drier upland regions. . . .” [See Exhibit 25].

The California Coastal Commission must treat similarly situated coastal communities in the same manner. Whatever action the Commission decides to take with the Gualala Patriot Days fireworks display must be the same action it has taken with fireworks displays in every other large and small coastal town, city, or county in California. The Commission has never before found a fireworks display to be a "development" pursuant to Public Resources Code section 30106.

For the sake of all concerned, cooperation is preferred over litigation. With the above facts in mind, I would ask the Commission to consider the following statutory and case authority as well:

Pursuant to Public Resources Code section 30803(b), a court may stay the operation of the cease and desist order, and any decision by the Commission is reviewable through a petition for writ of mandate under Code of Civil Procedure section 1094.5. (See Pub. Resources Code, § 30801 [authorizing any "aggrieved person" to seek judicial review of Commission decisions].)

Code of Civil Procedure section 1094.5 authorizes a trial court to reverse the Commission when it has exceeded its jurisdiction or denied a fair hearing, the trial court may reverse if it finds a prejudicial abuse of discretion. (Code Civ. Proc., § 1094.5, subd. (b).)

"Abuse of discretion is established if the [Coastal Commission did not] proceed in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).)

"Where it is claimed that the findings are not supported by the evidence ..., abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record." (Code Civ. Proc., § 1094.5, subd. (c).)

The trier of fact ... is the sole arbiter of all conflicts in the evidence, conflicting interpretations thereof, and conflicting inferences which reasonably may be drawn therefrom; it is the sole judge of the credibility of the witnesses [and] may disbelieve

them even though they are uncontradicted if there is any rational ground for doing so....”
(Pescosolido v. Smith (1983) 142 Cal.App.3d 964, 970-971, 191 Cal.Rptr. 415.)

The court must consider all relevant evidence, including evidence that detracts from the decision. (Sierra Club v. California Coastal Com. (1993) 12 Cal.App.4th 602, West's Ann.Cal.Evid.Code § 610, 15 Cal.Rptr.2d 779 (Pygmy Forest).)

I believe I have completely and accurately documented our phone conversation, and I believe I have answered all of your questions, including quite a few I realize you didn't ask, but I am extremely proud of the civic pride shown by the citizens of Gualala and the Gualala Festivals Committee, and it is my intention to vigorously represent their rights and interests on this issue.

For all of the above reasons, particularly in light of the documents submitted with this letter, the allegations contained in Mr. Merrill's letter “are not supported by substantial evidence” to support a finding of any violation of the Coastal Act.

I hope you agree that Gualala Patriot Days are worth preserving and protecting, and that the Gualala Festivals Committee has done everything required by law in preparation of the Gualala Patriot Days celebration, including the fireworks display, to preserve and protect their community and their environment.

On behalf of the people of Gualala and the Gualala Festivals Committee, I would be pleased if you would accept their invitation to join them in the Gualala Patriot Days celebration.

If I can be of any further assistance, please call, email, or write to me.

I have enclosed my card for your convenience.

Sincerely,

Keith Faulder

cc:

Governor Arnold Schwarzenegger
Patricia Wiggins, State Senate, 2nd District
Patty Berg, State Assembly, 1st District
Mike Thompson, United States Congress, 1st District
Mendocino County Board of Supervisors
J. David Colfax, District 5
Michael Delbar, District 1
Jim Wattenburger, District 2
John Pinches, District 3
Kendall Smith, District 4
Gualala Festivals Committee
Robert Merrill, California Coastal Commission
Rick Miller, Mendocino County Planning Department
Tony Warrington, Department of Fish and Game
Vicki Frey, Department of Fish and Game
Rich Burns, Bureau of Land Management
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
Glenn O'Hara, Independent Coast Observer
K.C. Meadows, Ukiah Daily Journal
Mike A'Dair, Willits News
Bob Norberg, Santa Rosa Press Democrat
San Francisco Examiner
San Francisco Chronicle

MANNON, KING & JOHNSON
ATTORNEYS AT LAW

CHARLES B. MANNON
JAMES F. KING
STEPHEN F. JOHNSON

SAVINGS BANK BUILDING, SUITE 304
200 NORTH SCHOOL STREET
P.O. BOX 419
UKIAH, CALIFORNIA 95482

TELEPHONE: 707-468-9151
FACSIMILE: 707-468-0284
jim@mkjlex.com

Via facsimile and U. S. mail
415-904-5400

April 4, 2008

Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Proposed Cease and Desist Order

Dear Mr. Douglas:

I represent Bower Limited Partnership ("BLP"). I am in receipt of your letter dated April 1, 2008, giving notice of intent to seek a cease and desist order.

BLP owns the property in Gualala where fireworks displays have been proposed for the Fourth of July in 2008. This is to advise you that BLP has withheld, and will continue to withhold its permission for all future fireworks displays on its property until such time as the Gualala Festivals Committee has obtained all necessary governmental approvals for the event.

BLP intends to comply with the Coastal Act and with all other California and federal laws concerning use of its property. BLP will be happy to reevaluate its position regarding use of its property when and if the permit issue has been resolved between the Commission and the Festivals Committee.

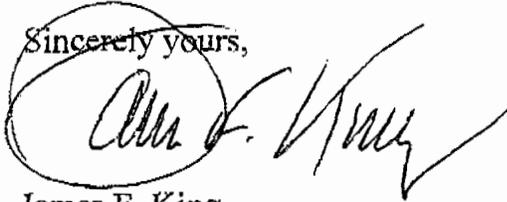
You should be aware of an additional factor. BLP has permit applications pending for installation of a soil retention system on Parcels 5 and 13 along the Gualala River bluff. BLP hopes to obtain the permits in 2008 in time to allow work to proceed during the construction window. Under these circumstances, it is unlikely that BLP would consider allowing a fireworks display on its property in 2008, even if the Commission and the Festivals Committee were able to resolve the permitting issue.

Exhibit 8
CCC-08-CD-07
(Gualala Festivals Committee)

Given these facts, we do not believe it necessary or appropriate for you to seek a cease and desist order against Bower Limited Partnership.

I will be happy to discuss this with you at any time.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James F. King", is written over the typed name. The signature is enclosed in a hand-drawn circle.

James F. King

cc: Bower Limited Partnership

**BOWER LIMITED PARTNERSHIP
P O BOX 1000
GUALALA, CA 95445-1000
PH 707-884-3579, FAX 707-884-1620**

Via facsimile and U. S. mail
415-904-5400

April 24, 2008

Nancy L. Cave
Northern California Supervisor
Enforcement Program
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

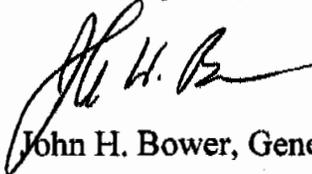
Re: Proposed Cease and Desist Order

Dear Ms. Cave:

I am sending you this letter at the suggestion of my attorney, James King, following his conversation with you yesterday.

Bower Limited Partnership will not allow the Gualala Festivals Committee, or any other entity, to conduct a fireworks display on or from the Subject Property, or on or from any other of its properties located within the Coastal Zone, as that phrase is defined in the California Coastal Act, Cal. Pub. Res. Code §§ 30000 *et seq.*, unless and until the entity wishing to undertake a fireworks display has either (a) obtained a Coastal Development Permit from the Coastal Commission or confirmation from the Commission that no such permit is necessary; or (b) a court of competent jurisdiction has made a final determination that no such permit is necessary. As used in the preceding sentence, 'final determination' means a final order or judgment of a California court which either has been affirmed on appeal, or has become final because the time for appealing the order has expired.

Sincerely yours,



John H. Bower, General Partner

Exhibit 9
CCC-08-CD-07
(Gualala Festivals Committee)

Page 1 of 1

RECEIVED
APR 29 2008
CALIFORNIA
COASTAL COMMISSION



PACIFIC LEGAL FOUNDATION

May 16, 2008

Ms. Nancy Cave
Enforcement
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Ms. Cave:

This letter is to inform the Commission that Gualala Festivals Committee has located a launch site for the July 4th fireworks display. The display will take place on the property within the zone and detonate over the Gualala River. The display will be the same as in previous years in all relevant respects, except that the fireworks must be reduced from the three-inch shells used in previous years to shells that will likely not exceed two-and-a-half-inches due to the physical characteristics of the launch site property.

This letter is also to confirm that there will be a cease and desist order hearing regarding the fireworks display at the Commission's June meetings. If this is not the case, please notify me immediately.

The information in this letter is provided to the Commission only as a courtesy, since staff has requested that it be notified when an alternative site for the display is found. This letter does not in any way constitute an admission or acknowledgment of the Commission's jurisdiction over the fireworks display or of the Executive Director's power to initiate proceedings against the display. It continues to be the position of Gualala Festivals Committee that the display is not "development" and that, as a result, the Commission may not require a coastal development permit for it.

Exhibit 10
CCC-08-CD-07
(Gualala Festivals Committee)

Page 1 of 2

Ms. Nancy Cave
May 16, 2008
Page 2

Henceforth, all communications with Gualala Festivals Committee, whom Pacific Legal Foundation represents, should be made to me. If you have any questions, please do not hesitate to contact me.

Sincerely,



GRAHAM OWEN
Attorney
Pacific Legal Foundation
3900 Lennane Drive, Suite 200
Sacramento, CA 95834
(916) 419-7111
go@pacificlegal.org

RECEIVED
MAY 19 2008

CA COASTAL COMMISSION
LEGAL DIVISION

Exhibit 10
CCC-08-CD-07
(Gualala Festivals Committee)

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



May 29, 2008

Ray Hall, Planning Director
Mendocino County
Department of Planning and Building Services
501 Low Gap Road, Room 1440
Ukiah, CA 95482

**RE: Alleged Coastal Act Violation No. V-1-07-018 (Gualala Festivals Committee),
concerning the proposed Gualala Festivals Committee Fireworks Display scheduled for
July 4, 2008**

Dear Mr. Hall:

As you know, the Coastal Commission has received reports of an alleged Coastal Act violation concerning the proposed Gualala Festivals Committee ("GFC") Fireworks Display scheduled for July 4, 2008, and has been coordinating with your staff regarding the most efficient way to address the issues.

On July 2, 2006, the GFC commenced its first Patriot Days fireworks display over the Gualala Estuary. The GFC did not obtain a coastal development permit ("CDP") for this activity and the Coastal Commission as well as other agencies such as the Department of Fish and Game received several phone calls complaining about the fireworks display and its perceived impact on nesting seabirds found on Gualala Point Island.

In June of 2007, Commission staff became aware that the GFC was planning a second fireworks display to take place on July 6, 2007. The plan was to launch the fireworks for this display in a location within or immediately adjacent to a lateral public access trail situated above the Gualala River and estuary. On June 13, 2007, the Commission's North Coast District Manager, Robert Merrill, sent a letter to the GFC, explaining that (1) launching fireworks from within the public access easement held by the Redwood Coast Land Conservancy ("RCLC") 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 ("CDP"), 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.

Exhibit 12
CCC-08-CD-07
(Gualala Festivals Committee)

The letter discussed CDP No. NCR-77-C-115, granted in 1977 to John and Ida Bower for a land division, which provided for a 25-foot-wide lateral blufftop access easement and a five-foot-wide vertical access easement from Highway One to the mean high tide water line of the Gualala River. In 1994, the RCLC accepted both offers to dedicate and obtained two coastal permits from Mendocino County to construct the Gualala Bluff Trail to provide public access along the bluff. Since 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, the launching would be inconsistent with the terms and conditions of prior CDPs granted by the Commission and the County that strictly reserve use of the easement for public access purposes.

In his letter, Mr. Merrill described how the proposed fireworks display, which involved detonating fireworks above the Gualala River estuary, is a form of "development" as defined by Section 30106 of the Coastal Act:

"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 CDP, in addition to any other permit required by law, authorizing such development before such development takes place. Thus, a CDP from both the Coastal Commission and Mendocino County would need to be obtained prior to undertaking the development.

Apparently, last year the GFC relocated the fireworks launching site to a location adjacent to but not within a public access easement, and agreed that public access to the easement area would not be blocked or closed before, during, or after the launch of the fireworks on July 6, 2007.

On July 6, 2007, the GFC launched a fireworks display from the planned location adjacent to a public access easement. Public use of the public access easement was halted prior to sunset so that the fireworks display could be installed. Although no CDP had been obtained, the fireworks were detonated over the Gualala River estuary, constituting a Coastal Act violation. The Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (USFWS) monitored the impact of the detonated fireworks on the nesting seabird colonies found on Gualala Point Island, and concluded that there had been disturbance of seabird roosts and rookeries, including abandonment by Brandt's cormorants, as a result of the fireworks display.

At the Commission's December 2007 hearing in San Francisco, this issue was discussed, and the Commission asked the GFC to apply for a CDP for any planned 2008 fireworks, and to submit a CDP application by February 2008. No CDP application has been submitted thus far, although it appears that the GFC is planning a similar fireworks display for July 4, 2008, to be launched from 39170 South Highway One in Gualala. As a result, on April 1, 2008, the Commission sent to the GFC a Notice of Intent to Commence Cease and Desist Order Proceedings for issuance of a Cease and Desist Order to require the GFC to cease and desist from conducting any unpermitted development.

The Gualala River and estuary (where the fireworks debris is designed to fall) are within the Coastal Commission's retained CDP jurisdiction. The property from which the fireworks are to be launched is within the County's CDP jurisdiction. However, the RCLC holds recorded easements over portions of the property from which the GFC is planning to launch its fireworks, which easements are for general public pedestrian access over the trails on the property and along the bluffs above the Gualala River, and were required as a condition of a CDP approved by the Coastal Commission in 1977. Presumably, the launching of fireworks will 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, as occurred prior to and during last year's fireworks display. The proposed activity is inconsistent with the requirements of the coastal permit issued by the Commission because it will inhibit public use of the trail easements before and during the fireworks display. Therefore not only is the falling debris within the Commission's jurisdiction, but the aspect of the alleged violation involving the set-up of the launch site and the launching of the fireworks is also, at least in part, subject to the Commission's default enforcement jurisdiction, as it involves actions inconsistent with a coastal permit issued by the Commission.

