

CALIFORNIA COASTAL COMMISSION

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

RECORD PACKET COPY**W 11a****PROPOSED FINDINGS****ON CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-052-02
Staff:	LJS-SF
File Date:	7/12/02
60 th Day:	9/10/02
75 th Day:	extended through 12/13/02
Commission Vote:	12/11/02
Hearing on Findings	2/5/03

FEDERAL AGENCY:**Bureau of Land Management****PROJECT****LOCATION:**

Humboldt Bay South Spit, Humboldt County (Exhibits 1-2).

PROJECT**DESCRIPTION:**

Implementation of the South Spit Interim Management Plan, a three-year plan to provide a baseline level of visitor services, public uses, resource protection, monitoring, and habitat restoration until the long-term management plan for the South Spit is developed.

PREVAILING**COMMISSIONERS:**

Commissioners Desser, Dettloff, Hart, Kruer, McClain-Hill, Nava, Peters, Susskind, Wan, Woolley, and Chairman Reilly.

SUBSTANTIVE FILE DOCUMENTS:

1. South Spit Interim Management Plan, July 10, 2002 (BLM).
2. Environmental Assessment for the South Spit Interim Management Plan, July 2002 (BLM).

3. Biological Assessment for Arcata Field Office, Bureau of Land Management, Interim Management Plan for Lands on the South Spit of Humboldt Bay, Managed under Conservation Easement by the Bureau of Land Management, July 2002 (BLM).
4. Formal Consultation on the Interim Management Plan for Lands Managed by the Bureau of Land Management on the South Spit of Humboldt Bay, California, September 11, 2002 (U.S. Fish and Wildlife Service).
5. South Spit Access Improvements (State Coastal Conservancy), August 8, 2002.
6. Adopted Findings for Humboldt County LCP Amendment No. 1-93 (Beach and Dunes Management Plan), December 13, 1993.
7. Consistency Determination CD-011-00 (Redwood National Park Management Plan, including limitations on beach OHV use).
8. Consistency Determination CD-27-82 (Bureau of Land Management; creation of Samoa Dunes OHV Recreation Area, Humboldt County).
9. Negative Determination ND-113-94 (Bureau of Land Management; nighttime closure of Samoa Dunes OHV Recreation Area and closure of Manila Dunes site to all vehicular access, Humboldt County).
10. Consistency Determination CD-144-97 (Bureau of Land Management; prohibit OHV use at Black Sands Beach in the Kings Range National Conservation Area, Humboldt County).
11. CDP 1-98-067 (City of Eureka and BLM), authorization of OHV use on Samoa Peninsula, Humboldt County.
12. CDP 1-00-047 (City of Eureka and BLM), reauthorization of OHV use on Samoa Peninsula, Humboldt County.
13. CDP 4-82-300-A5 (California Department of Parks and Recreation), institute interim vehicle use limits and establish interagency Technical Review Team at Oceano Dunes State Vehicular Recreation Area, San Luis Obispo County (revised findings adopted April 18, 2001).

EXECUTIVE SUMMARY

The Bureau of Land Management (BLM) has submitted a consistency determination for the Humboldt Bay South Spit Interim Management Plan (IMP). The IMP would provide visitor services, allow for recreational and some commercial activities, monitor and protect natural resources, restore wildlife and plant habitat, and provide for traditional Wiyot Tribe activities during a three-year time period allocated to develop a long-term management plan for the South Spit. The 800-acre South Spit extends 4.5 miles from the Humboldt Bay entrance channel south

to Table Bluff, is currently open to the public on a limited basis, and is comprised of several landowners, primarily the State of California and the U.S. Fish and Wildlife Service. Through a Deed of Conservation Easement, the State of California conveyed to the BLM an "interest" in and the "right" to manage the South Spit in all aspects of its use in perpetuity. The IMP includes numerous management actions and developments organized under recreation activities, facilities development, cultural resources, vegetation, and wildlife. The BLM states that implementation of the proposed management actions, except for the South Jetty Road rock revetment (which is not a part of this consistency determination) and the snowy plover habitat creation project, will be funded using approximately \$500,000 in State Coastal Conservancy grant funds. Funding for the revetment and habitat creation projects has yet to be obtained.

The IMP holds the potential to begin restoring the degraded state of snowy plover habitat on the South Spit. If the plan is implemented and restrictions on visitor activities are monitored and enforced, environmentally sensitive dune and beach habitat critical to recovery of the snowy plover will be protected and restored. The IMP includes the establishment of a 20-acre snowy plover protection area along a 3,000-foot-long reach of shoreline. This proposed area includes the waveslope and upland dune habitat, where all OHV use will be prohibited during the March 1-September 15 snowy plover nesting season. If the IMP fails to achieve its plover habitat goals, more severe restrictions on existing recreational activities on the South Spit may be necessary under terms of the U.S. Fish and Wildlife Service's Biological Opinion and/or the BLM's long-term management plan, including prohibition of all OHV use on the South Spit.

However, the Commission is concerned that continued use of OHVs on the waveslope during the snowy plover nesting season will lead to adverse effects on environmentally sensitive habitat that could be used for nesting and foraging by the snowy plover. Therefore, because OHV use during the nesting season would be incompatible with plover habitat restoration plans and plover management actions contained in the IMP, the project as submitted is inconsistent with Section 30240 of the Coastal Act. To bring the project into consistency with Section 30240, the Commission conditioned its concurrence to state that the IMP is consistent with the California Coastal Management Program (CCMP) if:

During the western snowy plover reproductive season, from March 1 through September 30, BLM will prohibit access of recreational vehicles to the waveslope. During this period vehicle use will be limited to commercial fishermen, tribal members, and mobility-impaired persons through a permit system.

If properly implemented and enforced, and if modified in accordance with the Commission's conditional concurrence to restrict OHV use on the South Spit during the snowy plover nesting season, the IMP will protect environmentally sensitive habitat on the South Spit, will not lead to further adverse effects on currently degraded snowy plover habitat on the South Spit, will restrict recreational activities and other uses not dependent on existing and potential plover habitat, and is consistent with the environmentally sensitive habitat policy (Section 30240) of the Coastal Act.

The IMP includes provisions for maintaining and improving opportunities for public access to and recreational use of the South Spit. Proposed interpretive, picnicking, and parking improvements adjacent to or near South Jetty Road will be sited and designed to protect views to and along the shoreline, and thus, the quality of the recreational experience. Proposed restrictions and controls on public access and recreation during the three-year life of the IMP, including restricting OHV use to only the waveslope, are reasonable in nature given the presence of endangered species and environmentally sensitive habitats in the dunes and along the bayshore. A multi-agency law enforcement and monitoring program on the South Spit will ensure compliance with land use regulations, and the BLM will make a formal report to the Commission on the effectiveness of the enforcement and monitoring program after the first year of the IMP. The access and recreation provisions of the IMP will be evaluated for their effectiveness in protecting recreational opportunities and natural resources, and should modifications or additional restrictions be necessary, such measures can be implemented by the BLM during the three-year interim management period and/or incorporated into the final management plan to be developed by the BLM. This final plan will be reviewed by the Commission in a subsequent consistency determination for long-term management of the South Spit. The project is consistent with the public access and recreation policies (Sections 30210-14 and 30220-23) of the Coastal Act.

The IMP includes a proposed road revetment necessary to protect a segment of South Jetty Road from erosion, undermining, and eventual washout. However, this consistency determination does not include a request for Commission concurrence at this time with the revetment or an associated project to mitigate the adverse effects of the revetment on intertidal mudflats. The subject consistency determination does include a commitment by BLM to submit a second consistency determination at a later date for the specific road protection and mitigation project outlined in the IMP.

The IMP includes provisions for a pre-construction archaeological survey of the South Spit, the presence of qualified archaeologists during all ground disturbing activities that may occur during the three-year interim management plan period, the coordination with and participation by Wiyot Tribe representatives in surveys, monitoring, and excavations, and the incorporation of the archaeological survey into the development of the long-term management plan for the South Spit. The IMP will not adversely affect cultural resources on the South Spit and is consistent with the archaeological and paleontological resource policies (Section 30244) of the Coastal Act.

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description.

The Bureau of Land Management (BLM) proposes to implement the Humboldt Bay South Spit Interim Management Plan for a three-year period of time. BLM states that the interim plan will "provide a baseline level of visitor services, allow for a variety of recreation activities, protect resource values, monitor resource conditions, and restore wildlife and native plant habitat until

the long-term plan is developed.” Upon completion of the long-term management plan, BLM would submit another consistency determination to the Commission for that plan.

The approximately 800-acre South Spit is a four and one-half-mile-long narrow strip of land separating Humboldt Bay and the Pacific Ocean and extending from the bay entrance south to Table Bluff (**Exhibits 1 and 2**). The spit is currently open to the public on a limited basis for a variety of recreational uses. Roughly 600 acres of the spit was recently gifted from the Pacific Lumber Company to the State of California. The balance of the spit is owned by Humboldt County (17 acres), U.S. Fish and Wildlife Service (160 acres), U.S. Army Corps of Engineers (10 acres), and Texaco Corporation (19 acres). Through a Deed of Conservation Easement, the State of California conveyed to the BLM an “interest” in and the “right” to manage the south spit in all aspects of its use in perpetuity. The South Spit will eventually be designated a State of California Wildlife Management Area pursuant to the California Department of Fish and Game Code. However, because the area will be managed by a federal agency, the BLM submitted a consistency determination to the Commission for the interim management plan.

The BLM states that the proposed Interim Management Plan (IMP) arises in part from previous related actions taken by Humboldt County, the State of California, and the State Coastal Conservancy:

A comprehensive Humboldt County Beach and Dunes Management Plan was completed in 1995, which recommended actions for resource protection and provisions of public recreation on both the North and South Spits. As a result of this effort, and as a requirement of California Senate Bill 39, the California Coastal Conservancy completed the South Spit Management Plan in October 1997. This plan evaluated the public acquisition, actions for habitat restoration, development of recreational improvements, and related management options for the South Spit.

The IMP’s “Vision Statement” states in part that:

The South Spit is a unique and significant area to the people of Humboldt County. Due to the area’s natural diversity, cultural resource values, and populations of sensitive species, protection of these resources is necessary and will require active management.

The BLM states that the IMP is intended to disclose the full range of management actions anticipated to occur prior to completion of the long-term management plan, and that the BLM’s intention is to “manage the South Spit under an interim strategy that does not foreclose future options for management or commit resources in a manner that would jeopardize potential alternatives in future planning.” The IMP provides:

. . . a starting point for management of the South Spit that includes the initial period of implementation of protection measures and use restrictions. Management is expected to be fluid and adaptive, detecting changing resource conditions, management successes and failures, public and wildlife responses to management and use levels, and quickly responding with improved management practices. The Interim Plan provides a management

scenario that will establish a baseline of information over a two to three year period against which subsequent planning can be based.

The BLM's consistency determination includes numerous management actions (**Exhibit 3**) that comprise the heart of the proposed IMP. An outline of the more significant management actions is provided below:

Recreation Opportunities

- Daytime recreational uses such as fishing, clamming, picnicking, sightseeing, beachcombing, hiking, horseback riding, wildlife viewing, and waterfowl, snipe, and coot hunting.
- Vehicle access to the waveslope for recreation uses and commercial fishing. Designated vehicle access corridors will provide access to the waveslope, both of which will have a speed limit of 15 miles per hour. Aside from the access corridors to the Pacific shoreline from South Jetty Road, no vehicle operations will be allowed in any of the South Spit dunes west of South Jetty Road or between the road and Humboldt Bay. OHV use will also be prohibited in the 3,000-foot-long waveslope fronting the snowy plover protection area, and within the 20-acre protection area itself, during the March 1-September 15 nesting season.
- Day use only, with no nighttime general public use allowed. The entrance gate will be opened one hour before sunrise and closed one hour after sunset. Open hours will be extended during waterfowl hunting season (October – January). Access will be free of charge during the three-year life of the Interim Plan.
- Commercial fishing allowed under a BLM special use permit for hours outside the day-use period.
- The BLM will not allow any public uses within a designated western snowy plover protection area during the nesting season (March 1 through September 15), and will restrict public uses in areas adjacent to nesting, brooding, and seasonal habitat protection areas.
- The BLM will conduct a visitor survey to gather information about preferred recreation activities, how people would like the area to be managed, perceived problems and user conflicts, and visitor demographics.
- A cooperative program between BLM, USFWS, CDFG, and the Humboldt County Sheriff will implement law enforcement efforts. Law enforcement patrols by these agencies will occur at a minimum of five days per week with two of the days being on the weekend.

Facility Developments

- A volunteer resident caretaker will open and close the entrance gate, provide information to visitors, and perform light maintenance duties. The preferred caretaker site is located on DFG property just south of the Lighthouse Ranch. The site will include a graveled access road and pad with trailer, a storage shed, developed drinking water well, septic tank and leach field, electricity, and telephone service.
- Improve eight existing graveled parking areas on the west side of South Jetty Road: one for multiple uses at the southern end on County Park property, six at intervals along South Jetty Road, and one for multiple uses at the north end of the spit next to the South Jetty. The two multiple use sites will each have a restroom, picnic tables, trash receptacles, and an information kiosk.
- Develop an area at the northeastern corner of the spit for small watercraft launching, picnicking, beachcombing, and wildlife viewing. This area will include tables, cooking grills, and trash receptacles. Close the existing spur road beyond this site to protect a cultural and wildlife sensitive area.
- Provide four vehicle access corridors to the waveslope on the Pacific shore of the spit: one at the south end, two in the mid-spit area, and one at the north end.
- Leave undeveloped the existing vehicle access routes extending to the shore of Humboldt Bay from the east side of South Jetty Road. However, some routes will be open only during the October-January waterfowl hunting season, several routes will be eliminated, and eleven existing parking turnouts will be improved.
- Repair and improve the South Jetty Road by scarifying the base course of the road, re-compacting, and repaving areas where large potholes have formed. Gravel and grade portions of the road. As funding allows, rip-rap and re-pave a short 100-foot section of the road along the eastern edge to prevent erosion; rip-rap will extend up to five feet into the tidal zone of Humboldt Bay. Stabilize another small section of South Jetty Road on County property by constructing terraces and re-vegetating the area. While the road revetment project is an element of the IMP, it is not a part of the subject consistency determination, but instead will be included in a future consistency determination.
- Install a variety of informational, educational, directional, and regulatory signs.

Cultural Resources

- Complete a Class III archaeological survey of the entire South Spit with participation by Wiyot Tribe representatives, prepare a comprehensive report, and use the report to develop the long-term management plan for the spit. During the interim management period, conduct comprehensive archaeological surveys, including subsurface test excavations in suspect areas, to ensure any and all cultural resources are located,

recorded, evaluated, and protected from facility developments and recreation use. An archaeologist will be present to monitor every ground disturbing action to ensure that no cultural resources are disturbed. Include Wiyot Tribe representatives in all aspects of archaeological survey, monitoring, and test excavations.

- Develop an agreement between the BLM and the Wiyot Tribe (Table Bluff Reservation) wherein tribal members will be given the free use of the South Spit for their traditional use and gathering of resources, including surf fishing, clamming, eeling, gathering seaweed, bay grass, firewood, mushrooms, berries, and basketry materials, and waterfowl hunting.

Vegetation

- Focus interim management of native plant habitats and areas of endangered species occupation on prevention of native plant and habitat loss, and the restoration of native dune habitat.
- Map and monitor vegetative types and endangered and rare plant species populations, in particular, Humboldt Bay wall flower and beach layia.

Wildlife

Surveys and Monitoring:

- Conduct western snowy plover searches along the South Spit beach (the only federally administered land in the northern California sub-population "Recovery Unit 2" that has documented recent nesting attempts by the endangered western snowy plover) at least once per month during the winter to identify areas of use and numbers of birds, noting actions adversely impacting the birds.
- Conduct plover searches along the South Spit beach at least once per week during the nesting season (March 1 through September 15). Monitor nest attempts, nest failures, presence of banded birds, brood numbers, brooding areas, brood failures, adult and brood harassment, and interaction with recreational activities.
- Monitor visitor compliance with rules guiding recreational activities and document non-compliance. Document acts of vandalism or tampering with temporary protective fencing or predator exclosures. BLM will provide law enforcement summary reports on violations and documentation of other activities to the public on a semi-annual basis. The summary reports will be submitted to the Coastal Commission on an annual basis.

Protection:

- Upon verification of an active plover nest, close plover protection areas to all recreational activity during the nesting season. The plover protection area will run along the beach,

just above the seasonal high tide line, for a distance of 600 feet on each side of the nest, then proceed eastward to a line 200 feet inland from the nest. Erect temporary "symbolic fencing" to delineate the perimeter of the plover protection area.

- If an area is discovered where one brood appears to be frequenting for one week, establish a plover protection area and close it to all recreational activity until fledging. Erect temporary "symbolic fencing" above the seasonal high tide line to delineate the concentrated use area of the broods and remove after birds fledge.
- In order to provide a dry-sand area of relatively disturbance-free habitat for plovers to initiate nesting activities, establish a seasonal (3/1 to 9/15) plover protection area near the north end of the South Spit. The area will run from a point approximately 500 yards south of the jetty for approximately 3,000 feet south along the beach and includes the waveslope. The protection area will extend inland approximately 300 feet into the dunes, creating a plover protection area of about 20 acres. Temporary "symbolic fencing" will be erected to delineate the perimeter of the plover protection area, wherein all public access and use is prohibited. OHV use is prohibited on the waveslope in this plover protection area.
- If an area is discovered where numerous plovers are wintering, establish a plover protection area and close it to all recreational activity until the birds leave the area. Erect a "picket line" of warning signs to delineate the concentrated use area.
- Restore plover habitat. The establishment of invasive plants on the spit adversely affects the plover and as a result, suitable plover habitat available above the high tide line has dramatically narrowed to 30-50 acres. The proposed method for restoring plover habitat is to bulldoze the beachgrass-covered dunes to the natural gradient of the unvegetated beach, disposing of spoils and vegetative material into the winter surf at low tide prior to a winter storm. The flattened and exposed sand would then be available to natural wind and water-caused sand movement to maintain a natural dynamic system that could support plovers. The IMP calls for treating over one-half mile of foredune ocean-frontage to a distance of 300 feet east of the primary dune and grading it to the natural rise of the beach, within the aforementioned 20-acre plover protection area. The treated area would be seasonally fenced with cable or rope and removable posts for the duration of the plover nesting season.

Refinements to the aforementioned IMP management actions are outlined in BLM's November 19, 2002, letter to the Commission (**Exhibit 4**). The BLM will fund implementation of the above-referenced management actions, except for the South Jetty Road rock revetment and the snowy plover habitat creation project, using approximately \$500,000 in State Coastal Conservancy grant funds. Funding for the revetment and habitat projects will likely come from the BLM or other sources. Presently, however, both of these project components are not funded and construction start dates are unknown. In addition, the road revetment is not a part of this consistency determination but will be included in a future consistency determination.

The Commission received several letters regarding the BLM's proposed IMP; they are provided in **Appendix 1** at the end of this report.

II. Status of Local Coastal Program. The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the LCP has been certified by the Commission and incorporated into the California Coastal Management Program (CCMP), it can provide guidance in applying Chapter 3 policies in light of local circumstances. If the LCP has not been incorporated into the CCMP, it cannot be used to guide the Commission's decision, but it can be used as background information. The Humboldt County LCP has been incorporated into the CCMP.

III. Procedures. As currently submitted the IMP includes proposals at varying levels of specificity and this consistency determination evaluates all these in as much detail as is presently available. However, the BLM will be developing more specificity at a later date. The Coastal Zone Management Act (CZMA) requires a consistency determination for each phase in cases where federal decisions to implement an activity are also made in phases. Section 930.36 (d) of the CZMA implementing regulations provides:

(d) Phased consistency determinations. ... In cases where federal decisions related to a proposed development project or other activity will be made in phases based upon developing information that was not available at the time of the original consistency determination, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (e.g., planning, siting, and design decisions), a consistency determination will be required for each major decision. [15 CFR Section 930.36(d)]

Historically, when the Commission has reviewed these types of federal agency activities, in a number of cases the Commission has reviewed the plan at a general level, noting potential problem areas and projects or activities which would be likely to affect the coastal zone if implemented. The benefits of this type of phased review are that: (1) it provides the federal agency, in advance of specific project or plan implementation, notice of what issues are likely to arise under the CCMP; and (2) it provides the Commission with an overall planning context within which to review specific plans or projects subsequently proposed.

