

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA
5 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260

F 6b

Appl. filed: July 29, 1998
49th day: September 16, 1998
180th day: January 25, 1999
Staff: JL-SF
Staff Report: September 25, 1998
Hearing Date: October 16, 1998
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 1-98-067

APPLICANT: City of Eureka, Community Development Dept.;
Bureau of Land Management, Arcata Field Office

PROJECT LOCATION: Samoa Peninsula, Foredune Area of City of Eureka-owned airstrip property adjacent to New Navy Base Road.

PROJECT DESCRIPTION: Provide for regulated off-highway vehicle (OHV) use of the North Spit Foredune area by installing fencing and signage and providing a management presence in the area. 14,000 linear feet of post and cable fencing would be installed to enclose and protect sensitive plant species and their habitat, and to prevent off-highway vehicle on all but 75 acres of the property.

SITE DESCRIPTION: The property encompasses approximately 450 acres. The proposed 75 acres of foredune area to be enclosed and used for OHV riding stretches along the Pacific Ocean and is contiguous to the 300 acre Bureau of Land Management (BLM) parcel to the south, of which 140 acres is designated for OHV riding. Parking and access to the proposed riding area is through the adjacent BLM property.

The proposed foredune riding area itself is heavily vegetated, primarily with introduced European beachgrass and yellow bush lupine types, which are not sensitive species. However, the property does contain pockets of native dune mat, native beachgrass, herbaceous hollows, and woody hollows.

LOCAL APPROVALS RECEIVED: None required.

SUBSTANTIVE FILE DOCUMENTS: (1) Humboldt County LCP; (2) Staff Report, Humboldt County LCP Amendment No 1-93, Dec. 15, 1993

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve with conditions the proposed use of a portion of the subject property for Off-Highway Vehicle (OHV) riding, and constructing fencing to protect the environmentally sensitive portions of the site.

If properly managed and implemented, the proposed project would be beneficial in protecting the rare and endangered plant species on the site that are currently being damaged by illegal and unmanaged OHV riding. Towards this end, staff recommends the Commission impose special conditions requiring that certain maintenance, management and monitoring activities be incorporated into the project, limiting authorization of the OHV use to a two-year initial period, and requiring annual reports on the project's effects.

As conditioned, staff believes that the project is consistent with the Coastal Act and recommends that the Commission adopt the resolution and findings contained in this report.

STAFF NOTE

Standard of Review

The proposed project is located in the County of Humboldt. The County has a certified LCP, but the project that is the subject of Coastal Development Permit Application No. 1-98-067 is within the Commission's retained jurisdictional area. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act. The certified LCP policies, including those added by the Beach and Dunes Management Plan LCP Amendment 1-93, are advisory.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

Motion

I move that the Commission approve Coastal Development Permit No. 1-98-067 subject to conditions.

Staff Recommendation of Approval

Staff recommends a YES vote and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve Permit

The Commission hereby grants, subject to the condition below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS

See attachment A

III. SPECIAL CONDITIONS

1. Off Highway Vehicle Use

Use of the area as an off highway vehicle (OHV) riding area shall be subject to the following conditions:

- (a) All fences and signage shall be continually maintained in a manner adequate to protect the environmentally sensitive vegetated dune habitat within the area;
- (b) Management activities shall be carried out to effectively prohibit OHV use of all unauthorized areas (the fenced off and enclosed areas containing rare and endangered plant species or native beach grass);
- (c) Annual monitoring of the environmentally sensitive vegetated dune habitat at the site shall be conducted to determine the effects of the allowed OHV use on these resources; and
- (d) The applicants shall encourage the removal of exotic invasive vegetation from the site and shall briefly close the OHV area if necessary to allow for eradication projects by responsible parties to be performed at the site.

2. Annual Report

The applicants shall provide an annual report to the Executive Director of the Coastal Commission by November 1 of each year beginning in 1999. The report shall discuss

compliance with Condition 1 above, and to that end may incorporate annual monitoring reports prepared pursuant to the June 1998 Memorandum of Understanding between the Bureau of Land Management and the City of Eureka. In particular, the report shall describe:

- (a) the location and duration of any breaches in the fencing permitted by this permit, and the effect of such breaches on the protected habitat;
- (b) the management activities and programs carried out to eliminate trespass into the fenced-off areas, including user-education activities, person-hours of patrols and enforcement activities;
- (c) data demonstrating any changes in the frequency, cover or census of endangered and/or native plants; and
- (d) conservation and restoration activities undertaken, including efforts to remove exotic plants.

3. Expiration Date.

The OHV use authorized by this permit shall cease on December 31, of the second year following Commission approval of the original permit or any subsequent amendment. Continued use of the area for Off Highway Vehicle (OHV) riding after that date shall require a new coastal development permit or an amendment to this permit.

