

CALIFORNIA COASTAL COMMISSION

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



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STAFF RECOMMENDATION
ON CONSISTENCY DETERMINATION

Consistency Determination No.	CD-069-06
Staff:	LJS-SF
File Date:	9/1/2006
60 th Day:	10/31/2006
75 th Day:	11/15/2006
Commission Meeting:	11/14/2006

FEDERAL AGENCY: **U.S. Fish and Wildlife Service and U.S. Bureau of Land Management**

PROJECT LOCATION: North Spit of Humboldt Bay, north of the town of Manila, Humboldt County (Exhibits 1 and 2)

PROJECT DESCRIPTION: Ma-le'l Dunes Cooperative Management Area Public Access Plan

SUBSTANTIVE FILE DOCUMENT: ND-091-04 (BLM, Ma-le'l Dunes Trailhead Parking Area Project, Humboldt County)

EXECUTIVE SUMMARY

The U.S. Fish and Wildlife Service (FWS) and U.S. Bureau of Land Management (BLM) have jointly submitted a consistency determination for the Ma-le'l Dunes Cooperative Management Area (CMA) *Public Access Plan*. The CMA is located one mile north of the town of Manila on

the north spit of Humboldt Bay and consists of 444 acres of public land located between the Pacific shoreline and the lower reaches of the Mad River Slough. BLM owns 154 acres of the CMA (these acres are referred to as “Ma-le’l South”) which are currently open to the public daily from sunrise to one hour after sunset for non-motorized recreational uses. Ma-le’l North, owned by FWS and occupying 290 acres of the CMA, is open to the public through a FWS permit or docent-led tours.

The goal of the *Public Access Plan* is to implement projects that will accommodate safe, orderly, and open public access and recreation throughout the CMA and minimize to the extent practicable any adverse impacts to the natural and cultural resources of the area. The objectives of the *Plan* include maintaining public access to the CMA, improving public access facilities, minimizing impacts to natural and cultural resources, providing interpretive information, cooperative management among agencies and organizations, managing the expected increased levels of visitor use, and securing funding for infrastructure improvements.

The *Plan* provides for pedestrian access, limited equestrian use, traditional resource gathering by local Native Americans by permit, non-motorized boat launching and landing, fishing, habitat restoration, and environmental education activities. The *Plan* proposes numerous access and recreation infrastructure improvements, including roadway safety improvements, access gate relocation, improvements to the Ma-le’l North parking area, construction of a kayak and canoe launch ramp, installation of a caretaker residence, construction of new hiking trails and elimination of casual trails, construction of a dune overlook view deck, replacement of the existing wetland view deck, removal of unused fencing, and installation of access and interpretive signs and displays.

The *Plan* states that only low-impact, non-motorized public access and recreation activities would be allowed at the Ma-le’l Dunes CMA, in order to protect its unique terrestrial and aquatic habitats and resources, the water quality of Mad River Slough and freshwater, brackish, and salt marsh wetlands, and cultural resources. Nevertheless, as documented in the *Plan* and the *Initial Study/Environmental Analysis*, several of the proposed projects in the *Plan* hold the potential to adversely affect access and recreation, environmentally sensitive habitats, and cultural resources. At the same time, these projects are designed to restore and protect those resources within the Ma-le’l Dunes CMA by implementing changes to existing public access and recreation facilities. However, adequate location and design information on several of the proposed projects (e.g., kayak launch ramp, Ma-le’l North parking area, wetland view deck, dune view deck, Hudt Trail wetland bridge, erosion control projects and ADA design improvements along the Cukish Trail, Ma-le’l Road turnouts) is not available at this time to enable the Commission to make definitive findings on whether those projects are fully consistent with the public access, environmentally sensitive habitat, and cultural resource policies of the California Coastal Management Program (CCMP).

The FWS and BLM have committed in this consistency determination to submit additional consistency and/or negative determinations to the Commission for any future projects or management decisions in the CMA that hold the potential to affect the resources of the adjacent lands and waters of the coastal zone. This commitment ensures that the Commission will have

the opportunity to review the details (when they become available) of those projects and decisions, and make a final determination of consistency with the policies of the CCMP. With this agreement for future review, the Commission finds that the Ma-le'l Dunes Cooperative Management Area *Public Access Plan* is consistent with the public access and recreation policies of the CCMP (Sections 30210-14, 30220-21, and 30223-24 of the Coastal Act), the environmentally sensitive habitat, wetlands, and water quality policies of the CCMP (Sections 30230, 30231, 30233, and 30240 of the Coastal Act), and the cultural resource policy of the CCMP (Section 30244 of the Coastal Act).

STAFF SUMMARY AND RECOMMENDATION

I. STAFF SUMMARY.

A. Project Description.

1. Background. The U.S. Fish and Wildlife Service (FWS) and the U.S. Bureau of Land Management (BLM) have jointly submitted a consistency determination for the *Draft Ma-le'l Dunes Cooperative Management Area (CMA) Public Access Plan*. The CMA is located one mile north of the town of Manila on the north spit of Humboldt Bay (also known as the Samoa Peninsula), and consists of 444 acres of public land located between the Pacific shoreline and the lower reaches of the Mad River Slough (**Exhibits 1-3**). The CMA includes 1.5 miles of coastline, a unique association of coastal dunes, wetland and estuarine habitat, and significant cultural resources of the Wiyot Tribe. BLM owns 154 acres of the CMA (these acres are referred to as "Ma-le'l South") which are currently open to the public daily from sunrise to one hour after sunset for non-motorized recreational uses. Ma-le'l North, owned by FWS and occupying 290 acres of the CMA, is open to the public through a FWS permit or docent-led tours. Adjacent private landowners (not included in the CMA) are Sierra Pacific Industries to the east, the Redwood Gun Club (a public shooting range) partially between the FWS and BLM units, and a group of residential properties to the southeast.

The goal of the *Public Access Plan* is to "propose actions that will accommodate safe, orderly, and open public access throughout the 444 acre Ma-le'l Dunes CMA and a range of recreational opportunities that minimize to the extent practicable any adverse impacts to the natural and cultural resources of the area." The objectives of the *Plan* include maintaining public access to the CMA, improving public access facilities, minimizing impacts to natural and cultural resources, providing interpretive information, cooperative management among agencies and organizations, managing the expected increased levels of visitor use, and securing funding for infrastructure improvements.

The 444-acre CMA came into joint FWS/BLM ownership over a 33-year period beginning in 1973. Private lands were donated to and purchased by the Nature Conservancy and the BLM in the 1970s and 1980s, while other lands now within the CMA continued in private ownership. In the late 1990s, the Nature Conservancy donated its holdings to the FWS. Between 2002 and 2005 additional private lands were purchased using State Coastal Conservancy (SCC) funds and eventually transferred to FWS and BLM, resulting in the current CMA boundaries. The Access

Plan states that by 2008 the FWS will complete a Comprehensive Conservation Plan for the Humboldt Bay National Wildlife Refuge Complex, including the newly-created Ma-le'l Dunes Unit, and the BLM plans to complete a Resource Management Plan Amendment for the Arcata Planning Area (which includes its CMA lands).