In this situation, the interim plan describes the proposed road stabilization work and identifies the need for the project, but does not include final design or a mitigation plans. The BLM will develop these details after it receives funding for the revetment. In other words, its decision with respect to the road-stabilization project will be made in phases. In such situations, the regulations implementing the CZMA require the BLM to submit consistency determinations for each phase. The BLM has agreed to continue to coordinate the implementation of its management plan with the Commission, to enable further Commission review of consistency determinations for both the specific road stabilization plan, as well as the long-term management plan.

IV. Federal Agency's Consistency Determination.

The Bureau of Land Management has determined the proposed project consistent to the maximum extent practicable with the California Coastal Management Program.

V. Applicable Legal Authorities.

Section 307 of the Coastal Zone Management Act (CZMA) provides in part:

(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

In addition, 15 CFR § 930.4 provides, in part, that:

(a) Federal agencies, ... agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under Subpart C ... would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable Subpart and notify, pursuant to §930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions; and

(2) The Federal agency (for Subpart C) ... shall modify the applicable plan [or] project proposal, ... pursuant to the State agency's conditions. The Federal agency ... shall immediately notify the State agency if the State agency's conditions are not acceptable; and

...

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable Subpart.

VI. Consistent to the Maximum Extent Practicable.

Section 930.32 of the federal consistency regulations provides, in part, that:

(a)(1) The term "consistent to the maximum extent practicable" means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

The Commission recognizes that the standard for approval of Federal projects is that the activity must be "consistent to the maximum extent practicable" (Coastal Zone Management Act Section 307(c)(1)). This standard allows a federal activity that is not fully consistent with the CCMP to proceed, if compliance with the CCMP is "*prohibited [by] existing Federal law applicable to the Federal agency's operations*" (15 C.F.R. § 930.32). The Bureau of Land Management did not provide any documentation to support a maximum extent practicable argument in its consistency determination or in any subsequent documents. Therefore, there is no basis to conclude that existing law applicable to the Federal agency prohibits full consistency.

VII. Motion:

I move that the Commission adopt the following findings in support of its conditional concurrence in the Bureau of Land Management's consistency determination CD-052-02.

VIII. Staff Recommendation:

The staff recommends a **YES** vote on this motion. Pursuant to section 30315.1 of the Coastal Act, adoption of findings requires a majority vote of the members of the prevailing side present at the December 11, 2002, hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action on the consistency determination are eligible to vote. A majority vote by the prevailing Commissioners listed on page 1 of this report will result in adoption of the findings.

IX. Resolution To Conditionally Concur With Consistency Determination:

The Commission hereby conditionally concurs with the consistency determination by Bureau of Land Management on the grounds that, if modified as described in the Commissions' conditional concurrence, the project would be consistent with the enforceable policies of the CCMP, provided the Bureau of Land Management satisfies the condition specified below pursuant to 15 CFR §930.4.

Condition:

1. OHV Use. During the western snowy plover reproductive season, from March 1 through September 30, BLM will prohibit access of recreational vehicles to the waveslope. During this period vehicle use will be limited to commercial fishermen, tribal members, and mobility-impaired persons through a permit system.

X. Findings and Declarations.

The Commission finds and declares as follows:

A. Environmentally Sensitive Habitat. The Coastal Act provides the following:

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those 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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The BLM's IMP examines the existing environmentally sensitive vegetative habitat present on the South Spit:

- The South Spit is currently in a severely degraded vegetative condition with the majority of the spit consisting of invasive, non-native plant types. Most of the west side of the spit is a very young landform and is a direct artifact of the construction of the south jetty at the turn of the 20th century. While some common native dune mat species have persisted, as a result of the explosive spread of invasive weeds many native plant habitats have degraded a result of the effects of the weed-induced over-stabilization of sand on the spit.
- In the early 1990s, two native plant species, Humboldt Bay wallflower and beach layia, became federally listed as endangered but still occupy some sites on the South Spit. Beach layia occupies areas with bare to semi-stabilized sand, and Humboldt Bay wallflower occupies one remnant dune mat site on the Texaco Inc. property. Several other special status species occur on the spit.
- The spit and the adjacent beaches, bay and channel waters, dunes, and the South Jetty are occupied and/or seasonally used by dozens of species of birds.

The IMP also addresses the presence of the western snowy plover on the South Spit:

The Pacific coast population of the western snowy plover was federally listed as threatened in March 1993 (USDI 1993). General population decline and a decrease in the numbers of breeding locations were the basis for the listing. The declines are attributed to loss and modification of habitat resulting from European beach grass, encroachment and urban development, extensive human recreational activity in plover habitat, and predation exacerbated by human disturbance. Designation of critical habitat was proposed in 1995

(USDI 1995) with final designation being published in 1999. The South Spit was not designated critical habitat.

According to the Draft Western Snowy Plover Pacific Population Recovery Plan (USDI 2001), total numbers of breeding plovers and nest locations have decreased in Humboldt, Del Norte and Mendocino Counties over the last 10 years or so, but because of variations in levels of survey effort, it is difficult to compare past with current bird numbers. Five beaches where nesting plovers were detected by Page and Stenzel (1981) or Fisher (1992-94) have had no nesting activity in the past few years. The majority of Humboldt County plover nesting has shifted to Eel River gravel bars (Colwell et al. 2001).

The South Spit is in Recovery Unit 2 of the Draft Recovery Plan (USDI 2001) which included Del Norte, Humboldt, and Mendocino counties. On the South Spit, plover nesting was documented in 1983, 1993, and 1999. In addition, wintering plovers were observed near the north end of the spit in early 2002 and a pair of plovers were observed in the same general location in mid-April 2002.

On September 11, 2002, after formal consultation with BLM in accordance with Section 7 of the Endangered Species Act, the U.S. Fish and Wildlife Service released its formal biological opinion on the proposed IMP and the plan's effect on the federally threatened western snowy plover, endangered California brown pelican, endangered beach layia, and endangered Humboldt Bay wallflower. The Service determined that the proposed IMP may affect, but is not likely to adversely affect, the brown pelican or the wallflower. The Service determined that the IMP is not likely to jeopardize the continued existence of beach layia on the South Spit, but that the species monitoring called for in the IMP is necessary in order to determine whether different management actions will be required in order to protect beach layia habitat.

The Service determined that the IMP is not likely to jeopardize the continued existence of the western snowy plover. The Service also reported that critical habitat for the plover has been designated (none, however, on the South Spit) but that the proposed IMP would not affect any of the designated areas and that no destruction or adverse modification of that habitat is anticipated. However, notwithstanding the no-jeopardy determination, the Biological Opinion also states that:

The Service anticipates take in the form of harassment of ten (10) wintering and four (4) breeding western snowy plovers per year through disturbance from recreational activities or other actions which cause harassment during the 2003 through 2005 calendar years. We based this anticipated amount of take on past survey results of the number of annual breeding and wintering plovers on the South Spit. With the proposed plover protection measures in place, the Service does not anticipate that there will be direct mortality of plovers as a result of the proposed action.

The Biological Opinion includes a discussion of the proposed BLM IMP (including the proposed snowy plover protection areas, restrictions on recreational activities, and conservation measures), background information on the status of the western snowy plover on the Pacific coast, California, and Humboldt County, an environmental baseline for the plover on the South Spit/Eel

River Wildlife Area (ERWA), and the anticipated effects on the plover from implementation of the IMP. The following are key points made by the Service:

- *The Service has identified the South Spit and the ERWA as breeding and wintering areas that are important for the recovery of the snowy plover. The South Spit is the only recently used nesting site in recovery Unit 2 that will be managed by a federal agency. Only 30-50 acres of suitable nesting habitat currently exist on the South Spit because of dune habitat degradation. The South Spit contains approximately 460 acres of potentially suitable habitat, much of it compromised because of exotic vegetation and recreational activities.*
- *In both 2001 and 2002 only one adult plover was sighted on the South Spit. Only one breeding bird was observed on the South Spit in 2002, which has a population target of 30 breeding adults. No documented nesting has occurred on the South Spit since 1999.*
- *Snowy plovers are currently known to winter on the South Spit and have been observed early in the reproductive period during the last two years. Several aspects of the proposed management strategy will benefit the plover over the current situation where little, if any, on-site management exists. Specifically, we anticipate the removal of European beachgrass on 20 acres, delineation of access routes, restriction of vehicles to the waveslope, restriction of recreational use to daytime, establishment of plover protection areas, prohibition of fireworks and target shooting, installment of scavenger-proof trash cans, presence of law enforcement, and education of visitors as improvements in existing management.*
- *The proposed management strategy will affect nesting and wintering plovers in foraging habitat along the waterline and in brood rearing habitat, except in identified concentration areas. Plovers will also be affected by day and nighttime vehicle use, unleashed dogs, equestrians, and recreationists. The effectiveness of the closures and restrictions will depend on the level of visitor compliance and law enforcement. This analysis of effects and our conclusions are based on the expectation that the management measures will be effective, and that timely action will be taken to revise management strategies if the measures fail to minimize impacts. However, even with complete compliance with the proposed measures, adverse impacts to wintering and breeding plovers due to harassment are likely to occur.*
- *A threshold is established for re-evaluating administration of the plan and considering adjustments to ongoing management of public use on the South Spit. After the first 30 days of BLM management, the trigger for this threshold will be the occurrence of three incidences of any combination of the following actions:*
 - prohibited acts in any of the delineated plover protection areas, or on the waveslope adjacent to a plover protection area;*
 - vehicle use above the waveslope;*
 - excessive equestrian use immediately above the waveslope;*

*firewood cutting during the closed season;
target shooting or plinking;
night use without proper authorization; or
vandalism of fences, exclosures, or plover area warning signs.*

To minimize the impacts of the anticipated incidental take of western snowy plovers, the Service determined in the Biological Opinion that the following reasonable and prudent measure on the part of the BLM is necessary and appropriate:

- *Minimize recreation-related impacts to plovers, their nests, and broods.*

The Service goes on to state that in order to implement this measure, the BLM must comply with the following non-discretionary terms and conditions:

1. Within the period March 1 to September 15, monitor violations of conservation measures designed to protect plovers. If 25 violations have been documented, BLM, Service, and CDFG will meet to evaluate and apply additional measures that might be required to protect plovers, including but not limited to closure of the waveslope to vehicles and further restrictions on dog or equestrian use.

Violations are to be documented by law enforcement officers from either BLM, Service, the CDFG, or Humboldt County. Any plover monitor may report violations to any law enforcement officer, who may then document the violation by visiting the site (for example, vehicle tracks through a plover protection area or above the waveslope).

2. BLM is to schedule and hold a meeting with the Service and CDFG in the fall each year the interim management plan is carried out. Primary objectives of the meeting would be to review the conservation measures implemented for plovers on South Spit, review the status of plovers on South Spit, and to adjust threshold levels for violations of measures designed to protect plovers.

3. On the west side of South Jetty Road, the BLM shall require that dogs be leashed at all times during the period March 1 to September 15.

As noted in the project description (Section 1) of this report, the BLM's proposed IMP includes numerous management actions designed to improve snowy plover habitat on the South Spit, and to protect plovers and plover habitat from the adverse effects currently generated by recreational activities, primarily uncontrolled and illegal vehicle use in the beach and dunes area on the South Spit. As noted above, the U.S. Fish and Wildlife Service states in its Biological Opinion that the proposed management plan will generate benefits to the plover and will be an improvement over the current management situation on the South Spit, notwithstanding the fact that plovers will continue to be adversely affected by human activities in this area.

Subsequent to the release of the Biological Opinion, the BLM modified the IMP to further enhance protection of snowy plover habitat on the South Spit (**Exhibit 4**). The IMP will now

prohibit OHV use and other public uses on the 3,000-foot-long stretch of waveslope in front of the previously-designated 20-acre plover protection area. In addition, the law enforcement and monitoring presence on the South Spit will increase from a minimum of two days per week to five days per week, including both weekend days, and law enforcement summary reports of violations and documentation of other activities on the South Spit will be provided to the public on a semi-annual basis.

The primary challenge facing the Commission is determining whether the BLM's proposed IMP is consistent with the environmentally sensitive habitat area protection policies of Coastal Act Section 30240, given that: (1) the proposed IMP and its snowy plover habitat protection policies and recreational use restrictions are a significant improvement over the status quo on the South Spit and could lead to more suitable habitat and increased numbers of wintering and nesting plovers; and (2) the proposed IMP provides for a continuation of some recreational activities on the South Spit that have been and may continue to be a significant contributing factors to the decline in suitable snowy plover habitat and the population of plovers on the South Spit.

The Commission faces a complex situation where ongoing legal and illegal recreational activities occur throughout the South Spit, both types of activities are degrading snowy plover habitat, degraded habitat and human activities severely hinder the ability of adult plovers in the region to breed and nest in what suitable habitat remains, and plovers have not nested on the spit since 1999. However, the proposed IMP will lead to improved plover habitat and additional plover protections if visitors comply with the new restrictions on their activities and if there is a viable enforcement program. The Commission notes that the terms and conditions of the Biological Opinion call for monitoring and reporting of violations of the IMP conservation measures and for potential additional and immediate restrictions on recreational activities, including the closure of the entire South Spit waveslope to OHVs, should the number of violations exceed the violation threshold.

The Commission also notes that the proposed IMP is for a period of three years during which BLM will develop a permanent management plan for the South Spit, which the Commission will review in a subsequent consistency determination (see "phased review" discussion on pages 9-10, above). Information obtained during this time period on the success or failure of the IMP snowy plover conservation measures to protect and restore plover habitat and populations on the South Spit will be used to develop the permanent plan. Moreover, any changes to the project impacts, design, or mitigation commitments raising Coastal Act policy concerns not previously identified could independently trigger additional federal consistency review under the provisions of Section 930.45 of the federal consistency regulations (15 CFR Part 930), which provide for re-review based on "changed circumstances" of federally agency activities in which the Commission has previously concurred (i.e., based on a determination that the project is having coastal zone effects that are substantially different than originally proposed and, as a result, the project is no longer consistent to the maximum extent practicable with the applicable coastal management program policies).

However, the Commission finds that continued use of OHVs on the waveslope during the snowy plover nesting season will lead to adverse effects on environmentally sensitive habitat that could

be used for nesting and foraging by the snowy plover. The Commission therefore concludes that because OHV use during the nesting season is incompatible with plover habitat restoration plans and plover management actions contained in the IMP, the project as submitted is inconsistent with Section 30240 of the Coastal Act. Furthermore, in order for the Commission to find the IMP consistent with Section 30240 of the Coastal Act, the Commission is conditioning its concurrence as follows:

During the western snowy plover reproductive season, from March 1 through September 30, BLM will prohibit access of recreational vehicles to the waveslope. During this period vehicle use will be limited to commercial fishermen, tribal members, and mobility-impaired persons through a permit system.

In conclusion, the Commission finds that if modified in accordance with the Commission's conditional concurrence to restrict OHV use on the South Spit during the snowy plover nesting season, the proposed IMP holds the potential to begin restoring what all interested parties acknowledge is the current poor state of snowy plover habitat and protection on the South Spit. If the plan is implemented and restrictions on visitor activities are monitored and enforced, environmentally sensitive dune and beach habitat critical to recovery of the snowy plover will be protected and restored. If the IMP fails to achieve its plover habitat goals, additional and immediate remedies will be available to the BLM and the Service under the terms of the Biological Opinion. If the measures are unsuccessful or not enforced, more severe near-term restrictions on existing recreational activities, particularly OHV use, on the South Spit may be necessary. The BLM will make a formal report to the Commission on the effectiveness of the enforcement and monitoring program after the first year of the IMP. Therefore, with these considerations, the Commission concludes that if modified in accordance with the Commission's conditional concurrence, the proposed IMP will protect environmentally sensitive habitat on the South Spit, will not lead to further adverse effects on currently degraded snowy plover habitat on the South Spit, will restrict recreational activities and other uses not dependent on existing and potential plover habitat, and is consistent with the environmentally sensitive habitat policies (Section 30240) of the Coastal Act.

B. Public Access and Recreation. The Coastal Act provides the following:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

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

Section 30212

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

- (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
- (2) Adequate access exists nearby*

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred....

Section 30214

(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. . . .*

Section 30220

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

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223

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

1. **Background.** The South Spit of Humboldt Bay has long provided local residents and visitors a wide range of unmanaged recreational activities, including fishing, clamming, birdwatching, camping, picnicking, surfing, and off-highway vehicle (OHV) use (**Exhibit 5**). However, the establishment of long-term homeless encampments and increasing illegal activities in the late 1980s began to adversely affect public access and recreation, wetland and dune resources, wildlife, endangered species habitat, and numerous cultural resources of the Wiyot people on the South Spit. In September 1996, Senate Bill 39 (Thompson)(**Exhibit 6**) was signed into law and called for the preparation of a management plan for the South Spit by the State Coastal Conservancy; the plan was submitted to the Legislature in October 1997. This legislation also authorized the State Wildlife Conservation Board and the Conservancy to acquire privately-owned properties on the South Spit after the illegal encampments, debris, and other environmental hazards were removed by those property owners.

In September 1997, the Humboldt County Health Officer issued an evacuation order for the South Spit in response to an outbreak of Shigella (an acute infection of the intestine; also known as bacillary dysentery) and diminishing health conditions. According to the Coastal Conservancy, approximately 300 people (including perhaps 80 children) were living in a high density situation without sewage disposal, running water, or trash disposal. The County initiated a relocation effort to assist campers with housing, health, and social services. In November 1997 the County Environmental Services Department began site clean-up efforts with funding assistance from the California Integrated Waste Management Board. Over 320 tons of solid waste and household materials were removed, not including an additional 150 vehicles and 2,000 tires. The BLM stated that serious crimes were reported during this time frame, and as late as spring 2002 BLM and the Humboldt County Sheriff's Office were involved in a homicide investigation on the South Spit.

The vast majority of the South Spit is now in public ownership. In May 2001 the Conservancy authorized a \$500,000 grant to the Redwood Community Action Agency (RCAA) for resource enhancement and public access projects on the South Spit consistent with the Conservancy's management plan. Those funds will now be used to implement the BLM's Interim Management Plan, which developed in part from the Conservancy's plan and the project development work of the RCAA. The proposed nighttime closure of the South Spit (from one hour after sunset to one

hour before sunrise) during the three-year interim management period arises from the historic and ongoing pattern of illegal activities that endanger public safety, natural resources, and cultural resources on the South Spit, and from the direction provided in SB 39 that management of the South Spit include, but not be limited to, the following minimum standards:

(a) *The property shall have controlled access.*

...

(e) *Uses shall be strictly limited and controlled, consistent with habitat requirements, public safety, and maintenance of public facilities, including the public jetty. . . .*

2. Existing Access and Recreation. The BLM's South Spit Interim Management Plan examines the existing public access and recreation resources available on the South Spit:

The South Spit is currently accessible to the public. Access is limited to individuals who have purchased a key that opens a locked gate located on Table Bluff County Park. Several thousand keys have been issued since the gate was installed. It is often left open, allowing visitors without keys to access the area. Other existing facilities are limited to two information kiosks at the bottom of the hill on county park property, and several signs placed along South Jetty Road, the northern boundary to the Eel River Wildlife Area, and at the jetty. The access road is partially paved and graveled, and numerous potholes exist. Over 25 graveled turnouts exist at various locations on the west side of the road. Nearly 20 undeveloped access routes extend from the east side of the road out to the bayshore. The Army Corps of Engineers has stored some large rocks at the jetty area that are surrounded by a chain link fence.

The area is used for many recreational activities involving the consumptive and non-consumptive use of wildlife. Birdwatching, brant, duck, snipe, and coot hunting, clamming in the bay and on the beach, fishing for surf perch and surf smelt off the beach, and bottom fish and salmon off the jetty are the major uses of wildlife on the spit. The spit is also used for commercial fishing for surf perch and surf smelt. Other existing recreation activities include hiking, sightseeing, picnicking, surfing, and off-highway vehicle (OHV) use. Much of the current OHV activity occurs in the dunes and near the bayshore, which are designated closed to vehicle use. Total annual recreation use is estimated at 25,000 visits. Firewood cutting of driftwood is a popular non-recreation activity that occurs frequently.

Law enforcement patrols now occur on a weekly basis by both BLM Law Enforcement Ranger and Humboldt County sheriff deputies. DFG wardens and FWS Law Enforcement Ranger patrol the area occasionally. . . .