IV. FINDINGS AND DECLARATION

The Commission hereby finds and declares as follows:

A. SITE DESCRIPTION AND BACKGROUND

The project site is located on the foredunes of the City of Eureka Municipal Airport property (approximately 450 acres commonly known as the "Skypark Foredunes") on the Samoa Peninsula of Humboldt County. The site is owned by the City of Eureka, but is in the unincorporated area of the County of Humboldt. Most of the site is also within the retained jurisdiction of the Commission. Uses on the adjacent portions of the airport property include an active airstrip, drag racing, a bed and breakfast, an area previously used as a dredge spoil site and other commercial uses. The project site does not include the wave slope (that area below high tide), which is owned by the state of California and is currently open to limited OHV use. The site is adjacent to the Samoa Dunes Recreation Area, managed by the Bureau of Land Management (BLM), Arcata Field Office.

The property consists mostly of accreted land, formed as a by-product of jetty construction in the early 1900's. The property as a whole contains native dune mat, native beachgrass, herbaceous hollows, woody hollows, as well as many dune areas of moderate to intensive exotic plant. An 80-acre portion of the property referred to as the Mitigation Bank was set aside and fenced off in 1990 (please see Exhibit 3). That area is currently being managed by the Center for Natural Lands Management, which has recently completed a dune habitat restoration plan. The

implementation of the plan for the Mitigation Bank, dependent on securing grant funding, will remove exotic plants, guide revegetation with native plants and provide an area for mitigation of future projects on the property that impact sensitive dune habitats elsewhere on the property.

An additional area of about 110 acres is zoned Natural Resource and contains about 30 acres of dune mat habitat, where no use other than vegetation rehabilitation or pedestrian use is allowed. The approximately 100-acre foredune area, of which 75 acres is proposed for OHV riding use, is heavily vegetated, primarily with non-sensitive, introduced exotic European beachgrass and yellow bush lupine types, but with pockets of sensitive species. Currently, both of these areas are being impacted by unrestricted OHV riding. The proposed perimeter fence would protect the Natural Resource area, and enclosure fences would protect the sensitive pockets of the foredune area.

Unauthorized Off-Highway Vehicle use has occurred on the Foredunes and interior (Natural Resource zoned) dune mat habitat for many years. Unregulated riding of OHVs over endangered and sensitive native plants and their fragile and increasingly rare habitat damages and threatens these resources. With increased OHV use in the last 15 to 20 years, conflicts between such use and sensitive habitat protection have grown throughout the beach and dune areas of Humboldt County. There are approximately 3,460 acres of dunes within the County's coastal area. The North and South Spits along Humboldt Bay contain the longest continuous stretch of dunes (approximately 26 miles) and more than one-third of the 85 miles of sand dunes found in northern California. The County of Humboldt has been seeking to address these conflicts since the early 80's. In 1990 the Board of Supervisors obtained funding from the State Coastal Conservancy to conduct a detailed study of natural and cultural resources, sensitive habitat, enhancement and restoration opportunities, passive recreational uses, as well as active recreation such as OHV riding as a basis for a balanced and comprehensive management plan.

After years of intensive study, planning, environmental review, public involvement and numerous hearings over the period from 1990 to 1994, the County adopted the Humboldt County Beach and Dunes Management Plan to provide a framework for managing the beach and dune areas of the North and South Spits.

One of the important outcomes of this plan was a determination as to where off-highway vehicles (OHVs) could or could not be ridden. The only areas where OHV use is allowed or proposed under the plan are the Samoa Dunes Recreation Area (BLM managed), the adjacent City of Eureka Foredunes (the proposed site) and along the wave-slopes for limited purposes. The remaining portions of the sand dunes along the Samoa Peninsula (both North and South Spits) were identified to be closed to vehicle use. The portion of the City of Eureka property where the city and the BLM now propose to establish an OHV riding area was redesignated and rezoned from Natural Resources to Public Recreation specifically to allow for future establishment of an OHV riding area.

Although the subject property is within the retained area of the Commission jurisdiction and any policies concerning the area are only advisory in nature, the Plan was certified with modifications in relevant part by the Commission as an amendment to the LCP in 1994. The

Commission suggested a modification, subsequently adopted by the County, specifically outlining how to resolve the conflict between OHV use and resource protection on the subject property. This Modification "A" stated:

- A. To (1) eliminate a potential conflict between redesignating a portion of the foredune of the City of Eureka Airport property to Public Recreation to allow for development of an expanded OHV riding area in a degraded dune area and the policies of the Humboldt Bay Area Plan that protect all vegetated dunes as environmentally sensitive habitat areas and preclude such development, and (2) ensure that any OHV riding area developed at the site will adequately protect all portions of the dunes vegetated with native beach grass or rare and endangered plant species, add the following to subsection 11, "Beach and Dune Areas," of Section 3.30 of the Plan, "Natural Resources Protection Policies and Standards:

11. Beach and Dune Areas

- c. The area designated "Public Recreation" along the foredune zone of the City of Eureka Airport property north of the BLM/Samoa Dunes Recreation Area contains dune habitat that has been severely degraded over time due to extensive previous use for recreational OHV riding and other human disturbance.
- (1) Although the dune vegetation in this area includes some native dune grass and populations of the endangered plant species *Menzies Wallflower* and *Beach Layia*, most of the vegetation consists largely of non-native invasive species such as *European beach grass* and *bush lupine*. Section 3.30B(1)(a)(2) of this plan states that all vegetated dunes along the North Spit to the Mad River and along the South Spit are environmentally sensitive habitats. Because of the high percentage of invasive plant species and the degraded nature of this particular area, only those portions of the vegetated dunes in this area actually containing either rare and endangered plant species or native dune grass are considered to be environmentally sensitive vegetated dune habitat. Pursuant to Sections 3.30B(1)(a)(1) and 3.30B(1)(a)(4) of this plan, any wetlands or critical habitats for rare and endangered animal species that might exist in the area are also considered to be environmentally sensitive habitat areas.
- (2) The area is proposed for development as an off highway vehicle riding area under the County's Beach and Dunes Management Plan. To protect the environmentally sensitive vegetated dune

habitat within the area, any such development shall be required to do the following:

- (a) Fence and prohibit use of all portions of the affected dunes containing rare and endangered plant species or native beach grass.*
- (b) Conduct annual monitoring for rare plant species to determine the effects of activities on the relative viability of the population in any given year and perform necessary remediation measures. (emphasis added)*

Since the plan was certified in 1996, only portions of the plan have been implemented and the impacts of OHV use on the dunes have not yet been fully addressed. In fact, the problem of illegal use at the subject site has increased substantially in recent years because OHV closures elsewhere have doubled OHV use at the Samoa Dunes, which in turn has increased the incidence of trespass onto the City of Eureka property for OHV riders coming from the Samoa Dunes Recreation Area. As the BLM notes in the materials submitted in support of their application:

With the adoption of this plan, BLM's Samoa Dunes Recreation Area experienced a substantial increase in the number of OHVs using the area. This increased OHV use has resulted in off-site impacts onto the Eureka property. Vehicles have been observed riding throughout the Foredunes as well as the interior dune mat habitat where more sensitive vegetative species occur. Because these OHVs originate from Samoa Dunes, the BLM felt some degree of responsibility and need for action in order to keep off-site impacts to a minimum.

Consequently, the City of Eureka and the BLM entered into a Memorandum of Understanding (MOU) in June 1998 (Exhibit 4) as a means of implementing the objectives stated in the Beach and Dunes Management Plan (as certified by the Commission), and particularly, as stated in the MOU:

... for the purpose of cooperatively managing approximately 80 acres of what is commonly known as the Eureka Foredunes, located adjacent to the Samoa Dunes Recreation Area at the north jetty area of the Samoa Peninsula. More specifically, this agreement provides a framework for managing the aforementioned area so that safe and orderly off-highway vehicle (OHV) recreation use can occur while protecting endangered and native plant species, and their habitats. This MOU outlines cooperative activities and clarifies the range of shared tasks, which includes, but may not be limited to : (1) constructing and maintaining protective fencing, (2) maintaining OHV trails, (3) maintaining the property, (4) installing and maintaining signs, (5) resource monitoring, (6) patrols, (7) writing environmental documents and (8) obtaining permits.

Now BLM and the City have secured sufficient grant funds to build fencing to protect the sensitive habitat areas on the Foredunes site, and to operate the area for the next two years, with the expectation of further funding beyond that time. In BLM's words:

Resulting from a request from several local OHV user groups, and coordination with the City of Eureka, the BLM has now secured a total of \$53,000 in grant funds from the California Dept. of Parks & Recreation, Off-Highway Motor Vehicle Division ("Green Sticker" Fund) to construct protective fences and provide resource monitoring on the Eureka Foredunes. The BLM has succeeded in obtaining grant funds from the aforementioned agency for the last 10 years to operate and maintain the Samoa Dunes Recreation Area, and funding has been increased by \$17,000 for each of the next two years (in addition to the one time \$53,000 grant) to manage the Eureka Foredunes once the facilities are in place. A very strong likelihood exists that grant funds will be available each succeeding year to operate and maintain both areas as long as adequate OHV riding opportunities are provided.

B. PROJECT DESCRIPTION

The objective of the project is to establish a legal riding area for OHV users in a manner that will protect and maintain populations of endangered native plant communities and native dunegrass colonies by (1) constructing post and cable fence enclosures and perimeters, (2) providing restrictive and guiding signing, and (3) providing an increased management presence in an area currently subject to illegal OHV trespass.