However, as you may be aware, even when there is no relevant pre-existing permit issued by the Commission and the unpermitted development occurs in areas covered by local coastal programs, the Commission often addresses such violations of the Coastal Act. Pursuant to Coastal Act Section 30810(a), the Coastal Commission may issue a cease and desist order to enforce any requirements of a certified local coastal program if any of several elements is met.

Section 30810(a) states:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

- (1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*
- (2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.*

In conversations between our staff and county permitting staff, we have discussed the appropriate and most efficient way to address the violations given their location and genesis. As noted above, this is a violation which could cause significant damage to coastal resources, and which is time sensitive and requires a timely response. It also involves actions occurring both within Commission retained permit jurisdiction, and involving terms of a coastal permit issued by the Commission. Therefore, based on our conversations with County staff in which the County has told us that it has declined to act in this matter, pursuant to Coastal Act Section 30810(a)(2), the Commission will assume primary responsibility for taking enforcement action pertaining to both County and Commission jurisdictions, and for issuing a cease and desist order to the GFC. Furthermore, as noted above, the Commission may exert enforcement authority in this matter since the fireworks display will be launched from property containing public access trails required by a Coastal Commission CDP, and the fireworks display will interfere with public access to and along these trails, making it "inconsistent with [a] permit previously issued by the [C]ommission" (Coastal Act Section 30810(a)).

Please do not hesitate to contact me if you have any questions. We appreciate your attention to this matter.

Thank you.

Sincerely,



JO GINSBERG
Enforcement Analyst

cc: Lisa Haage, CCC, Chief of Enforcement
Nancy Cave, CCC, Northern California Supervisor
Bob Merrill, Coastal Commission, North Coast District Manager
Rick Miller, Mendocino County Dept of Planning and Building Services

Exhibit 12
CCC-08-CD-07
(Gualala Festivals Committee)

CALIFORNIA COASTAL COMMISSION45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

January 23, 1998

To: Planning Directors of Coastal Cities and Counties

From: Peter Douglas, Executive Director

A handwritten signature in black ink that reads "Peter Douglas".

Re: **REGULATION OF TEMPORARY EVENTS IN THE COASTAL ZONE**

Over the past several years, temporary events on California's beaches and adjacent areas have become a subject of substantial concern. The concerns relate to the nature and frequency of such events, their impact on coastal resources and nearby residential neighborhoods, and the general public's ability to get to and utilize coastal recreational lands during such events. Temporary events, such as volleyball tournaments, visual arts and music festivals, surfing contests, boat and auto races, farmers markets, etc. have a long-standing tradition and history in California's coastal communities. As the State's population grows and competition for limited coastal space intensifies and fiscally strapped local governments search for supplemental sources of revenue, conflicts among different coastal users and uses become more significant. Exacerbating the problem is the fact that many event sponsors, whether for profit or charitable purposes, seek to charge entrance fees that, by their nature, result in the exclusion from the event site non-paying members of the public. The Commission recently denied approval of a volleyball tournament that proposed 100% paid seating on the beach in the summer.

While some temporary events raise substantial concerns about adverse impacts on coastal resources, most events of this type are de minimis and raise no such concerns. In order to minimize permitting burdens for the vast majority of temporary events that do not raise Coastal Act concerns, the Commission sought and received legislative approval to utilize procedures to exclude such events from coastal permit requirements. The attached guidelines were adopted by the Commission in 1993 to identify those types of temporary events which have the potential for significant adverse effect on public access and/or coastal resources and which, as a result, require a coastal development permit.

The Commission recently held a workshop and received public testimony on whether the guidelines should be changed. Subsequent to the hearing, Commission staff, based on Commission direction, determined not to amend the guidelines at this time. However, testimony at the hearing did suggest that the guidelines fail to address the cumulative impacts these kinds of events are having on public access to and recreational use of the shoreline. Concerns were raised about the number and size of events, impacts on public parking, noise, advertising, etc. The Commission heard from citizens that these concerns are not being adequately addressed at the local level and that there may be inadequate opportunities for the public to raise these concerns through a public hearing process.

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(Gualala Festivals Committee)

Regulation of Temporary Events in the Coastal Zone

January 23, 1998

Page 2

The Coastal Act gives both the Coastal Commission and local governments the responsibility to implement coastal protection policies through the planning and regulatory processes established by the Act. The Commission believes that most of the concerns raised in connection with the impacts of temporary events can best be addressed at the local government level. Obviously in doing so, Coastal Act policies designed to protect coastal resources need to be addressed. The Commission-adopted guidelines relative to temporary events only apply to areas where the Coastal Commission retains permit authority, including public trust lands and areas for which there is no certified Local Coastal Program (LCP).

The Commission has asked that staff contact its local government partners in coastal stewardship to request that you review your local regulations affecting temporary events. The intent is to ensure that every LCP contains implementable land use policies that specifically address the protection of coastal resources consistent with Coastal Act policies. These policies should, for example, deal with potential impacts on parking and traffic affecting public beach access, visual amenities, the recreational and free use of public beaches, impacts on environmentally sensitive habitat, and the cumulative affects of multiple events, especially during the high-use summer season. Coastal development permits should be required for those temporary events having the potential of significant adverse effects on coastal resources. In addition to the range of issues your jurisdiction deals with as a matter of primarily local concern, Coastal Act policies and the Commission's guidelines should be used to help shape your approach.

We realize that many local governments have dealt with temporary events long before the Coastal Act was enacted. It is our intent to work in cooperation and coordination with you so as to avoid duplication of effort, to reduce regulatory burdens for event sponsors, and to minimize conflicts in policy direction. As you consider our request, we would also appreciate it if you would assist the Commission in meeting its responsibilities by notifying promoters of temporary events that a coastal development permit may be required from the Commission for certain types of events, and that they should contact the appropriate Commission office for guidance on whether a coastal permit or permit exemption is required. To the extent possible, Commission staff is available to provide any assistance you may deem helpful and appropriate. If you have any further questions, please don't hesitate to contact either myself at the above number or Sherilyn Sarb in our San Diego office at (619) 521-8036.

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(Gualala Festivals Committee)

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



TO: Local Governments and Interested Persons

FROM: Coastal Commission Staff

SUBJECT: Guidelines For the Exclusion of Temporary Events from Coastal Commission Permit Requirements - Adopted 5/12/93

I. Purpose and Authority.

The purpose of these guidelines is to identify the standards the Coastal Commission staff, under the direction of the Executive Director, will use in determining whether a temporary event is excluded from coastal development permit requirements pursuant to Public Resources Code Section 30610 (i) (as amended by SB 1578, Ch. 1088, Stats. 1992). The guidelines are for use in areas where the Coastal Commission retains coastal development permit authority. These guidelines may be utilized by local governments for reference in developing Local Coastal Programs or in processing LCP amendments, if required, to address coastal development permit jurisdiction over temporary events.

II. Criteria for Exclusion from Permit Requirements.

Except as provided in Section III, below, the Executive Director shall exclude from coastal development permit requirements all temporary events except those which meet all of the following criteria:

- a) Are held between Memorial Day weekend and Labor Day; and,
- b) Occupy all or a portion of a sandy beach area; and,
- c) Involve a charge for general public admission or seating where no fee is currently charged for use of the same area (not including booth or entry fees).

Only temporary events meeting all of the above criteria shall require coastal development permit review, however,

The Executive Director may also exclude from permit requirements temporary events meeting all of the above criteria when:

- d) The fee is for preferred seating only and more than 75% of the provided seating capacity is available free of charge for general public use; or,

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e) The event is held on sandy beach area in a remote location with minimal demand for public use, and there is no potential for adverse effect on sensitive coastal resources; or,

f) The event is less than one day in duration; or,

g) The event has previously received a coastal development permit and will be held in the same location, at a similar season, and for the same duration, with operating and environmental conditions substantially the same as those associated with the previously-approved event.

III. Executive Director or Commission Discretion to Require a Permit.

The Executive Director, or the Commission through direction to the Executive Director, may determine that a temporary event shall be subject to Commission coastal development permit review, even if the criteria in Section II. are not met, if the Executive Director or the Commission determines that unique or changing circumstances exist relative to a particular temporary event that have the potential for significant adverse impacts on coastal resources. Such circumstances may include the following:

a) The event, either individually or together with other temporary events scheduled before or after the particular event, precludes the general public from use of a public recreational area for a significant period of time;

b) The event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as defined in Section V. of these guidelines;

c) The event is scheduled between Memorial Day weekend and Labor Day and would restrict public use of roadways or parking areas or otherwise significantly impact public use or access to coastal waters;

d) The event has historically required a coastal development permit to address and monitor associated impacts to coastal resources.

IV. Modifications to Guidelines by the Commission.

The Commission may amend these guidelines at any time if it is determined such modification is necessary to more effectively implement Section 30610(i) of the Coastal Act, and provide Coastal Commission coastal development permit review of any category of temporary events having the potential for significant impacts to coastal resources; or, eliminate such review of any category of temporary events having no such potential.

V. Definitions.

For purposes of these guidelines, the following definitions shall apply:

a) "Temporary event(s)" means an activity or use that constitutes development as defined in Section 30106 of the Coastal Act; and is an activity or function of limited duration; and involves the placement of non-permanent structures; and/or involves exclusive use of a sandy beach, parkland, filled tidelands, water, streets or parking area which is otherwise open and available for general public use;

b) "Limited duration" means a period of time which does not exceed a two week period on a continual basis, or does not exceed a consecutive four month period on an intermittent basis;

c) "Non-permanent structures" include, but are not limited to, bleachers, perimeter fencing, vendor tents/canopies, judging stands, trailers, portable toilets, sound/video equipment, stages, platforms, movie/film sets, etc., which do not involve grading or landform alteration for installation.

d) "Exclusive use" means a use that precludes use in the area of the event for public recreation, beach access or access to coastal waters other than for or through the event itself.

e) "Coastal resources" include, but are not limited to, public access opportunities, visitor and recreational facilities, water-oriented activities, marine resources, biological resources, environmentally sensitive habitat areas, agricultural lands, and archaeological or paleontological resources.

f) "Sandy beach area" includes publicly owned and privately owned sandy areas fronting on coastal waters, regardless of the existence of potential prescriptive rights or a public trust interest.

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**SEABIRD AND MARINE MAMMAL MONITORING
AND RESPONSE TO A FIREWORKS DISPLAY
AT GUALALA POINT ISLAND,
SONOMA COUNTY, CALIFORNIA,
MAY TO AUGUST 2007**

James F. Weigand and Gerard J. McChesney



United States Department of the Interior
Bureau of Land Management
California State Office, Sacramento, CA

and

United States Department of the Interior
Fish and Wildlife Service
San Francisco Bay National Wildlife Refuge Complex, Newark, CA

12 February 2008

Exhibit 14
CCC-08-CD-07
(Gualala Festivals Committee)

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**SEABIRD AND MARINE MAMMAL MONITORING
AND RESPONSE TO A FIREWORKS DISPLAY
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¹United States Department of the Interior
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Suggested Citation: Weigand, JF; and McChesney, GJ. 2008. Seabird and marine mammal monitoring and response to a fireworks display at Gualala Point Island, California, Sonoma County, May to August 2007. Unpublished report, USDI Bureau of Land Management, California State Office, Sacramento, CA; and USDI Fish and Wildlife Service, San Francisco Bay National Wildlife Refuge Complex, Newark, CA. 38 pp

Title Page Photo: Marge Anthony

Exhibit 14
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EXECUTIVE SUMMARY

During part of the 2007 breeding season, seabirds and pinnipeds were monitored on Gualala Point Island, Sonoma County, California. Monitoring was conducted in response to reports of disturbance from a fireworks display in July 2006 to nesting seabirds on the island, a part of the California Coastal National Monument (CCNM) administered by the United States Department of Interior (USDI) Bureau of Land Management (BLM). In 2007, monitoring examined potential impacts to seabirds and marine mammals during a fireworks display on 6 July and gained additional basic knowledge of this little studied colony. The fireworks display took place on the north side of the Gualala River mouth in the unincorporated community of Gualala, located at the southern end of Mendocino County, California, and 1.8 km northeast of Gualala Point Island.

The study period extended from 30 May to 30 August, with a core monitoring period from 1 to 12 July. The BLM developed monitoring protocols in collaboration with four of its formal partners: the California Department of Fish and Game, a CCNM Core-Managing Partner; US Fish and Wildlife Service (USFWS) and PRBO Conservation Science, both CCNM Collaborative Partners; and its local CCNM Steward, The Sea Ranch Association. BLM and USFWS staff biologists and trained volunteers from The Sea Ranch CCNM Stewardship Task Force staff carried out protocol monitoring. Monitoring focused on populations of breeding seabirds on Gualala Point Island, particularly the Brandt's Cormorant (*Phalacrocorax penicillatus*), to examine potential responses and effects on reproductive success from the fireworks display. Monitoring also included Harbor Seals (*Phoca vitulina*), which haul out on Gualala Point Island. Seabird monitoring consisted of modified versions of existing protocols from the USFWS for monitoring seabird colonies from mainland vantage points in central California and for aerial photography. Protocols for disturbance monitoring were developed from protocols by PRBO Conservation Science, USFWS, and other sources. Surveys included four daily bird counts of all species and monitoring of visible nests of Brandt's Cormorants, Pelagic Cormorants (*P. pelagicus*), Western Gulls (*Larus occidentalis*), and Black Oystercatchers (*Haematopus bachmanni*) between 1 and 12 July, with follow-up surveys conducted through 18 July. Aerial photographic surveys of the Gualala Point Island Brandt's Cormorant colony were conducted on six dates between 30 May and 30 August to document numbers of nests and relative nest success for the entire colony. Harbor Seals were monitored following the protocol established by the Point Reyes National Seashore. At the same time and location each day, photographs of the visible surface of Gualala Point Island were taken to document seabird distribution, densities and behavior. Nighttime photography (with digiscoped and infra-red photographs) was conducted on two nights, 4 July and 6 July, to examine differences in Brandt's Cormorant behavior prior to and during the fireworks display. Video cameras recorded fireworks explosions and the response vocalizations of seabirds.