3. Proposed Access and Recreation Plan. As noted above in the project description section of this report, BLM's proposed South Spit Interim Management Plan (IMP) includes numerous public access and recreation elements on the South Spit (**Exhibits 7-10**). The South Spit is currently accessible to the public with a number of improved and unimproved recreational

facilities and amenities located along the spit. Implementation of the proposed IMP will lead to the development of numerous access and recreational facilities to serve the general public while at the same time providing new means to protect some of the environmentally sensitive natural resources that are currently adversely affected by uncontrolled access and recreation:

- The interim plan proposes to provide unrestricted, maximum public access via South Jetty Road during daytime hours (one hour before sunrise to one hour past sunset). Various directional and informational signs would be conspicuously posted along roads leading to the South Spit.
- A variety of recreational opportunities would be provided, including hiking, beachcombing, picnicking, surfing, vehicle access to the waveslope, surf fishing and fishing off the jetty, boating, wildlife viewing, sightseeing, and waterfowl hunting.
- Recreational facilities would be distributed throughout the area to mitigate the impacts, social or otherwise, of overcrowding or overuse by the public of any single area.
- Specific restrictions on visitor use activities would be enforced near snowy plover protection areas.

For the most part, the proposed access and recreation improvements contained in the IMP are consistent with and further the public access and recreation policies of the Coastal Act. However, the most challenging element of the IMP, from the perspective of Coastal Act access and resource protection policies, is the provision for continued off-highway vehicle (OHV) access to and use of the waveslope (except for the 3,000-foot-long reach fronting the snowy plover protection area, which will be closed during the March 1 through September 15 nesting season).

Over the past twenty years the Commission has reviewed numerous OHV activities on the shoreline through its actions on coastal development permits, LCPs, and federal consistency determinations. The Commission has approved, denied, and modified existing and newly-proposed OHV uses, basing its decisions on the particular resource issues present at each site. A brief summary of these Commission actions (arranged geographically north to south) is provided below:

Redwood National Park (Del Norte Co.)

Concurred with consistency determination CD-011-00 from the National Park Service on March 14, 2000, for a General Management Plan that included prohibiting all existing OHV use in the park, except OHV use essential to provide access for permitted commercial surf fishermen at Freshwater Spit near Orick. Due to legislative provisions establishing the park, this use will be phased out over a twenty-year period rather than eliminated immediately. Permits issued between March 1996 and September 1999 will be renewed. No new permits will be issued and permits not renewed will be terminated.

Humboldt County

Certified LCP Amendment No. 1-93 from Humboldt County on December 13, 1993, which incorporated certain provisions of the County's Beach and Dunes Management Plan into the LCP. This amendment in relevant part provided for an expanded area for OHV use on the North Spit of Humboldt Bay (north of the BLM Samoa Dunes Recreation Area), and added an ordinance to the Implementation Plan limiting motor vehicle use to the aforementioned BLM and expansion sites, and along the waveslope of the South Spit. The ordinance established a vehicle-free zone throughout the rest of the County's beach and dune area (a 26-mile-long stretch of coastline north and south of the mouth of Humboldt Bay) with exceptions for handicapped access, seniors, emergency search and rescue, licensed commercial beach fishermen, and by special permit. Notwithstanding the above exceptions, all vehicle use is prohibited during the snowy plover nesting season at any posted site on the South Spit that the County Planning Director determines, after consultation with the U.S. Fish and Wildlife Service, is needed to protect the seasonal nesting area of the endangered snowy plover.

Little River State Beach (Humboldt Co.)

Approved CDP 1-99-073 from the California Department of Parks and Recreation on September 13, 2001, for installation of "No Vehicle" signs along the north and south property boundaries of Little River State Beach to enforce the existing prohibition of vehicle use on the beach for the protection of western snowy plover habitat.

Samoa Peninsula (Humboldt Co.)

Concurred with consistency determination CD-027-82 from the Bureau of Land Management on February 11, 1983, for creation of the Samoa Dunes OHV Recreation Area on the Samoa Peninsula, Humboldt Bay. OHV use was authorized on 330 acres of disturbed dune habitat and separated from sensitive habitat by fencing and barriers.

Approved CDP 1-98-067 from the City of Eureka and the Bureau of Land Management on October 16, 1998, for OHV use for two years on the 75-acre North Spit Foredune area (adjacent to the BLM Samoa Dunes OHV area), installation of fencing, and provision of law enforcement and monitoring activities.

Approved CDP 1-00-047 from the City of Eureka and the Bureau of Land Management on January 12, 2001, for reauthorization of OHV use for five years on the 75-acre North Spit Foredune area, expand fencing to protect sensitive habitat, and trail maintenance.

Concurred with negative determination ND-113-94 from the Bureau of Land Management on January 10, 1995, for closing the Samoa Dunes OHV Recreation Area to vehicular access ½ hour after sunset to one hour before sunrise, closing the Manila Dunes area to all vehicular access, and restoring habitat at Manila Dunes. The Samoa Dunes vehicle access closure was necessary to reduce the amount of criminal activity (including vandalism, theft, drug use and sales, and rape) occurring within this area at night and to protect public safety.

Black Sands Beach (Kings Range National Conservation Area; Humboldt Co.)

Concurred with consistency determination CD-144-97 from the Bureau of Land Management on July 9, 1998, for prohibition of OHV use at Black Sands Beach (north of Shelter Cove) in order to reduce conflicts between OHV users and other users of the beach, and to manage the entire area as a primitive, backcountry recreation area. Prior to this closure, the entire area surrounding Black Sands Beach was managed for primitive recreation, except for the 3.5 miles of beach open to OHV use. The closure now provides for consistent management of natural resources in this area.

Oceano Dunes State Vehicular Recreation Area (San Luis Obispo Co.)

Approved CDP 4-82-300-A5 from the California Department of Parks and Recreation on February 14, 2001, for instituting interim OHV vehicle use limits and establishing an interagency Technical Review Team (TRT). Oceano Dunes is a complex ecological system that also supports a variety of recreational activities pursuant to DPR's legislative mandate. The TRT would be part of an adaptive management process that oversees on-going monitoring of both environmental and use trends in the park for the purpose of supporting decision-making about such things as total day and overnight use in the park. This approach provides a procedural framework for responding to changing environmental conditions and increases the likelihood for overall success of management activities.

Currently, OHV use is prohibited in the dunes of the South Spit and along the bayshore east of South Jetty Road in order to protect environmentally sensitive habitat in these areas. This arises in part from Humboldt County LCP policies that restrict OHV use to the waveslope of the South Spit, with some exceptions to allow commercial fishermen, handicapped persons, senior citizens, search and rescue teams, and others by special permit to ride within otherwise restricted areas, except during the snowy plover nesting season. Despite the current prohibition, the BLM reports in the IMP that "much of the current OHV activity occurs in the dunes and near the bayshore" and additionally notes that existing enforcement of the OHV access restrictions is less than adequate:

Law enforcement patrols now occur on a weekly basis by both the BLM Law Enforcement Ranger and Humboldt County sheriff deputies. DFG wardens and USFWS Law Enforcement Ranger patrol the area occasionally.

The proposed IMP will prohibit all OHV use anywhere in the South Spit dunes except within the four access corridors connecting South Jetty Road and the waveslope. In order to enforce this OHV restriction and other regulations governing activities on the South Spit, the BLM entered into a Memorandum of Understanding (MOU) with the California Department of Fish and Game, U.S. Fish and Wildlife Service, and Humboldt County Sheriff's Office to implement the law enforcement portion of the South Spit IMP. The BLM incorporated the MOU into the IMP and the subject consistency determination. The *Purpose* section of the MOU states in part that:

... provides a coordinated approach and active enforcement presence for implementing the law enforcement portion of the South Spit Interim Management Plan. The MOU signifies an extensive commitment of federal, state, and local agencies to ensure that an adequate level of law enforcement presence and documentation is provided on the South Spit to protect the area's natural resources, visitors, and facilities. . .

Additional personnel, outside the Law Enforcement MOU, will have responsibilities and a daily/weekly presence on the South Spit. Such positions include an on-the-ground presence plover monitoring during the plover nesting season. Biologists, caretaker, maintenance worker, and visitor service personnel, et. will also be committed to ensure the protection of natural resources as well as visitor information and safety.

A copy of the Law Enforcement MOU is provided in **Exhibit 11**. In summary, the MOU provides that:

- BLM will patrol the area a minimum of two days per week, one of which is on the weekend. During holiday weekends, the BLM will ensure law enforcement personnel are on-site each day. The amount of time spent each day patrolling the South Spit by the BLM (and CDFG, USFWS, and HCSO) will be commensurate with the amount, type, and degree of visitor use activity and its proximity to snowy plover protection area. A central file of all incidents, citations, warnings, and other law enforcement documents will be kept at the local BLM office and updated every month. The BLM Law Enforcement Ranger will compile on a monthly basis all law enforcement incidents documented by other agency personnel.
- The U.S. Fish and Wildlife Service will provide on-the-ground law enforcement presence at the South Spit a minimum of one day per week during waterfowl hunting season (October-January). Throughout the year, the FWS Law Enforcement Officer will be available to help respond in case of law enforcement related emergencies or to snowy plover related incidents as much as possible.
- California Department of Fish and Game will provide an on-the-ground law enforcement presence at South Spit a minimum of two days per week, one of which is on the weekend.
- The Humboldt County Sheriff's Office will provide an on-the-ground law enforcement presence at South Spit a minimum of one day per week.
- All documented enforcement incidents will be reported by USFWS, CDFG, and HCSO to the BLM once every month.
- All incidents specific to snowy plover management will be reported by USFWS, CDFG, and HCSO immediately to the BLM.
- Semi-annual and annual law enforcement summary reports will be prepared and submitted by BLM to all interested agencies, organizations, and individuals upon request.

The summary reports will be submitted by BLM to the Coastal Commission on an annual basis.

- All parties to the MOU will meet on a semi-annual basis to discuss ongoing law enforcement issues and concerns of the South Spit.
- The MOU runs through September 30, 2008, unless terminated by any party upon thirty days written notice to the others. The MOU may be renewed and extended for periods of time not to exceed five years. It may be revised by a written amendment, signed and dated by all parties.

The consistency determination addresses OHV use on the South Spit:

The BLM considered but dismissed the option of restricting or prohibiting vehicle access along the waveslope in this EA. The Humboldt County Beach and Dunes Management Plan, 1995 and the South Spit Management Plan, 1997 both recognized waveslope access for vehicles. The California Coastal Commission has also concurred with this use by approving Amendment No. 1-93 of Humboldt County's Local Coastal Program to allow vehicle access to the waveslope. Any recommended change in vehicle designations or use would not be consistent with County Planning and possibly require changing certain County ordinances in order to implement or enforce a vehicle designation change. Furthermore, the BLM's policy is to design plans and management objectives to conform with local government planning whenever possible.

The IMP provides for maintaining OHV access to and use of the waveslope but restricts to four the number of access routes from South Jetty Road to the waveslope, continues the prohibition of OHV use in the dunes of the South Spit and along the bayshore east of South Jetty Road, prohibits OHV use in and adjacent to snowy plover nesting and protection areas, includes a new prohibition against OHV use of the waveslope in front of the designated snowy plover protection area at the north end of the South Spit, and includes a commitment for additional enforcement of OHV restrictions on the South Spit:

- Designated vehicle access corridors will provide access to the waveslope. In accordance with county ordinances for the South Spit and Table Bluff County Park, vehicles will be allowed on the waveslope with a speed limit of 15 miles per hour.
- Law enforcement efforts will be implemented under a cooperative program between BLM, FWS, DFG, and HCSO. Patrols will occur at a minimum of five days per week with two of the days being on the weekend.
- Four vehicle access corridors will be provided for vehicle access to the waveslope. The two corridors along South Jetty Road will be delineated by post and cable barriers. The other two are located at each end of the spit where multiple use parking and picnic areas will be developed. The southern access corridor will be delineated using driftwood logs. The northern access corridor will require signing only, as the corridor is easily

recognizable. An alternate vehicle corridor will be developed and used only if one of the other two sites needs to be closed for reasons associated with the snowy plover. Signs will be displayed on these corridors to inform visitors these are the only routes to the beach and all other unsigned routes are closed, about potential difficulties while traveling at high tides, and that non-street legal ATV and motorcycle riders need to use the same route to and from the beach to avoid driving on South Jetty Road.

- Vehicle access routes extending to the bayshore from the east side of South Jetty Road will be left undeveloped. Vehicle use on nine of these short access routes will be allowed only for loading and unloading supplies during waterfowl hunting season (October – January). During the remainder of the year these routes and surrounding lands will be closed to all vehicle use. Several existing corridors will be physically blocked using driftwood logs to prevent further vehicle use. To facilitate the access routes on the east side, 11 existing turnouts will be improved. The turnouts are located along South Jetty Road and will eliminate parking near the bay side of the area.

Additional details on the OHV restrictions associated with snowy plover nesting and protection areas are provided in the Environmentally Sensitive Habitat section of this report (Section B).

Based on the information contained in the BLM's Interim Management Plan, Environmental Assessment, and Biological Assessment, it is clear that OHV users on the South Spit are not complying with existing regulations that restrict their use to the waveslope, and as a result, are adversely affecting biologically sensitive habitats and may be affecting other less intrusive recreational activities that take place on the South Spit. Compounding the problem is a lack of adequate enforcement of the existing OHV use regulations.

However, as noted above, the IMP includes provisions that could, with adequate monitoring and enforcement, reduce the existing level of conflict between uncontrolled OHV use and other recreational activities, habitat protection, and endangered species protection efforts. The Commission notes that the subject consistency determination is an *interim* management plan for a three-year period of time. A second consistency determination will be submitted at a later date for the *final* management plan. Now that the BLM is the management agency for the South Spit, it will have the responsibility for enforcing the existing and proposed OHV access and use restrictions. Increased enforcement by BLM and other law enforcement agencies of existing and proposed restrictions on OHV use is essential if the IMP is to have a reasonable chance to succeed in protecting sensitive habitat and providing for OHV users continued use of the South Spit waveslope.

Should it become clear during the three-year interim management plan period that the OHV provisions in the IMP failed to protect endangered species, environmentally sensitive habitat, and other recreational opportunities on the South Spit, the Commission will expect that the BLM will, during the development of the long-term management plan for the South Spit (and the preparation of the associated consistency determination), consider more restrictive OHV management alternatives (e.g., prohibition of all OHV use on the South Spit) as a means to eliminate adverse effects on coastal resources from OHV activities.

The Interim Management Plan concludes by noting that before South Spit is opened to the public for the recreational opportunities outlined in the IMP, numerous management actions and projects must first be implemented, including the following:

- Removal of potential hazardous waste.
- Site specific resource inventories for cultural resources, wildlife, and vegetation.
- Consultation with the Table Bluff Reservation.
- Installation of signs that provide information as well as interim management rules and regulations.
- Construction of vehicle access corridors and barriers.

4. Conclusion. The Commission finds that the proposed Interim Management Plan for the Humboldt Bay South Spit includes provisions for maintaining and improving opportunities for public access to and recreation use of the South Spit. Proposed interpretive, picnicking, and parking improvements adjacent to or near South Jetty Road will be sited and designed to protect views to and along the shoreline, and thus, the quality of the recreational experience. Proposed restrictions and controls on public access and recreation during the three-year life of the IMP are appropriate given the presence of endangered species and environmentally sensitive habitats in the dunes and along the bayshore. The access and recreation provisions of the IMP will be evaluated during the three-year plan period for their effectiveness in protecting recreational opportunities and natural resources. The multi-agency law enforcement MOU will ensure that natural resources and visitors will be protected. Should modifications or additional restrictions be necessary, such measures can be implemented by the BLM during the three-year interim period and/or incorporated into the final management plan to be developed by the BLM and reviewed by the Commission in a subsequent consistency determination for long-term management. In addition, the BLM will make a formal report to the Commission on the effectiveness of the enforcement and monitoring program after the first year of the IMP. The Commission therefore finds that the IMP is consistent with the public access and recreation policies (Sections 30210-14 and 30220-23) of the Coastal Act.

C. Cultural Resources. The Coastal Act provides the following:

Section 30244

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The IMP documents the cultural and Native American heritage present on and adjacent to the South Spit:

The Humboldt Bay region including the South Spit has been occupied for at least the last 1,500 years by Algonquian speaking people now referred to as Wiyot. Descendants of these people, the Wiyot Tribe, now reside at Table Bluff Reservation [south of the spit] and other places in Humboldt County. An early ethnographer, Llewellyn L. Loud, collected information from surviving Wiyot informants about the ethnogeography and archaeology of the Humboldt bay area in 1913; his report was published in 1918. Loud listed two modern village sites and five archaeological village sites on the South Spit plus a trail system connecting the southernmost site to Table Bluff where many more occupation sites were located. The South Spit was not occupied to the density of other areas around the Bay; Loud suggests the Wiyot favored the upper bluffs and hillsides with their forests and less harsh environment as opposed to the South Spit's unprotected, low-lying open dunes and marshy bayside (Loud 1918:277). The present-day Wiyot Tribe feel a strong connection to the South Spit as part of their aboriginal territory, and it has a great significance to them as part of their heritage and is still used for hunting, fishing, and gathering shellfish and vegetal resources. There are also reported sensitive Tribal Areas.

. . . an intensive Class III archaeological and cultural survey is presently underway on the South Spit by cultural resources staff from Table Bluff reservation – Wiyot Tribe and the BLM. One proto-historic site, 8 prehistoric sites, and one prehistoric Isolate, ten historic period sites, and one historic isolate have now been identified on the South Spit and site records are presently being prepared. It is expected that several more such sites will be recorded when the cultural survey of the remaining acreage is completed.

As noted in the project description (Section 1) of this report, the IMP outlines a number of actions to be undertaken by the BLM to protect cultural resources present across the South Spit. The IMP also addresses how cultural resources will be protected during project implementation:

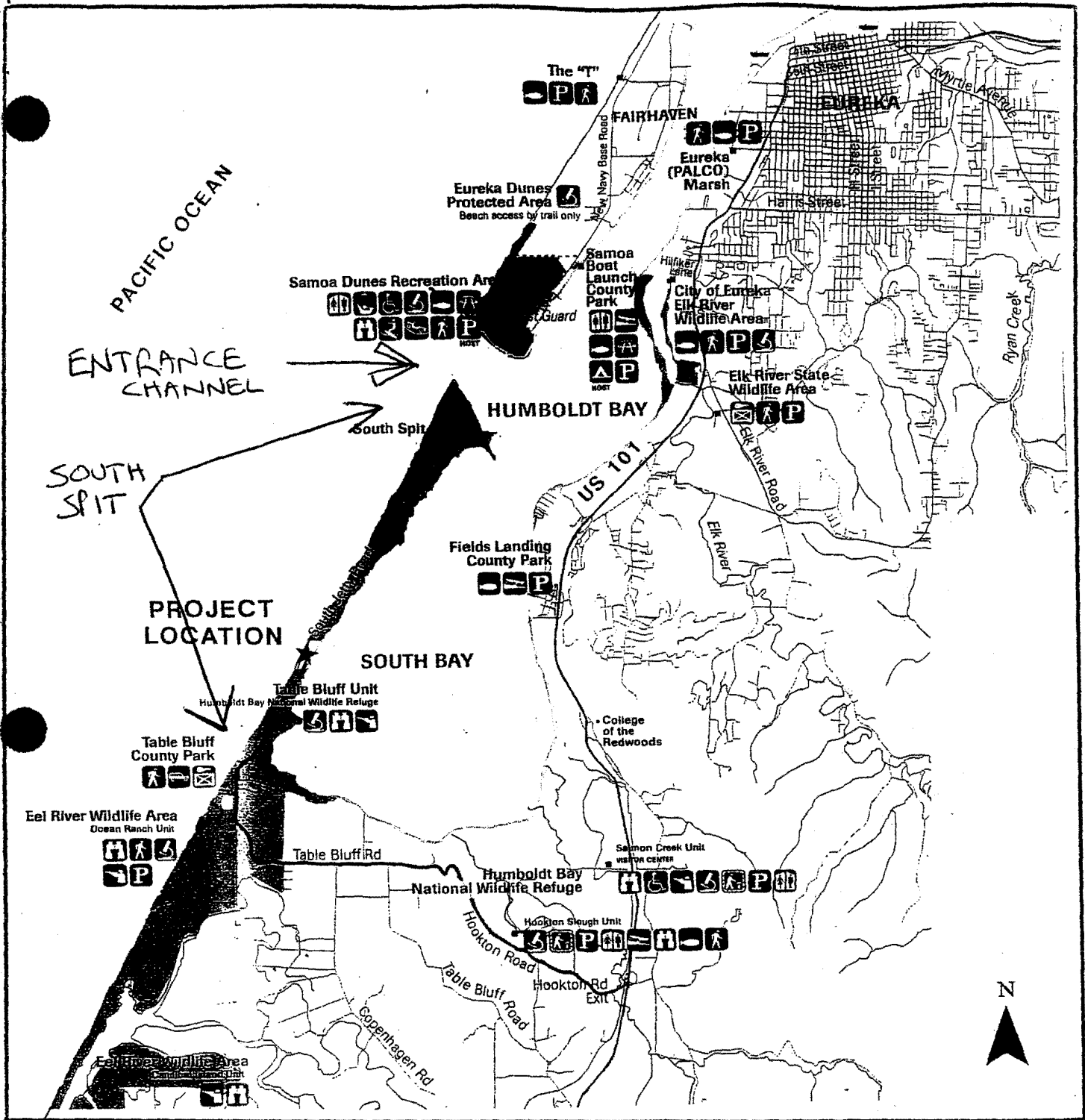
During the interim management period, comprehensive archaeological surveys including subsurface test excavations in suspect areas are necessary to ensure any and all cultural resources are located, recorded, evaluated, and protected from facility developments and recreation use. Table Bluff Reservation – Wiyot Tribe will be contacted and given the opportunity to review the proposed interim management planning effort and share their ideas. Wiyot representatives will be included in all aspects of archaeological survey, monitoring, and test excavations. A Class III archaeological survey of the entire South Spit will be completed with participation by Wiyot tribe representatives and a comprehensive report prepared. The survey report will be used in developing long-term management plans.