The project specifically consists of the following:

1. Increase the legal OHV riding area by 75 acres while protecting all remaining area of dune mat habitat (the existing environmentally sensitive area) currently being degraded by illegal OHV trespass.
2. Construct post and cable enclosures totaling approximately 14,000 linear feet around dune mat habitat containing endangered plants and native beach dunegrass colonies within the Foredunes (see Exhibit 3) and on the easterly edge of the Foredunes. The posts would be four feet long, 6 inches in diameter and 2 feet above ground once installed. One strand of yellow plastic coated $\frac{3}{4}$ inch wire rope would be fed through the posts. Up to 10 3"x4' signs would be installed to inform visitors of areas open and closed to vehicle use. Maintaining existing vehicle trails using a tractor twice a year is also proposed. This perimeter fence provides for the protection of an additional 30 acres of endangered plant habitat in the Natural Resource (Rehabilitation/Passive recreation area), excluding the Mitigation Bank.

Additional grant funds approved for the next two years and expected in subsequent years will be used for operation and maintenance of the Eureka Foredunes OHV area, which will consist of fence maintenance, law enforcement, and monitoring. On the ground supervision

will be provided during this project to ensure endangered plant species safety. Maintaining existing vehicle trails using a tractor twice a year is also proposed.

C. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Coastal Act Section 30107.5 defines "environmentally sensitive area" as:

Any area 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 development.

Coastal Act Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The area subject site has been significantly disturbed over time by previous and continuing unauthorized OHV use and other human activities. The site is known to contain populations of Beach Layia and Menzies wallflower, two federally listed endangered plant species. In addition, some of the dune area contains native dune grass. However most of the dune area is covered by invasive European beach grass, bush lupine, another invasive plants that outcompete and displace native species.

The Commission has already established how these Coastal Act policies apply to this specific site. In its action on Humboldt County LCP Amendment #1-93 (the Beach and Dunes Management Plan), the Commission determined that only those portions of the site with Menzies (a.k.a. Humboldt Bay) wallflower, Beach layia, and native dune grass vegetation fall under the section 30107.5 definition of "environmentally sensitive area." The Commission further found that developing the site in a manner that would preclude entry to the ESHA areas through the use of fencing and signing would be in conformance with Coastal Act Section 30240. Specifically, the Commission found:

Not every sand dune or sand dune area necessarily meets the definition of an ESHA set forth in Coastal Act Section 30107.5... [T]he Commission finds that in this portion of the Humboldt beach and dunes area, dunes vegetated with invasive species such as European beach grass and bush lupine do not meet the definition of an environmentally sensitive species because these plant species are not rare or especially valuable in this area. In fact, these species are damaging to native species in that they outcompete and displace

the native species. Many dune restoration projects in the Humboldt County area have included the removal of these exotic species...

However, as defined by Coastal Act Section 30107.5, the Menzies wallflower, the Beach layia, and native dune grass are all considered to be environmentally sensitive since: (1) the plants are either rare or play an especially valuable role in an ecosystem and (2) they are easily disturbed or degraded by human activities and developments such as OHV riding. Therefore, the Commission finds that the portions of the dunes in the 150-acre foredune of the City of Eureka Airport property that are covered by these three plant species constitute environmentally sensitive habitat areas.

Based on botanical surveys conducted as of the planning process for the Beach and Dunes Management Plan, the vast majority of the 150-acre foredune area proposed for ...OHV park use is not vegetated with the environmentally sensitive plant species. Thus there would be appear to be sufficient acreage within the site to develop the intended use without necessarily intruding on the ESHA areas...[D]eveloping the site in a manner that would preclude entry to the ESHA areas through the use of fencing and signing ... would then be in conformance with Coastal Act Section 30240. (Adopted Findings, Humboldt County LCP Amendment 1-93, Beach and Dunes Management Plan, April 11, 1994)

The physical installation fences and signs described in the permit application form is part of what would be needed to preclude OHV entry into the ESHA areas, but in and of itself, is not sufficient to assure the level of protection necessary to find consistency with Section 30240. If the fences are not maintained, or if illegal use in the fenced-off areas is not controlled, these sensitive areas will continue to be damaged. In recognition of this fact, the submitted application contains substantial additional materials which address the operation and management of the proposed project. These include a Memorandum of Understanding (MOU) between the co-applicants (the City of Eureka and the BLM) related to management of the proposed OHV use, as well as a Biological Assessment prepared by BLM (and accompanying "Section 7" consultation by the USFWS) that provides additional detail on the project. However, it is unclear whether all aspects of these materials were intended to be part of the project as proposed. The Commission therefore attaches Special Conditions 1 through 3 to explicitly incorporate these management actions into the permit. These conditions assure that the proposed legalized OHV use of the site does not intrude into the environmentally sensitive areas of the site, and thereby remains a use consistent with Section 30240 of the Coastal Act .