In October 2004, the public planning process for developing the subject *Public Access Plan* commenced under a joint effort led by the FWS, BLM, and SCC. The planning effort included meetings and consultations with various local community and environmental groups, representatives of the Wiyot tribe, Sierra Pacific Industries, Redwood Gun Club, Humboldt Bay Municipal Water District, residents living adjacent to the CMA, and state and federal regulatory agency representatives. In December 2004, the Commission's Executive Director concurred with a negative determination submitted by the BLM for the Ma-le'l Dunes Trailhead Parking Area Project. The project on the newly-acquired parcel improved public access, protected environmentally sensitive habitat, assured closure of the parcel to motorized vehicles, and included cable barriers and native vegetation plantings to separate the trailhead area from nearby residents.

2. Area Description and History. The *Public Access Plan* describes the physical geography of the Ma-le'l Dunes Cooperative Management Area:

The Ma-le'l Dunes CMA consists of a portion of the dune-slough ecosystem that comprises the upper Samoa Peninsula, or North Spit. The Samoa Peninsula is a roughly 20-mile sand spit that extends from the jetty to the mouth of the Mad River, effectively enclosing the northern portion of Humboldt Bay. The North Spit is a relatively mature dune system that contains a diversity of landforms. Typically, the dune system begins at the beach strand with a foredune, which is the first rise of sand parallel with the beach above the mean high tide line. Behind the foredune is a series of dune ridges and swales that are oriented parallel to prevailing wind direction. Collectively, the foredune ridges and swales are referred to as the nearshore dunes. East of the nearshore dunes is a deflation plain, which grades into large parabolic moving dunes (Pickart and Barbour, in press). Older dunes, located east of the moving dunes, consist of stabilized parabolas, ridges, and depressions that support coniferous coastal forest on the uplands and deciduous forest or marsh in the low lying wetlands. The marshes, mudflats, and open channel of the Mad River Slough occupy the far east side of the site . . .

The Mad River Slough is a narrow extension of the bay that separates the project site from the mainland and the Arcata Bottoms. The northern portion of Ma-le'l North is adjacent to the main stem of the Mad River Slough channel, while the southern portion is bordered by a branch of the slough that is inundated only at high tide. The mouth of the slough is adjacent to the Ma-le'l South portion of the project area . . .

The *Public Access Plan* also documents the cultural history and resources of the Ma-le'l Dunes CMA:

Prior to Euro-American settlement, the Wiyot Indians inhabited numerous settlements along the shores of Humboldt Bay and near the mouths of the Mad and Eel rivers. The Wiyot used the network of rivers and sloughs around the bay to travel by canoe between villages and to access hunting and gathering areas. Using the villages as their base, the Wiyot took advantage of the abundant resources around the bay and along the adjacent coastline. The slough, dunes, and beaches within and around the Ma-le'l Dunes CMA were used extensively for gathering berries, weaving materials and mollusks, as well as for surf fishing, waterfowl hunting and fish drying. Stranded whales and sea lions also provided important food sources as did the anadromous fish runs on the Mad and Eel rivers (Angeloff, et al, 2004).

From 1850 to 1865, Wiyot territory became the center for the largest concentration of Europeans in California north of San Francisco. The Euro-American intrusion nearly annihilated the Wiyot people through displacement, disease, and murder. By the 1870s, Euro-American settlers had claimed nearly all the land in the area. As Euro-Americans settled the area, they diked and drained much of the marshlands around the bay to make way for farming and dairy ranches. However, the vicinity of the Ma-le'l Dunes CMA developed much more slowly due to the windy conditions, sandy soils and natural barriers including the freshwater marshes, slough, bay, and mad River. The Wiyot continued to return to the area now known as Ma-le'l until the early 1900's (personal communication, Marnie Atkins, 2005).

The *Public Access Plan* states that archaeological field investigations in recent years re-confirmed the location of prehistoric sites within the Ma-le'l Dunes CMA recorded in the early 1900's, and recorded additional Wiyot cultural sites.

3. Proposed Public Access Plan. The *Public Access Plan* states that the Ma-le'l Dunes CMA will be open to the following types of non-motorized recreation:

- Pedestrian use allowed on designated trails within the forest and nearshore dunes, on open sandy areas, and on the waveslope.
- Horseback riding allowed on two designated trails within the nearshore dunes of Ma-le'l South and along the waveslope of the entire CMA.
- Walking unleashed dogs allowed on designated trails and the open dunes within Ma-le'l South and along the waveslope of the entire CMA. Dogs must be leashed in the parking and picnic areas of Ma-le'l South. Dogs are not allowed within Ma-le'l North and its parking area, except for aid dogs and on the waveslope.
- Camping and nighttime use are not allowed within the CMA, except by special permit.
- Plant materials gathering for personal use and from designated trails allowed from May to November in Ma-le'l South, and otherwise by special permit. Ma-le'l North will be closed year-round to plant gathering except by special permit. In accordance with an

MOU between FWS/BLM and the Wiyot Tribe, limited off-trail and off-season plant materials gathering will be allowed at Ma-le'l South on a case-by-case basis to the extent that such activity does not cause negative impacts to the forest.

- Traditional resource gathering by local Native American tribal members will be allowed throughout the CMA by special permit to the extent that such activity does not cause negative impacts to forest or dune resources.
- Non-motorized boat launching and landing into and from the Mad River Slough allowed during high tide at the Ma-le'l North parking area.
- Fishing allowed within the CMA consistent with California Department of Fish and Game regulations at the Ma-le'l North boat ramp and at the end of the railroad berm.
- Motorized vehicle use outside the parking areas and Ma-le'l Road are not allowed, except in an emergency or for authorized maintenance, construction, restoration, or research purposes.
- On-going environmental restoration and invasive plant eradication activities will continue in the dunes and forests of the CMA.
- Access allowed for educational field trips related to natural resources, sciences, and native culture by local schools, non-profits, and tribes.
- Access for people with disabilities will be provided at the parking areas, picnic areas, and restrooms at Ma-le'l North and South.

Public access to the CMA will be controlled via the Ma-le'l South and Ma-le'l North entrance gates. The caretaker will be responsible for opening and closing the gates at the proper time. Security and public safety throughout the area will be addressed via patrols by the caretaker and by law enforcement protocols.

The *Public Access Plan* estimates that visitors to the Ma-le'l South and North areas are expected to increase to 16,500 and 8,000 persons per year, respectively. This estimate is based on use levels when the CMA was managed as the Mad River Slough and Dunes Cooperative Management Area between 1990 and 1994, and on FWS and BLM staff experience with similar sites. BLM and FWS will cooperatively manage the lands within the CMA, and will work with other public agencies, the Wiyot Tribe, and private organizations to facilitate public access and recreation.