The development of graveled parking areas, vehicle access routes, two restrooms, and placement of information kiosks and other signs will only be done in conjunction with an intensive archaeological survey of the proposed sites where ground disturbing activities will occur. Special attention will be paid to the area adjacent to the northeast area of the South Spit near the sea wall and the old wharf remains to prevent disturbance to the burial grounds located somewhere in the vicinity. An archaeologist will be present to monitor every ground disturbing action to ensure that no cultural resources are disturbed. A Wiyot

tribal representative should also be present if so desired by Table Bluff Reservation Tribal officials.

The pre-construction archaeological survey of the South Spit, the presence of qualified archaeologists during all ground disturbing activities that may occur during the three-year interim management plan period, the coordination with and participation by Wiyot Tribe representatives in surveys, monitoring, and excavations, and the incorporation of the archaeological survey into the development of the long-term management plan for the South Spit are key elements of the IMP. A letter from the Table Bluff Reservation-Wiyot Tribe supporting the IMP is provided in **Exhibit 12**. Therefore, the Commission finds that the IMP will not adversely affect cultural resources on the South Spit and is consistent with the archaeological and paleontological resource policies (Section 30244) of the Coastal Act.

D. South Jetty Road Revetment. While the primary focus of the IMP is on natural resource protection and public use of the upland environment of the South Spit, the IMP also includes a proposed rock revetment along a 100-foot-long section of South Jetty Road and that structure holds the potential to affect the marine environment of Humboldt Bay. However, the BLM decided to not include the proposed revetment in the subject consistency determination because a plan to mitigate the revetment's adverse effects on intertidal mudflats is not yet complete. As a result, the BLM will submit to the Commission at a later date a second consistency determination for the road revetment and mitigation plan. At that time the Commission will review the revetment for consistency with the allowable use, alternatives, and mitigation policies of the Coastal Act.



BUREAU OF LAND MANAGEMENT

South Jetty Road Revetment

Figure 1 - Vicinity Map



EXHIBIT NO. 1
APPLICATION NO.
CD-052-02
California Coastal Commission

SOUTH SPIT MANAGEMENT AREA

MAP A

LEGEND

- ★ Parking Area
- == Vehicle Corridor
- Picnic Area

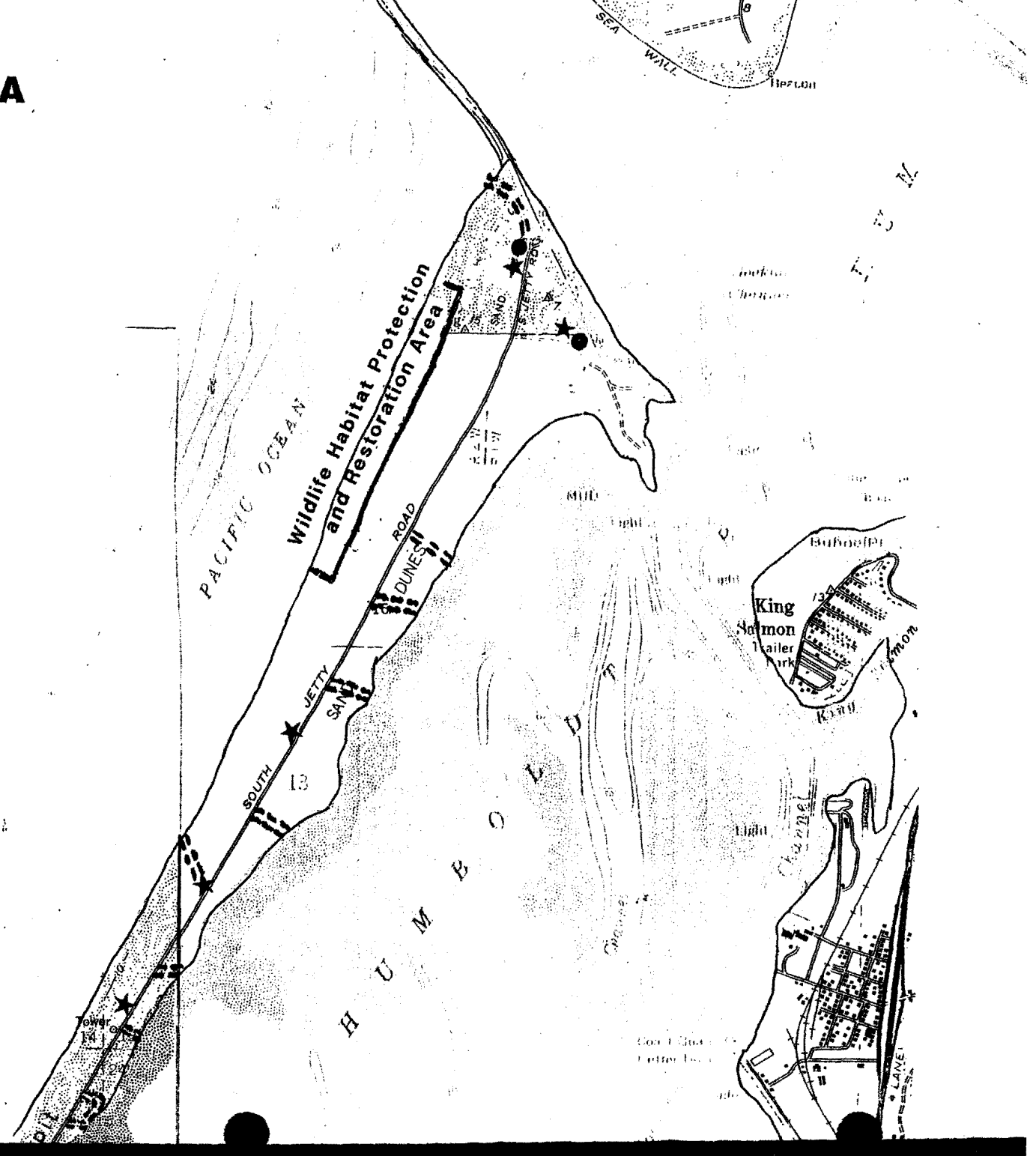
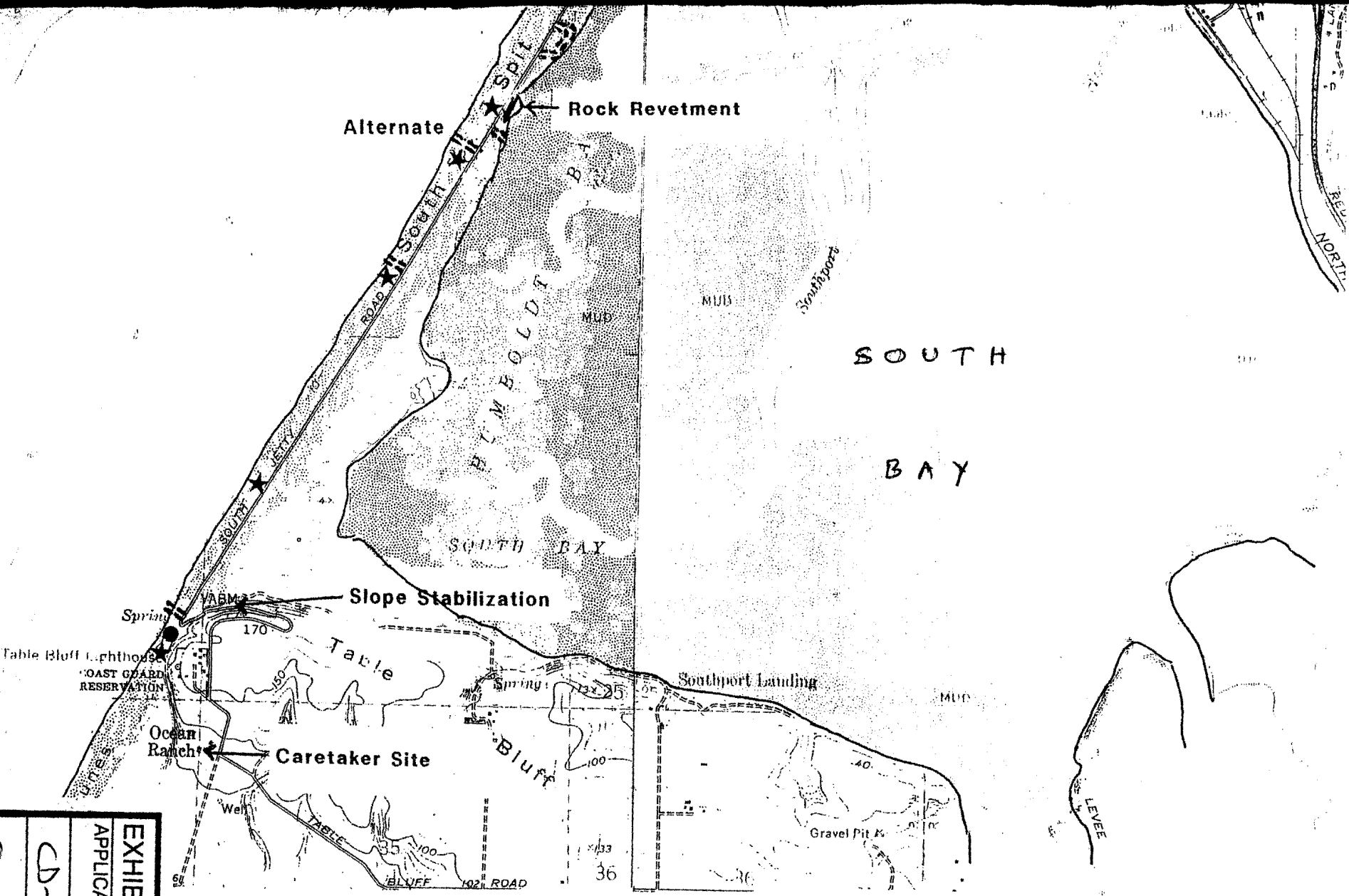


	EXHIBIT NO. 2
	APPLICATION NO. SOUTH
CD-052-02	

California Coastal Commission



Alternate **Rock Revetment**

SOUTH
BAY

Slope Stabilization

Caretaker Site

Table Bluff Lighthouse
COAST GUARD
RESERVATION

Southport Landing

Gravel Pit #1

	EXHIBIT NO.
	APPLICATION NO.
CD-052-6	50



INTERIM MANAGEMENT ACTIONS

This interim planning document is intended to disclose the full range of management actions anticipated to occur prior to completion of the long-term management plan. It is the intent to manage the South Spit under an interim strategy that does not foreclose future options for management or commit resources in a manner that would jeopardize potential alternatives in future planning.

This interim management plan provides a starting point for management of the South Spit that includes the initial period of implementation of protection measures and use restrictions. Management is anticipated to be fluid and adaptive, detecting changing resource conditions, management successes and failures, public and wildlife responses to management and use levels, and quickly responding with improved management practices. The interim plan provides a management scenario that will establish a baseline of information over a two to three period against which subsequent planning can be based.

Recreation Opportunities

Interim management provides for a variety of recreational opportunities that recognize present as well as historical activities on the South Spit. Recreational uses will include day use activities such as fishing, clamming, picnicking, sightseeing, beachcombing, hiking, horseback riding, wildlife viewing, and waterfowl, snipe and coot hunting. Vehicle access to the waveslope will be allowed for recreation uses and commercial fishing. Rules guiding some of these activities include:

1. The area will be open to day use only, with no nighttime general public use allowed. The entrance gate will be opened one hour before sunrise and closed one hour after sunset. Open hours will be extended during waterfowl hunting season (October - January);
2. Designated vehicle access corridors will provide access to the waveslope. In accordance with county ordinances for the South Spit and Table Bluff County Park, vehicles will be allowed on the waveslope with a speed limit of 15 miles per hour;
3. All public uses within a designated plover protection area during the nesting season are not allowed. The following restrictions apply to waveslope activities adjacent to fenced and posted plover nesting, temporary brooding, and seasonal habitat protection areas:
 - a) Dogs must be leashed
 - b) No kites or model airplanes
 - c) No campfires

No waveslope activity restrictions apply to the temporary wintering protection areas. Plover protection areas are described in detail beginning on page 16 under "Plover Protection Actions";

4. Dogs must be under the owner's control at all times. Owners must carry a leash. See #3 for use restriction;

EXHIBIT NO.
APPLICATION NO.
CD-052-02

5. Equestrian use is provided for on the west side of South Jetty Road;
6. Firewood cutting is allowed by permit from September 16th to March 1st;
7. Firearms (shotguns only) are only allowed for hunting of waterfowl, snipe, and coot;
8. Target shooting is not allowed (includes bow and arrows);
9. Fireworks are not allowed.
10. If fish are cleaned on the South Spit, then all entrails shall be carried off-site, or buried a minimum of 12 inches deep, or wrapped and disposed of in a proper receptacle: but in no case shall the entrails be left lying open on the beach.

A brochure and map will be developed and include information about the area's historic and cultural values, recreational opportunities, endangered plants and animals, restoration efforts, and will provide rules and regulations.

In cooperation with Humboldt State University, a visitor survey will be conducted to gather information about preferred recreation activities, how people would like the area to be managed, perceived problems and user conflicts, and visitor demographics. The survey would involve a questionnaire and possibly a telephone poll sampling of Humboldt County residents. A traffic counter will be installed at the entrance gate to document overall visitor use.

Law enforcement efforts will be implemented under a cooperative program between BLM, FWS, DFG, and HCSO. BLM patrols will occur at a minimum of two days per week with one of the days being on the weekend. Patrol summaries and incident reports will be prepared annually.

Special events held during the plover use periods will require a separate consultation under Section 7 of the Endangered Species Act.

A Memorandum of Understanding (MOU) between the BLM, Humboldt County, and DFG will be developed to provide consistency with visitor management rules and regulations.

Commercial Uses

Commercial fishing will be allowed under a special use permit, by BLM, for hours outside of the day use period.

Facility Developments

1. Caretaker Site: A volunteer resident caretaker will open and close the entrance gate, provide information to visitors, and perform light maintenance duties. The preferred site is located on DFG property just south of Lighthouse Ranch. The site will include a graveled access route to a graveled pad. The site will also include a storage shed, developed drinking water well,

electricity and telephone service, and a septic tank with leach field.

2. Parking Areas and Access Routes: Eight existing graveled parking areas on the west side of the road will be improved; one for multiple uses at the southern end on County Park property, six at intervals along South Jetty Road, and one multiple use parking area at the north end next to the jetty (See Map A for locations). The north and south sites will each have a single vault restroom, picnic tables, trash receptacles, and an information kiosk.

Each of the parking areas along South Jetty Road will be expanded and graveled to accommodate at least four vehicles, and delineated by a post and cable barrier or driftwood logs. Three will be designated for pedestrian parking, two for vehicle access to the waveslope, and one for a combination of both.

Four vehicle access corridors will be provided for vehicle access to the waveslope. The two corridors along South Jetty Road will be delineated by post and cable barriers. The other two are located at each end of the spit where multiple use parking and picnic areas will be developed. The southern access corridor will be delineated using driftwood logs. The northern access corridor will require signing only, as the corridor is easily recognizable. An alternate vehicle corridor will be developed and used only if one of the other two sites needs to be closed for reasons associated with the snowy plover. Signs will be displayed on these corridors to inform visitors these are the only routes to the beach and all other unsigned routes are closed, and about potential difficulties while traveling at high tides, and that non-street legal ATV and motorcycle riders need to use the same route to and from the beach to avoid driving on South Jetty Road.

Vehicle access routes extending to the bayshore from the east side of South Jetty Road will be left undeveloped. Vehicle use on nine of these short access routes will be allowed only for loading and unloading supplies during waterfowl hunting season (October - January). During the remainder of the year these routes and surrounding lands will be closed to all vehicle use. Several existing corridors will be physically blocked using driftwood logs to prevent further vehicle use. To facilitate the access routes on the east side, 11 existing turnouts will be improved. The turnouts are located along South Jetty Road and will eliminate parking near the bay side of the area.

An area will be located at the northeastern corner of the management area on the north side of the spur road for small watercraft launching, picnicking, beachcombing, and wildlife viewing. This area will be developed as a picnic site, with tables, cooking grills, and trash receptacles. The spur road beyond this site will be closed to vehicle use to protect a cultural and wildlife sensitive area. An existing four wheel-drive access route paralleling the sea wall will connect the picnic site to the jetty parking area. This route is used heavily by fishermen and will continue to be open to street legal vehicles.

3. South Jetty Road: This road will be repaired and improved by scarifying the base course of the road, re-compacting, and repaving areas where large potholes have formed. Portions of the road will be graveled and graded. As funding allows, a short 100-foot section of road will be ripped and re-paved along the eastern edge to prevent erosion. The spur road leading to the proposed picnic site mentioned above will be graveled and graded. Traffic calming techniques

such as speed bumps may be installed. Roads will be maintained as necessary during interim management. The speed limit will be 25 miles per hour and open for street legal vehicles only.

A small section of road on County property has been impacted by erosion from the bluff above. The gully will be stabilized by constructing terraces and re-vegetating the area.

4. Signing: A variety of informational, educational, directional, and regulatory signs will be developed and installed. The information kiosks will display interpretive themes related to endangered plants and animals, and historical and cultural resource values. Information on types and locations of the various recreation activities will also be provided along with warning signs that beach areas in front of plover nest protection fences may not be passable during high tide. Adjacent to each kiosk will be a sign displaying the rules and regulations for the area. Many of the existing signs will be replaced with new ones that are more attractive looking. A sign plan with specific wording will be developed cooperatively between the Redwood Community Action Agency (RCAA) and BLM.

All facilities (including signs) will be designed to prevent, as much as reasonable possible, use as predator perches. All trash receptacles will be scavenger proof and emptied as necessary to prevent corvids from being attracted to these areas.

Prior to allowing public use of the area, two small piles of earthen materials containing potentially hazardous waste will be removed from the area. These sites are located near the proposed northernmost parking and picnic area adjacent to the jetty.

To provide for public safety and enhance the scenic quality at the jetty area, the chain link fence surrounding the large rocks that were stockpiled for jetty maintenance will either be removed or repaired.

Cultural Resources

During the interim management period, comprehensive archaeological surveys including subsurface test excavations in suspect areas are necessary to ensure any and all cultural resources are located, recorded, evaluated, and protected from facility developments and recreation use. Table Bluff Reservation - Wiyot Tribe will be contacted and given the opportunity to review the proposed interim management planning effort and share their ideas. Wiyot representatives will be included in all aspects of archaeological survey, monitoring, and test excavations. A Class III archaeological survey of the entire South Spit will be completed with participation by Wiyot tribe representatives and a comprehensive report prepared. The survey report will be used in developing long-term management plans.

The preferred location for the caretaker site on DFG lands coincides with the archaeological and historic house ruins and barn site that dates back to 1855. Some historic evaluation of this property has been done by Susie Van Kirk (1998) for the California Department of Fish and Game, however, no archaeological site records were prepared nor was a prehistoric survey conducted. An intensive archaeological survey of this area and complete recordation of the historic resources must take place before any ground disturbing activity occurs under interim

management. Evaluation of the historic resources and recommendations for their treatment will be included in the report to assist in proper long-term management of the area.

The development of graveled parking areas, vehicle access routes, two restrooms, and placement of information kiosks and other signs will only be done in conjunction with an intensive archaeological survey of the proposed sites where ground disturbing activities will occur. Special attention will be paid to the area adjacent to the northeast area of the South Spit near the sea wall and the old wharf remains to prevent disturbance to the burial grounds located somewhere in the vicinity. An archaeologist will be present to monitor every ground disturbing action to ensure that no cultural resources are disturbed. A Wiyot tribal representative should also be present if so desired by Table Bluff Reservation Tribal officials.