Specifically, Special Condition No. 1 incorporates measures that the BLM commits itself to in the MOU (Exhibit 4). These include (a) requiring that all fences and signage be maintained to prevent vehicles from entering environmentally sensitive areas; (b) that management activities, including developing a strategy for on-the-ground patrols, be carried out to effectively prohibit OHV use of these areas; and (c) that monitoring be conducted to determine the effects of the proposed use. Further BLM's biological assessment discusses the potential opportunities for improving the protected habitat by actively removing invasive exotic species. Special Condition

No. 1 requires the applicants to encourage such eradication work and requires the applicants to briefly close the riding area, if necessary to allow such work to be performed safely.

Special Condition No. 2 requires an annual report (also called for in the applicants' MOU) to be submitted to the Commission's Executive Director, to demonstrate how the objectives of Special Condition No. 1 are being met. These management measures are essential for the protection of sensitive habitat. Therefore Special Condition No. 3 limits the OHV use authorized by this permit to only the period of time for which funding for this management is secured. The Commission notes, however, that if Special Conditions 1 and 2 are met, if funding is demonstrated to be available to continue the activities specified therein, and if other circumstances are unchanged in the future, additional authorization would likely be granted to again permit the OHV use through a period for which continued funding is available.

Thus, the proposed project, as conditioned, meets the specific criteria for conformance with Section 30240 of the Coastal Act. Additional biological studies done by the BLM for the present project have confirmed the location of the environmentally sensitive habitat area, and the fencing has been designed to enclose and protect all of these areas. As a result, 75 acres of the Foredunes will be available for OHV riding, and the balance of the area fenced off for habitat protection. Similar fencing has been used in the "Mitigation Area" and BLM's Samoa Dunes OHV riding area, and has proven effective in excluding OHV trespass. Exhibit 5 presents charts comparing the areas of sensitive habitat currently being damaged by illegal OHV use to the areas that will be protected by the proposed project, and shows that all of the area sensitive area subject to this permit will be protected.

The project is also consistent with the certified LCP, including its Beach and Dunes Management Plan component reproduced in section "A" above. In a larger sense, the project provides the missing link in implementing the Beach and Dunes Management Plan's major goal of minimizing the potential conflicts between use of the beach and dunes for recreational OHV riding and protection of these habitats. The essential strategy of the Plan for protecting environmentally sensitive habitats is to take the pressure off of sensitive habitat areas by directing OHV use to expanded legal riding areas in the degraded dune areas. This project is an integral part of that strategy: the project will nearly double the present public legal riding area, physically restrict illegal riding on the subject site, and take the pressure off the balance of the nearly 3500 acres of open dunes which are set aside for habitat protection under the Beach and Dunes Management Plan.

D. PUBLIC ACCESS

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to

protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212 states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby...

Coastal Act Section 30214 states:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission, regional commissions, and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

The proposed project would establish an OHV riding area but would have the effect of banning OHV use in certain sensitive areas that OHV users have used, albeit illegally, in the past. However, this use cannot be construed to fall within the prescriptive rights provisions of Coastal Act Section 30211 because the subject site is publicly owned (in this case by the City of Eureka) and prescriptive rights for public access cannot accrue on publicly owned lands.

Furthermore, the Commission must take into account the provisions of Sections 30210 and 30214 that call for balancing the need to provide access opportunities with the needs to protect sensitive coastal resources. This project is being proposed precisely because of the damage indiscriminate OHV use of the beach and dunes area has caused to the sensitive beach and dune ecosystem. The Commission concludes that restricting vehicle use from the environmentally sensitive parts of the dunes would assure protection for these coastal resource while at the same time providing opportunities for public access in the form of OHV use.

The Commission further finds that with regard to non-OHV public use, the proposed project is consistent with Coastal Act Section 30212. The project provides no specific new accessway for non-OHV use because potential conflicts with motorized traffic could be a hazard for the public attempting to access the coast through the property. The fence itself would not specifically block public access, given its less than three foot height. Moreover, the signage program which is a part of this project will include signs advising pedestrians of OHV travel routes to minimize conflicts. But more importantly in terms of section 30212 (b), significant public access opportunities to the coast exist at virtually every point along the Samoa Peninsula for pedestrian use, including the improved safe pedestrian access facilities at the BLM. Therefore, the Commission finds that the proposed amendment as submitted is also consistent with Coastal Act Section 30212.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, modified by any conditions of any approval, be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned to be found consistent with the resource protection policies of the Coastal Act. The attached mitigation measures will minimize all adverse

environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

EXHIBITS

1. Regional Location
2. Vicinity Map
3. Project Site Map
4. Memorandum of Understanding, City of Eureka/BLM
5. Levels of Protection of Native Dune Mat