The *Public Access Plan* proposes numerous access and recreation infrastructure improvements at the CMA over a multi-year time period, to the extent that adequate funding is available (**Exhibit 4**), including:

- Improve and re-surface the existing one-lane, gravel Ma-le'l Road to support expected increase in traffic. Proposed work maintains the single lane, gravel nature of the road and includes turn-outs, a vehicle turn-around at the Young Lane intersection, alteration of road profile sections to allow passive drainage to the side of the road, and construction of gutter sections where needed.
- Relocate the gate on Ma-le'l Road that controls access to Ma-le'l North from its present location near the PGE tower to a site approximately 80 feet south and closer to the Young Lane intersection. Construct post and cable fencing to create a pedestrian safety corridor along the west side of the road between the PGE tower and the trail to the south that leads to the Ma-le'l South parking area. The fence and vehicle gate relocation would eliminate a five-vehicle parking turnout at the PGE tower, from where a trail heads west into the dunes, but which is also used for nighttime parking and access into the Ma-le'l Dunes CMA after the access gates are closed.
- Install a water spigot for equestrian use and a bicycle rack at the Ma-le'l South parking/day use area.
- Enlarge, reorient, and improve the Ma-le'l North parking/day use area in the same location and using a gravel surface. Elements include ten vehicle parking spaces, one ADA vehicle space, one bus parking space, designated expansion area for nine future vehicle spaces, ADA accessible vault toilet, ADA accessible trailhead, bicycle rack, information kiosk, picnic tables, trash and recycling receptacles, and split rail fence to keep visitors from walking into the Mad River Slough.
- Construct a kayak and canoe launching ramp at the Ma-le'l North parking/day use area to provide access to the Mad River Slough during high tides. The ramp would be approximately five feet wide and 35 feet long, surfaced with gravel confined by a heavy-duty, polyethylene cellular product. The objective is to confine boat launching to a narrow corridor and protect salt marsh habitat from further trampling and erosion that is arising from current boat launching at this location.
- Upgrade the existing caretaker trailer pad to accommodate a new trailer, including re-grading, placement of road gravel, and vegetation clearing.
- Add two miles of new hiking trails to the CMA's existing three-mile hiking trail network, and improve, repair, or realign existing hiking and equestrian trails as necessary to protect resources and visitors (**Exhibit 5**). All casual trails throughout the CMA will be decommissioned and revegetated with native plants and/or covered or blocked with vegetative materials. Trails are proposed to be named using words from the Wiyot language (after further consultation with the Wiyot Tribe):

Latkak Equestrian Trail: an existing route from the Ma-le'l South parking area through the foredunes to the beach.

Latkak Trail: a new northerly extension of the equestrian trail through the foredunes to the beach.

Wonokw Trail: an existing route through forest and dunes from the Ma-le'l South parking area to the beach; a proposed spur trail would create a shorter loop return to the parking area.

Letik Trail: an existing route from the Ma-le'l South parking area through nearshore dunes to the beach.

Cukish Trail: the existing railroad berm trail from the Ma-le'l North parking area northeast to the Mad River Slough trestle; route would receive an ADA accessibility upgrade and erosion control measures.

Ki'mak Trail: a proposed trail from the Cukish Trail over open sand and nearshore dunes to the beach.

Hop'o'y Trail: an existing forest loop trail extending from the northern end of the Cukish Trail.

Hudt Trail: an existing trail from the Hop'o'y Trail through nearshore and primary dunes to the beach. The primary improvement is installation of a 15-foot-long footbridge across a seasonal wetland located in the foredunes.

- Construct an 8' x 10' dune overlook view deck adjacent to the Ki'mak Trail approximately 500 feet from the Ma-le'l North parking area.
- Replace the existing 5' x 5' wetland view deck adjacent to the Cukish Trail approximately 1,200 feet from the Ma-le'l North parking area with a view deck no larger than 10' x 10' at the same location.
- At various locations in the CMA, remnant and unused fencing would be removed, damaged fencing repaired, and new fencing installed.
- Install location, information, and interpretive signs, panels, and kiosks at appropriate locations in the CMA to enhance public access and recreation and to protect sensitive natural and cultural resources.
- Implement interpretive programs, including maps, guidebooks, guided walks, and volunteer restoration days.

The subject consistency determination documents how the proposed *Public Access Plan* for the Ma-le'l Dunes CMA is conceptually consistent with the CCMP. The FWS and BLM have committed in this consistency determination to submit additional consistency and/or negative determinations to the Commission for any future projects listed above (e.g., kayak launch ramp,

Ma-le'l North parking area, wetland view deck, dune view deck, Hudt Trail wetland bridge, erosion control projects and ADA design improvements along the Cukish Trail, Ma-le'l Road turnouts), or for future management decisions in the CMA, that hold the potential to affect the resources of the adjacent lands and waters of the coastal zone. This commitment ensures that the Commission will have the opportunity to review the details of those projects, and make a determination of consistency with the CCMP, when those project details are available.

B. Federal Agency's Consistency Determination. The U.S. Fish and Wildlife Service and U.S. Bureau of Land Management have determined the project consistent to the maximum extent practicable with the California Coastal Management Program.

C. Applicable Legal Authorities. 15 CFR Section 930.36(d) provides that:

Phased Consistency Determinations. In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project or other activity from planning to completion, the federal agency shall provide the State agency with one consistency determination for the entire activity or development project. 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. In cases of phased decision making, Federal agencies shall ensure that the development project or other activity continues to be consistent to the maximum extent practicable with the management program.

II. STAFF RECOMMENDATION.

The staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission **concur** with consistency determination CD-069-06 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

Staff Recommendation:

The staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution to Concur with Consistency Determination:

The Commission hereby **concurs** with the consistency determination by the U.S. Fish and Wildlife Service and the U.S. Bureau of Land Management, on the grounds that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the CCMP.

III. Findings and Declarations:

The Commission finds and declares as follows:

A. 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, or. . . .*

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.

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

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

Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot be readily 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.*

Section 30224. *Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by . . . increasing public launching facilities*

Vehicle, pedestrian, and bicycle access to the Ma-le'l Dunes CMA is from State Highway 255 via Young Lane, a paved road that connects Hwy. 255 with an unpaved, one-lane access road (informally known as Ma-le'l Road) that runs in a north-south direction within the right-of-way of the decommissioned Humboldt Northern line of the Hammond Lumber Company Railroad. This road provides access to the gravel parking areas at Ma-le'l South (600 feet to the southwest of the Young Lane – Ma-le'l Road intersection) and Ma-le'l North (0.75 mile to the northeast).

Ma-le'l South is currently open to the public daily from sunrise to one hour after sunset for non-motorized recreational use; a steel access gate is located at the parking area entrance. Pedestrian

use is allowed only on designated trails, wave slope, and open sandy areas; equestrian use is limited to designated equestrian trails and the wave slope. Existing public access and recreation amenities include a recently improved entry road and 20-vehicle gravel parking lot, an adjacent day use area with picnic tables, temporary toilet, information kiosks, and signed equestrian and foot trails. In addition, just north of the Young Lane – Ma-le’l Road intersection is a 2,500 sq.ft. cleared, gravel pad which in the past supported a BLM caretaker’s trailer; power, water, and telephone utilities extend to this site.

Ma-le’l North has had restricted public access since 1994. A permit to visit the northern portion of Ma-le’l North must be obtained from FWS or Friends of the Dunes (FOD). Public access to the southern portion of Ma-le’l North is currently limited to monthly guided walks by FOD docents. Existing access and recreation amenities at the end of Ma-le’l Road include an unimproved 10-vehicle gravel parking area, a picnic table and benches, an informal kayak and canoe landing area for access into the Mad River Slough at high tide, well-defined but unsigned trails leading to the north along the slough, into the forest, over the dunes, and to the beach, and a small wetland view deck 0.25 miles north of the parking area along the railroad berm trail.