An Agreement will be developed jointly between the BLM Arcata Field Office and Table Bluff Reservation - Wiyot Tribe wherein tribal members will be given the free use of the South Spit for their traditional use and gathering of resources. These activities will include the following: surf fishing, clamming, eeling, gathering seaweed, bay grass, firewood, mushrooms, berries, basketry materials such as hazel, and waterfowl hunting. A tentative seasonal gathering schedule will be developed but may vary according to annual fluctuation of resources. Tribal members utilizing the South Spit will carry and present identification upon request by BLM staff and other law enforcement officers.

Vegetation

Consistent with the 1998 *Recovery Plan for Seven Coastal Plants and the Myrtle's Siverspot Butterfly*, which includes recovery plans for both the Humboldt bay wallflower and beach layia, interim management of native plant habitats and areas of endangered species occupation will focus on prevention of native plant and habitat loss, and the restoration of native dune habitat. Restoration methods employed will consist of manual removal of weeds that threaten further degradation of suitable habitat. Driftwood barriers and/or post and cable fencing may be used to prevent and discourage chronic or high intensity human impacts by foot, horse, or vehicle disturbance in inappropriate and sensitive plant habitat areas.

The BLM will continue to work with the Wildlife Conservation Board toward the public acquisition of the Texaco property to better manage and conserve its valuable plant resources including the threatened populations of Humboldt Bay wallflower and rare salt marsh species. The property will be posted as private on its north and west boundaries to dissuade public trespass.

Vegetative types, and endangered and rare plant species populations will be mapped and monitored. The mapping will provide valuable recreation, restoration, and wildlife planning assistance. Habitat features valuable to wildlife, such as ephemeral wetlands, will be included in the mapping.

Monitoring will occur for beach layia on the South Spit to meet these objectives 1) to collect data to provide occupied habitat area for comparable use in the future, 2) to establish baseline population estimates with which to establish overall population trends in the future, and 3) to

observe habitat changes with respect to recreation impacts.

Monitoring for the Humboldt Bay wallflower may occur on the South Spit. If permission can be obtained from Texaco Inc. to enter private property, vegetative and reproductive individuals will be counted and the overall population photo-documented. The BLM is willing to participate with the USFWS and Texaco Inc. to develop and implement a conservation and restoration strategy for the South Spit population, particularly if the USFWS finds that this population is genetically unique to other Humboldt Bay populations. In the event that the BLM is not granted permission to monitor and enhance the wallflower population from Texaco Inc., then, the BLM will patrol the property boundaries to dissuade trespass.

Research proposals will be considered by an interagency research team during the interim management period. Proposals will be evaluated and approved based on the following criteria: 1) they cannot alter natural resource values; 2) they should not compete with other approved projects; and 3) they must contribute to the management and conservation of native populations and habitats on the South Spit.

The BLM recognizes that the South Spit provides geographical range suitable for the subsistence of endangered beach layia and Humboldt Bay wallflower. The immediate objective of the *Recovery Plan* "is to minimize the threats to the species and the habitats upon which they depend." The BLM will work in the interim to conserve these species and minimize threats by removing invasive weeds adjacent to existing threatened populations, managing types and levels of human use such that the species are not negatively impacted, and by working towards developing a conservation strategy by working collaboratively with the local FWS and interested parties during the long-term management planning process.

Wildlife

As a federal agency, the BLM is required to consult with the FWS as directed by the Endangered Species Act, as amended, and receive a biological opinion on the actions proposed in this draft interim plan. It is imperative that BLM modify this plan, as necessary, to comply with terms and conditions of the biological opinion to ensure that the continued existence of the western snowy plover is not jeopardized and that the plan would contribute to the recovery of the species. According to the FWS *Western Snowy Plover Pacific Coast Population Draft Recovery Plan* USDI (2001), the only federally administered land in the Northern California sub-population "Recovery Unit 2" that has documented recent plover nesting attempts, is the South Spit of Humboldt Bay.

1. Surveys and Monitoring

Conduct plover searches along the 4½ miles of the South Spit beach at least once per month during the winter to identify areas of use and numbers of birds and noting actions adversely impacting the birds. Coordinate with Humboldt State University (HSU) researchers (Colwell) and Humboldt County representatives to minimize overlaps and maximize efforts.

Conduct plover searches along the 4½ miles of the South Spit beach at least once per week during the nesting season. Make note of paired birds and nest scrapes and request nest protection

actions where appropriate. Monitor nest attempts, nest failures, presence of banded birds, brood numbers, brooding areas, brood failures, adult and brood harassment, and interaction with recreational activities. Record locations of bird activity and attempt to determine failures, abandonments, mortalities, and other incidents. Coordinate with HSU (Colwell) and Humboldt County representative to minimize overlaps and maximize efforts.

Monitor visitor compliance with rules guiding recreational activities and document non-compliance. Document acts of vandalism or tampering with temporary protective fencing or predator exclosures. Document observations of deliberate take of plovers or plover eggs. Coordinate with HSU researchers (Colwell) and Humboldt County representative to minimize overlaps and maximize efforts. All monitoring and protective actions will be conducted by people who hold a recovery permit that covers such actions.

2. Plover Protection Actions

Temporary Nest Protection Area

Upon verification of an active plover nest, a plover protection area will be closed to all recreational activity during the nesting season (3/1 to 9/15). The plover protection area will run along the beach, just above the seasonal high tide line, for a distance of 600 feet on each side of the nest, then proceed eastward to a line 200 feet inland from the nest. Temporary "symbolic" fencing will be erected to delineate the perimeter of the plover protection area. Preventive measures will be taken so as not to create additional perches for avian predators. The proposed plover protection area configuration is designed to:

- a) Protect nests from vehicle run-overs and still allow vehicle passage;
- b) Protect an area wide enough to make it difficult for predators or vandals to key in on the nest site;
- c) Provide a wide enough buffer from unleashed dogs and kite or model airplane types of disturbances;
- d) Protect an area deep enough to screen nesting plovers from activities in the back dunes without closing off a large area.

Temporary Brood Protection Area

If an area is discovered where one brood appears to be frequenting for one week, a plover protection area may be established which will be closed to all recreational activity until fledging. Temporary "symbolic fencing" will be erected, above the seasonal high tide line to delineate the concentrated use area of the broods and removed after birds fledge.

Seasonal Habitat Protection Area

In order to provide a dry-sand area of relatively disturbance-free habitat for plovers to initiate nesting activities, a seasonal (3/1 to 9/15) plover protection area will be established near the north end of the South Spit. The area will run from a point approximately 500 yards south of the Jetty for approximately 3,000 feet south along the beach at a level approximately 40 feet inland from the seasonal high tide line. The protection area will extend inland approximately 300 feet into the dunes creating a plover protection area of about 20 acres. The placement of the protection area at this location was chosen for several reasons. The site is toward the north end of the spit where visitor intensity is lower, but with a 500-yard buffer from the concentrated

fishing-sightseeing area at the jetty. The site is where wintering birds were observed in early 2002 and where a pair of plovers were seen as late as mid-April 2002. The beach is at its greatest distance from the access road and would potentially have the least amount of foot traffic by visitors. The site is located where the spit averages about one-half mile in width where plover habitat restoration actions could be implemented without potentially affecting the access road by sand movement. Temporary "symbolic" fencing will be erected to delineate the perimeter of the plover protection area. Preventive measures will be taken so as not to create additional perches for avian predators. The proposed plover protection area configuration is designed to:

- a) Protect nests from vehicle run-overs and still allow vehicle passage;
- b) Protect an area wide enough to make it difficult for predators or vandals to key in on the nest site;
- c) Provide a wide enough buffer from unleashed dogs and kite or model airplane types of disturbances;
- d) Protect an area deep enough to provide for the implementation of future habitat restoration activities.

Based on the recommendation of appropriate recovery permit holders, predator-proof exclosures will be constructed at nest sites after the departure of migrating merlins.

Temporary Wintering Protection Area

If an area is discovered where numerous plovers are wintering, a plover protection area may be established which will be closed to all recreational activity until the birds leave the area. A "picket line" of warning signs will be erected to delineate the concentrated use area and will be removed when the birds disburse.

3. Public Education and Enforcement

During the plover nesting season, an interpreter/maintenance person will update kiosk material, perform minor maintenance on fences and signs, and remove garbage which will otherwise be available for potential plover predators. This person will also be used to monitor visitor compliance with rules and document vandalism.

This interpreter/maintenance person will also erect informational and warning signs that will inform the public of plover resources and closure areas. The BLM will coordinate with other agencies to standardize plover signs as much as possible. This will serve to decrease public confusion over plover closures.

If plovers are present, additional staff will be on-site during high use periods (official opening of the area, holiday weekends of Memorial Day, Fourth of July and Labor Day), to act as interpretive/maintenance personnel to greet visitors at the South Spit entrance and to provide educational as well as current information on the presence of snowy plover nesting areas. Direct contact will assist in the visitor being well informed and able to watch for and avoid plovers on the beach.

4. Western Snowy Plover Habitat Restoration

As a part of the Interim Management Plan, a program of western snowy plover habitat restoration is planned. The program would provide an opportunity to increase suitable plover habitat by 80-150 percent over the existing situation.

The establishment of European beachgrass, ice plant and other invasive plants, have interrupted the functioning of natural systems on the spit, to the detriment of the western snowy plover. The stabilization of foredunes by beachgrass has eliminated low-gradient shifting dunes preferred by nesting plovers. The amount of suitable plover habitat available above the high tide line has dramatically narrowed to 30-50 acres. The remaining plover habitat is adjacent to a thatch of continuous vegetative ground cover convenient as ground predator ambush sites.

The most efficient and effective method for restoring a meaningful amount of plover habitat is to use heavy equipment (bulldozers, excavators, etc.) to bulldoze the beachgrass-covered dunes to the natural gradient of the unvegetated beach, disposing of spoils and vegetative material into the winter surf at low tide. The work would be performed at low tide prior to a winter storm so the natural power of the ocean could be used to mobilize and move the material in a natural way as storm drift when large amounts of beach in other local areas are also being mobilized by the storm. An archaeologist and a threatened/endangered plant specialist would be on site during the heavy equipment work to make sure those resources are not adversely impacted by the project. The flattened and exposed sand would then be available to natural wind and water-caused sand movement to maintain a natural dynamic system. Similar projects in degraded dune systems in Oregon have resulted in dynamic increases in plover nesting (Heany, Palermo, Segotta, Frounfelker pers. comm.). Further habitat enhancement may include dumping oyster shell hash on the project site, improving the effectiveness of the cryptic plover plumage and decreasing their vulnerability to predators (Kritz 1999). Resprouting of beachgrass is inevitable and annual maintenance for several years would be required to maintain appropriate landscape conditions. Permits would be required by the, Corps of Engineers, and possibly others.

The current project design would initially treat over one-half mile of foredune ocean-frontage to a distance of 300 feet east of the primary dune and grading it to the natural rise of the beach. This project configuration and location was chosen to treat a large area nearest the existing plover habitat on the widest portion of the spit while not impacting seasonal wetlands or encroaching on the paved access road to the east. The area treated would amount to approximately 20 acres and would be seasonally fenced with cable or rope and removable posts for the duration of each plover nesting season. The current proposed location of the project is in the 20-acre plover protection area mentioned in the "Plover Protection Actions".

COST ESTIMATES

Following is a list of management actions and projects that will be constructed and/or installed, using Coastal Conservancy grant funds, under interim management of the South Spit.

1. Potential Hazardous Waste Disposal	\$ 20,000 -
2. Stabilize / Re-vegetate old bluff trail	\$ 15,000 -
3. South Jetty Road Repair	\$ 70,000 -
4. Parking and Picnic Areas (includes grading, graveling, tables, restrooms, trash bins, corridors, barriers)	\$120,000 -
5. Caretaker Site	\$ 35,000 -
6. Signing (includes 2 kiosks)	\$ 30,000 -
7. Brochure / Publication	\$ 15,000 -
8. Cultural, Wildlife, Vegetation Inventory (in-house)	\$ 0
9. Remove invasive vegetation	\$ 20,000 -
10. Plover Protection Areas	\$ 20,000 -
11. Native American Consultation	\$ 5,000 -
12. Call Boxes (2)	\$ 15,000 -
13. Vehicle Barriers	\$ 40,000 -
14. HSU Visitor Survey	\$ 20,000 -
15. RCAA Overhead	\$ 75,000

TOTAL \$500,000

Many of the projects and/or management actions listed above may need to be implemented prior to opening the area to the public. They include the following:

- removal of the potential hazardous waste;
- site specific resource inventories for cultural resources, wildlife, and vegetation;
- consultation with the Table Bluff Reservation;
- installation of signs that provide information as well as interim management rules and regulations; and
- construction of vehicle access corridors and barriers.

Development of the caretaker site would not have to be fully completed if a nearby resident is available to serve as a BLM volunteer caretaker.

The following management actions are discussed in the interim plan but not part of the Coastal Conservancy funding at this time:

1. South Jetty Road Rock Revetment (Rip-Rap)	\$ 20,000
2. Creating Plover Habitat with Heavy Equipment	\$ 75,000



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

Arcata Field Office
1695 Heindon Road
Arcata, California 95521
www.ca.blm.gov/arcata



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November 19, 2002

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CALIFORNIA
COASTAL COMMISSION

Mr. Larry Simon
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Larry:

This letter is in regard to the Bureau of Land Management's (BLM) request for a Consistency Determination No. CD-052-02, Implementation of the *South Spit Interim Management Plan*, Humboldt County, California. This letter provides a follow-up to items discussed at the Coastal Commission's October 9th, 2002 for the subject area.

Commitment to Law Enforcement on the South Spit: Attached is a Memorandum of Understanding (MOU) that provides a coordinated approach and active enforcement presence for implementing the law enforcement portion of the *South Spit Interim Management Plan*. The MOU signifies an extensive commitment of federal, state and local agencies to ensure that an adequate level of law enforcement presence and documentation is provided on the South Spit to protect the area's natural resources, visitors, and facilities. Signatories to the MOU include BLM, California Department of Fish & Game (DFG), Humboldt County Sheriff's Office (HCSO), and Fish & Wildlife Service (FWS).

Additional personnel, outside the Law Enforcement MOU, will have responsibilities and a daily/weekly presence on the South Spit. Such positions include an on-the-ground presence for plover monitoring during the plover nesting season. Biologists, caretaker, maintenance worker, and visitor services personnel, etc. will also be committed to ensure the protection of natural resources as well as visitor information and safety.

Supporting Documentation for Night-time Closure: Attached is an article titled "*Recovering the South Spit of Humboldt Bay*" that outlines the 10 years of problems on the South Spit and the tremendous effort by the Coastal Conservancy and Senate Bill 39 (authored by then State Senator Mike Thompson), Humboldt County Department of Public Health, California Conservation Corps and the California Integrated Waste Management Board to clean up the area and place it in under an active management regime. In summary, up to 300 people were relocated and offered housing, health, and social services. Over 320 tons of solid waste and household materials were removed not including an additional 150 vehicles and 2,000 tires. Several serious crimes were reported during this timeframe, and as late as Spring 2002, BLM and HSCO were involved with a homicide on the South Spit.

EXHIBIT NO. 4

APPLICATION NO.
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Because of the area's past history, the *South Spit Interim Management Plan* does not provide for overnight camping. A key element of the *Interim Plan* is night time closure. The area will be open from one hour before sunrise to one hour after sunset, with an earlier opening during the waterfowl season. The night time closure is intended to ensure that visitors adhere to day use regulations, to provide for visitor safety, and to minimize vandalism.

Also enclosed is a Times-Standard Editorial dated December 2001 which indicates the communities desire to have the South Spit managed by a federal agency, specifically BLM.

Adaptive Management: As stated in the *South Spit Interim Management Plan*, adaptive management will be incorporated where appropriate and necessary to achieve the highest levels of resource protection and public service. The key to adaptive management is the willingness to integrate new information in response to changing conditions and make appropriate adjustments. Both BLM and DFG are committed to this adaptive management concept and it is reflected in the Biological Opinion received from FWS on September 11, 2002. The terms and conditions contained herein provide for evaluation of violations and the ability to apply additional measures that might be required to protect plovers, including but not limited to closure of the waveslope to vehicles and further restrictions on dog or equestrian use.

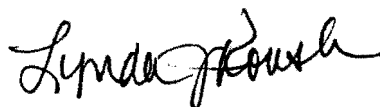
Seasonal Habitat Protection Area for Snowy Plovers: The *South Spit Interim Management Plan* proposed the establishment of a plover protection/restoration area near the north end of the Spit. This 20-acre area would be fenced to provide an area free of disturbance to encourage plover nesting. As discussed at the Coastal Commission meeting on October 9, 2002, BLM will modify the *Interim Plan* to close the one-half mile of waveslope in front of the habitat protection area during the nesting season (March 15 to September 15) annually.

Cultural Resource Protection: Attached is a letter to the California Coastal Commission from the Table Bluff Reservation – Wiyot Tribe supporting the pending federal consistency determination and the protection of cultural resources as proposed in the *South Spit Interim Management Plan*.

Public Use Monitoring: BLM will monitor visitor use activities and patterns to determine management effectiveness during the implementation period of the *Interim Plan*. As outlined in the Law Enforcement MOU, BLM will provide law enforcement summary reports on violations and documentation of other activities to the public on a semi-annual basis. The summary reports will be submitted to the Coastal Commission on an annual basis.

If you have any questions, please don't hesitate to call me at (707) 825-2309. We look forward to the December 11, 2002 meeting. Thank you for your assistance.

Sincerely,



Lynda J. Roush
Arcata Field Manager

Recovering the South Spit of Humboldt Bay

Mark E. Wheatley, Coastal Conservancy Project Manager

Long before statehood, the South Spit was enjoyed by the Wiyot people in their daily dependence upon the resources surrounding Humboldt Bay. This remote and isolated land dominated by sensitive coastal dunes and salt marsh habitat remained unchanged for many years. Today it extends approximately five miles between the shores of the Pacific Ocean and Humboldt Bay with only a narrow road running down the middle, providing access to the south jetty at the mouth of the bay.

Traditionally, it has provided many recreational opportunities for local residents and visitors ranging from sportfishing, clamming, birdwatching, and surfing to hang-gliding, diving, and off-highway vehicle use. It is renowned along the West Coast as the premier waterfowl hunting area for Black Brant. Historically, recreational camping was a popular unmanaged public use during the summer months, but in recent years the establishment of long-term homeless encampments began to impact both public use and natural resources within the area.

In response to emerging problems and deteriorating conditions at the South Spit, Senate Bill 39 (authored by Senator Mike Thompson) initiated the preparation of a management plan by the Coastal Conservancy because existing private landowners were simply unable to adequately protect and manage public use within the area. The majority of the South Spit is privately owned. Pacific Lumber Company (603 acres) is the primary private landowner, along with Texaco (19 acres) and other interests while the US Fish & Wildlife Service (160 acres) and Humboldt County (15 acres) comprise the existing minority public ownership.

The Legislature recognized that the lack of proper management had negatively affected the wetland and dune resources, including essential habitat for many endangered species and migratory waterfowl. It also threatened cultural resources of the Wiyot people and many illegal activities were negatively affecting public recreational use of the area. Therefore, public ownership was deemed desirable by local, state, and federal agencies.

The plan focused on evaluating the potential for public acquisition, habitat restoration, development of recreational improvements, and related management options. The plan was also to be based on the assumption that all illegal uses had been terminated, and the property cleared of debris and other environmental hazards. The plan was to report back to the Legislature findings and recommendations for a strategic response. Amongst these conclusions were two key findings: action to acquire the

South Spit should commence immediately; and the management regime must be active, not passive.

In September 1997, the Humboldt County Health Officer issued an evacuation order of the South Spit in response to an outbreak of Shigella and diminishing health conditions. Up to 300 people (approximately 80 children) were living in a high density situation without sewage disposal, running water, or trash disposal. A relocation effort was initiated by the County to assist campers with housing, health and social services.

In November 1997, the County Environmental Services Department began site clean-up efforts with funding assistance from the California Integrated Waste Management Board. Over 320 tons of solid waste and household materials were removed not including an additional 150 vehicles and 2,000 tires.

Presently, plan implementation efforts are underway. While we have already come a long way in recovering the South Spit of Humboldt Bay; public ownership and management will ensure the success of these efforts. The Bureau of Land Management, US Fish & Wildlife Service, and the Coastal Conservancy are actively engaged in the acquisition process with existing landowners. Once ownership can be consolidated, an opportunity will be provided for the public, along with other participating state and federal agencies, to assume their place as shareholders in the development of a cooperative management program.