Observations documented a visible response by nesting seabirds on Gualala Point Island. Digiscoped and infra-red photography during the 6 July fireworks display showed that Brandt's Cormorants quickly changed from resting to erect postures at the first fireworks, followed by birds moving about or departing from the island. Western Gulls also flushed, circled and called during the fireworks display. During the study period, 90 Brandt's Cormorant nests were documented on Gualala Point Island. Of these, seven nests (35% of

nest failures) were abandoned in the two days between 5 and 7 July, and another seven nests were abandoned between 7 and 12 July. These losses contrast with the abandonment of only six nests (30% of nest failures) for the 30-day period from 5 June to 5 July. Two of nine nests monitored from the adjacent mainland were abandoned between 6 and 8 July. The high rate of Brandt's Cormorant nest abandonment between 5 and 7 July, and possibly nest abandonment from 7 to 12 July, likely resulted from fireworks disturbance.

Pelagic Cormorants abandoned both of the two monitored nests on Gualala Point Island between 10 and 16 July for unknown reasons. For one day after the fireworks display, counts of adult Western Gulls on the island declined significantly, but no Western Gull nesting failures were known to have occurred during the count period. California Brown Pelicans (*Pelecanus occidentalis californicus*) did not use Gualala Point Island as an overnight roost until after the date of the fireworks display. Other seabird species were too few in number or too difficult to monitor to detect potential responses from the fireworks display. No significant response was detected for Harbor Seals, which were not present on the island during the fireworks display.

Other human and "natural" disturbances to the island's wildlife were rare and minor, with no detectable impacts to nesting birds or pinnipeds.

ACKNOWLEDGMENTS

The authors gratefully acknowledge the assistance of The Sea Ranch CCNM Stewardship Task Force, in particular:

CONNIE SCHIMBOR and DIANE HICHTWA for organizing and shepherding equipment, data sheets, and volunteers to needed locations;
BRYANT HICHTWA, ROZANNE RAPOZO, and CRAIG TOOLEY for planning and undertaking nighttime, daytime, and aerial photography;
JERRY RENCH for his piloting skills to expand the aerial inventories;
SANDRA BUSH and BONNIE PLAKOS for Harbor Seal monitoring;
RITA PECK and PHYLLIS SCHMITT for video and sound recording;
GEORGE BUSH for acoustic instrumentation and monitoring;
ROZANNE RAPOZO and JULIE GIBSON for data entry and proofing, and database management;
MICHAEL LANE for valuable insights into the unique geology of Gualala Point Island and its bearing on seabird habitat and donated his GIS and mapping services;
RICHARD KUEHN for document research and historical background on seabird behavior in the area based on years of daily observations; and
RICHARD SCHIMBOR and DEAN SCHULER assisted in all manner of logistics.

The following people donated their time and skills to assist with seabird monitoring:

GINGER ALEXANDER	DOROTHY GREGOR
THOMAS ALEXANDER	KENNETH HOLMES
GEORGE ANDERSON	MARY HUNTER
MARGE ANTHONY	LINDA KEIR
SUSAN BECHTEL	LEE KOSSO
ELIZABETH BURRIDGE	ELAINE MAHAFFEY
PAULINE DAKIN	GEORGE MARSHALL
JAMIE EDWARDS	MICHELE MARSHALL
JEANNE GADOL	GRACE STEURER
STEVEN GADOL	JAMES TACKETT
MEL GERST	JULIE VERRAN
BARBARA GOMES	

In addition, field work and photographic analysis accomplished for this study could not have happened without the assistance of BLM wildlife biologists, PAUL ROUSH and GARY DIRIDONI. HERRICK HANKS, manager of the BLM California Coastal National Monument, and JOHN FOX, Community Manager of The Sea Ranch Association, provided funding, logistical support, and public relations efficiently and capably to support this effort. The authors also thank PHILLIP CAPITOLO and DEASY LONTOH of Humboldt State University and WAYNE BURNETT of the California Department of Fish and Game for assistance on aerial photographic surveys.

This report benefited greatly from thoughtful reviews by PAUL ROUSH and PETER WARZYBOK.

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INTRODUCTION

Understanding impacts from human disturbances to seabird colonies may be key to restoring certain nesting seabird populations along the California coast. Disturbances to seabirds during their reproductive cycles are a critical element for analysis in the process of adapting management to preserve and augment California seabird populations. Sources of human disturbance that are well recognized include habitat destruction, close-approaching boats, humans on foot and low-flying aircraft (e.g., McChesney 1997, Carney and Sydeman 2003, Rojek *et al.* 2007). Another source of human disturbance to seabirds that is not well documented is the display of celebratory fireworks. In California, only one study (Wengert and Gabriel 2002) of the heron colonies of Humboldt Bay has previously looked at the impact of fireworks on colonial waterbirds in California.

This monitoring study was conducted to determine how a recently initiated Independence Day fireworks display affected nesting and resting seabirds and marine mammals on Gualala Point Island within the California Coastal National Monument (CCNM), administered by the US Department of the Interior (USDI), Bureau of Land Management (BLM). Concern about potential impacts to nesting seabirds originated from observer reports of large numbers of birds on Gualala Point Island that flushed and flew into the darkness above the island on 2 July 2006 during the First Annual Gualala Festivals Committee Independence Day fireworks display.

The BLM and its partner regulatory wildlife agencies, the California Department of Fish and Game, the US Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service, wanted to assess whether the Gualala fireworks display impacted breeding success or attendance patterns of seabirds and marine mammals at Gualala Point Island and to learn the current status of the island's natural resources. To obtain information, BLM and USFWS biologists worked with The Sea Ranch CCNM Stewardship Task Force (hereafter "the Task Force") to monitor seabirds and marine mammals on Gualala Point Island before, during, and after the fireworks display using a combination of aerial and land-based techniques. This report summarizes the study results from 2007.

METHODS

Study Area

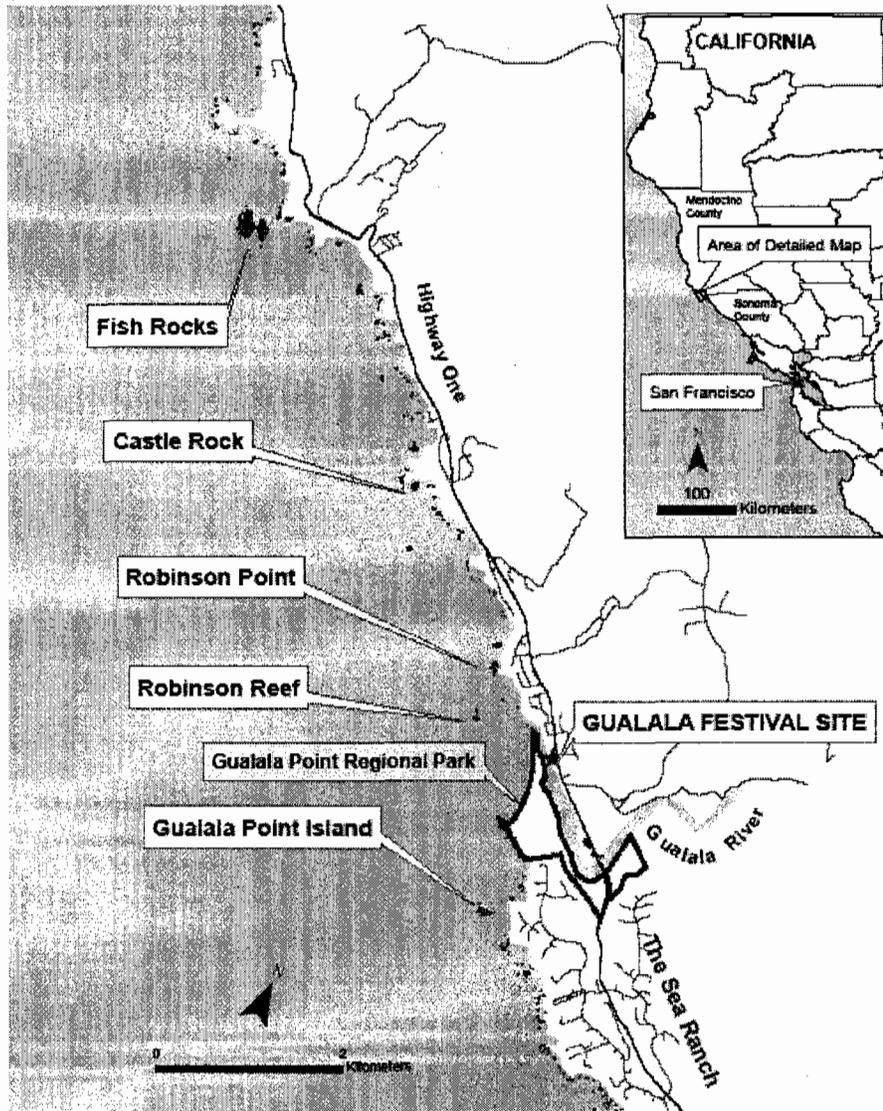
Gualala Point Island (California Seabird Colony Number SO-384-01; 38°45'04" N, 123°31'42" W) is located just offshore at the northern border of Sonoma County, California. The island is situated 1.8 km southwest from the Gualala Festivals Committee fireworks launch site located on a bluff top above the mouth of the Gualala River in the unincorporated community of Gualala, Mendocino County (Figure 1).

Geological factors combine to make Gualala Point Island a unique and favorable habitat for colonial seabirds. Gualala Point Island is part of the Gualala Block, a narrow crustal sliver that extends roughly from Point Arena in Mendocino County south to Fort Ross in Sonoma

County. The Gualala Block consists predominantly of sedimentary formations deposited originally hundreds of miles south of their current location and subsequently transported northward along the San Andreas Fault System. The Gualala Block is the most northerly large assemblage of rocks on the west side of the San Andreas Fault (M. Lane, pers. comm.).

Additionally, the large-scale movement has brought to the Gualala area some rocks, such as limestones, that are uncommon along the northern California Coast. This small area of well-bedded sedimentary rocks contrasts sharply with the heterogeneous lithologies of the Franciscan Group prevalent north of San Francisco.

Figure 1 – Map of Gualala Point Island and vicinity, Mendocino and Sonoma counties, California.



Gualala Point Island bedrock consists of interbedded shales and massive sandstones of the Paleocene-Eocene Germán Rancho Formation. However, at this locality, crustal deformation associated with northward transport of the Gualala Block has caused the bedding planes to

twist and become vertical. The result is a corrugated effect to the rocks, with the softer shales eroding more rapidly than the massive resistant sandstones. Crevices that form between the interbedded rock layers form nesting sites for Pigeon Guillemots (*Cepphus columba*) and rock ledges create nesting habitat for Pelagic Cormorants (*Phalacrocorax penicillatus*). Brandt's Cormorants (*P. penicillatus*) nest primarily on the limestone flats of the island.

Monitoring

The study period ranged from 30 May and 30 August 2007, with a more intensive monitoring period (hereafter referred to as the "count period") between 1 and 12 July 2007 (six days before and six days after the fireworks display). Multiple methods were used to record bird and mammal numbers, reproductive success, and potential impacts of fireworks displays and other disturbances. These methods included aerial photography, land-based surveys, land-based photography both during the day and at night (including during the fireworks display), and audio recordings made during the fireworks display. Data collection (except as indicated below) was conducted by BLM staff and Task Force volunteers. Data analysis and interpretation was conducted by the authors with assistance from Paul Roush (BLM). Documentation of the monitoring protocol used for this study (USDI Bureau of Land Management and The Sea Ranch CCNM Stewardship Task Force 2008) is available from the BLM California State Office.

Aerial Photography: The USFWS, in cooperation with Humboldt State University and the California Department of Fish and Game, photographed Gualala Point Island on 30 May 2007 during an annual aerial photographic survey of Common Murre, Brandt's Cormorant, and Double-crested Cormorant colonies in northern and central California. Subsequently, a volunteer pilot and a volunteer professional photographer flew additional surveys of Gualala Point Island on 5 June, 5, 7, and 12 July, and 30 August, using a protocol comparable to that used by the USFWS. A planned flight for 6 July was cancelled because of heavy fog and low visibility. Surveys on 30 May were conducted at 210-230 m (700-750 ft) altitude in a fixed-wing, high-wing Partenavia aircraft. Photographs were taken through a belly port by two photographers with Canon 30D digital cameras and 70-200 mm or 300 mm telephoto lenses. All other flights were conducted above 300 m (1000 ft) altitude in a fixed-wing Cessna 172-M aircraft and digital photographs were taken through a side window. Survey altitudes were flown high enough to alleviate disturbance to seabirds from these types of fixed-wing aircraft. Photographs were taken of the entire island, with a focus on the Brandt's Cormorant colony.