ATTACHMENT A

Standard Conditions

1. Notice of Receipt and Acknowledgment: The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration: If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance: All development must occur in strict compliance with the proposal set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation: Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections: The Commission staff shall be allowed to inspect the site and development during construction, subject to 24-hour advance notice.
6. Assignment: The permit may be assigned to any qualified person, provided the assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land: These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

VICINITY MAP

1 0 1 2
MILES

N ↑

PACIFIC OCEAN

PROJECT LOCATION

SAMOA DUNES

HUMBOLDT

South Bay

R2W

RIW

BLM

Manila Residential Area

L-P

L-P

NW Export Co.

Simpson

EUREKA PROPERTY

Eureka

Martin Slough

Fields Landing

Elk River

The Nature Conservancy

Ford

BAY

Arcata Bay

Fay Slough

Freshwater Creek

Ryan Creek

McDaniel Slough

Arcata

R1E

EXHIBIT NO. 2
APPLICATION NO.

1-98-067 CITY OF EUREKA
& BLM

VICINITY MAP

ATTACHMENT 7

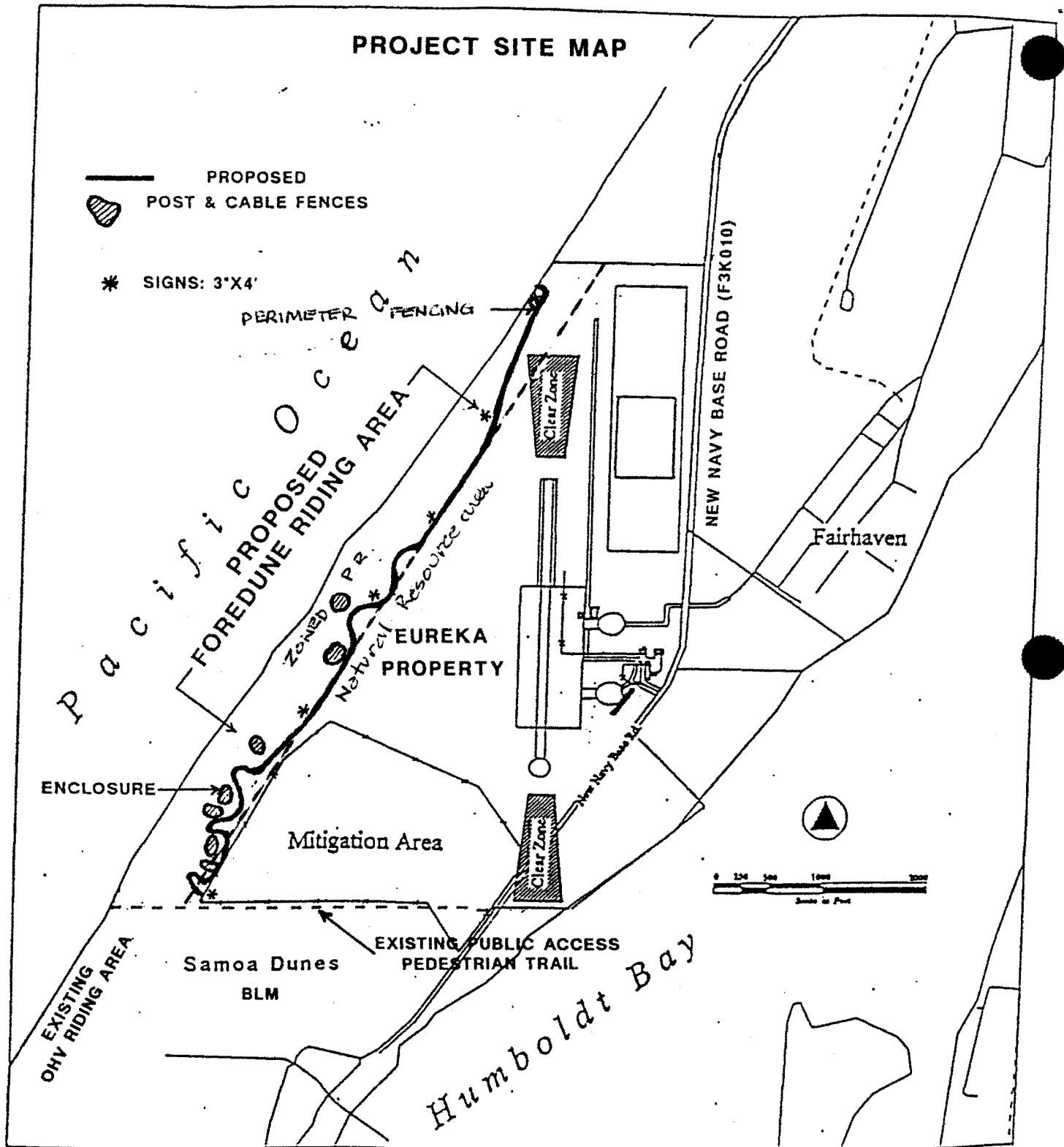


EXHIBIT NO. 3

APPLICATION NO.