The proposed *Public Access Plan* for the CMA includes numerous infrastructure, access, and recreation improvements, as described previously in this report. The *Public Access Plan* is designed in part to serve anticipated increased levels of use at Ma-le’l South and Ma-le’l North, as more of these areas are opened to general public use. The *Plan* also states that the improvements and new infrastructure have incorporated human safety measures, erosion control measures, and measures for protecting the natural and cultural resources of the area (examined below in Sections B and C).

The *Plan* includes a phased approach towards implementing the proposed access improvements and states that:

Recommendations for improvements that are critical to establishing basic park operations, usability, and public safety will be implemented first as “Phase One” improvements. Proposed improvements to enhance the experience of visitors to the area will be implemented in a later stage, and as funding allows, as “Phase Two” improvements.

The list of projects assigned to each phase is provided in **Exhibit 6**. (Several of the proposed “Phase One” projects at Ma-le’l South have been completed and were reviewed by the Commission in Negative Determination ND-091-04.) The total estimated cost to implement the proposed improvements in both phases is approximately \$460,000. FWS and BLM note in the *Plan* that fully implementing the access improvements remains contingent on securing adequate funding, continued successful collaboration among the interested agencies and non-governmental organizations, completing environmental review documentation for proposed projects, and obtaining the required regulatory permits.

The Commission finds that the proposed public access and recreation projects described in the *Public Access Plan* will significantly expand and improve the opportunities for public access and recreation within the Ma-le’l Dunes Cooperative Management Area. The Commission notes that

precise location, design, and construction details for several of the proposed projects (i.e., kayak launch ramp, Ma-le'l North parking area, wetland view deck, dune view deck, Hudt Trail wetland bridge, erosion control projects and ADA design improvements along the Cukish Trail, Ma-le'l Road turnouts) are not yet available. As a result, the Commission can only find at this time that these projects are conceptually consistent with the public access and recreation policies of the CCMP. However, the FWS and BLM have committed in this consistency determination to submit additional consistency and/or negative determinations to the Commission for any future projects or management decisions in the CMA that hold the potential to affect the access and recreation resources of the adjacent lands and waters of the coastal zone. This commitment ensures that the Commission will have the opportunity to review the details (when they become available) of those projects and decisions, and make final determinations of their consistency with the access and recreation policies of the CCMP. Therefore, with this commitment the Commission finds that the Ma-le'l Dunes Cooperative Management Area *Public Access Plan* will not adversely affect public access and recreation, and that the *Plan* is consistent with the public access and recreation policies of the CCMP (Sections 30210-14, 30220-21, and 30223-24 of the Coastal Act).

B. Marine Resources and Environmentally Sensitive Habitat. The Coastal Act provides the following:

Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233.

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

. . .

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

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 *Draft Initial Study/Environmental Assessment (IS/EA)* for the *Public Access Plan* states that the Ma-le'l Dunes CMA supports a complex of unique coastal dune, wetland, and estuarine communities within a relatively small area of the North Spit of Humboldt Bay. The *IS/EA* states that:

The North Spit is a relatively mature dune system that contains a diversity of landforms. Typically, the dune system begins at the beach strand with a primary foredune, which is a ridge of sand that forms parallel with the beach above the mean high tide. Behind the primary foredune is a series of longitudinal foredune ridges and swales oriented parallel to the prevailing winds. Collectively, the foredune ridges and swales are referred to as the nearshore dunes. East of the nearshore dunes is a deflation plain that grades into large parabolic moving dunes or sand sheets. Older dunes, located east of the moving dunes, consist of stabilized parabolas, ridges and depressions that support coastal coniferous forest on the uplands and deciduous forest or marshes in the low lying wetlands. Salt and brackish marsh estuarine wetlands associated with the Mad River Slough occupy the far eastern side of the CMA.

The *IS/EA* states that the CMA includes the following major vegetation types:

- Coniferous Forest. Approximately 100 acres on upland stabilized dunes inland from actively moving dunes that encroach upon them, and characterized by beach pine, Sitka spruce, Douglas fir, grand fir, and madrone.
- Dune Mat. Approximately 75 acres within semi-stabilized nearshore dunes, and characterized by native, perennial forbs, grasses, and shrubs.
- European Beachgrass. Approximately 25 acres of invasive grass found primarily in the foredunes, where it alters the physical and biological conditions in the dunes and leads to a loss of native vegetation and reduced wildlife use. This vegetation type is the subject of eradication efforts.
- Lupine – Coyote Brush Scrub. Approximately ten acres in the nearshore dunes on the border of Ma-le'l South and North, characterized by invasive yellow brush lupine and coyote brush, a native but typically found with invasives. This vegetation type is the subject of eradication efforts.
- Open Sand. Approximately 130 acres of beach strand and moving, unvegetated dunes.
- Dune Swale. Approximately 50 acres of seasonal freshwater wetlands on deflation plains and in depressions between primary foredunes and larger, moving parabolic dunes to the east, and supports herbaceous or woody vegetation.
- Freshwater/Riparian Swamp. Approximately 15 acres in depressions within coniferous forests which are seasonally or permanently flooded by freshwater, and are dominated by red alder and hooker willow.
- Brackish Marsh. Approximately five acres between the salt marsh and coniferous forest at Ma-le'l North, and receive both tidal and freshwater inflows.
- Salt Marsh. Approximately 35 acres located on the mainland and on islands of the Mad River Slough at Ma-le'l North, characterized by saltgrass, pickleweed, and cordgrass (including the invasive dense-flowered cordgrass).

The *IS/EA* states that forested dunes, northern foredunes, beach strands, active coastal dunes, dune swales, freshwater/riparian swamp, brackish marsh, and salt marsh are environmentally sensitive habitats under the Humboldt County Local Coastal Program, and additionally states that dune swales, freshwater/riparian swamp, brackish marsh, and salt marsh are Coastal Act wetlands.

The CMA supports a faunal assemblage that includes small mammals and birds, carnivores, insects, reptiles, and amphibians. Two federally and state listed endangered plants, the Humboldt Bay wallflower and beach layia, occur within the CMA, primarily within the dune mat community. In addition, four California Native Plant Society List 1B species occur within the CMA: dark-eyed gilia and pink sand-verbena (which occur in the foredunes), and Humboldt Bay

owl's-clover and Point Reyes bird's-beak (which occur in the high salt marsh adjacent to the Mad River Slough). Lyngbye's sege, a CNPS List 2 species, is present along the west bank of the Mad River Slough. The IS/EA states that while the federally threatened western snowy plover has been seen on the beaches within the CMA, plover nesting has never been documented in this area. The nearest nesting sites are five miles to the north at Clam Beach and seven miles to the south on the South Spit of Humboldt Bay. The federally endangered brown pelican only breeds as far north as Monterey Bay, but has been observed flying and feeding offshore of the CMA.

The IS/EA examines the expected benefits to native vegetation and wildlife associated with the proposed *Public Access Plan*:

The Plan proposes many actions that are expected to eliminate significant adverse impacts to sensitive and native plant communities, including the estuarine wetlands of the Mad River Slough, the understory of the coniferous forest where a number of locally rare plants can be found, and the native dune mat community within the nearshore dunes. Such proposed actions include the use of regulatory, boundary and directional trail signs, the decommissioning of various casual trails currently in use including the trail that leads to the bank of Iron Creek, the use of symbolic fencing, the installation of a split rail fence between the parking area at Ma-le'l North and the slough to eliminate or minimize foot traffic in salt marsh habitats, and the monitoring of compliance for public use activities through caretaker presence, law enforcement patrols, and BLM/USFWS staff field visits.