From each aerial survey, the photograph with the highest quality and most complete coverage of the cormorant colony primarily was used, augmented by additional photos as needed for complete views of all nests. From the photographs, all active nest sites were identified and assigned unique site numbers. For each survey, the status of each nest was identified using the following codes:

E = empty nest

P = poorly built nest

F = fairly well-built nest

W = well-built nest

C = chick(s) visible

S = adult sitting on nest

D = adult standing at nest site

T = territorial site, *i.e.*, adult bird(s) on territory but no nest

V = vacant site, *i.e.*, no birds present

Exhibit 14

CCC-08-CD-07

(Gualala Festivals Committee)

3

“Active nests” were well-built or fairly well-built nests with either an adult sitting on the nest or standing at a nest containing visible eggs or visible chicks, except for nests known to have failed recently (i.e., too soon to have laid a new clutch of eggs). “Territorial sites” had one of three characteristics: adults standing or sitting at a potential nest site with little or no nesting material; adults on a poorly-built nest; or adults sitting or standing at a well-built or fairly well-built nest that was visibly empty or known to have failed recently. From these data, a history of each nest site was established, including seasonal site status (breeding or territorial), approximate breeding phenology, and whether or not the nest failed during the survey period. Breeding sites were those with confirmed eggs or chicks or where breeding was inferred by nest status. Territorial sites were those where breeding could not be confirmed or inferred by nest status.

Seabird Counts from Mainland Vantage Points: These counts were conducted by BLM wildlife biologists and volunteers from the Task Force. Adults and ambulatory chicks of all seabirds on Gualala Point Island were counted through 20x to 60x spotting scopes from two mainland vantage points four times daily (05:30, 08:30, 10:00 and 13:30 h), visibility permitting, during the 1-12 July count period. One vantage point viewed the north side, and the other viewed the south side of the island. Observers also recorded any bird and marine mammal observations at 21:00 h just before sunset on the evening of 6 July.

UTM locations in Zone 10N (NAD 1983) of the vantage points are as follows:

North Vantage Point:	454244 E	4289459 N	about 245 m from the island
South Vantage Point:	454411 E	4289224 N	about 305 m from the island

Seabird Nest Monitoring from Mainland Vantage Points: A modified version of the USFWS Common Murre Restoration Project protocol for Brandt’s Cormorant nest monitoring (McChesney *et al.* 2007) was used. Along with Brandt’s Cormorants, the protocol included nest monitoring of two other species on Gualala Point Island: Pelagic Cormorant and Western Gull (*Larus occidentalis*). Observations were recorded during the same times that seabird counts took place. For each species, visible nests were assigned unique numbers and identified on photographs. During the count period, the status of each nest was identified by recording the number of adults present, adult posture (sitting or standing), and the number of eggs and chicks visible.

Daytime Marine Mammal Monitoring: The count form for monitoring Harbor Seals (*Phoca vitulina*) at Point Reyes National Seashore and along the Sonoma County coast including The Sea Ranch (Manna *et al.* 2006) was adopted for this project. Censuses of Harbor Seals took place at the daytime low tide closest to seabird count times. In addition, as time permitted, seals were counted during seabird counts.

Daytime Disturbance Monitoring: Disturbances to seabirds were recorded systematically. The protocol to monitor and characterize disturbances combined pre-established protocols from PRBO Conservation Science (unpubl. data), USFWS (McChesney *et al.* 2007), and Jaques and Strong (2002). All aircraft flying below 300 m (1000 ft) and boats approaching to within 300 m (1000 ft) of Gualala Point Island were recorded, as well as any visible disturbance behaviors to seabirds or seals (e.g., flushing or displacement).

Daytime Land Photography from Mainland Vantage Points: An initial photographic survey of Gualala Point Island was conducted at the onset of the count period. Photographs taken with a Canon 20D digital single lens reflex (DSLR) camera with a 300 mm lens and a 2x teleconverter (magnification = 12x) documented the initial nest site locations for both Western Gulls and Brandt's Cormorants as well as other species of interest. These photographs served as the basis for subsequent monitoring. On most days during the count period, one or more observers took photographs of Gualala Point Island from each of the mainland vantage points between 10:30 and 11:30 h.

Nighttime Photo Monitoring: On both 4 and 6 July, two volunteer professional photographers took nighttime photographic images of the Brandt's Cormorant colony on Gualala Point Island from the south vantage point. Two digital photographic methods were used: visible light digiscoping and infrared photography. On each night, photography documented bird activity for 90 minutes after sunset. Images provided for comparison of cormorant activity during the same time on the two evenings, one before and one during the fireworks display.

Nighttime Video and Sound Recording: Continuous video and audio recordings of Gualala Point Island were conducted from both mainland vantage points during the fireworks display. One observer used a Sony Handycam DCR-DVD308 mounted on a tripod to capture video and sound from 21:00 until 22:00 h, and another observer used a Sony 20x optical Handycam (DCR-HC26). The time marks on the video corresponded within one minute of the time recorded on the nighttime DSLR images.

Acoustic Monitoring: Sound monitoring took place during the Gualala Festivals Committee's fireworks display. Monitoring consisted of a sound recording of the entire fireworks display from the north vantage point for Gualala Point Island and of sound meter readings filmed in real time alongside a GPS unit with satellite clock time. One sound level meter, a Tenma™ model 72-860, measured sound during the fireworks display.

RESULTS

Aerial Photography of the Brandt's Cormorant Colony

In 2007, the Brandt's Cormorant colony was limited to a relatively small area on the southwest side of Gualala Point Island (Figure 2). Figure 3 (a-e) shows aerial photographs of the entire Gualala Point Island Brandt's Cormorant colony from six surveys between 30 May and 30 August 2007. During the survey period, a total of 93 sites were identified and assigned unique site numbers that are indicated in the photos. Histories of each site are shown in Appendix 1. A small number of apparent territorial sites that were present on single surveys only were not assigned site numbers.

Of all sites followed, 90 were identified as breeding sites and three as territorial sites (*i.e.*, where egg-laying was not likely to have occurred). Most nests (72%) recorded during the study period were active when the colony was first photographed on 30 May (Table 1); most of these likely had eggs at that time based on well-formed nest structures and adults sitting in incubation postures. Nest establishment continued for some time afterward, and by 5 July an additional 25 nests were added. By 5 July, part of the colony had entered the chick period, as

twelve nests had relatively large chicks (*ca.* two to four weeks old) visible in nests. Six nests, or 8.2% of the 5 June total and 6.7% of the seasonal total, failed between 5 June and 5 July.

On 7 July, no new nests were recorded and six additional nests had visible chicks. Seven nests, or 8.3% of the 5 July nest total and 7.8% of the seasonal total, were newly failed. Of these, none had visible chicks (*i.e.*, adults were either incubating eggs or brooding small chicks) on 5 July, two were newly established between 5 June and 5 July and one was established between 30 May and 5 June. Of fourteen total nests with visible chicks, all were attended by adults, and no chicks appeared to be wandering from natal nests.

On 12 July, another seven nests were newly failed and an additional 28 nests had visible chicks. Of failed nests, none had visible chicks in 5 July photographs. Three were established by 30 May, two were established between 30 May and 5 June, one was established between 5 June and 5 July, and one was established between 30 May and 5 July (nest-building on 30 May but no data on 5 June). Some chicks were clearly larger than on previous surveys, and some chicks were large enough (*ca.* minimum three to four weeks old) to wander from natal nests. Five sites that failed between 5 and 7 July were attended on 12 July: three had large chicks present that had wandered from other nearby nests; and two were attended by territorial adults only. These sites were considered to be territorial sites and not active nests because of their recent failures. Two nests had visible eggs, indicating that some pairs were still incubating.

By 30 August, the entire nesting area was abandoned following the end of breeding. This last survey showed that no pairs that failed nesting in July re-nested successfully. Based on averages of eight days to lay a new egg, a 30-day incubation period, and about 30 days until chicks can become independent from natal nests (Ainley and Boekelheide 1990, Carter and Hobson 1988), active nests still would have been present on 30 August if re-nesting after 6 July had been successful.

In summary, 20 nests, or 22.2%, of documented nests failed between 5 June and 12 July. Of failed nests, 30% failed between 5 June and 5 July and 35% failed during each of the periods 5-7 July and 7-12 July. Cumulatively, 70% of nest failures occurred during the brief period between 5 and 12 July. By 12 July, 46 nests (51%) had visible chicks, with the oldest chicks close to 30 days old and wandering from natal nests. Based on those chicks, the earliest eggs were laid in mid-May. However, at least some nests clearly still had eggs on 12 July, indicating that egg-laying had continued at least through mid-June. No failed nests had chicks visible to observers prior to failure, indicating that failed nests had either eggs or very small (or young) chicks prior to failing.

Figure 2 – Aerial photograph of Gualala Point Island from the southeast, 30 May 2007. The arrow points to the Brandt's Cormorant colony, indicated by the dark mass of nests and birds surrounded by white guano.

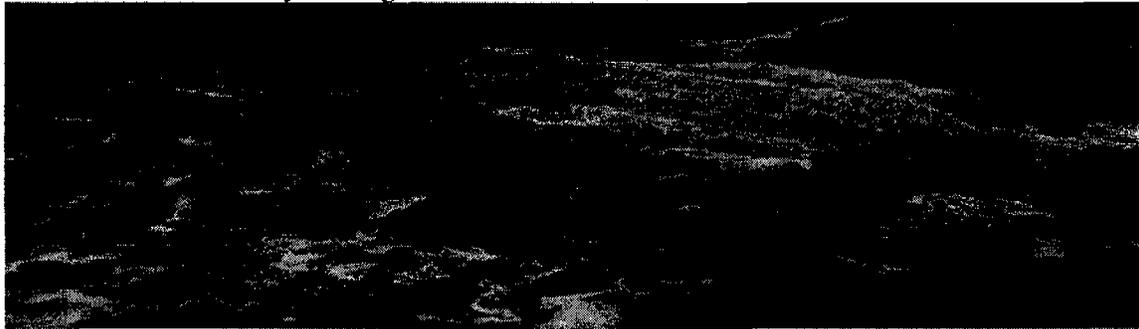


Photo courtesy of US Fish and Wildlife Service

Table 1 - Summary of the status of Brandt's Cormorant nest and territorial sites as determined from aerial photographs, Gualala Point Island, 30 May to 12 July 2007.

Reproductive Stage	30 May	5 June	5 July	7 July	12 July
Active nests ^a	65	83 ^h	84	77	69
Active territorial sites ^b	15	7	4	5	11
Total active sites	80	90	88	82	80
Unknown ^c	0	1	0	0	0
Newly categorized nest sites (former territorial sites) ^d	0	10	5	0	0
New nest sites ^e	65	8	2	0	0
Total new nests ^f	65	18	7	0	0
New territorial sites ^e	15	3	0	0	0
Total new sites^g	80	11	2	0	0
Nests w/newly visible chicks	0	0	12	6	28
Newly failed nests	0	0	6	7	7

^a Includes: 1) nests with birds sitting in fairly well-built to well-built nests (probably incubating eggs or brooding chicks); and 2) nests with visible chicks that were not recorded as failed on a previous survey.

^b Includes nests that failed previously but were attended by adult birds on the survey date.

^c No photo coverage available for site that was active on later surveys only.

^d Sites categorized as nests that were present and categorized as territorial on previous survey(s).

^e Sites not recorded as either nest or territorial sites on previous surveys.

^f Sum of "newly categorized nest sites" and "new nest sites."

^g Sum of "new nest sites" and "new territorial sites."

^h Includes one site (Site 91) with no photo coverage that was known to be active before and after 5 June.

Figure 3 (a through e) – Time series of aerial photographs of the Brandt's Cormorant colony on Gualala Point Island, 30 May to 30 August 2007. Site numbers used for monitoring are indicated in each photograph.¹