1-98-067 CITY OF EUREKA
& BLM

PROJECT SITE MAP

ATTACHMENT 10

MEMORANDUM OF UNDERSTANDING
BETWEEN
BUREAU OF LAND MANAGEMENT
ARCATA FIELD OFFICE
AND
CITY OF EUREKA

| |
|---|
| EXHIBIT NO. 4 |
| APPLICATION NO. |
| 1-98-067 CITY OF EUREKA & BLM |
| MEMORANDUM OF UNDERSTANDING CITY OF EUREKA/BLM |

I. PURPOSE

This MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into by the Department of the Interior, Bureau of Land Management (BLM), Arcata Field Office, and the City of Eureka, CA for the purpose of cooperatively managing approximately 80 acres of what is commonly known as the Eureka Foredues, located adjacent to the Samoa Dunes Recreation Area at the north jetty area of the Samoa Peninsula. More specifically, this agreement provides a framework for managing the aforementioned area so that safe and orderly off-highway vehicle (OHV) recreation use can occur while protecting endangered and native plant species, and their habitats. This MOU outlines cooperative activities and clarifies the range of shared tasks, which includes, but may not be limited to: (1) constructing and maintaining protective fencing, (2) maintaining OHV trails, (3) maintaining the property, (4) installing and maintaining signs, (5) resource monitoring, (6) patrols, (7) writing environmental documents and (8) obtaining permits.

II. AUTHORITY

This MOU falls under the authority of Section 307 of the Federal Land Policy and Management Act of 1976 (P.L. 94-579).

III. BACKGROUND

In 1994, the Humboldt County Board of Supervisors adopted the Beach and Dunes Management Plan. One of the important outcomes of this plan was a determination as to where off-highway vehicles (OHV's) could or could not be ridden. The only two areas where OHV's would be allowed are the Samoa Dunes Recreation Area (BLM managed) and the adjacent City of Eureka foredues. The remaining portions of the sand dunes along the Samoa Peninsula (both North and South Spits) were identified to be closed to vehicle use. With the adoption of this plan, BLM's Samoa Dunes Recreation Area experienced a substantial increase in the number of OHV's using the area. This increased OHV use has resulted in off-site impacts onto the Eureka property. Vehicles have been observed riding throughout the foredues as well as the interior dune mat habitat where more sensitive vegetative species occur. Because these OHV's originate from Samoa Dunes, the BLM felt some degree of responsibility and need for action in order to keep off-site impacts to a minimum.

Resulting from a request from several local OHV user groups, and coordination with the City of Eureka, the BLM has now secured a total of \$53,000 in grant funds from the California Dept. of Parks & Recreation, Off-Highway Motor Vehicle Division ("Green Sticker" Fund) to construct protective fences and provide resource monitoring on the Eureka Foredues. The BLM has succeeded in obtaining grant funds from the aforementioned agency for the last 10 years to operate and maintain the Samoa Dunes Recreation Area, and funding has been increased by \$17,000 for each of the next two years (in addition to the one time \$53,000 grant) to manage the Eureka Foredues once the facilities are in place. A very strong likelihood exists that grant funds will be available each succeeding year to operate and maintain both areas as long as adequate OHV riding opportunities are provided.

IV. PARTIES TO THE AGREEMENT AND THEIR ROLES

A. The BLM agrees to:

1. Use approved grant funds (\$32,000) from the California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division to construct post and cable enclosures totalling approximately 5,000 feet around dune mat habitat containing endangered plants within the Eureka Foredunes. These enclosures and appropriate signage will be maintained as required to prevent vehicles from entering these areas.
2. Use approved grant funds (\$21,000) from the California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division to construct a post and cable perimeter fence totalling approximately 8,000 feet on the easterly edge of the Eureka Foredunes. This fence and appropriate signage will be maintained as required to prevent unauthorized vehicle use.
3. Apply for grant funds in each subsequent year for the duration of this MOU which will be used for operations and maintenance of the Eureka Foredunes.
4. Provide financial support for permits required to implement the projects listed under A.1 and A.2 above.
5. Provide on-the-ground supervision of work conducted under A.1 and A.2 above.
6. Coordinate with Ca. Dept. of Fish & Game and U.S. Fish & Wildlife Service to provide monitoring for the presence of the Western snowy plover.
7. Install, maintain and replace information and regulatory signs as necessary.
8. Develop a monitoring plan for the endangered plant habitat areas, and provide monitoring reports on an annual basis.
9. Assist the City of Eureka in developing a strategy for providing law enforcement patrols and on-the-ground OHV management. This will involve the expenditure of approximately \$10,000 each year from the aforementioned OHV "Green Sticker" grant fund.
10. Provide technical support for the preparation of studies required to secure permits for tasks A.1 and A.2.
11. Continue to open and close the entrance gate at Samoa Dunes Recreation Area as specified in BLM's Resource Management Plan Amendment (opened one hour before sunrise and closed one hour after sunset). This gate will continue to be maintained and operable, with signs posted regarding the night-time vehicle closure.