Adverse impacts to native plant communities resulting from on-going plant and traditional resource gathering, and the possible trampling of native vegetation from pedestrians, dogs or horses walking outside the designated trail corridor would be minimized to less than significant through the monitoring of CMA resources and public use activities by BLM and USFWS resource managers as proposed in the Plan. Such monitoring would enable managers to identify where adaptive management strategies would be implemented to protect native plant communities. This would include installing additional signage or decommissioning trails in areas where damage to natural resources is occurring as a result of unauthorized uses. In addition, off-trail plant gathering at Male'l South and traditional resource gathering throughout the CMA would be regulated by the issuance of special permits.

The IS/EA examines potential adverse environmental effects from the proposed *Public Access Plan* on native vegetation in the CMA:

Native Vegetation.

Within the Plan, permanent impacts to native vegetation would occur due to implementation of the Proposed Plan Alternative A. These include:

- *The displacement of approximately 60 sq.ft. of wetland vegetation (i.e. wetland fill) for the installment of footings for the footbridge over the seasonal wetland in the nearshore dunes;*
- *The displacement of less than one square foot of wetland vegetation due to the installation of two post piles as part of the repair of the wetland view deck along the Cukish Trail at Ma-le'l North; and,*
- *Installation of the canoe/kayak landing ramp at Ma-le'l North is expected to permanently remove a minor amount of wetland vegetation (less than 300 sq.ft.) composed mostly of dense-flowered cordgrass with small amounts of the native pickleweed, jaumea and saltgrass. Dense-flowered cordgrass is an invasive exotic plant in Humboldt Bay that displaces native salt marsh vegetation.*

The *Public Access Plan* also calls for routine vegetation clearing to maintain the proposed trail corridors through the CMA. The *IS/EA* also includes the following mitigation measures to ensure that the proposed Plan would not adversely affect native vegetation:

Mitigation Measure 1: Planned improvements will occur during the dry season in seasonal wetlands and will incorporate Best Management Practices (BMPs) to control sediment transport, such as conducting work during low tide, and use of silt fencing if necessary.

*Mitigation Measures 5: **(This measure is being discussed with the agencies)** Six hundred square feet of dense-flowered cordgrass will be removed from the mainland salt marsh habitat adjacent to the canoe/kayak landing ramp to encourage the reestablishment of the native salt marsh community and mitigate for the removal of 300 sq.ft. of salt marsh vegetation for the installation of a canoe/kayak landing ramp. This measure will be done under the coordination of the USFWS resource manager for Ma-le'l North.*

Mitigation Measures 6: The development of a maintenance program for the trail to insure that routine vegetation clearing does not adversely affect any locally rare plants identified by the CMA resource managers.

The *IS/EA* next examines potential adverse environmental effects from the proposed *Public Access Plan* on wildlife in the CMA:

Wildlife

Increased disturbance associated with higher public use rates, including those associated with the continued allowance of dogs and horses at Ma-le'l South, will be minimized to less than significant via measures identified in the access plan that will concentrate public access. Such measures include the installation of regulatory, boundary and directional trail signs, the decommissioning of various casual trails currently in use, symbolic fencing, and

the monitoring of compliance of allowable public uses through caretaker presence, law enforcement patrols, and BLM/USFWS staff field visits. These mitigation measures are expected to limit public access to sensitive plant communities and thus the wildlife they support, including the estuarine wetlands of the Mad River Slough, the understory of the coniferous forest and the native dune mat community within the nearshore dunes. Through the monitoring of CMA resources and public use activities, BLM and USFWS resource managers will be able to identify where adaptive management strategies may be implemented to protect wildlife, if deemed necessary. This may include installing additional signage or decommissioning trails in areas where excessive disturbance to wildlife or destruction of wildlife habitat is occurring as a result of authorized uses.

In summary, implementation of the Proposed Plan Alternative A could result in the following potential impacts to wildlife:

- The ongoing potential for disturbance to breeding birds associated with routine vegetation clearing to maintain an open trail corridor through the CMA,*
- The potential for disturbance to breeding birds associated with the expansion of the parking area at Ma-le'l North involving the removal of approximately eight young beach pines and the placement of crushed gravel,*
- The potential for siltation into dune swales and freshwater/riparian swamp, and the associated impacts to suitable amphibian and reptile habitat, that could result from the proposed installation of a foot bridge over the seasonal wetland in the nearshore dunes and the wetland view deck along the Cukish Trail at Ma-le'l North,*
- Disturbance to potentially nesting ospreys associated with the installation of the wetland view deck near the currently active osprey nest located approximately 50 meters west of the Cukish Trail at Ma-le'l North, and*
- The potential for siltation into the Mad River Slough, and associated impacts to water quality and thus fish habitat, that could result from construction of the canoe and kayak launching ramp at Ma-le'l North.*

Implementation of the following mitigation measures would ensure that the proposed Plan and associated activities (such as the improvement of the parking area at Ma-le'l North, installation of the canoe and kayak ramp, installation of the foot bridge, repair of the wetland view deck, and routine vegetation clearing), as described in Alternative A Proposed Action, would not significantly impact or adversely affect wildlife, including the active osprey nest at Ma-le'l North.

Mitigation Measure 1:

Planned improvements will occur during the dry season in seasonal wetlands and will incorporate Best Management Practices (BMPs) to control sediment transport, such as conducting work during low tide, and use of silt fencing if necessary.

Mitigation Measure 2:

Construction activities and routine maintenance will be restricted to the non-breeding period for birds likely to breed in the CMA (15 August through 15 February).

The IS/EA also examines potential effects on threatened, endangered, and special status plant and animal species present at or near the CMA:

Plants

The nearshore dunes of the CMA contain important habitat for five special status vascular plants. These include the federal and state-listed endangered Humboldt Bay wallflower and beach layia; the CNPS list 1B pink sand verbena and dark-eyed gilia; and the CNPS list 4 American glehnia. In addition, Humboldt Bay owl's-clover and Point Reyes bird's-beak, both listed as CNPS 1B, are known to occur within the high salt marsh habitats of the Mad River Slough at Ma-le'l North, and Lyngbye's sedge, a CNPS list 2 species, occurs in brackish areas along the banks of the slough.

Activities associated with the proposed action that have the potential to adversely affect these species include any activity that may cause ground disturbance where these species occur . . .

Direct impacts to the wallflower and other rare dune plants could result from pedestrians, dogs or horses leaving the trail corridor and walking within rare plant areas, potentially crushing seed and reproductive individuals. Ground disturbance associated with off-trail foot traffic may also indirectly impact rare plants by causing degradation of suitable habitat areas (i.e. dune mat).

The use of regulatory, boundary and directional trail signs, the decommission of various casual trails currently in use, symbolic fencing, and the monitoring of compliance for public use activities through caretaker presence, law enforcement patrols, and BLM/USFWS staff field visits, is expected to limit public access to endangered plant areas located within the CMA and the adjacent Lanphere Dunes Unit of HBNWR, thereby minimizing impacts to existing populations of rare plants to less than significant. In addition, through the monitoring of CMA resources and public use activities, BLM and USFWS resource managers will be able to identify where adaptive management strategies may be implemented to protect sensitive resources. This would include installing additional signage or decommissioning trails in areas where damage to natural resources is occurring as a result of authorized uses.