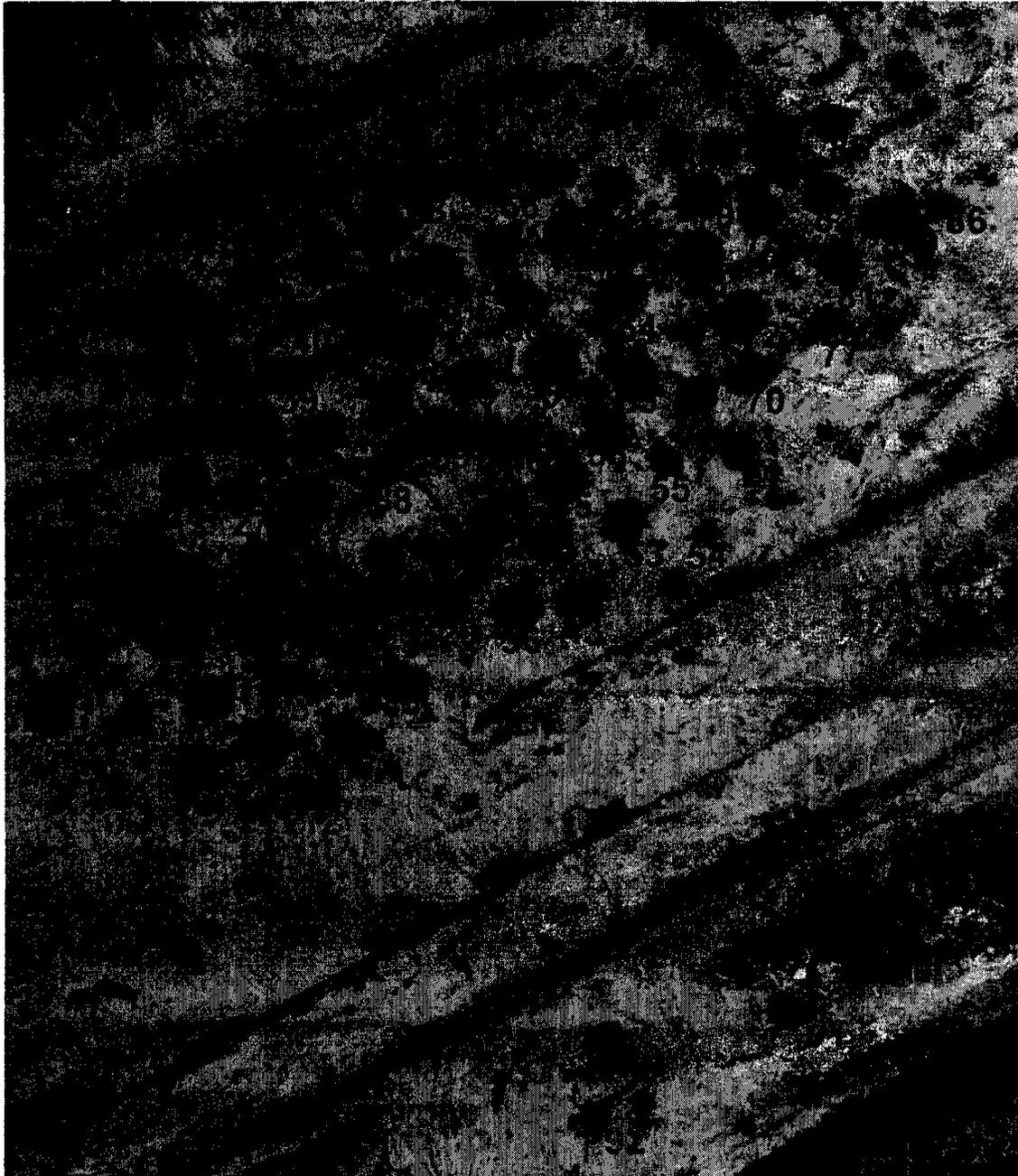


Photo by Gerard McChesney, US Fish and Wildlife Service
a) 30 May 2007



Photo © Craig Tooley, The Sea Ranch School of Photography
b) 5 June 2007

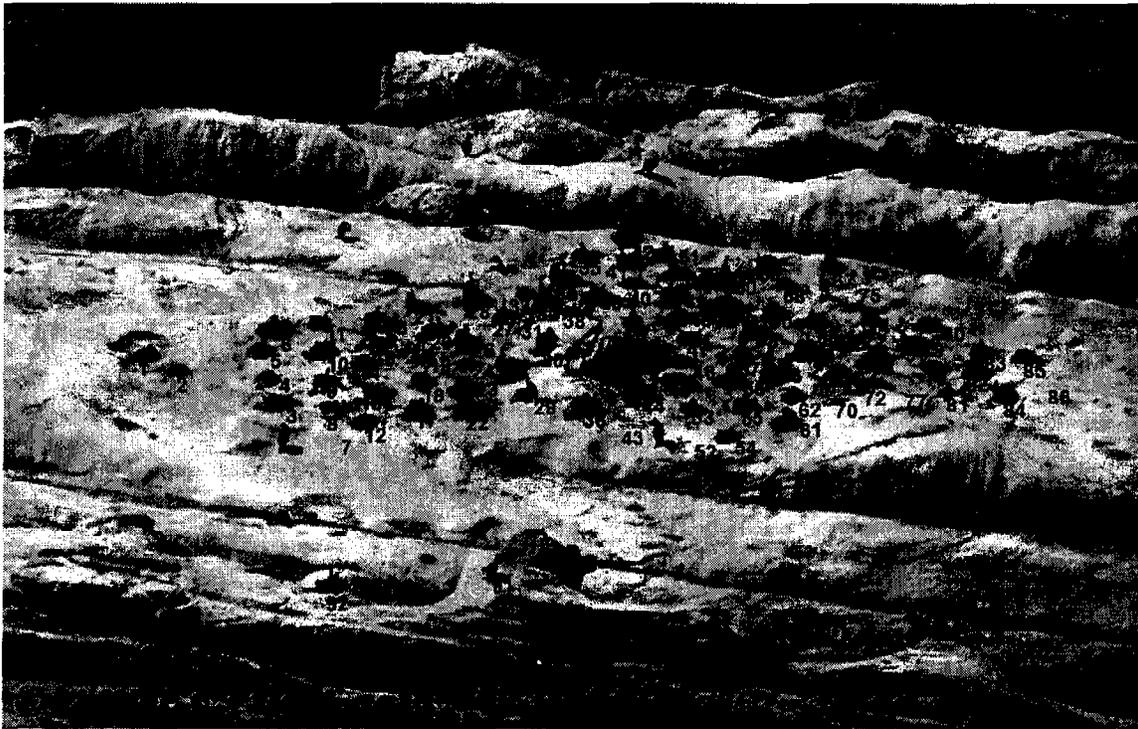


Photo © Craig Tooley, The Sea Ranch School of Photography
c) 5 July 2007

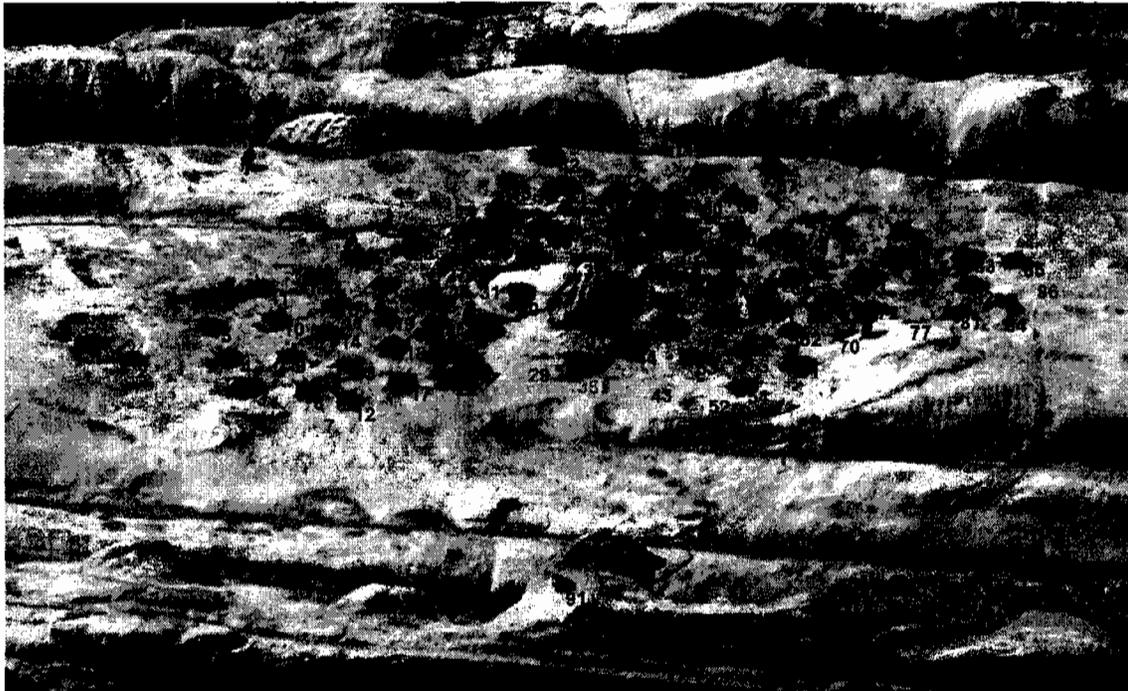


Photo © Craig Tooley, The Sea Ranch School of Photography
d) 7 July 2007



Photo © Craig Tooley, The Sea Ranch School of Photography
e) 12 July 2007

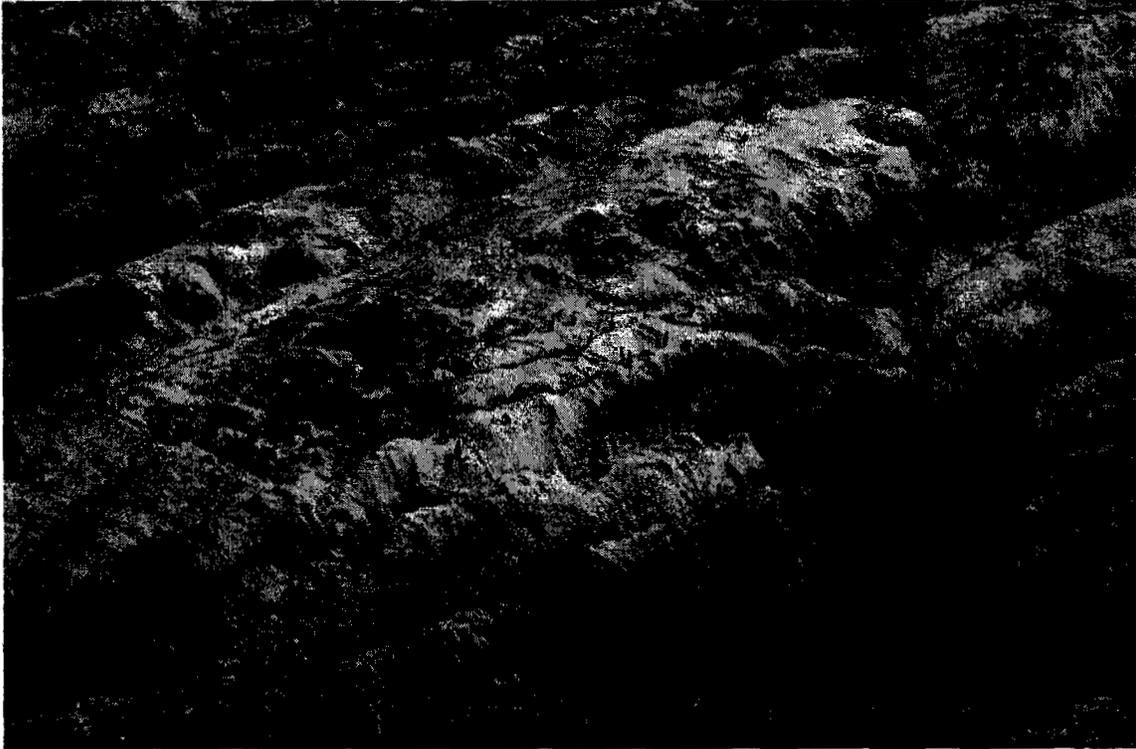


Photo © Craig Tooley, The Sea Ranch School of Photography

f) 30 August 2007

¹For the photographs on 5, 7 and 12 July 2007, nest numbers are color coded as follows:

- blue: active nests or territorial sites;
- red: 6 nests categorized as newly failed on 5 July 2007;
- green: 7 nests categorized as newly failed on 7 July 2007; and
- pink: 7 nests categorized as newly failed on 12 July 2007.

Seabird Counts from Mainland Vantage Points

Appendix 2 displays graphs of seabird count data by count time and vantage point for the key species monitored on Gualala Point Island. All but the Brown Pelican nested on the island. Where data bars are absent in graphs, either no birds were present or no data were collected because of adverse weather conditions. Foggy conditions on 6-7 July precluded some counts and comparisons between the day of the fireworks and the day immediately after the fireworks.

Brown Pelican: Gualala Point Island is frequently a nocturnal roost for Brown Pelicans during their post-breeding dispersal. During the count period, many more pelicans were observed flying by Gualala Point Island than actually landing on the island, and pelicans were absent on the island on most days before the fireworks display. Large numbers of pelicans have roosted on Gualala Point Island in past summers, often reaching 100 birds before 1 July (R. Kuehn and G. Marshall, pers. comm.). The island did not appear to be a significant nocturnal roost site during the count period in 2007. When present during the day, most birds roosted on the lower rocks at the west end of Gualala Point Island or occasionally on the lower rocks on the east end of the island.

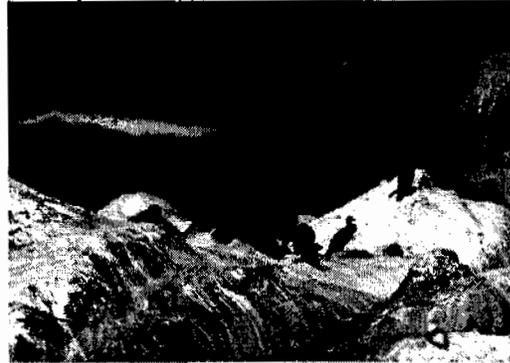
Brandt's Cormorant: Only a small portion (10%) of the Brandt's Cormorant colony was visible from the mainland and only from the south vantage point. Brandt's Cormorants were typically most numerous during the two earlier daily count times (see Appendix 2). Between 1 and 10 July, no consistent trend in counts was discernible, although a decline may have occurred between 5 and 9 July. Fog prevented counts at 05:30 and 08:00 h on 6 July, making this assessment less clear. On 11 and 12 July, an influx of non-breeding or post-breeding Brandt's Cormorants arrived and began roosting on Gualala Point Island. Their different origin was apparent by the presence of immature birds, not previously recorded on the island during the count period, and a clear spatial segregation between the roosting birds and the nesting colony.

Figure 4 shows the Brandt's Cormorant colony on Gualala Point Island from the south vantage point on four different days between 6 and 12 July. Nest #1 at the far left edge of the colony was found to be abandoned on 8 July and then reoccupied on 12 July. A Common Murre appears in flight in the 12 July photograph.

Figure 4 – The Brandt's Cormorant colony on Gualala Point Island, photographed from the south vantage point at mid-morning on 6, 7, 10 and 12 July 2007.



Brandt's Cormorants GPI-S 20070706



Brandt's Cormorants GPI-S 20070707



Brandt's Cormorants GPI-S 20070710



Brandt's Cormorants GPI-S 20070712

Photos © Rozanne Rapozo, Nature As I See It

Pelagic Cormorant: Counts of Pelagic Cormorants on Gualala Point Island consisted mostly of non-breeding birds. Most birds congregated on ledges along the north side of the island. Bird counts varied considerably between count times and days. No trend in counts was evident during the count period.

Black Oystercatcher: One breeding pair of oystercatchers was located from the north vantage point (Figure 5). Parents fed the young throughout the count period after first being discovered on 2 July 2007. All three young birds were first seen together on 6 July 2007. The chicks were still present at the end of the count period and beyond.