B. The City of Eureka agrees to:

1. Provide personnel to write environmental reports required to implement items A.1 and A.2 above.
2. Provide personnel to secure the permits necessary to implement items A.1 and A.2 above.

3. Coordinate with BLM to develop a strategy for providing law enforcement patrols. This will involve the expenditure of approximately \$10,000 each year from the aforementioned OHV "Green Sticker" grant fund.

4. Allow OHV use within the 80 acre Eureka Foredunes zoned "Public Recreation", upon completion of items A.1, A.2, B.1 and B.2 above.

C. The City of Eureka and BLM Mutually Agree:

1. To meet on a periodic basis to discuss ongoing management of the Eureka Foredunes.

2. It is beneficial to provide the maximum assistance and coordination possible, within the availability of funds and established regulations and policies governing the respective agencies.

3. All improvements/facilities placed on the Eureka Foredune property that are purchased by Federal or State grant monies will be under the control and care of the BLM, and will remain the property of the BLM.

4. Nothing in this agreement shall be construed as obligating the BLM or the City of Eureka to expend money, or as involving the BLM or City of Eureka in any obligation for the present or future payment of money in excess of appropriations authorized by law and administratively allocated for work undertaken pursuant to this MOU.

5. The Federal Government's liability will be governed by the provisions of the Federal Tort Claims Act.

6. During the performance of work undertaken pursuant to this MOU, both parties will not discriminate on the grounds of race, color, creed, gender, age, physical handicap or national origin.

7. No fees will be charged for access to the Eureka Foredunes.

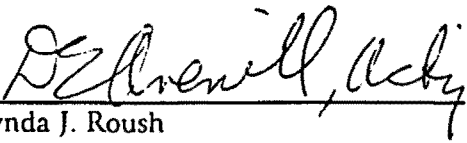
8. The City of Eureka has the right to inspect and report in writing to the BLM actions necessary to correct potential or existing hazardous conditions.

V. TERM OF MOU

This MOU shall become effective on the date of both signatures. It may be revised by a written amendment, signed and dated by both parties. Either party may terminate this MOU by providing 60 days written notice.

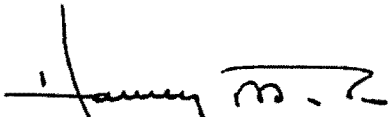
V. SIGNATURES

UNITED STATES OF AMERICA
BUREAU OF LAND MANAGEMENT
ARCATA FIELD OFFICE


Lynda J. Roush
Area Manager

6-15-98
Date

CITY OF EUREKA


Harvey M. Rose
City Manager

6/23/98
Date

Table 1. Level of Protection of Native Dune Mat under Current Management.

| CURRENT MANAGEMENT | TOTAL ACRES | ACRES DUNE MAT (approximate) | ACRES DUNE MAT PROTECTED |
|---|-------------|------------------------------|--------------------------|
| Airport/Drag- strip/mx superbowl area | 100 | 0.25 | 0 |
| Industrial Area | 60 | 0 | 0 |
| Public Recreation Area (Skypark foredunes) | 100 | 6.5 | 0 |
| Natural Resource Area (rehabilitation and passive recreation) | 110 | 30 | 0 |
| Mitigation Bank | 80 | 15 | 15 |
| TOTAL | 450 | | 15 ACRES |

Table 2. Level of Protection of native Dune Mat if proposed action is implemented.

| PROPOSED ACTION | TOTAL ACRES | ACRES DUNE MAT (approximate) | ACRES DUNE MAT PROTECTED |
|---|-------------|------------------------------|--------------------------|
| Airport/Drag Strip/superbowl area | 100 | 0.25 | 0 |
| Industrial Area | 60 | 0 | 0 |
| Public Recreation Area (Skypark foredunes) | 100 | 6.5 | 6.5 |
| Natural Resource Area (rehabilitation and passive recreation) | 110 | 30 | 30 |
| Mitigation Bank | 80 | 15 | 15 |
| TOTAL | 450 | | 51.5 ACRES |

EXHIBIT NO. 5

APPLICATION NO.

1-98-067 CITY OF EUREKA
& BLM

**LEVELS OF PROTECTION
OF NATIVE DUNE MAT**