. . .

Implementation of the following mitigation measures would ensure that the Proposed Action Alternative A, would not significantly impact or adversely affect threatened, endangered or special status plants.

Mitigation Measure 1:

Planned improvements will occur during the dry season in seasonal wetlands and will incorporate Best Management Practices (BMP's) to control sediment transport, such as conducting work during low tide, and use of silt fencing if necessary.

Mitigation Measure 3:

The USFWS will implement Humboldt Bay wallflower seed collection and subsequent dispersal within newly restored areas of the Fernstrom-Root parcel. This measure is designed to facilitate the expansion of the wallflower within the CMA and mitigate for potential adverse impacts from off-trail foot traffic.

Mitigation Measure 4:

All construction activities occurring within or adjacent to endangered plant areas will be supervised by CMA resource managers and will take place outside of the growing season for annual species to avoid impacts to reproductive individuals. In addition, before the commencement of work and when species are clearly visible all occurrences of Humboldt Bay wallflower rosettes, Humboldt Bay owls-clover, Point Reyes birds-beak, and other rare plant species located near construction areas will be flagged and the CMA resource manager will document any adversely affected individuals.

Animals

Fish

The Mad River slough, which meanders through the eastern edge of Ma-le'l North provides potential habitat for five species of special status fish: tidewater goby, coast cutthroat trout, the southern Oregon/northern California coho salmon evolutionarily significant unit (ESU), the northern California steelhead ESU and the California coastal Chinook salmon ESU. Tidewater goby is federally endangered and a California Species of Special Concern. Coast cutthroat trout and the southern Oregon/northern California coho salmon ESU are both California Species of Special Concern. The northern California steelhead ESU and California coastal Chinook salmon ESU are federally threatened.

Activities associated with the proposed action that have the potential to adversely affect threatened, endangered and special status fish include:

- *Temporary impacts to water quality and sediment transport within the Mad River Slough due to construction of the canoe/kayak launching ramp.*

Implementation of the following mitigation measures would ensure that the Proposed Action Alternative A, would not significantly impact or adversely affect threatened, endangered or special status fish.

Mitigation Measure 1:

Planned improvements will occur during the dry season in seasonal wetlands and will

incorporate Best Management Practices (BMPs) to control sediment transport, such as conducting work during low tide and use of silt fencing.

Amphibians and Reptiles

Coniferous forest and freshwater wetland areas such as those mapped as freshwater/riparian swamp (including Iron Creek and potentially the spring near the Male'l North parking lot) and dune swales provide habitat for one special status amphibian, northern red-legged frog, and one special status reptile, northwestern pond turtle, both California Species of special concern.

Activities associated with the proposed action that have the potential to adversely affect northern red-legged frog and northwestern pond turtle include:

- Temporary impacts to water quality due to sediment transport in freshwater environments where northern red-legged frog and northwestern pond turtle could occur. This includes the potential for sediment transport associated with construction of the foot bridge over the seasonal wetland in the nearshore dunes and the wetland view deck over freshwater/riparian swamp adjacent to Cukish Trail, both at Ma-le'l North.*

Implementation of the following mitigation measures would ensure that the Proposed Action Alternative A, would not significantly impact or adversely affect special status amphibians and reptiles.

Mitigation Measure 1:

Planned improvements will occur during the dry season in seasonal wetlands and will incorporate Best Management Practices (BMPs) to control sediment transport, such as conducting work during low tide and use of silt fencing.

Hérons and Egrets

Four species of special status herons and egrets occur throughout the CMA, great egret, great blue heron, snowy egret and black-crowned night heron. Although these species are found all throughout Humboldt Bay, they primarily frequent areas of the CMA near marshes, freshwater/ riparian swamp, and tidal mud flats associated with the Mad River Slough.

Adverse impacts to special status herons and/or egrets are not expected since the Plan proposes to minimize disturbance associated with increased public use including the installation of regulatory, boundary and directional trail signs, the decommissioning of various casual trails currently in use, symbolic fencing and monitoring of compliance with allowable public use policy through caretaker presence, law enforcement patrols, and BLM/USFWS staff field visits. These measures are expected to limit public access to heron and egret habitat occurring in the estuarine wetlands of the Mad River Slough, the understory of the coniferous forest and within the nearshore dunes.

Activities associated with the proposed action that have the potential to adversely affect

herons and/or egrets include:

- *The ongoing potential for disturbance associated with routine vegetation clearing to maintain an open trail corridor through the CMA.*
- *The potential for disturbance to breeding birds associated with the expansion of the parking area at Ma-le'l North involving the removal of approximately eight young beach pines and the placement of crushed gravel.*

Implementation of the following mitigation measures would ensure that the Proposed Action Alternative A, would not significantly impact or adversely affect herons and egrets.

Mitigation Measure 2:

Construction activities and routine maintenance will be restricted to the non-breeding period for birds likely to breed in the CMA (15 August through 15 February).

Raptors

Nine species of special status raptors occur throughout the CMA in association with different habitat types and include Cooper's and sharp-shinned hawks, short-eared owl, northern harrier, white-tailed kite, merlin, peregrine falcon, bald eagle and osprey. Cooper's and sharp-shinned hawks, short-eared owl, northern harrier, merlin and osprey are California Species of Special Concern. White-tailed kite, peregrine falcon and bald eagle are California Fully Protected species. Special status raptors are either known to occur or have the potential for occurrence within all of the habitats of the CMA.

Adverse impacts to special status raptors are not expected since measures have been implemented to minimize disturbance associated with increased public use including the installation of regulatory, boundary and directional trail signs, the decommissioning of various casual trails currently in use, symbolic fencing and monitoring of compliance with allowable public use policy through caretaker presence, law enforcement patrols, and BLM/USFWS staff field visits. These measures are expected to limit public access to raptor habitat occurring in the estuarine wetlands of the Mad River Slough, the understory of the coniferous forest and native dune mat communities within the nearshore dunes.

Activities associated with the proposed actions that have the potential to adversely affect raptors include:

- *The ongoing potential for disturbance associated with routine vegetation clearing to maintain an open trail corridor through the CMA,*
- *The potential for disturbance to breeding birds associated with the expansion of the parking area at Ma-le'l North involving the removal of approximately eight young beach pines and the placement of crushed gravel.*

Implementation of the following mitigation measures would ensure that the Proposed Action Alternative A, would not significantly impact or adversely affect special status raptors.

Mitigation Measure 2:

Construction activities and routine maintenance will be restricted to the non-breeding period for birds likely to breed in the CMA (15 August through 15 February).

The IS/EA also examines potential adverse effects on water quality from the proposed *Public Access Plan*:

Impacts of the proposed action alternative are generally associated with construction and are expected to be temporary. The replacement of the wetland viewing deck and construction of the canoe and kayak landing and launching ramp would potentially disturb water quality on a temporary basis. Additionally, construction of the erosion control revetment along the Cukish trail could possibly impact water quality due to its vicinity to the Mad River Slough. All construction activities possibly affecting water quality would be mitigated to a less than significant amount through the use of California Stormwater Quality Association's Stormwater Best Management Practice (BMP) Handbooks. Construction of the pedestrian footbridge over a seasonal wetland would take place during the dry season thereby avoiding impacts to water quality.