In this era of limited public resources, effective active management of the South Spit will be a local challenge and require collaborative efforts. It must accommodate the dual goals of natural resource protection and public recreational use. We must not forget the lessons we have learned through the South Spit experience; we are all partners in the healing process. Collectively, our community can actively strive to protect, preserve, and enjoy this unique coastal treasure, we find hidden between the shores of the Pacific Ocean and Humboldt Bay.

Efforts are currently underway to organize a community beach cleanup event, tentatively scheduled for Saturday, April 18th. If you have questions or are interested in participating, please contact Mark Wheatley, Coastal Conservancy Project Manager at 707-441-5884.

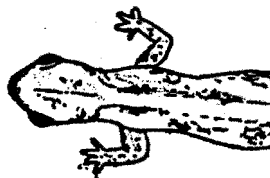



EXHIBIT NO. 5
APPLICATION NO.
CD-052-02
 California Coastal Commission

BILL NUMBER: SB 39 CHAPTERED
BILL TEXT

CHAPTER 1022
FILED WITH SECRETARY OF STATE SEPTEMBER 29, 1996
APPROVED BY GOVERNOR SEPTEMBER 27, 1996
PASSED THE SENATE AUGUST 28, 1996
PASSED THE ASSEMBLY AUGUST 22, 1996
AMENDED IN ASSEMBLY AUGUST 5, 1996
AMENDED IN ASSEMBLY JUNE 4, 1996
AMENDED IN ASSEMBLY APRIL 8, 1996
AMENDED IN ASSEMBLY JULY 7, 1995
AMENDED IN ASSEMBLY JUNE 22, 1995
AMENDED IN ASSEMBLY JUNE 19, 1995

INTRODUCED BY Senator Thompson

DECEMBER 15, 1994

An act relating to fish and wildlife, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 39, M. Thompson. South Spit of Humboldt Bay: acquisition.

Under existing law, the Wildlife Conservation Board is required to authorize the acquisition of land, rights in land, water, and water rights necessary to carry out that law and may authorize that acquisition by the Department of Fish and Game. Existing law provides that the State Coastal Conservancy is the repository of lands pursuant to the California Coastal Act of 1976 and authorizes the conservancy to acquire real property or interests in real property for purposes of that act.

This bill would authorize the board and the conservancy to acquire the South Spit of Humboldt Bay, as described in the bill, after an illegal encampment, debris, and other environmental hazards are removed by the current property owners. The bill would permit the conservancy, in consultation with the Department of Parks and Recreation, the Attorney General, the State Lands Commission, and Humboldt County to prepare a management plan for that area and to submit the plan to the Legislature on or before June 30, 1997.

The bill would appropriate \$100,000 from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund to the conservancy for the acquisition of, and planning for, the South Spit of Humboldt Bay.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The property known as the South Spit of Humboldt Bay, including five miles from Table Bluff County Park to the south jetty separating south Humboldt Bay from the Pacific Ocean, contains several species of rare or endangered plants and animals.

(b) Lack of proper management of the South Spit of Humboldt Bay has negatively affected the wetland and dune resources of Humboldt

http://info.sen.ca.gov/pub/95-96/bill/sen/sb_0001-0050/sb_39_bill_960929_chaptered

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Bay, including essential habitat for migratory water birds and the brant and snowy plover, and has placed at risk valuable cultural resources of the Wiyot people.

(c) Current illegal camping on the South Spit of Humboldt Bay negatively affects natural or cultural activities, such as hiking, sportfishing, hunting, appropriate off-highway vehicle use, Native American gatherings and cultural protection.

(d) Public ownership of the South Spit of Humboldt Bay is desirable to ensure that it is properly managed and its natural and cultural resources can be restored and protected.

(e) Expansion of existing publicly owned wildlife habitat and refuge will enhance wildlife habitat protection, is desirable, and can be most effectively accomplished by engaging in cooperative management with various state and federal agencies.

SEC. 2. Due to the impact of unmanaged public use of the South Spit of Humboldt Bay on its natural and cultural resources, after the removal of any illegal encampment, debris, and other environmental hazards by the current property owners, the State Coastal Conservancy and the Wildlife Conservation Board may acquire the south spit area.

The State Coastal Conservancy, in consultation with the Department of Parks and Recreation, the Attorney General, the State Lands Commission, and Humboldt County, may prepare a management plan for the south spit area. It is the intent of the Legislature that the management plan be based on a site that has been cleared of illegal encampments, debris, and other environmental hazards. It is the intent of the Legislature that the management plan be completed and submitted to the Legislature on or before June 30, 1997, and that it include, but not be limited to, the following minimum standards:

(a) The property shall have controlled access.

(b) Rare species of plants and animals shall be protected, and their habitats, including dunes and wetlands, shall be restored where appropriate and feasible.

(c) Access corridors shall be specified.

(d) Cultural resources shall be protected through a cooperative arrangement with the representative of the Wiyot people.

(e) Uses shall be strictly limited and controlled, consistent with habitat requirements, public safety, and maintenance of public facilities, including the public jetty.

(f) Off-highway vehicle use shall be limited to the waveslope on the west side of the South Jetty Road, bounded by Table Bluff County Park to the south and the South Jetty to the north.

(g) Vehicular access on the east side of South Jetty Road shall be limited by special permission only as required for access for hunting, gathering, wildlife management, or traditional uses of the Wiyot people.

(h) Vehicle turnouts and pedestrian access shall be allowed only at designated corridors.

(i) Identification of potential state, local, and federal funding sources necessary to implement the plan.

SEC. 3. There is hereby appropriated from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund to the State Coastal Conservancy the sum of one hundred thousand dollars (\$100,000) for the acquisition of, and planning for, the South Spit of Humboldt Bay pursuant to Section 2 of this act.

EX. 6

FIGURE 2: SOUTH PARKING AREA

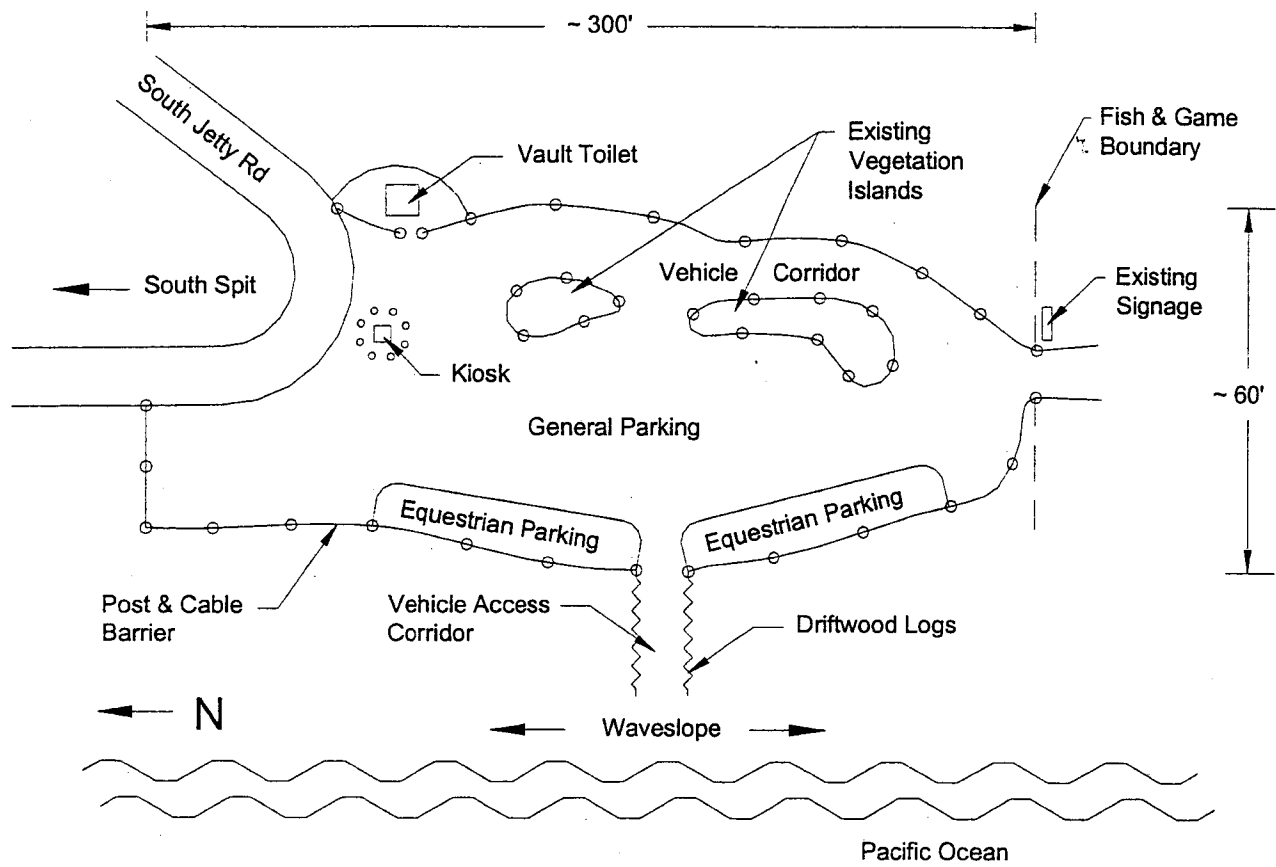


EXHIBIT NO. 7
APPLICATION NO.
CD-052-02
California Coastal Commission

FIGURE 3: NORTH PARKING AREA

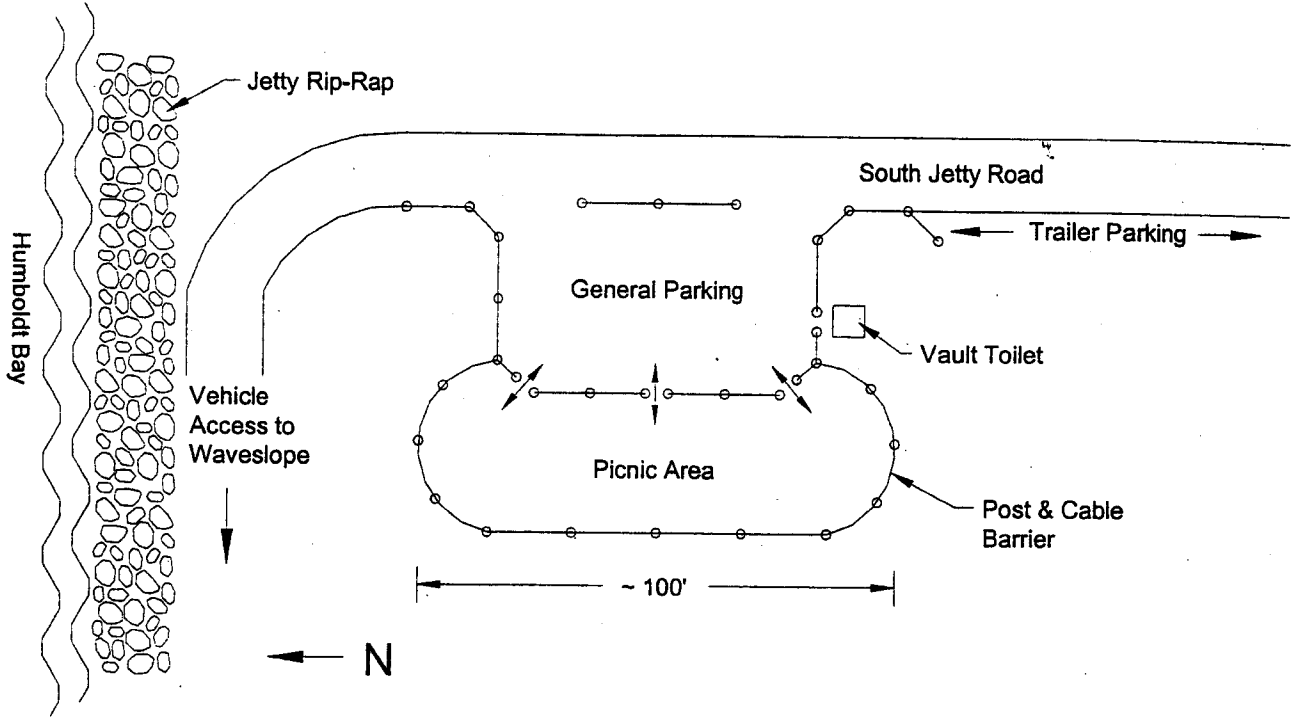


EXHIBIT NO. 8
APPLICATION NO.
CD-052-02
California Coastal Commission

FIGURE 4: NORTHEAST PICNIC AREA

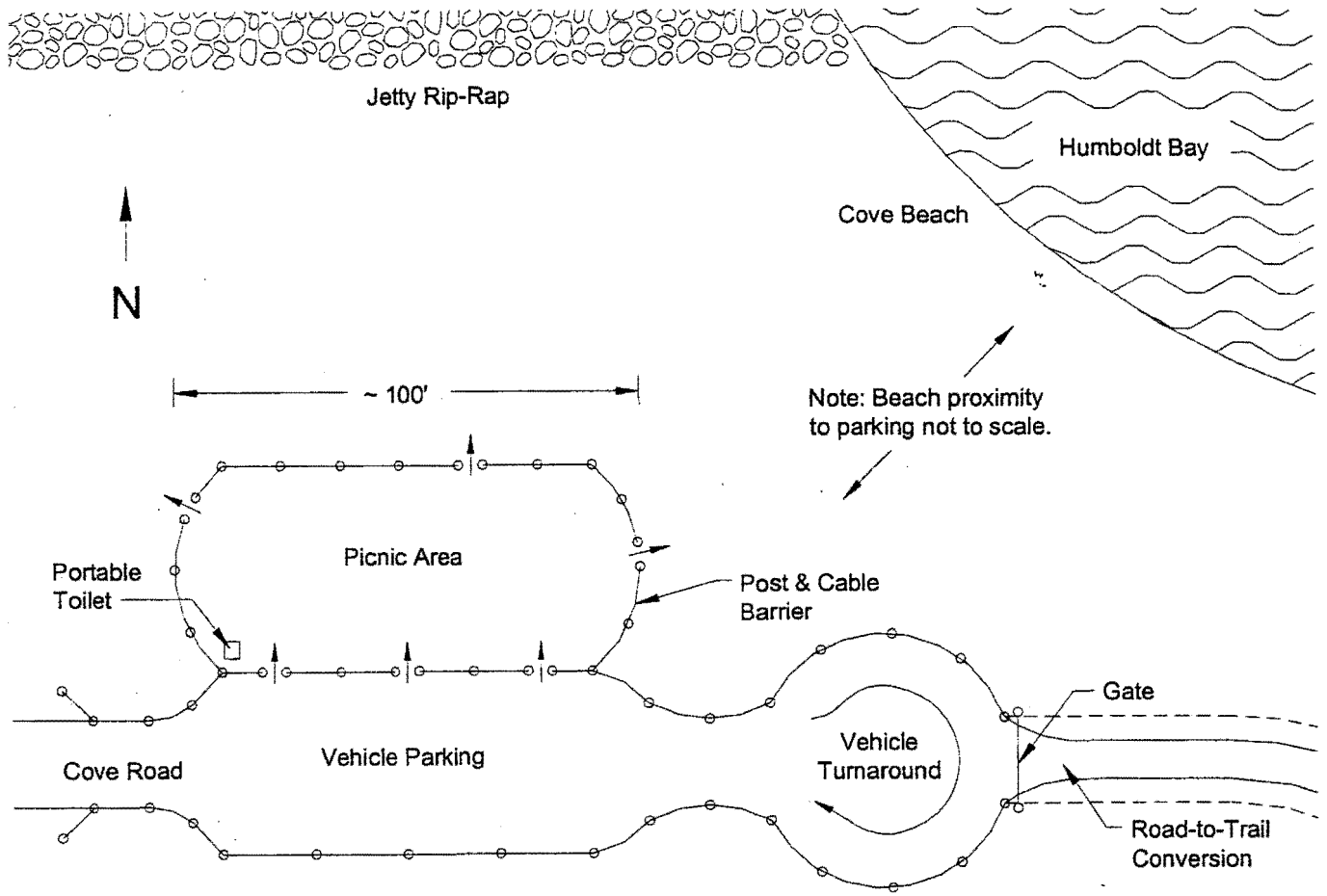


EXHIBIT NO. 9
APPLICATION NO.
CD-052-02
California Coastal Commission

FIGURE 5: CARETAKER SITE

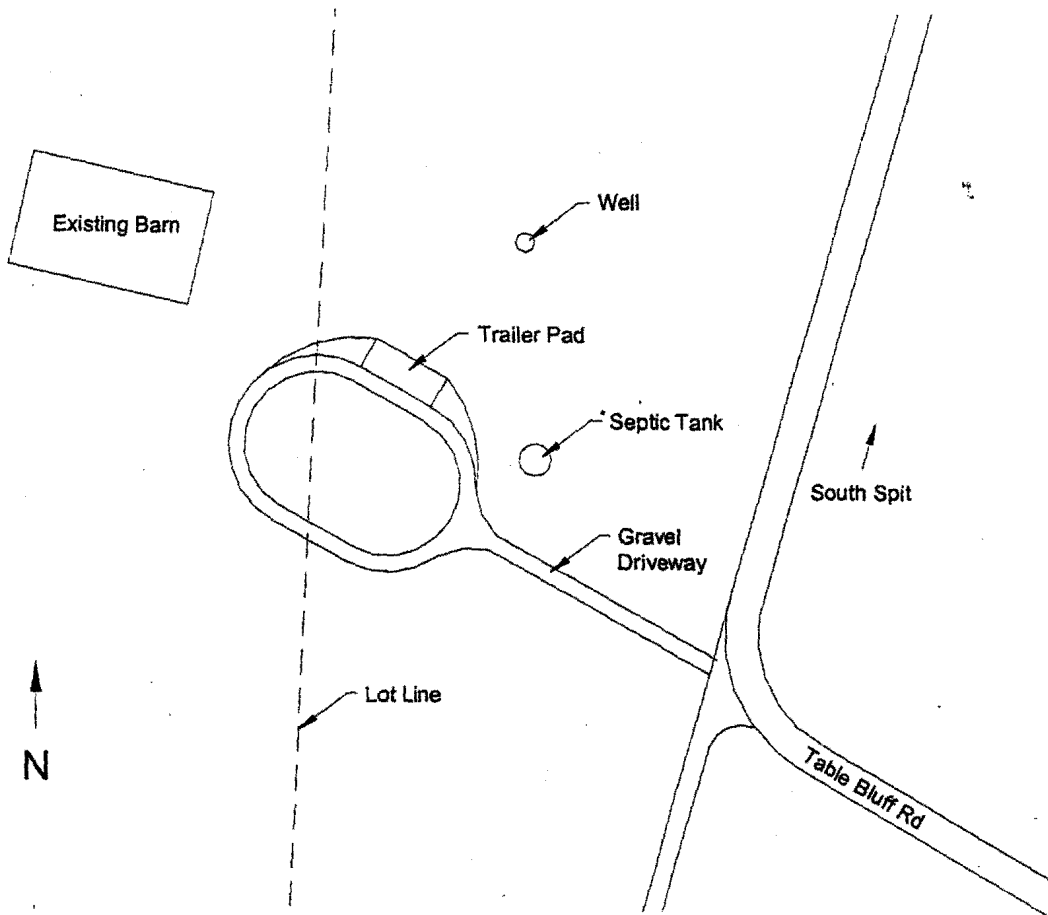



EXHIBIT NO. 10
APPLICATION NO.
CD-052-02
 California Coastal Commission

LAW ENFORCEMENT MEMORANDUM OF UNDERSTANDING

between the
BUREAU OF LAND MANAGEMENT, ARCATA FIELD OFFICE
the
HUMBOLDT COUNTY SHERIFF'S OFFICE
the
CALIFORNIA DEPARTMENT OF FISH & GAME
and the
U.S. FISH & WILDLIFE SERVICE, HUMBOLDT BAY WILDLIFE REFUGE

PURPOSE

This Memorandum of Understanding (MOU) provides for the enhanced protection of persons, property and resources on land commonly known as South Spit. The South Spit is an 800-acre, four and one-half mile long, narrow strip of land located between Humboldt Bay's entrance and Table Bluff. Most of the area (600 acres) was recently gifted from Pacific Lumber Company to the State of California. Other ownerships include Humboldt County (17 acres), U.S. Fish and Wildlife Service (160 acres), Texaco Corporation (19 acres), and U.S. Corps of Engineers (10 acres). Through a Deed of Conservation Easement, the State of California will soon be conveying to the Bureau of Land Management an "interest" in and the "right" to manage the South Spit in all aspects of its use in perpetuity.

This MOU provides a means of implementing the law enforcement portion of the *South Spit Interim Management Plan*, dated July 2002. Specifically, on page four under *Goals and Objectives*, the plan states "Provide an active management presence, including visitor services and law enforcement personnel. Develop a cooperative effort by various law enforcement agencies, including the Humboldt County Sheriff's Office (HCSO), California Department of Fish and Game (DFG), Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service (FWS)."