On most days, the total numbers of adult oystercatchers using Gualala Point Island for feeding and resting included more than the breeding pair. Most activity occurred in the intertidal foraging zone. They were also regularly seen in transit between the island and the mainland. Daily maximum counts ranged from two to seven birds.

Figure 5 – Location of the Black Oystercatcher nest site, marked in red, from the north vantage point, Gualala Point Island, July 2007.

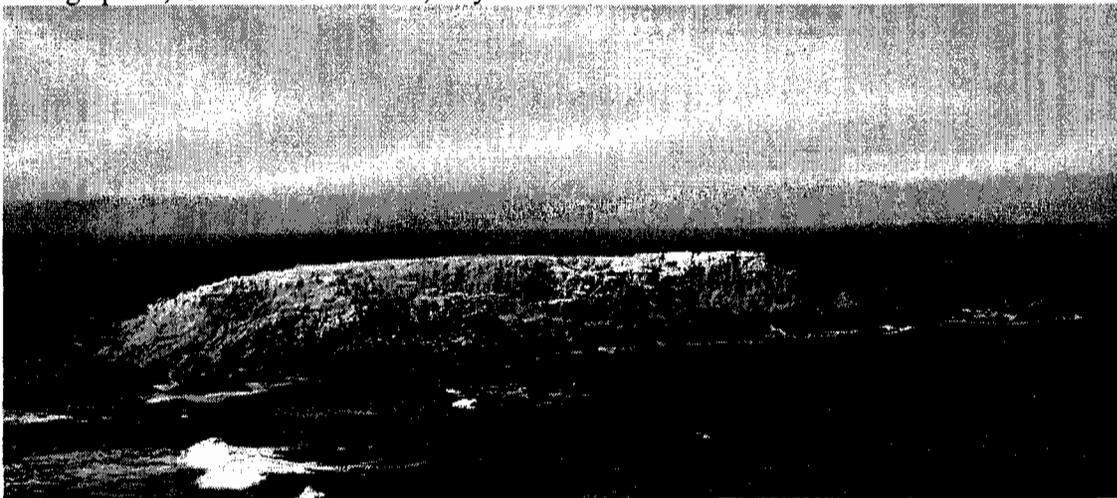


Photo by Paul Roush, USDI Bureau of Land Management

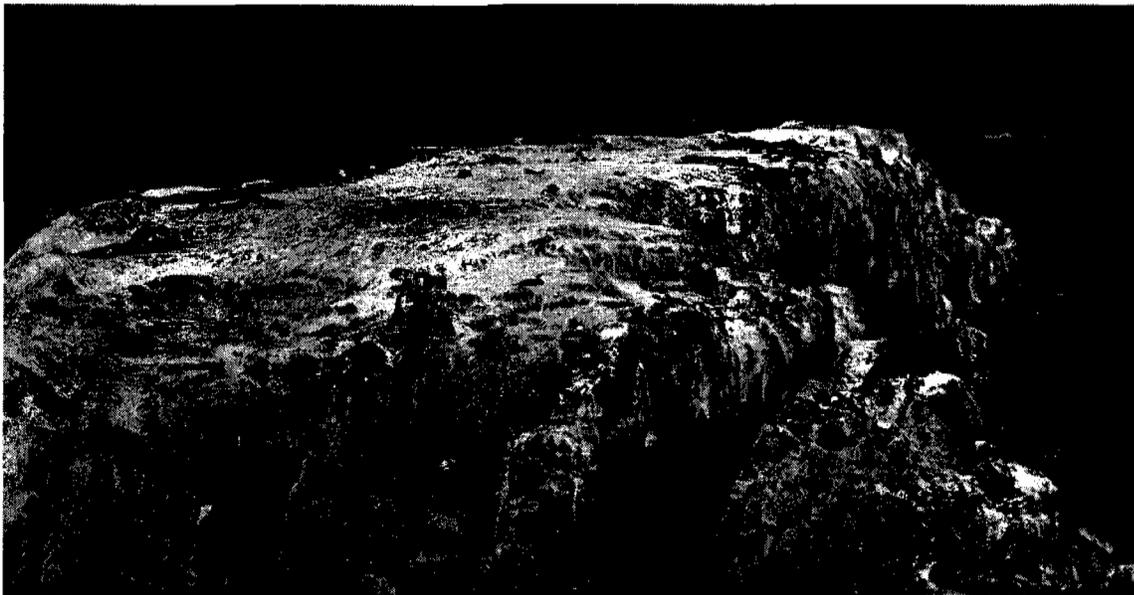
Western Gull: Although more Western Gull nests were visible from the north vantage point of the island, counts of adult Western Gulls were consistently higher from the south vantage point (Appendix 2). Immature Western Gulls were virtually absent from the island during the count period, as noted in previous years (R. Kuehn, pers. comm.). Most adult gulls not attending nests roosted on the sparsely vegetated flat top of the east end of the island. Maximum daily counts usually occurred during the second or third shift (08:00 or 10:30 h). Counts of adult Western Gulls generally increased through the count period, except for a clear decline that lasted through the day on 7 July (Appendix 2, Figure 6). These counts were among the lowest of the count period and indicated that many gulls departed the island and remained away during the course of that day. Otherwise, the general increase observed suggested an influx of non-breeders or failed breeders from other colonies.

Figure 6 shows the Western Gull colony as viewed from the south vantage point on 6 and 7 July at about 10:30 h each day. The higher density gull roost on top of the island on 6 July was absent on 7 July.

Figure 6 – View of the Western Gull colony on Gualala Point Island from the south vantage point at 10:30 h on 6 (upper photo) and 7 (lower photo) July 2007. Note the higher density roost near the top of the island on 6 July that was absent throughout the day on 7 July.



Western Gulls GPI-S
20070706

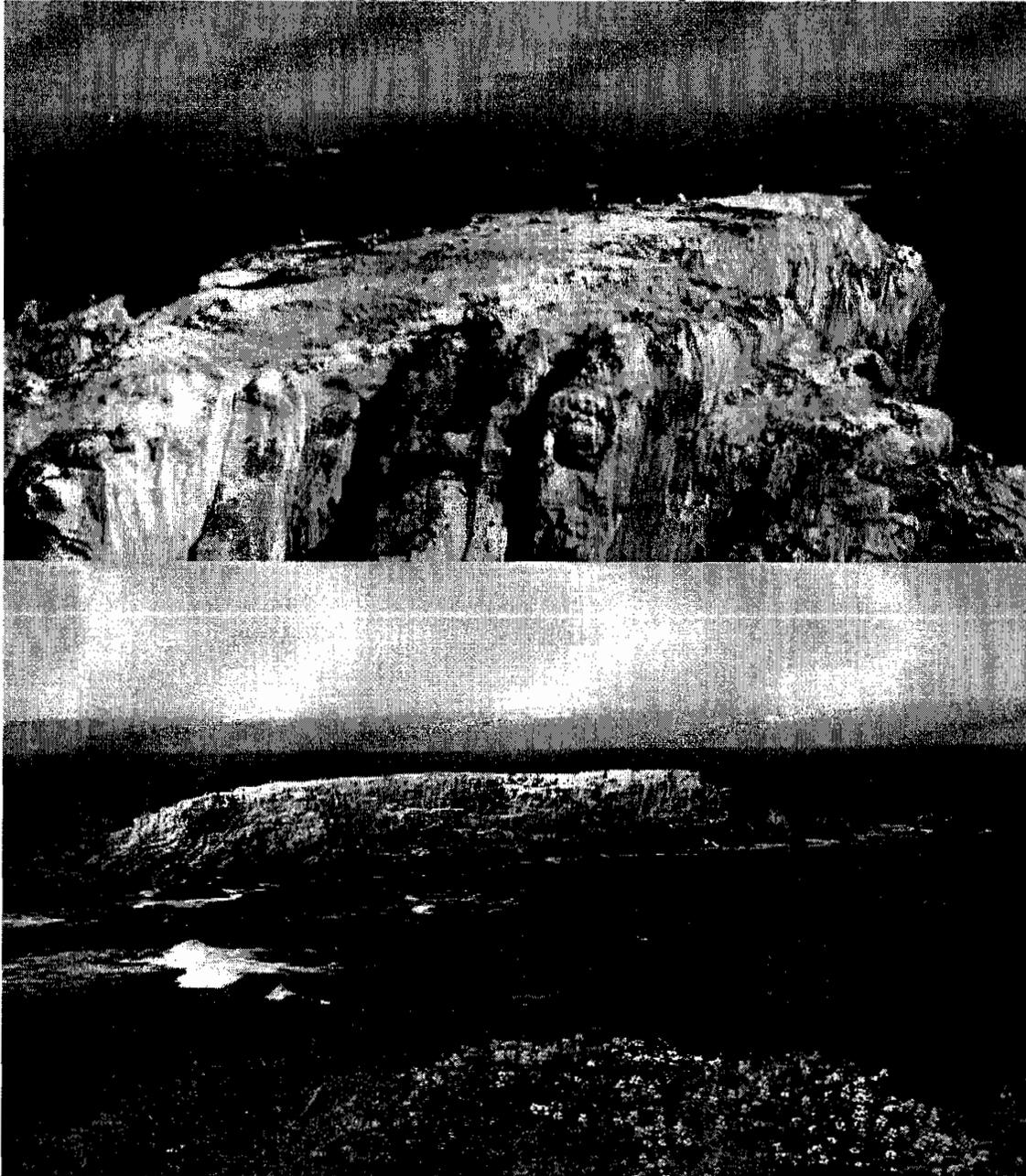


Western Gull GPI-S
20070707

Photos © Rozanne Rapozo, Nature As I See It

Pigeon Guillemot: Observers at both the north and south vantage points regularly noted Pigeon Guillemots resting on ledges and cliffs as well as entering crevices where birds were believed to be nesting (Figure 7).

Figure 7 - Pigeon Guillemot nest crevices on Gualala Point Island, marked in red, detected as of 5 July 2007 from the south (upper photo) and north (lower photo) vantage points.



Photos by Paul Roush, USDI Bureau of Land Management

Counts of Pigeon Guillemots may have contained birds simultaneously visible to observers at both the north and south vantage points. Highest guillemot counts occurred during the first two shifts each day. This pattern was expected because guillemots tend to congregate near

nest sites in the early morning hours (Carter *et al.* 1992, Ewins 1993). Numbers of guillemots counted generally increased through the count period.

Other Bird Species Observed: In addition to bird species discussed above, observers recorded the following species on Gualala Point Island during the count period:

Double-crested Cormorant	<i>Phalacrocorax auritus</i>
Unknown Sandpiper	<i>Calidris</i> spp.
Whimbrel	<i>Numenius phaeopus</i>
Ring-billed Gull	<i>Larus delawarensis</i>
Heermann's Gull	<i>Larus heermanni</i>
Common Murre	<i>Uria aalge</i>
Cliff Swallow	<i>Petrochelidon pyrrhonota</i>
Barn Swallow	<i>Hirundo rustica</i>
European Starling	<i>Sturnus vulgaris</i>
Brewer's Blackbird	<i>Euphagus cyanocephalus</i>

Common Murres were observed on nine days during the main count period and on 16 to 18 July, usually among the nesting Brandt's Cormorants. Counts ranged from one to seven birds. Although this abundant California breeder has the closest colonies located just north of Point Arena, nesting has not been documented on Gualala Point Island or anywhere else in Sonoma County (Carter *et al.* 2001).

Seabird Nest Counts

All species noted as nesting on Gualala Point Island during the last complete colony survey in 1989 (Carter *et al.* 1992) were nesting in 2007 (Table 2). Historically and in 2007, Brandt's Cormorants have been the most numerous nesting seabird species. Although census methodologies were different each year except for Brandt's Cormorants, numbers of breeding birds for most species appeared similar between the 1989 and 2007 counts.

Table 2 – Comparison of nest counts for breeding seabirds on Gualala Point Island in 1989 and 2007.

Species	1989			2007		
	Nest Count	Census Method	Census Date	Nest Count	Census Method	Census Date
Brandt's Cormorant	237	aerial survey	23 May	84 ¹	aerial survey	5 July
Pelagic Cormorant	2	boat survey	6 June	2	mainland survey	1 July
Black Oystercatcher	0	boat survey	6 June	1	mainland survey	2 July
Western Gull	13	boat survey	6 June	17	mainland survey	5 July

¹High single survey count. The seasonal total for all nests constructed in 2007 was 90 nests (see text).

Brandt's Cormorant nest counts were conducted using aerial photographic surveys. A total of 90 Brandt's Cormorant nests were identified over the five surveys conducted between 30

May and 12 July 2007, with a high count of 84 nests on 5 July 2007. Only 65 nests were active during the standardized annual USFWS survey on 30 May (Table 1). Other past nest counts have been: 620 in 1980 (Sowls *et al.* 1980); 78, 139, and 125 nests in 1993, 1994, and 1995, respectively (Carter *et al.* 2000); and 132 in 2003 (Capitolo *et al.* 2004).

Thus, nest counts of Brandt's Cormorants on Gualala Point Island in 2007 were 85% lower than the high count in 1980 and 32% lower than the most recent count in 2003. Comparing the standardized USFWS survey periods, the 2007 nest count was 51% lower than the 2003 count.

Seabird Nest Monitoring

Brandt's Cormorant: In 2007, only about 10% of the Brandt's Cormorant colony was visible from the mainland and only from the south vantage point. Although views were not ideal, the data obtained were sufficient to establish nesting status during the count period for nine sites (Table 3). Of these, six nest sites had breeding confirmed by the presence of chicks. Two other sites were not confirmed to have eggs or chicks, but breeding was inferred by the conditions of the nests and adult behavior (*i.e.*, sitting in nests). One site (#15) was identified as "territorial" only. At this site, an adult was sitting on the nest during nearly every nest check between 11 and 18 July, suggesting that egg-laying might have occurred during that period although the nest was clearly empty (*i.e.*, no eggs or chicks) by 21 July (data not shown in Table 3).