Typical stormwater pollutants from parking lots are hydrocarbons and metals. In gravel parking lots the constituents are typically adsorbed and sequestered within the gravel media and therefore pose little potential risk to downstream receptors. Expansion of the Ma-le'l North parking area would be constructed using gravel, which is semi-permeable. Soil in the vicinity of the site is highly permeable. The design would include best management practices proposed in the Plan that would reduce erosion and non-point source pollution, and that meet the design guidelines and performance criteria of the California Stormwater Quality Association's Stormwater Best Management Practice (BMP) Handbooks.

The *Public Access Plan* states that only low-impact, non-motorized public access and recreation activities would be allowed at the Ma-le'l Dunes CMA, in order to protect its unique terrestrial and aquatic habitats and resources, and the water quality of Mad River Slough and freshwater, brackish, and salt marsh wetlands. Nevertheless, as documented in the *Plan* and the *IS/EA*, several of the proposed projects in the *Plan* hold the potential to adversely affect environmentally sensitive habitats and water quality. At the same time, these projects are designed to restore and protect resources and habitat within the Ma-le'l Dunes CMA by implementing changes to existing public access and recreation facilities. However, adequate location and design information on several of the proposed projects (e.g., kayak launch ramp, Ma-le'l North parking area, wetland view deck, dune view deck, Hudt Trail wetland bridge, erosion control projects and ADA design improvements along the Cukish Trail, Ma-le'l Road turnouts) is not available at this time to enable the Commission to make definitive findings on whether those projects are fully consistent with the environmentally sensitive habitat, wetlands, and water quality policies of the CCMP.

For example, while the proposed kayak launch ramp would focus boat launching and landing to one site along the Mad River Slough (rather than the several paths that currently exist), and includes fencing to facilitate recovery of damaged salt marsh habitat at this site, the ramp would entail fill of wetland habitat. Similarly, the proposed rehabilitation of the existing wetland view deck and construction of the Hudt Trail seasonal wetland foot bridge may include fill of wetland habitat. Should the final design of these three projects include wetland fill, they must be analyzed for consistency with the three tests of Coastal Act Section 30233(a): allowable use, least environmentally damaging alternative, and mitigation. Regarding the latter test, the Commission staff informed FWS staff that the mitigation plan initially proposed for the loss of wetland habitat arising from construction of the kayak launch ramp was inadequate and would need revision. Regarding project alternatives for the view deck and bridge, the Commission staff informed FWS staff that design alternatives which avoid wetland fill should be thoroughly investigated prior to selection of the final designs.

At this conceptual level of project development at the Ma-le'l Dunes CMA, the Commission finds that the proposed public access and recreation projects included in the *Public Access Plan* will improve the protection of environmentally sensitive habitat, wetlands, and water quality within the CMA. The Commission notes that the precise location, design, and construction details for several of the proposed projects (i.e., kayak launch ramp, Ma-le'l North parking area, wetland view deck, dune view deck, Hudt Trail wetland bridge, erosion control projects and ADA design improvements along the Cukish Trail, Ma-le'l Road turnouts) are not yet available. As a result, the Commission can only find at this time that these projects are conceptually consistent with the environmentally sensitive habitat, wetlands, and water quality protection policies of the CCMP. However, the FWS and BLM have committed in this consistency determination to submit additional consistency and/or negative determinations to the Commission for any future projects or management decisions in the CMA that hold the potential to affect environmentally sensitive habitat, wetlands, and water quality of the adjacent lands and waters of the coastal zone. This commitment ensures that the Commission will have the opportunity to review the details (when they become available) of those projects and decisions, and make a final determination of consistency with the aforementioned CCMP policies. Therefore, with this understanding the Commission finds that the Ma-le'l Dunes Cooperative Management Area *Public Access Plan* is consistent with the environmentally sensitive habitat, wetlands, and water quality protection policies of the CCMP (Sections 30230, 30231, 30233, and 30240 of the Coastal Act).

C. Cultural Resources. The Coastal Acts 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 proposed *Public Access Plan* addresses protection of cultural resources within the Ma-le'l Dunes CMA, and states that the CMA and Humboldt Bay with its north and south enclosing peninsulas is completely within the ethnographic territory of the Wiyot Tribe and has been in use by people for over a thousand years. Cultural resources within the CMA include Wiyot village

sites, camps, and activity areas. Archaeological and ethnographic investigations have taken place in the CMA from the early 1900s to the present. As a result of these research efforts, twelve pre-Contact Wiyot and Old Nation use areas have been identified, several isolated stone tools have been found and recorded, and several historic places have been located with the CMA.

The *Public Access Plan* states that:

Natural erosion, time, and recreational uses are the major adverse conditions affecting the prehistoric and historic cultural resources situated within the Ma-le'l Dunes CMA. Past impacts from off-highway vehicles in the foredunes have effaced, dispersed, and destroyed the fragile cultural activity areas located there. Archaeological test excavations at several of these sites have recovered scant information. The village sites, on the other hand, have been somewhat protected due to their more restricted locations. However, illegal looting activities, casual collecting, vandalism, and recreation trails have caused much damage and destroyed a lot of information. In addition, natural erosion and weathering are recognized as adversely affecting the remaining village sites and the deteriorated historic remnants.

Consultation with the Wiyot Tribe of Table Bluff Reservation has resulted in the recognition of Ma-le'l Dunes as a place for gathering natural resources both for use as part of their subsistence and for traditional cultural practices such as basket weaving. Also notable is the sacred aspect of the old Wiyot village sites that contain burial grounds and ceremonial areas. Extra care would be exercised in protecting the cultural resources from further damage and consultation with the Wiyot tribe should continue so access to traditional gathering areas are allowed and the Wiyot people can be more involved with their heritage.

Given the cultural resources present throughout the CMA, development of the *Public Access Plan* included numerous provisions to protect these resources from the anticipated increase in levels of public access and recreation in the CMA:

Public access trails to be delineated as per the proposed public Access Plan were routed around pre-historic resources with the assistance of the Wiyot Tribe Cultural Resources Specialist and in such a way to avoid impact to pre-historic resources. Under the proposed Plan, casual trails to pre-historic resources of special interest to the Wiyot Tribe would be decommissioned and re-vegetated with native plants and/or brushed with vegetative materials. More foot traffic would be allowed near the cultural areas that could lead to adverse effects. On the positive side, the Wiyot people would have more access for traditional gathering and could be involved in monitoring and protecting their heritage values. The proposed presence of the public and a caretaker would deter looting, vandalism, and casual collecting at the Wiyot sites.

The Plan proposes a public education and signing plan to be developed cooperatively by BLM and FWS for the Ma-le'l Dunes that would foster appreciation and understanding, inspire stewardship, and convey management goals and regulatory restrictions relevant to

the area. In addition, the joint logo to include both agency logos as well as a unifying design element, such as a Wiyot basket pattern, indicative of the cultural significance of the area would foster appreciation and respect of cultural resources. The main interpretive theme of the area, which is proposed to be: "The Ma-le'l Dunes is a culturally significant place to the Wiyot people who have a long history of habitation in the area and of making use of the area's diverse and abundant resources", the proposed trailside interpretive signs that would convey this message as well as several sub-themes, the proposed Wiyot trail names to be finalized with the consultation of the Wiyot Tribe, the proposed educational field trips to the area, and the proposed trail map/brochure containing interpretive information regarding the cultural values of the area and regulatory restrictions would further appreciation and respect of cultural resources within the Plan area.