A coordinated approach to law enforcement, involving the four agencies mentioned above, will ensure that an adequate law enforcement presence is provided on the South Spit which will be needed to protect the area's abundant resource values. An active law enforcement presence will also ensure that visitors are provided with a reasonable amount of safety, and that they fully comply with existing laws and new regulations identified in the *South Spit Interim Management Plan*.

AUTHORITY

Bureau of Land Management: This MOU falls under the general authority of Section 307 of the Federal Land Policy and Management Act of 1976 (P.L. 94-579). Section 303(d) of FLPMA grants specific law enforcement authority to the Secretary of the Interior to assist local law enforcement officials in enforcing local laws and regulations, as they carry out their primary responsibility of assuring adequate law enforcement for the public land areas and resources under jurisdiction for the Bureau of Land Management. The Deed of Conservation Easement conveys to BLM an "interest" in the State lands and such lands are considered "public lands" as defined in Section 103 of FLPMA.

EXHIBIT NO. 11

APPLICATION NO.
CD-052-02

This makes applicable to those lands the enforcement provisions authorized pursuant that law, including those contained in Title 43 of the Code of Federal Regulations.

U.S. Fish and Wildlife Service: This MOU falls under the general authority of Section 307 of FLPMA. Section 303(d) of FLPMA grants specific law enforcement authority to the Secretary of the Interior to assist local law enforcement officials in enforcing local laws and regulations. An interagency MOU between the FWS and BLM exists that authorizes cross designation of law enforcement authority between the two agencies.

California Department of Fish and Game: This MOU falls under the authority of the California Penal Code, Section 830.2: The following persons are peace officers whose authority extends to any place in the state:

(e) Employees of the Department of Fish and Game designated by the director, provided that the primary duty of those peace officers shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code, which authorizes DFG to enter into cooperative agreements with federal agencies to promote wildlife management, conservation, and research.

Humboldt County Sheriff's Office: California State Government Code, Supplementary Fire or Police Protection, Section 55631, Local Agency (as used in this article, "local agency" means neighboring city, county, county fire or police protection district, federal government or any federal department or agency); and Section 55632, Contract for Fire or Police Protection (The legislative body of any local agency may contract with any other local agency for the furnishing of fire or police protection to such other local agency). As authorized by Section 303(d) of FLPMA, the BLM has entered in an MOU with the Humboldt County Sheriff's Office granting to BLM law enforcement personnel authority to enforce applicable state law or county ordinances within Humboldt County, CA.

OPERATIONS

Bureau of Land Management

The BLM agrees to assume the lead responsibility in all aspects of law enforcement at South Spit. The BLM Law Enforcement Ranger assigned to the area will be responsible for conducting semi-annual coordination meetings with the other three agencies. A central file of all incidents, citations, warnings, and other law enforcement documents will be kept at the local BLM office and updated every month. The BLM Law Enforcement Ranger will compile on a monthly basis all law enforcement incidents documented by other agency personnel. Those incidents related to snowy plover management will be reported immediately to the BLM Arcata Field Manager. Semi-annual and annual law enforcement summary reports will be prepared and submitted to all interested agencies, organizations, and individuals upon request.

Law enforcement patrols will occur a minimum of two days per week, one of which is on the weekend. During holiday weekends, the BLM will ensure law enforcement personnel are on-site each day. The amount of time spent each day patrolling South Spit will be commensurate on the amount, type, and degree of visitor use activity and its proximity to snowy plover protection areas.

EX-11

U.S. Fish and Wildlife Service

The FWS agrees to provide an on-the-ground law enforcement presence at South Spit a minimum of one day per week during waterfowl hunting season. All documented incidents will be provided to the BLM Law Enforcement Ranger at the conclusion of the waterfowl season. The amount of time spent each day patrolling South Spit will be commensurate with waterfowl hunting activity. During both waterfowl season and the remainder of the year, the Refuge Law Enforcement Officer will be available to help respond in case of law enforcement related emergencies or to snowy plover related incidents as much as possible. All incidents specific to snowy plover management will be reported to BLM immediately.

California Department of Fish and Game

The DFG agrees to provide an on-the-ground law enforcement presence at South Spit a minimum of two days per week, one of which is on the weekend. The amount of time spent each day patrolling South Spit will be commensurate on the amount, type, and degree of visitor use activity and its proximity to snowy plover protection areas. All documented incidents will be provided to the BLM Law Enforcement Ranger once every month. All incidents specific to snowy plover management will be reported immediately to the BLM.

Humboldt County Sheriff's Office

The Humboldt County Sheriff's Office agrees to provide an on-the-ground law enforcement presence at South Spit a minimum of one day per week. The amount of time spent each day patrolling South Spit will be commensurate on the amount, type, and degree of visitor use activity and its proximity to snowy plover protection areas. All documented incidents will be provided to the BLM Law Enforcement Ranger once every month. All incidents specific to snowy plover management will be reported immediately to the BLM.

The BLM, FWS, DFG, and HCSO mutually agree to provide the maximum assistance and coordination possible, within the availability of funds and established laws, regulations and policies governing the respective agencies that will assure the protection of persons and property at South Spit.

All parties to this MOU mutually agree to meet on a semi-annual basis to discuss ongoing law enforcement issues and concerns of the South Spit.

None of the parties shall be liable to the others or its agents or employees for any loss, damage, personal injury, or death occurring as a consequence of the performance of this MOU.

Nothing in this MOU shall be construed as obligating the BLM, FWS, DFG, or HCSO to expend money or resources in excess of appropriations authorized by law.

TERM OF MOU

The period of this MOU shall be from the date the BLM signs the Deed of Conservation Easement authorizing the BLM to manage the South Spit through September 30, 2008, unless terminated by any party upon thirty (30) days written notice to the others. This MOU may be renewed and extended for periods of time not to exceed five years. It may be revised by a written amendment, signed and dated by all parties.

SIGNATURES

Lynda J. Roush

Lynda J. Roush, Field Manager
BLM Arcata Field Office

11-18-02

Date

Eric Nelson

Eric Nelson, Refuge Manager
Humboldt Bay National Wildlife Refuge

11/18/02

Date

Donald B. Koch

Donald B. Koch, Regional Manager
California Dept. of Fish & Game
Northern California - Northcoast Region

11/19/02

Date

Gary Philp

Gary Philp, Sheriff
Humboldt County Sheriff's Department

11-18-02

Date



Table Bluff Reservation Wiyot Tribe

November 18, 2002

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

RE: South Spit Interim Management Plan, Humboldt Bay

He'ba'lo' Mr. Douglas:

I would like to take this opportunity to urge the Coastal Commission's support for the pending federal consistency determination regarding the proposed *South Spit Interim Management Plan* developed by the Bureau of Land Management (BLM).

The Table Bluff Reservation-Wiyot Tribe (Wiyot Tribe) is the closest community to the South Spit and our tribal members have traditionally used this area for hunting, fishing and ceremonial use since time immemorial. In recent years we observed, on a daily basis, the degradation of resources that occurred when a homeless encampment took over the area. Today, we continue to experience public safety concerns and many other problems without an active site manager.

The Wiyot Tribe has worked with BLM to address our concerns regarding our traditional and ceremonial use of the South Spit area. With BLM staff, we have also explored ways to ensure protection of our sensitive cultural sites within the planning area. Without the active management presence BLM will be able to provide; resource protection and public safety problems will continue and may deteriorate to the level we were so unfortunate to observe in recent years, once again posing a threat to sensitive cultural resources.

As proposed, BLM's *South Spit Interim Management Plan* will provide protection for both natural and cultural resources while accommodating public recreational use. In cooperation with the Bureau of Land Management, Department of Fish and Game and other project partners, the Wiyot Tribe will continue to play a critical role in developing workable management solutions and perhaps most importantly, ensuring that the needs and concerns of our people are an integral part of the process.

We hope implementation of BLM's *South Spit Interim Management Plan* offers an opportunity to begin a new chapter for the South Spit of Humboldt Bay and our people look forward to being a part of this successful transformation.


EXHIBIT NO. 12

APPLICATION NO.

CD-052-02

We urge your support. Please do not hesitate to contact the Table Bluff Reservation office at 707.733.5055 if you have any questions or require additional information.

Čawokš,



Cheryl A. Seidner
Tribal Chairwoman

nmh:CAS

cc: Bureau of Land Management, Lynda Roush
California Fish & Game, Karen Kovacs
California Fish & Game, Mark Wheatley
Board of Supervisors, Jimmy Smith
Board of Supervisors, John Wooley
County of Humboldt, Don Tuttle

EX-12

APPENDIX 1

Comment Letters Received

Environmental Protection Information Center, September 16, 2002, and October 9, 2002

Redwood Region Audubon Society, September 24, 2002

Sierra Club, October 7, 2002, and October 9, 2002

Robert W. Hewitt, October 9, 2002

California Association of 4 Wheel Drive Clubs, Inc., Oct. 12, 2002

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RECEIVED

SEP 19 2002

CALIFORNIA
COASTAL COMMISSION

September 16, 2002

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

Re: The South Spit Interim Management Plan, and the Environmental Assessment for the South Spit Management Plan

Dear Mr. Douglas,

We have reviewed the South Spit Interim Management Plan, the Environmental Assessment for the South Spit Management Plan, and the Biological Assessment for the Interim Management Plan for Lands on the South Spit of Humboldt Bay managed under conservation easement. We offer the following comments for your consideration.

We do not support the proposed alternative. We support alternative #3, closing the waveslope to vehicles, for the following reasons.

The Interim Management Plan describes the purpose of the easement as the following,

"It is the purpose of this Easement to preserve, protect, enhance, and restore the conservation values of the property, to provide dispersed recreation for the general public; and to prevent any use of the Property that will significantly impair or interfere with such conservation values."

The Easement clearly directs the BLM to prevent any use that will impair or interfere with the conservation values present on the South Spit. Furthermore, the Affirmative Rights and Interests Conveyed include the following,

... (d) To manage the property for dispersed recreational purposes of the general public, subject to such use being consistent with preservation of the conservation values of the property;

(e) To prevent any activity or use of the Property that is inconsistent with the purpose of this Easement and to require the reasonable restoration of such areas or features of the property that may be materially damaged by any inconsistent activity or use."

W12a-2

The Affirmative Rights and Interests Conveyed also make it clear that the BLM is to ensure the preservation of the conservation values of the property, and to eliminate any use that may compromise those values.

The conservation value of the dune mat community, the salt marsh plant communities, and the avian species and mammal communities on the South Spit are fairly well documented, as outlined in the Environmental Assessment and the Biological Assessment for the Interim Management Plan. However, we could find no references to the invertebrate communities. According to Barnhart et al. (1992) polychaetes, crustaceans, and mollusks are the significant invertebrates of the higher intertidal areas. Therefore these animals would be expected to inhabit the waveslope. In addition, the Federally Threatened Snowy Plover feeds on the invertebrate community associated with beach flotsam, such as various seaweeds and eelgrass, found on the waveslope (Colwell, 2002). We request that an inventory of the beach intertidal community be conducted, as well as an analysis of the potential impacts that may be caused to that community as a result of the proposed activities, which include Off-Highway Vehicle (OHV) use on the waveslope, and a discussion as to how the BLM proposes to restore the benthic community. In some previous studies, mortality of invertebrates was found to be as high as 100% in the path of travel from an OHV. We are concerned that the conservation value of the invertebrate communities on the waveslope has not been adequately considered.

We are concerned that adequate protection will not be provided to the snowy plover. As mentioned above, snowy plovers spend a significant portion of time feeding on the waveslope. This finding has also been confirmed by the USFWS; according to the Draft Recovery Plan for Snowy Plover, one of the primary places they forage on invertebrates is in the wet sand and amongst surf-cast kelp within the intertidal zone (USFWS 2001, pg. 15). Yet the BLM is proposing to allow vehicles on the waveslope, one of the primary feeding areas for the Snowy Plover. No wet sand protection habitat is provided for Snowy Plovers. The Snowy Plover will be impacted by OHV use on the waveslope through disruption of feeding, and through direct mortality from OHVs running over birds. In addition, OHV access increases the amount of trash on the beach, encouraging predators to forage on the beach, that also predate on Snowy Plovers. The Snowy Plover population has not been recovering in Humboldt County; in fact, it appears to be in danger of significantly declining due to the number of failed nests. Allowing OHV use on the waveslope of the South Spit will cause a significant adverse cumulative effect on the Snowy Plover population, because so much of the population is already stressed. Therefore it is imperative that the BLM provide adequate protection for this species by prohibiting OHV access on the waveslope.

We fully support the requirement that dogs be leashed at all times, including away from designated plover protection areas, during the Snowy Plover nesting season. As dog owners, we are well familiar with the joys of letting dogs run free on the beach. We also know how difficult it can be to keep a dog that is unleashed under control. Dogs harass birds, and can cause direct mortality.

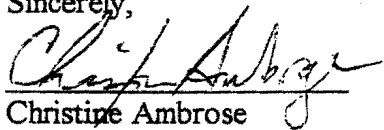
We are concerned that our recreational experience will be compromised by the presence of OHVs. There have been many times that we have been walking peacefully on the beach, enjoying a tranquil sunset, only to have an OHV rumble up behind, completely disrupting our recreational experience, with exhaust fumes, noise pollution, a significantly degraded aesthetic value to the desolate, peaceful beach, with big ugly tracks that are difficult to walk in. The tranquil beach has been transformed into a "highway". On some occasions, they engage in "vehicle play" on the waveslope, performing donuts in the sand, which can also transform the beach into an OHV playground, precluding all other recreational uses from taking place. We strongly object to OHV access on the South Spit, which precludes all other high value recreational experiences from taking place.

We are also concerned that once vehicles are allowed on the beach, unauthorized use will be difficult if not impossible to prevent. The BLM is already well familiar with the problems associated with protecting conservation values from OHVs, Rand Mountains and Fremont Valley in Kern County, where evidence of unauthorized OHV activity was well documented (Goodlet and Goodlet 1991). They found that Bureau of Land Management policies limiting vehicle use to signed, open routes were ineffective, and that intensive, negative impacts to desert tortoise habitat were occurring as a result. We believe that allowing OHV use will create an enforcement problem that will directly conflict with other conservation values present on the South Spit, such as the dune mat community containing Beach Layia, and will result in dedicating scarce financial resources to control one specific user group, thereby creating economic hardship for other beach users. As a result, BLM will be forced to pursue state OHV funds, which require a certain level of use for funding. We are strongly opposed to the BLM pursuing any additional funding from the state OHV funds to provide for OHV enforcement.

We are concerned that a total of eight vehicle corridors are to be provided on the east side of the road for hunting. Much of the area on the east side is wetland, with CNPS rare plants present. Vehicle access in these areas has been destroying the ecologically sensitive salt, brackish, and freshwater marsh communities for some time (personal observation, 1993). Vehicles compact and destroy the wetland community. Many of these sites should be closed off and restored, rather than continuing to allow access. We believe that vehicle access is inappropriate in these areas.

Thank you for the opportunity to comment. We hope you will seriously consider the issues we have raised regarding the proposed alternative in light of the potential impacts to conservation values on the South Spit.

Sincerely,



Christine Ambrose

cc: USFWS

References

Barnhart, R.A., M.J. Boyd, and J.E. Pequegnat, 1992. The ecology of Humboldt Bay: an estuarine profile. USFWS Biological Report #1.

Colwell, Mark, 2002. Personal communication, July 24, 2002.

Goodlet, G.O., and G.C. Goodlet, 1991. Evidence Of Unauthorized Off-Highway Vehicle Activity In The Rand Mountains And Fremont Valley, Kern County California. Special Report commissioned by the Desert Tortoise Preserve Committee, Inc.

USFWS, 2001. Western Snowy Plover Draft Recovery Plan, Portland Oregon.

Wiza

Received at Commission Meeting

OCT - 9 2002

From: ~~Frank Beck~~



epic

October 9, 2002

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

Re: The South Spit Interim Management Plan

Dear Chairman of the Board and Commissioners,

We have previously submitted comments to you on South Spit Interim Management Plan, dated September 16, 2002, that present many of our issues and concerns. We offer the following additional comments for your consideration.

We have been disappointed in the amount of political pressure that both the California Department of Fish and Game (CDFG) and Humboldt County have allegedly brought upon the Bureau of Land Management (BLM) to accommodate Off-Highway Vehicles (OHV) use on the South Spit. We are appalled that the CDFG is acting like an advocate for OHV use rather than an agency charged with the responsibility of ensuring our Public Trust resources are protected. The Eel River Wildlife Area managed by CDFG is already open to OHVs; we do not see the justification for accommodating additional OHV use on the South Spit when adequate OHV access already exists in an adjacent area. We are also disappointed in what can best be called political maneuvering by the United States Fish and Wildlife Service (USFWS) to override their own biologist's concerns at the USFWS office in Arcata by having the Biological Opinion transferred to the Sacramento Office in order to obtain a biological opinion for the western snowy plover that finds OHV uses consistent with BLM's interim management plan for the South Spit.

With this in mind, we hope you will reconsider whether the Biological Opinion in favor of OHV use on the South Spit is in fact in the best interest of the conservation values and the survival of the plover. The plover is an important public trust resource that has been seriously declining throughout Humboldt County and its range from unmanaged beach use and a lack of suitable habitat. In fact, the adverse cumulative effects on the plover have been so great that the South Spit represents a disproportionately important area for the survival of the plover, particularly if a catastrophic event ever occurs. The South Spit is the only recently used nest site in recovery unit 2 that will be managed by a federal agency that can also provide suitable breeding, nesting, and rearing habitat. The South Spit is the only place potentially capable of providing a source population of plovers for the rest of the County, given Humboldt County's widely acknowledged poor record of beach management and plover protection. We do not believe that the South Spit Interim Management Plan will provide adequate protection for the snowy plover and other conservation values for the following reasons:

- 1. The entire waveslope is open to OHV use, including the waveslope adjacent to the plover restoration area.

Plovers forage on invertebrates in the wet sand within the intertidal zone (USFWS 2001). By leaving the entire waveslope open to vehicle use, foraging habitat is impacted. OHVs will harass and potentially kill plovers

...pting to feed through both day and nighttime vehicle use on the waveslope. By not providing waveslope as off limits to OHVs, plovers will be harassed and their required habitat needs will not be protected.

Recommendation: Close the waveslope adjacent to the plover restoration area so that plovers have one area where they can feed in the intertidal zone without the threat of harassment or direct mortality.

2. The BLM proposes to have a law enforcement officer present on the South Spit only two days a week, with one day on the weekend.

The BLM already has law enforcement out on the South Spit one day a week, and that level of enforcement is clearly not sufficient to ensure the protection of conservation values on the South Spit. As stated on page 14 of the staff report, "it is clear that OHV uses on the South Spit are not complying with existing regulations", yet the BLM proposes to increase the amount of enforcement by only one day a week. This is not a viable enforcement program. In addition, law enforcement officers from either BLM, the Service, the CDFG, or Humboldt County are the only entities that can document a violation (page 24 of staff report). Therefore, OHV use can take place without a law enforcement officer present 5 days out of the week, with no one there to document a violation if it occurs.

Recommendation: Require additional law enforcement to ensure the protection of conservation values and the snowy plover, and to ensure that violations are documented.

3. BLM only proposes to monitor plovers once a week during the nesting season. It is not clear how adults will be monitored as compared to chicks, and how protection areas will be responsive to plover needs.

According to Colwell et al. (2002) most plover chicks perished when they were less than 10 day old. If BLM personnel only conduct plover searches once per a week, eggs may have hatched and the vulnerable chicks may have moved out of a plover protection area into an area open to OHVs and been lost before monitoring would have determined a need to modify the protected area. As a result, plover protection areas may exclude people from areas that do not even provide protection for plovers. Colwell (2002) recommended the following: "For beach sites, we propose to monitor more closely the relationships between plover breeding success, human impacts, and predation risk."

Recommendation: Require daily monitoring of plovers in areas that are open OHV use, and more detailed and explicit monitoring requirements so that the goals of the interim management plan can be met.

Thank you for the opportunity to comment. We hope you will seriously consider the issues we have raised regarding the protection of conservation values on the South Spit.

Sincerely,


Christine Ambrose

References

USFWS, 2001. Western Snowy Plover Draft Recovery Plan, Portland Oregon.

Colwell, M.A., et al. 2002. Final report: 2002 snowy plover breeding in northern CA, with emphasis on Humboldt County. Submitted to MRB Research, Inc.