Table 3 - Summary of daily status for the nine Brandt's Cormorants nests monitored from the mainland on Gualala Point Island, 1-18 July 2007.^{1,2}

Nest #	Status	Day in July 2007														
		1	2	3	4	5	6	7	8	9	10	11	12	16	17	18
1	B	N	N	N	N	N	N	N	F	T	T	T	T	T	T	T
2	B	N	C	N	C	N	N	C	N	C	C	C	N	N	C	?
3	B	N	N	N	N	N	N	F	T	T	T	T	T	T	T	T
4	B	N	N	N	N	N	N	N	N	N	N	C	N	N	C	N
13	B	?	C	N	C	C	C	N	N	C	C	C	C	?	C	?
14	B	N	N	N	N	N	C	N	N	C	C	C	N	C	N	?
15	T	T	T	T	T	T	T	N?	N?	T?	T?	N	N	N	N	N
16	B	?	C	N	C	C	N	N	N	C	C	C	C	N	C	?
18	B	?	?	?	?	?	?	?	?	C	C	C	?	N	C	?

¹The numbered nests below are different from the schema used in Figure 2 and in Appendix 1.

²Key to abbreviations:

B = breeding site

C = cormorant chick(s) seen

F = failed nest

N = adult sitting on nest

N? = uncertain whether the site is a functioning nest

T = territorial site ("status") or adult at nest territory only (daily nest condition)

T? = uncertain whether the site is functioning as a territory

? = or no data (nest view obstructed or not checked)

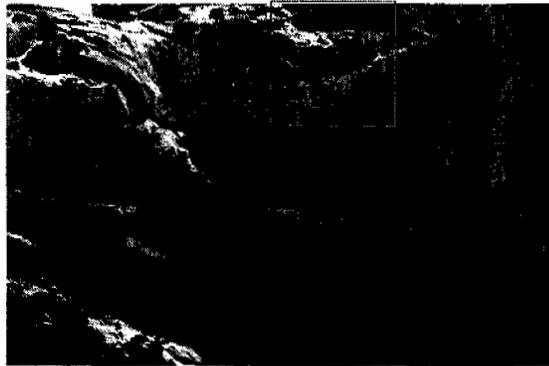
Chicks were not visible until they were large enough to be seen above the nest bowl, usually after seven to ten days of age. Of nests with chicks, the maximum numbers of chicks

recorded were: one chick at one nest; two chicks at four nests; and > 3 chicks at one nest. Four nests had chicks confirmed before the fireworks, and three more nests had chicks confirmed after the fireworks. Beginning on 9 July, some chicks were large enough to begin wandering from nests, when failed Nest #3 was sporadically visited by a wandering chick from another nearby nest.

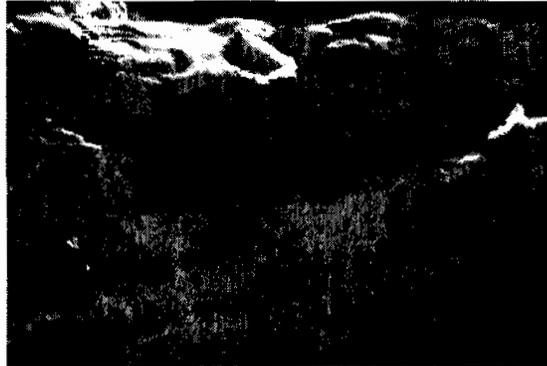
During the count period, two nests, or 22% of the sample, failed as indicated by a sudden change in adult behavior (e.g., standing outside the nest, irregular attendance), lack of eggs or chicks in nests when exposed to view, and deterioration of the nests. Nest #3 was found to be failed on 7 July and Nest #1 on 8 July (Table 3). Although these nests were fairly regularly (but not constantly) attended thereafter until at least 18 July, subsequent checks through 28 July showed no evidence of re-nesting. Because no chicks had been observed prior to nest failure, these nests likely were in the egg or early chick stage when they failed (Nest #3 had a possible egg observed on 1 July).

Pelagic Cormorant: Two Pelagic Cormorant nests were located on the same ledge on the north side of Gualala Point Island (Figure 8). The number of nests was low in comparison to 2006, when seven nests were recorded on the south side cliffs of the island (R. Kuehn, pers. comm.).

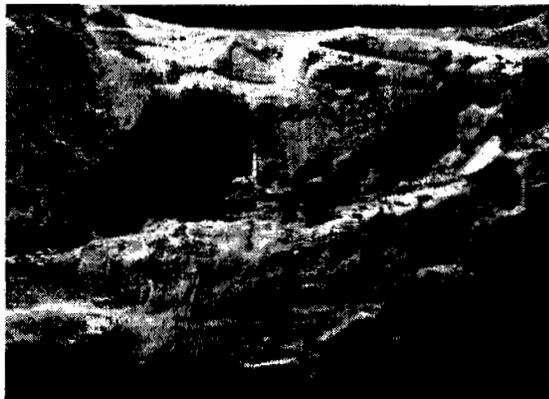
Figure 8 – Images of the two Pelagic Cormorant nest sites on Gualala Point Island from three different dates, 1 to 12 July 2007.



Pelagic Cormorants GPI-N 20070706



Pelagic Cormorants GPI-N 20070706



Pelagic Cormorants GPI-N 20070707



Pelagic Cormorants GPI-N 20070711

Photos © Rozanne Rapozo, Nature As I See It

In 2007, both nests monitored on Gualala Point Island failed. Pelagic Cormorant Nest #1 first showed signs of failure on 10 July when an apparently incubating adult departed the nest for several hours. Later the same day, the same or a different bird was observed sitting on the nest. Sporadic occupancy continued after 10 July but eggs or chicks were not observed and the nest was completely abandoned by 12 July. At Nest #2, adults incubating two or more eggs were observed through 12 July; by 16 July (outside the count period), this nest also was abandoned.

Western Gull: Observers at both the north and south vantage points observed Western Gull nests and young in nests throughout the count period. Western Gull nests occupied either the relatively flat top surface at the east end of the island or wide ledges and nooks just below the top of the island. Thirteen nests on the north side and eight nests on the south side of the island were visible. Accounting for visual overlap between vantage points, a total of seventeen nests were observed daily for as long as the young gulls remained in or near the nest. Afterward it was not possible to distinguish nest origin of mobile chicks and loss of individual young could not be determined.

All but four nests contained visible chicks by 2 July and all nests had chicks by 12 July. Brood sizes averaged 2.29 chicks (range = 2-3, n = 17); 29% of broods contained three chicks. No nest failures or chick fatalities were recorded during the count period. However, surveys of all chicks were often difficult to obtain because of high wind conditions, when chicks crouched out of the wind. As chicks grew larger, they were easier to detect, which may explain the continued rising trend in counts of mobile chicks toward the end of the count period, even though very few young hatched after 2 July.

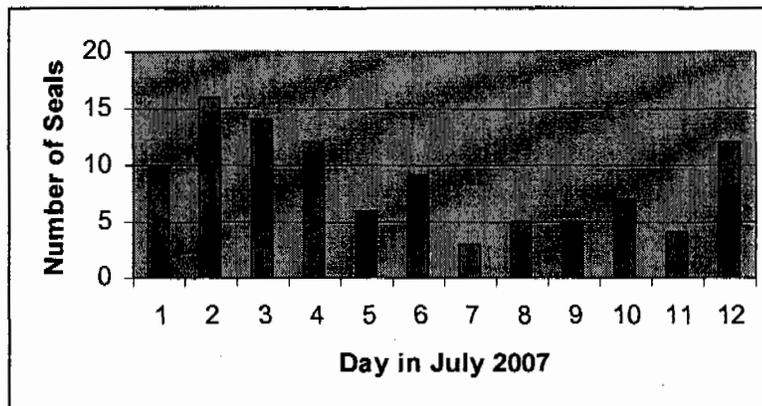
Harbor Seal Counts from Mainland Vantage Points

Harbor Seals regularly hauled out along the intertidal perimeter of the island and less often above the mean high tide line. No Harbor Seal pups were recorded at Gualala Point Island during the count period.

Seals were not double-counted during simultaneous counts from each vantage point. Therefore, counts from north and south vantage points were pooled for the total daily maximum count at the diurnal low tide (Figure 9). Because the counts took place as close to low tides as possible, Harbor Seal count times changed from day to day.

In general, low-tide counts declined through the count period, with the lowest count on 7 July. This observation suggests that there may have been a response that coincided with the fireworks display. However, at 21:00 h on 6 July, just before the Gualala fireworks display began and the island was still visible, Task Force observers did not locate any Harbor Seals from either vantage point on Gualala Point Island. Thus, a link between a decline in numbers on 7 July and the fireworks display is not conclusive.

Figure 9 – Census of Harbor Seals at daytime low tide, Gualala Point Island, 1 to 12 July 2007.



Daytime Disturbance Monitoring

Aircraft and boat disturbances have been shown to impact certain seabird colonies in central California and elsewhere (Carney and Sydeman 1999, Rojek *et al.* 2007). To assess overall agents of disturbance and their effects at Gualala Point Island, all potential human disturbances and all non-human disturbances were recorded during daytime seabird counts (Table 4). Daytime disturbance agents and disturbances to seabirds, whether human- or animal-caused, were rare and minor during the count period. Two disturbances were from cannon blasts and one from a fishing boat. Of all aircraft recorded, only the jets and helicopter flew below 300 m but still did not cause any notable disturbance. The fishing boat that caused two Brandt’s Cormorants to flush had approached to within 45 m of the island.

Table 4 – Summary of daytime disturbances to seabirds on Gualala Point Island recorded during seabird counts and nest surveys, 1-12 July 2007.

Disturbance Agent	Total Number of Events	Total Duration in Minutes	Number of Disturbance Events	Effect on Seabirds
Aircraft				
Airplane	7	14	0	none
Military Jets (4)	1	1	0	none
Helicopter	1	1	0	none
People on Beach	1	22	0	none
Cannon Blast	3	3	2	Brandt’s Cormorants assumed an alert posture, did not flush
Fishing Boats	6	25	1	2 Brandt’s Cormorants flushed
Avian Sources				
Brown Pelican	1	1	1	20 Western Gulls flew up, called
Western Gull	1	1	1	other gulls became agitated
Unknown	1	2	1	20 to 30 Western Gulls flushed
Total	22	70	6	--

*Data Collection during the Gualala Festivals Committee Fireworks Display,
6 July 2007*

The South Coast Fire Protection District issued a permit, dated 13 June 2007, to the Gualala Festivals Committee to detonate 732 three-inch shells containing fireworks during an interval of ten minutes. The fireworks display ran from 21:35 to 21:53 h on 6 July 2007. A bird count, taken at 21:00 h while light conditions still permitted complete coverage, included nineteen Brandt's Cormorants, eight Pigeon Guillemots, one Black Oystercatcher and about 100 Western Gulls on the island.

Observers did not tally the number of detonations during that time. However, the detonations were continuous for the entire eighteen-minute interval. In contrast with the permit issued for the 2006 display, the 2007 permit covered a narrower spectrum and less powerful selection of fireworks to display.

Weather conditions during the fireworks display were clear with a strong northwest wind onshore, but a fog bank was present offshore.

During the fireworks display, two observers viewed and verbalized observations to a third observer who recorded observations. The following are verbatim observations recorded at the south vantage point viewing Gualala Point Island:

"At 9:35 pm the fireworks began with no loud 'salutes' but with light burst[s] and pops. There was lots of noise from the birds as soon as the fireworks started. We heard the bird cries from 1000 feet away. The gulls are up and flying immediately and constantly calling. Cormorants are moving around at the nest area; a few are up and flying also. Birds are flying higher and higher. Lots of bird noise. Birds are high enough to silhouette above the fog bank. None are seen landing at this time. Birds are up 1½ times higher than the island's height. Fireworks 'pop' every 1 to 1½ seconds. No break between fireworks; steadily shot off. About 9:45 pm it is quieter: we cannot hear the gulls nor see them in flight. Have they landed? About 9:50 pm we lost visibility to the dark and the fog bank background. The right corner of the upper face of Gualala Point Island is lit up 3 times by fireworks. The finale is very loud and frequent explosions. Right face of the rock is lit up. Birds are flying again and calling loudly through the finale. 18 minutes total disturbance time."

During these observations, "bird noise" referred to Western Gulls, a vocal species. Most other seabird calls, such as from cormorants, were not audible from the mainland vantage points. The cormorants observed referred to Brandt's Cormorants. In the darkness, observers were not able to obtain data on Pelagic Cormorants, Black Oystercatchers, or Pigeon Guillemots.

Nighttime Photography and Audio Recording: Photographers took pictures set for nighttime exposures on two evenings during the count period. On 4 July 2007, photographs taken at thirty-second exposures monitored Western Gull and Brandt's Cormorant behavior for 80 minutes after sunset. Minimal bird activity was noted during this time; both cormorants and gulls appeared to be in the same positions from image to image.

On 6 July 2007, photographic images of the Brandt's Cormorant colony were taken from 55 minutes prior to the start of the fireworks display until 22:00 h. Prior to the fireworks, activity of Brandt's Cormorants and Western Gulls was minimal; birds were in the same relative positions from image to image. In the images acquired at 21:35 h just after the start of the fireworks, cormorants had changed postures from resting to standing and alert. By 21:36 h, some birds had moved from their original locations to points on the tops of rocks. By 21:37 h at least six birds were gone from their positions, having either flushed or otherwise moved out of view. In the next four minutes, at least three other birds departed and one other bird moved to a position higher on the rock. In one example, a resting cormorant first became alert, looked to the left, then looked to the right, and then lifted off and departed the colony.