W 12a
REDWOOD REGION AUDUBON SOCIETY

P.O. BOX 1054, EUREKA, CALIFORNIA 95502



September 24, 2002

RECEIVED

Linda Roush, Arcata Field Office Manger
Bureau of Land Management
1695 Heindon Road
Arcata, CA 95521

OCT 01 2002

CALIFORNIA
COASTAL COMMISSION

Re: The South Spit Interim Management Plan, and the Environmental Assessment for the South Spit Management Plan

Dear Ms. Roush,

Please accept the following comments from Redwood Region Audubon Society (RRAS), based on our review of the South Spit Interim Management Plan, the Environmental Assessment for the South Spit Management Plan, and the Biological Assessment for the Interim Management Plan for Lands on the South Spit of Humboldt Bay managed under conservation easement.

We realize this submittal is being made after the September 13, 2002 deadline for comments. However, RRAS never received notice of the comment period. It's possible that the notice was sent to our Eureka post office box, but was among the 2 weeks of worth of mail stolen when the box was broken into this summer.

RRAS does not support the proposed alternative. We support alternative #3, closing the waveslope to vehicles, for the following reasons.

The Interim Management Plan describes the purpose of the easement as "... to preserve, protect, enhance, and restore the conservation values of the property, to provide dispersed recreation for the general public; and to prevent any use of the Property that will significantly impair or interfere with such conservation values."

We are concerned that adequate protection will not be provided to the federally threatened Snowy Plover. This species forages on the waveslope, according to the Draft Recovery Plan for Snowy Plover (USFWS Service, 2001), yet the BLM is proposing to allow vehicles on the waveslope. The Snowy Plover population has not been recovering in Humboldt County; in fact, it appears to be in danger of significantly declining due to the number of failed nests. The Snowy Plover will be impacted by OHV use on the waveslope through disruption of feeding.

Clam Beach serves as an example that permitting OHV use on the waveslope invariably leads to illegal driving through the dunes. Because we have witnessed numerous vehicle violations on Clam Beach following the listing of the Snowy Plover in 1993 (speeding, lengthy driving forays through the dunes), we take exception to BLM's contention that

12a-1

"Adverse impacts can be lessened by law enforcement and interpretive/maintenance personnel who can explain and enforce regulations that provide increased protection to wildlife." (EA for the South Spit Interim Management Plan July 2002, page 20). It is widely known that law enforcement has no hope of controlling illegal OHV use, owing to limited staffing hours. On page 11 you state that "BLM patrols will occur a minimum of two days per week..." This is the same level of law enforcement presence as at Clam Beach. To emulate a failed policy is ill-advised.

We have witnessed "take" (harassment) on several occasions at Clam Beach, whereby vehicles traveling well in excess of the posted speed limit have repeatedly scattered roosting and/or foraging Snowy Plovers.

Another issue relative to the Snowy Plover is the ongoing destruction of existing nest enclosures at Clam Beach. Law enforcement is currently powerless to prevent acts such as these. Although I do not wish to imply that outlaws such as these are OHV enthusiasts, OHVs would clearly permit the perpetrators of these acts a swift getaway. One of our members was threatened at knife point when he dared to confront a driver who had illegally sped through the dunes for a period of nearly an hour. To suggest that interpretive personnel can educate callous lawbreakers such as these is impractical, as well as naïve.

Oceano Dunes in San Luis Obispo County serves as another example of the incompatibility of OHVs and Snowy Plover nesting success. Namely only 2 of 68 chicks successfully fledged in 2001.

As you know, Snowy Plovers have bred and currently winter on the south spit. With habitat restoration work, and the exclusion of OHVs from their foraging, roosting and nesting habitat, we can look forward to them successfully breeding there again. Clearly, the use of OHVs on the south spit will not facilitate the recovery of the species.

Thank you for the opportunity to comment. We hope you will seriously consider the issues RRAS has raised regarding the proposed alternative, in light of the potential impacts to conservation values on the South Spit.

Sincerely,

Tom Leskiw

Tom Leskiw for

Jim Clark
Conservation Chair
Redwood Region Audubon Society

cc: Jim Watkins, USFWL Service
cc: California Coastal Commission

W12cc



SIERRA CLUB

FOUNDED 1892

REDWOOD CHAPTER

P.O. Box 466, Santa Rosa CA 95402-0466
(707) 544-7651 Fax: (707) 544-9861

RECEIVED

OCT 07 2002

7 October 2002

CALIFORNIA
CALIFORNIA COASTAL COMMISSION
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105

Fax: 415/904-5400

Re: Item W 12a: Consistency Determination by the Bureau of Land
Management for Humboldt Bay South Spit Interim Management Plan

Dear Commissioners:

Enclosed herewith is an article from the Redwood Needles (Oct. 1, 2002), the newsletter of the Redwood Chapter Sierra Club, on EDJ's South Spit Interim Management Plan. I will be addressing the Coastal Commission on Wednesday, October 9, in Eureka, and will speak on behalf of the Redwood Chapter, with 10,000 members in northwestern California. I am hoping this background will be useful to you.

Yours sincerely,

Diana Fairchild Beck
3200 Greenwood Heights Drive
Kneeland, CA 95549
707/445-2690

A Fatal Flaw: BLM Plans for OHV Riding on Humboldt Bay's South Spit

The South Spit of Humboldt Bay is a desolate, four-and-a-half-mile-long narrow peninsula of land that separates the southern part of Humboldt Bay from the Pacific Ocean. A rough county road runs up the middle to the South Jetty, next to the bay entrance and ship channel. This year, ownership of the many disparate parcels of the spit was consolidated in a gift to the State of California, and the state gave the Bureau of Land Management (BLM) the right to manage the peninsula. It is an outstanding opportunity to enhance and restore a wonderful beach-and-dune ecosystem and to enjoy a long, semi-wilderness, easily accessible expanse of Pacific Coast beach.

The North Group has very high regard for BLM's Arcata Field Office. Its Draft Management Plan for Headwaters Forest Reserve, for instance, is superior and very well wrought, in the face of demands from various user groups. But its South Spit Interim Management Plan contains, to us, a fatal flaw: It proposes to allow off-road-vehicle riding on the ocean waveslope. The North Group

REDWOOD CHAPTER

is urging it to change its mind.

Management of the South Spit was handed over to BLM with a Deed of Conservation Easement. The Deed states: "It is the purpose of this Easement to preserve, protect, enhance, and restore the conservation values of the Property; to provide dispersed recreation for the general public; and to prevent any use of the Property that will significantly impair or interfere with such conservation values." Included in the Deed is a mandate: "To prevent any activity on or use of the Property that is inconsistent with the purpose of this easement." It seems to us that OHV waveslope riding is incompatible with such conservation values, especially when referring to the federally listed western snowy plover.

Under the conditions that existed before the removal of the tons of junk and the homeless encampment in 1998, the snowy plover did not stand a chance, with OHVs riding all over the dunes and beach, feral cats looking for a meal, and food refuse attracting predators. The plover does have a chance now, with BLM's admirable plans for habitat restoration and monitoring on 20 acres. But how much chance does it have with waveslope riding? Very little, if Oceano Dunes (San Luis Obispo County)—where but 2 of 68 chicks fledged in 2001—is any indication or if Clam Beach (Humboldt County) this year is lighting the way.

Even if vehicles actually remain on the wet part of the waveslope, plovers (adults and chicks) feed on the organisms under and around the organic debris left on the beach with the tide. And keeping OHVs on the waveslope with but four hours of patrolling a week

demonstrates an extreme form of wishful thinking. The Interim Plan sets out the numerous ways in which the plover is adversely affected by vehicles. BLM seems satisfied to rest its case for managing for waveslope vehicle riding on the South Spit on Humboldt County's Beach and Dune Management Plan—produced in 1995, when no one in the county wished to deal with the existing problems—and on the California Coastal Conservancy's South Spit Management Plan (1997). During the scoping meetings for the latter, waveslope riding was a given and never brought into the discussion. The scoping meetings took place in Loleta and were not well attended by anyone but locals, who were primarily concerned with issues pertaining to the homeless and Native American sites.

Thus, BLM intends to allow waveslope riding on the basis of two very weak legs, two plans in which waveslope riding on the South Spit was inadequately considered in the face of other salient issues or was not questioned at all.

Vehicle riding on beaches also detracts from the recreational experience of most other beach users, whether walkers, picnickers, bird watchers or equestrians. The large majority of beach users do not want to see vehicles at all beaches.

Many more people will come to enjoy the semi-wilderness experience of the South Spit once they realize it is open to the public and beautiful and under active management. We are urging BLM to bite the bullet and close the beach to vehicles (except for emergency vehicles and permitted fishermen). It is the right thing to do.

-DIANE BEC
NORTH GROUP CONSERVATION CO-CHA

07:02:09:40 D FAIRCHILD BECK

T: 707 445 2880

P: 02

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W12a

REDWOOD CHAPTER

P.O. Box 466, Santa Rosa CA 95402-0466
(707) 544-7651 Fax: (707) 544-9861

9 October 2002

To: The California Coastal Commission

Re: [W 12A] BLM's South Spit Interim Management Plan

Received at Commission Meeting

OCT - 9 2002

From: DEANE STECK
(AUST102)

The following comments are offered on behalf of the Redwood Chapter Sierra Club, with over 10,000 members in northwestern California.

The Redwood Chapter is, on the one hand, especially pleased that BLM/Arcata will be managing the South Spit, since it has proved itself to be exceptionally capable. On the other hand, we are extremely disappointed that BLM did not bite the bullet and exclude off-road-vehicle riding.

The large majority of beach users, as polls have indicated many times, do not want to be near or see motor vehicles on beaches. The presence of OHVs detracts greatly from experiencing the natural values offered to the beach user. And to allow OHV riding on the waveslope while attempting to manage for the recovery of the endangered western snowy plover flies in the face of reason.

Motor vehicle riding on the waveslope of the South Spit has been "allowed" until now because no one has taken responsibility for managing the area. Virtually nothing was disallowed. BLM seems satisfied to rest its case for managing for waveslope riding on Humboldt County's Beach and Dunes Management Plan--which was produced in 1995, when no one in the county wished to deal with the considerable existing problems--and on the California Coastal Conservancy's South Spit Management Plan plan (1997). During the scoping for the latter, waveslope riding was a given and never brought into the discussion. The scoping meetings took place in Toleta and were not well attended by anyone but locals, who were primarily concerned with issues pertaining to the homeless and Native American sites.

Thus, BLM intends to allow waveslope riding on the basis two very weak legs, two plans in which waveslope riding on the South Spit was either inadequately considered in the face of other salient issues or not questioned at all.

The Deed of Conservation Easement given by the state of California to the BLM states that "It is the purpose of this Easement to preserve, protect, enhance, and restore the conservation values of the Property; to provide dispersed recreation for the general public; and to prevent any use of the Property that will significantly impair or interfere with such conservation values." And included is a mandate "To prevent any

activity on or use of the Property that is inconsistent with the purpose of this easement."

Vehicle riding is incompatible with conservation values particularly when one is concerned to manage for the federally listed western snowy plover.

Under the conditions existing before the removal of junk and the homeless encampment, the endangered western snowy plover did not stand a chance, with off-road-vehicles riding all over the dunes and the beach, feral cats looking for a meal, and food refuse attracting predators. The plover does have a chance now, with BLM's admirable plans for habitat restoration. But how much chance does it have with "waveslope" only riding? Very little, if Oceano Dunes--where but 2 out of 68 plover chicks fledged in 2001--is any indication or if Clam Beach this year is lighting the way.

Even if vehicles actually remain on the wet part of the waveslope, snowy plovers--both adults and chicks--feed on the organisms under and around the organic debris left on the beach with the tide and they travel up and down the beach on the waveslope for a mile or two. In addition, that you can keep OHV riders on the waveslope with but four hours of patrolling a week demonstrates an extreme form of wishful thinking, regardless of educational efforts.

OHVs have other places to ride on Humboldt County's beaches, and in fact can ride for three miles on the Fel River Wildlife Area immediately below the South Spit and at Clam Beach. Both areas contain plover breeding habitat and both have a law enforcement presence. Whether OHV riding should be allowed is another matter. This season, only twelve percent of chicks fledged at these sites. To quote from the 2002 Final Report of the biologists monitoring these sites, "Reproductive rates of beach-nesting plovers were well below values predicted for the species' recovery, with 0.29 and 0.25 young fledged per male at Clam Beach and Fel River Wildlife Area, respectively." They also recommend that waveslope driving be prohibited on the South Spit "owing to the negative relationship between human activity and reproductive success at Clam Beach and throughout the plovers' range."

The Redwood Chapter urges that the Coastal Commission be attentive during BLM's three-year Interim Management Plan. At this time, we are considering our options for challenging it. You will not be surprised to see us at your doorstep in the future.

Diane Fairchild Beck
3200 Greenwood Heights Drive
Kneeland, CA 95549

October 9th 2002

Lynda J. Roush
Arcata Field Manager
Bureau of Land Management
Arcata Field Office
1695 Heindon Road
Arcata, California 95521

Received at Commission
Meeting
OCT - 9 2002
From: Robert Hewitt

RE: 1-14-2002-1196

Dear Lynda,

The following comments are submitted as a result of a brief review of the South Spit Interim Management Plan for Lands Managed By the BLM on the South Spit of Humboldt Bay, California. As Committee Chair of the local North Coast Chapter of The Wildlife Society, we have only recently started to convene and prepare comments for review from the local working biologists. We are currently preparing some final comments, but have not completed the document at this time. We understand that this is late in the process, but wanted to let you be aware of our thoughts.

Firstly we are glad that many aspects of effective management are proposed to be implemented out on the south spit under your agency guidance in an area that has been somewhat ignored in recent years. This includes improved recreation opportunities and habitat restoration of the Dune Plant community. However, we cannot support the use of recreational vehicles on the wave slope during the breeding season of the threatened Western Snowy Plover (*Charadrius alexandrinus nivosus*). There are a variety of factors that others have presented at this point and we will elaborate on these given more time. It is our consensus that there is a strong likelihood of disturbance and possible nest, chick or adult bird destruction by vehicles on the beach. Avoiding these potential impacts is the only way to fully ensure protection for this species.

We understand the variety of other factors that influence management out on the dunes, but from a biological perspective we cannot concur that recreational vehicles within potential breeding habitat of a known threatened species is conducive to its recovery as outlined in the USFWS Draft Recovery Plan. Until our complete response is available the above is submitted on an individual basis. We look forward to providing input from local resource professionals.

Yours sincerely,



Robert W. Hewitt (Wildlife Biologist),

cc: Coastal Commission

cc: A. Cheddon (RF)
to Merrill
to Delaplaine



**CALIFORNIA ASSOCIATION OF 4 WHEEL
DRIVE CLUBS, INC.**

NATURAL RESOURCES CONSULTANT

DON KLUSMAN
2916 COY DRIVE
YUBA CITY CALIFORNIA 95993
(530) 671-4587 FAX (530) 671-1487
E-Mail klusman@svix.com

RECEIVED
OCT 16 2002

**CA COASTAL COMMISSION
LEGAL DIVISION**

October 11, 2002

California Coastal Commission
Chief Counsel
Mr. Ralph Faust
45 Fremont Street Suite 2000
San Francisco CA 94105-2219

Dear Mr. Faust:

This letter is in response to the conservation that we had on October 9th in Eureka, California concerning my questions on how past laws reflect on decisions made by the Coastal Commission. I have attached a copy of SB 39, Chapter September 27, 1996 by the Governor of California. This was a bill that then Senator Mike Thompson had support from not only the Off Road groups but the environmental groups as well. As you can see in Section 2, item (f) off-highway vehicles were mentioned in this bill as being limited to the wave slope. Please also note in Section 1, item (c) off-highway use is also mentioned.

I hope this will help to clear up items discussed during our conservation and I'm looking forward to hearing from you on this important item. Thank you in advance for your time on this matter.

Sincerely,

Don Klusman

- Cc: Mike Pool, State Director Bureau of Land Management (BLM)
Lynda Roush, Area Manager BLM Arcata
Sara Wan, Chair California Coastal Commission
Peter M. Douglas, Executive Director California Coastal Commission
David Douglas, President California Association of 4 Wheel Drive Clubs Inc.

BILL NUMBER: SB 39 CHAPTERED
 BILL TEXT

CHAPTER 1022
 FILED WITH SECRETARY OF STATE SEPTEMBER 29, 1996
 APPROVED BY GOVERNOR SEPTEMBER 27, 1996
 PASSED THE SENATE AUGUST 28, 1996
 PASSED THE ASSEMBLY AUGUST 22, 1996
 AMENDED IN ASSEMBLY AUGUST 5, 1996
 AMENDED IN ASSEMBLY JUNE 4, 1996
 AMENDED IN ASSEMBLY APRIL 8, 1996
 AMENDED IN ASSEMBLY JULY 7, 1995
 AMENDED IN ASSEMBLY JUNE 22, 1995
 AMENDED IN ASSEMBLY JUNE 19, 1995

INTRODUCED BY Senator Thompson

DECEMBER 15, 1994

An act relating to fish and wildlife, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 39, M. Thompson. South Spit of Humboldt Bay: acquisition.

Under existing law, the Wildlife Conservation Board is required to authorize the acquisition of land, rights in land, water, and water rights necessary to carry out that law and may authorize that acquisition by the Department of Fish and Game. Existing law provides that the State Coastal Conservancy is the repository of lands pursuant to the California Coastal Act of 1976 and authorizes the conservancy to acquire real property or interests in real property for purposes of that act.

This bill would authorize the board and the conservancy to acquire the South Spit of Humboldt Bay, as described in the bill, after an illegal encampment, debris, and other environmental hazards are removed by the current property owners. The bill would permit the conservancy, in consultation with the Department of Parks and Recreation, the Attorney General, the State Lands Commission, and Humboldt County to prepare a management plan for that area and to submit the plan to the Legislature on or before June 30, 1997.

The bill would appropriate \$100,000 from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund to the conservancy for the acquisition of, and planning for, the South Spit of Humboldt Bay.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The property known as the South Spit of Humboldt Bay, including five miles from Table Bluff County Park to the south jetty separating south Humboldt Bay from the Pacific Ocean, contains several species of rare or endangered plants and animals.

(b) Lack of proper management of the South Spit of Humboldt Bay has negatively affected the wetland and dune resources of Humboldt

Bay, including essential habitat for migratory water birds and the brant and snowy plover, and has placed at risk valuable cultural resources of the Wiyot people.

(c) Current illegal camping on the South Spit of Humboldt Bay negatively affects natural or cultural activities, such as hiking, sportfishing, hunting, appropriate off-highway vehicle use, Native American gatherings and cultural protection.

(d) Public ownership of the South Spit of Humboldt Bay is desirable to ensure that it is properly managed and its natural and cultural resources can be restored and protected.

(e) Expansion of existing publicly owned wildlife habitat and refuge will enhance wildlife habitat protection, is desirable, and can be most effectively accomplished by engaging in cooperative management with various state and federal agencies.

SEC. 2. Due to the impact of unmanaged public use of the South Spit of Humboldt Bay on its natural and cultural resources, after the removal of any illegal encampment, debris, and other environmental hazards by the current property owners, the State Coastal Conservancy and the Wildlife Conservation Board may acquire the south spit area.

The State Coastal Conservancy, in consultation with the Department of Parks and Recreation, the Attorney General, the State Lands Commission, and Humboldt County, may prepare a management plan for the south spit area. It is the intent of the Legislature that the management plan be based on a site that has been cleared of illegal encampments, debris, and other environmental hazards. It is the intent of the Legislature that the management plan be completed and submitted to the Legislature on or before June 30, 1997, and that it include, but not be limited to, the following minimum standards:

(a) The property shall have controlled access.

(b) Rare species of plants and animals shall be protected, and their habitats, including dunes and wetlands, shall be restored where appropriate and feasible.

(c) Access corridors shall be specified.

(d) Cultural resources shall be protected through a cooperative arrangement with the representative of the Wiyot people.

(e) Uses shall be strictly limited and controlled, consistent with habitat requirements, public safety, and maintenance of public facilities, including the public jetty.

(f) Off-highway vehicle use shall be limited to the waveslope on the west side of the South Jetty Road, bounded by Table Bluff County Park to the south and the South Jetty to the north.

(g) Vehicular access on the east side of South Jetty Road shall be limited by special permission only as required for access for hunting, gathering, wildlife management, or traditional uses of the Wiyot people.

(h) Vehicle turnouts and pedestrian access shall be allowed only at designated corridors.

(i) Identification of potential state, local, and federal funding sources necessary to implement the plan.

SEC. 3. There is hereby appropriated from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund to the State Coastal Conservancy the sum of one hundred thousand dollars (\$100,000) for the acquisition of, and planning for, the South Spit of Humboldt Bay pursuant to Section 2 of this act.