Audio was recorded with a hand-held video camera during the fireworks. An iMovie™ slide file with the synchronized Western Gull calls was made. High winds appeared to dampen the sounds of the gulls and fireworks at the observation site. Additional photographs and sound recordings are on file with The Sea Ranch Association.

Acoustical Readings: No data on acoustical readings are reported here. A windscreen used did not adequately shield the sound recording instrument, and the wind turbulence caused high background readings. Further sound analysis will require more complex filtering of background noise from this procedure. Task Force members and BLM biologists will work further to analyze the recordings with software for generating sound spectrograms.

Data from the fireworks operator were not available for comparing sound levels of the fireworks displays in 2006 and 2007.

Discussion

Short-term Impacts

This study was the first to examine colony attendance patterns and relative breeding parameters for seabirds and marine mammals at Gualala Point Island. The impetus for the study was to examine potential impacts of a fireworks display conducted from a low coastal bluff 1.8 km from the island on 6 July 2007. Data also provide baseline information that will be valuable for guiding future monitoring efforts, management, or other studies. Surveys demonstrated the same five species of seabirds nesting on Gualala Point Island in 2007 as in the previous complete survey of the island in 1989 (Carter et al. 1992). Breeding populations of most species also were similar to 1989 except for Brandt's Cormorant, which has declined substantially.

While data were collected on all species observed, efforts focused on the colony of Brandt's Cormorants because of their known sensitivity to human disturbance (Hunt *et al.* 1981, McChesney 1997, Wallace and Wallace 1998, Thayer *et al.* 1999) and the relatively large sample size that could be monitored. For this species, colony monitoring combined land-based nest monitoring and bird counts with data from a series of aerial photographs. The aerial photography established "snapshots" in time and provided coverage of the entire cormorant colony. Land-based nest monitoring, however, was limited because only about 10% of the colony was visible from the mainland vantage point. Still, land-based nest monitoring provided

relatively detailed information on the nests that could be viewed and helped interpret aerial photographic results.

From the aerial photographs, 90 breeding pairs of Brandt's Cormorants were identified on Gualala Point Island in 2007. Overall, 78% of nests were successful through 12 July (but may have been lower if additional nests failed after 12 July). Most (70%) nests that failed did so within a short, seven-day interval between 5 and 12 July, and 35% of nest failures occurred over just two days between 5 and 7 July. Nest success was lower than Brandt's Cormorant nest success in 2007 at three central California colonies: 86%, 90%, and 97% at Castle Rocks and Mainland (Monterey County), Devil's Slide Rock and Mainland (San Mateo County), and Point Reyes (Marin County), respectively (G. J. McChesney, USFWS, unpubl. data). At these colonies, nest failures occurred infrequently and asynchronously over the course of the season, and most nest failure occurred prior to 6 July.

Nighttime monitoring during the 6 July fireworks display demonstrated visible disturbance to both Brandt's Cormorants and Western Gulls on Gualala Point Island. The cormorants became visibly alert immediately after the start of the display, followed shortly by birds being displaced and flushed. Western Gulls also flushed and flew over the island. These responses coincided with high rates of Brandt's Cormorant nest abandonment in the days immediately after and shortly following 6 July. During severe disturbance events, cormorants may depart their nests, leaving eggs and chicks susceptible to predators such as gulls or they may accidentally kick eggs out of the nest (McChesney 1997, Wallace and Wallace 1998). Following the cessation of the disturbance, birds may either return to their nests or they may abandon nesting efforts entirely. Thus, it is highly likely that nests found to be failed on 7 July were associated with the fireworks disturbance the previous evening.

For Brandt's Cormorant nests found to be failed after 7 July, the causes for failure are less clear but also may have been associated with the fireworks disturbance. Brandt's Cormorants sometimes will attend nests for up to several days after nest failure, even refurbishing and sitting in the nest (G. McChesney, pers. obs.). Thus, it is possible that some nests recorded as "active" on 7 July actually had already failed but that adults were still attending nests, which visibly failed a few days later. Other factors associated with the fireworks display also may have contributed to a prolonged period of nest failure. For example, at certain colonies with high levels of human activity, high nest loss over longer periods has been demonstrated in other seabirds even in the absence of obvious behavioral cues (Giese 1996, Beale and Monaghan 2004). High stress caused by human disturbance was thought to be the cause. Based on behavioral observations in this study, cormorants and other birds almost certainly experienced elevated stress levels during the fireworks display and this may have had an effect lasting up to several days. Also, if a cormorant mate had been disturbed by the display and subsequently abandoned the island, the breeding pair's nest certainly would have failed because two parents are necessary for cormorants to nest and rear young successfully.

The fact that most cormorant nests abandoned were on the edge of the colony was not surprising. Studies of other seabirds have shown that birds nesting on the edge or in low-density portions of a colony can experience higher rates of nest predation and lower breeding success than nests in the interior or denser parts of colonies (Birkhead 1977, Siegel-Causey and Hunt 1981). Also, nests established later and still holding eggs or small chicks were more prone to predation by gulls (e.g., Birkhead 1977). Larger chicks, such as chicks in many nests on 6 July, are generally

too large for avian predators to handle and are capable of maintaining their body temperatures to survive brief periods of exposure when adults are absent (Ainley and Boekelheide 1990). None of the cormorant nests known to have failed on Gualala Point Island between 7 and 12 July had large chicks.

Data were not adequate to fully evaluate potential impacts of the fireworks display on other species. However, for the entire day on 7 July, Western Gulls showed a brief but marked decline in numbers of adults counted on Gualala Point Island. This decline may have been associated with disturbance to gulls recorded the previous night during the fireworks display.

Potential Long-term Impacts

The Brandt's Cormorant is one of the most abundant breeding seabirds in California (Sowls *et al.* 1980, Carter *et al.* 1992). However, along the southern Mendocino County and Sonoma County coasts, few colonies exist mainly because suitable breeding habitat is scarce. Formerly, Gualala Point Island was the largest of only a handful of Brandt's Cormorant colonies between Point Arena and Bodega Bay. Available data indicate that the Brandt's Cormorant colony at Gualala Point Island has declined substantially since 1980. The count of 65 nests on 30 May 2007 was the lowest recorded to date during standardized USFWS annual surveys (Sowls *et al.* 1980; Carter *et al.* 1992 and 2000; Capitolo *et al.* 2004; and this study).

Fireworks displays are not the major cause for the long-term decline of Brandt's Cormorants on Gualala Point Island. A specific cause or set of causes remains unknown at this time. Given the sensitivity of Brandt's Cormorants to disturbance and the proximity of the colony to various human-related activities, human disturbance may be at least partially responsible for reductions in numbers. Thus, a major concern is that additional human disturbances, such as the recently instituted fireworks display, will add to the burden of impacts and will make future recovery of the colony less likely.

Common Murres, a species recovering in California from past human impacts that is undergoing a breeding population expansion in southern Mendocino County (Carter *et al.* 2001, Capitolo *et al.* 2006), were observed prospecting on several days in 2007 among the Brandt's Cormorant colony on Gualala Point Island. If properly protected, murres may begin nesting on the island in the near future and become the first documented colony in Sonoma County.

In addition to the importance of Gualala Point Island to nesting and roosting seabirds, the coast between Collins Landing and the Gualala River has been important for certain species, especially Pelagic Cormorants (Sowls *et al.* 1980, Carter *et al.* 1992). This species, which nests in more scattered and lower-density colonies, is also sensitive to both disturbance and shortages in prey supplies (Carter *et al.* 1984, Ainley and Boekelheide 1990). Given the similar proximity to developed areas, this local colony also may be jeopardized by increases in human disturbance. A remnant population of the federally threatened Marbled Murrelet (*Brachyramphus marmoratus*) uses the waters just off the mouth of the Gualala River (C. S. Strong, Crescent Coastal Research, pers. comm.). Intensifying human disturbance could jeopardize the well-being of this small group of birds.

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Appendix 1

Histories of Brandt's Cormorant nest and territorial sites recorded in aerial photographs, Gualala Point Island, 30 May to 12 July 2007.¹

Nest #	Status	30 May	5 June	5 July	7 July	12 July	Fate as of 12 July
1	B	V	V	SF	SF	SW	S
2	B	V	T	SF	SF	failedT	F
3	B	V	SF	SW	SW	SW	S
4	B	V	SF	SW	SW	failedDE	F
5	B	SW	SW	SW	SW	SW	S
6	B	V	V	SW	failedDE	T	F
7	B	DPE	SF	failedV	V	V	F
8	B	SF	SW	SW	SW	SW	S
9	B	SF	SF	SW	SW	SW	S
10	B	T	SF	SW	SW	failedDE	F
11	B	V	SF	SF	SW	SW	S
12	B	SF	SW	SW	SW	SW	S
13	B	SW	SW	SW	SW	SW	S
14	B	SW	SW	SW	SW	DC	S
15	B	SW	SW	SW	SW	DC	S
16	B	SW	SF	SW	failedE	T	F
17	B	SW	SW	SW	SW	SW	S
18	B	SW	SF	SW	SW	SWG	S
19	B	SW	SW	DC	DC	DC	S
20	B	V	SW	SW	SW	SW	S
21	B	SW	SF	SW	SW	DC	S
22	B	SW	SW	DW	DC	DC	S
23	B	SW	SW	SW	SW	DC	S
24	B	SW	SW	SW	SW	C	S
25	B	SW	SW	DC	DC	DC	S
26	B	SW	SW	DC	DC	DC	S
27	B	SF	SW	SF	SF	SW	S
28	B	SW	SW	DC	DC	DC	S
29	B	SW	SW	failedT	V	DF(E in alt photo)	F
30	B	SW	SW	SW	SW	SW	S
31	B	SW	SW	DC	SW	DC	S
32	B	SW	SW	SW	SW	SW	S
33	B	V	SP	SF	SF	DC	S
34	B	SW	SW	DC	SW	DC	S
35	B	T	SF	SF	SW	SW	S
36	B	SW	SW	SW	failedE	SW(E in alt photo)	F
37	B	SW	SW	SW	SW	DC	S
38	B	SW	SW	SW	DC	DC	S
39	B	SF	SW	SW	SW	DC	S
40	B	T	SP	SF	failedV	DC	F
41	B	SF	SW	SW	SW	DC	S
42	B	T	SP	SW	SW	SW	S

Nest #	Status	30 May	5 June	5 July	7 July	12 July	Fate as of 12 July
43	B	SW	SW	failedV	V	V	F
44	B	SW	SW	SW	DC	DC	S
45	B	SW	SW	DC	DC	DC	S
46	B	SW	SF	SF	SW	SW	S
47	B	SW	SW	SW	SW	DC	S
48	B	SW	SW	SW	SW	SW	S
49	B	SW	SW	SW	SW	DC	S
50	B	SW	SW	DW	SW	DC	S
51	B	V	SF	SF	failedV	T	F
52	B	SP	SW	failedDPE	V	V	F
53	B	SW	SW	SW	SW	DC	S
54	B	T	SF	SW	SF	SW	S
55	B	SF	SF	SW	failedE	DC	F
56	B	SW	SW	DC	DC	DC	S
57	B	SW	SW	SW	DC	DC+	S
58	B	SW	SF	DW	SC	DC	S
59	B	SW	SW	DC	SW	DC	S
60	B	SW	SW	failedDE	V	T	F
61	B	SF	SF	DW	DC	DC	S
62	B	SW	SW	SW	SW	failedDE	F
63	B	SW	SW	DC	SW	DC	S
64	B	SW	SW	DC	DC	DC	S
65	B	DPE	SF	SW	SW	DC	S
66	T	T	SP	T	V	DC	na
67	B	T	SF	SW	SW	SW	S
68	B	T	SW	SW	SW	SW	S
69	B	V	SW	SW	SW	SW	S
70	B	SW	SW	SW	SW	failedV	F
71	B	V	SW	SW	SW	DC	S
72	B	SW	SW	SW	SW	DC	S
73	B	SW	SW	SW	SW	DC	S
74	B	SW	SF	SW	SW	SF	S
75	B	V	SF	SF	SF	SF	S
76	T	T	DF	V	V	V	na
77	B	SW	SW	SW	SW	failedDE	F
78	B	SW	SF	SW	failedE	DC	F
79	B	SW	SW	SW	SW	DC	S
80	B	SP	SF	SW	SW	DC	S
81	B	SW	SF	SW	SW	SW	S
82	B	SW	SW	SW	SW	DC	S
83	B	SW	SW	SW	SW	DC	S
84	B	SW	SW	SW	SW	DC	S
85	B	SF	SF	SF	SW	DC	S
86	B	SP	SF	failedV	V	V	F
87	T	V	T	V	V	V	na
88	B	SW	SW	DC	DC	DC	S
89	B	SW	SW	SW	SW	DC	S
90	B	SW	SF	SW	SW	DC	S

Nest #	Status	30 May	5 June	5 July	7 July	12 July	Fate as of 12 July
91	B	SF	n/a	SF	SF	SFG	S
92	B	DF	n/a	SW	SW	failedV	F
93	B	SF	SF	SW	SW	SW	S

¹ Codes are as follows:

Status: B = breeding site

T = territorial site

Nest Site Condition by Date: C = chick(s) visible in nest

D = adult standing at nest site

E = empty nest

F = fairly well built nest

G = egg(s) visible in nest

P = poorly built nest

S = adult sitting on nest

T = adult bird(s) on territory with little or no nest material

V = vacant site

W = well built nest

failed = first survey when nest discovered to be failed

n/a = no photo coverage

Fate as of 12 July: F = failed

S = successful

n/a = no nest established during the count period

Appendix 2

Bird Census Totals by Species, Vantage Point and Time of Day, 1 to 12 July 2007

0 = no birds observed - = no data available because of poor visibility