In addition, the *Public Access Plan* includes the following mitigation measures to assure that the *Plan* would not significantly impact or adversely affect cultural resources within the CMA:

Mitigation Measure 7: *In the event any undiscovered paleontological, archaeological, ethnic, or religious resources are encountered during grading or construction-related activities, in compliance with the state and federal law, all work within 100 feet of the resources shall be halted and the Plan applicants shall consult with a qualified cultural resources specialist and/or archaeologist to assess the significance of the find and formulate further mitigation. This would include coordination with the Native American Heritage Commission. The Native American Heritage Commission would contact the Wiyot Tribe, as deemed necessary, to assist in assessing the significance of any find. If any find is determined to be of significance, the USDI-BLM and FWS, and a qualified archaeologist would meet to determine the appropriate course of action. Pursuant to the California Health and Safety Code Section 7050.5, if human remains are encountered, all work would cease and the County coroner would be contacted. The county coroner and Native American Heritage Commission would be charged with determining if the human remains are of Native American origin.*

Mitigation Measure 8: *Regulatory signing would state that there are cultural resources in the area and that in accordance to state law, destruction, and defacement of historical objects (Penal Code 655-1/2) and removal of human remains (PRC 5097.5 and PRC 70550.5) is a punishable crime. Undesignated canoe and kayak landings located on the slough and within the project boundary would be re-vegetated and signed "No Landing/Re-vegetation in Progress."*

Mitigation Measure 9: *A certified archeologist would prepare a baseline of review of the cultural resources of the Plan area in conjunction with the Wiyot Tribe and qualified agency staff. Thereafter annual review with a certified archeologist would occur and qualified agency staff would conduct interim quarterly monitoring to ensure against vandalism of cultural resources within the Plan area. Results of cultural resources monitoring would be conveyed to the appropriate agencies.*

With the aforementioned design guidelines and mitigation measures, the Commission finds that the proposed public access and recreation projects included in the *Public Access Plan* will improve the protection of cultural resources within the CMA. The Commission notes that the precise location, design, and construction details for several of the proposed projects (i.e., kayak launch ramp, Ma-le'l North parking area, wetland view deck, dune view deck, Hudt Trail wetland bridge, erosion control projects and ADA design improvements along the Cukish Trail, Ma-le'l Road turnouts) are not yet available. As a result, the Commission finds that these projects are conceptually consistent with the cultural resource protection policies of the CCMP. However, the FWS and BLM have committed in this consistency determination to submit additional consistency and/or negative determinations to the Commission for any future projects or management decisions in the CMA that hold the potential to affect cultural resources of the adjacent lands and waters of the coastal zone. This commitment ensures that the Commission will have the opportunity to review the details (when they become available) of those projects and decisions, and make a final determination of consistency with the cultural resource protection policies of the CCMP. Therefore, the Commission finds that the Ma-le'l Dunes Cooperative Management Area *Public Access Plan* will not adversely affect cultural resources, and that the *Plan* is consistent with the cultural resource policy of the CCMP (Section 30244 of the Coastal Act).

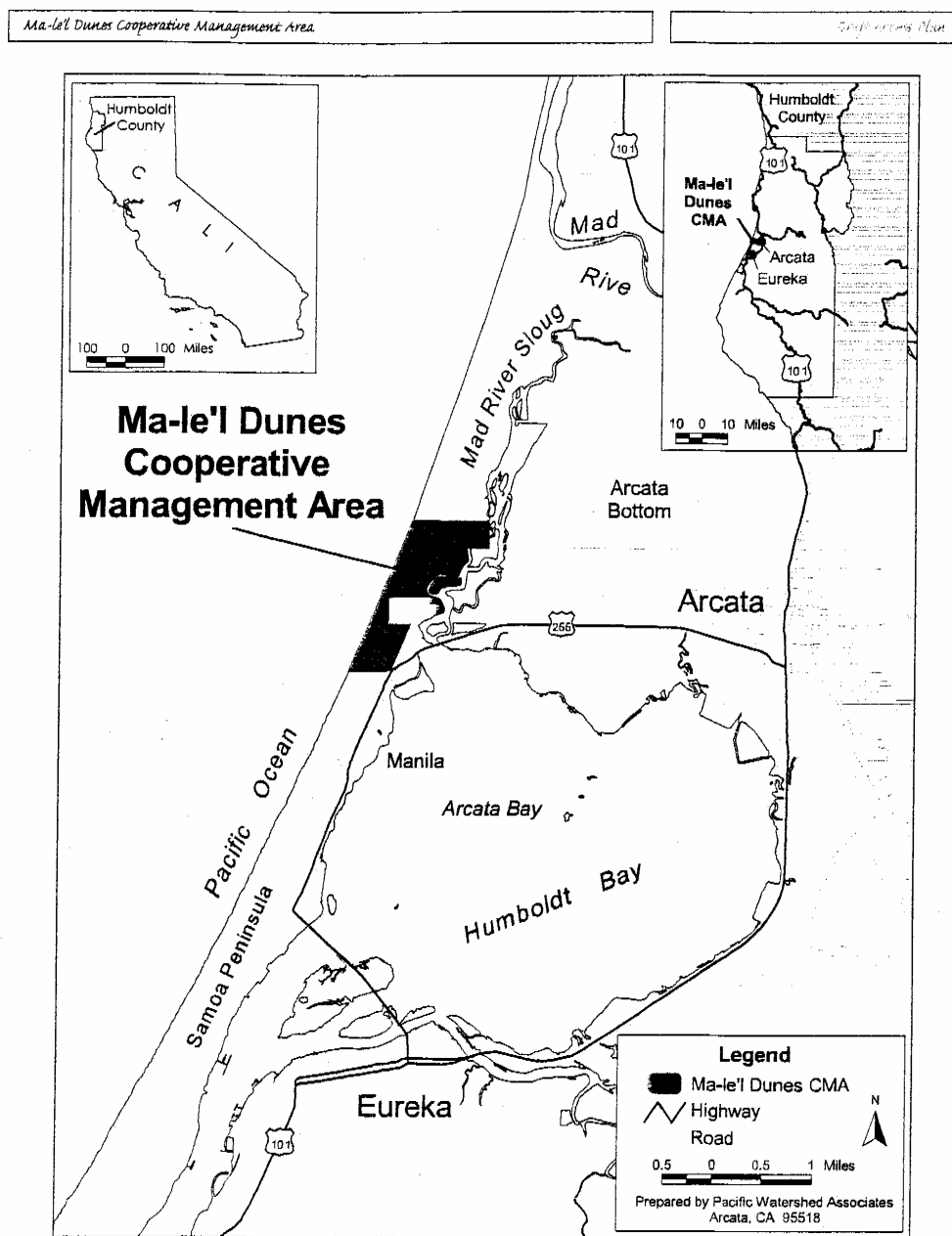


Figure 1-1. Site Location Map

1-4

EXHIBIT NO. <u>1</u>
APPLICATION NO.
<u>CD-069-06</u>

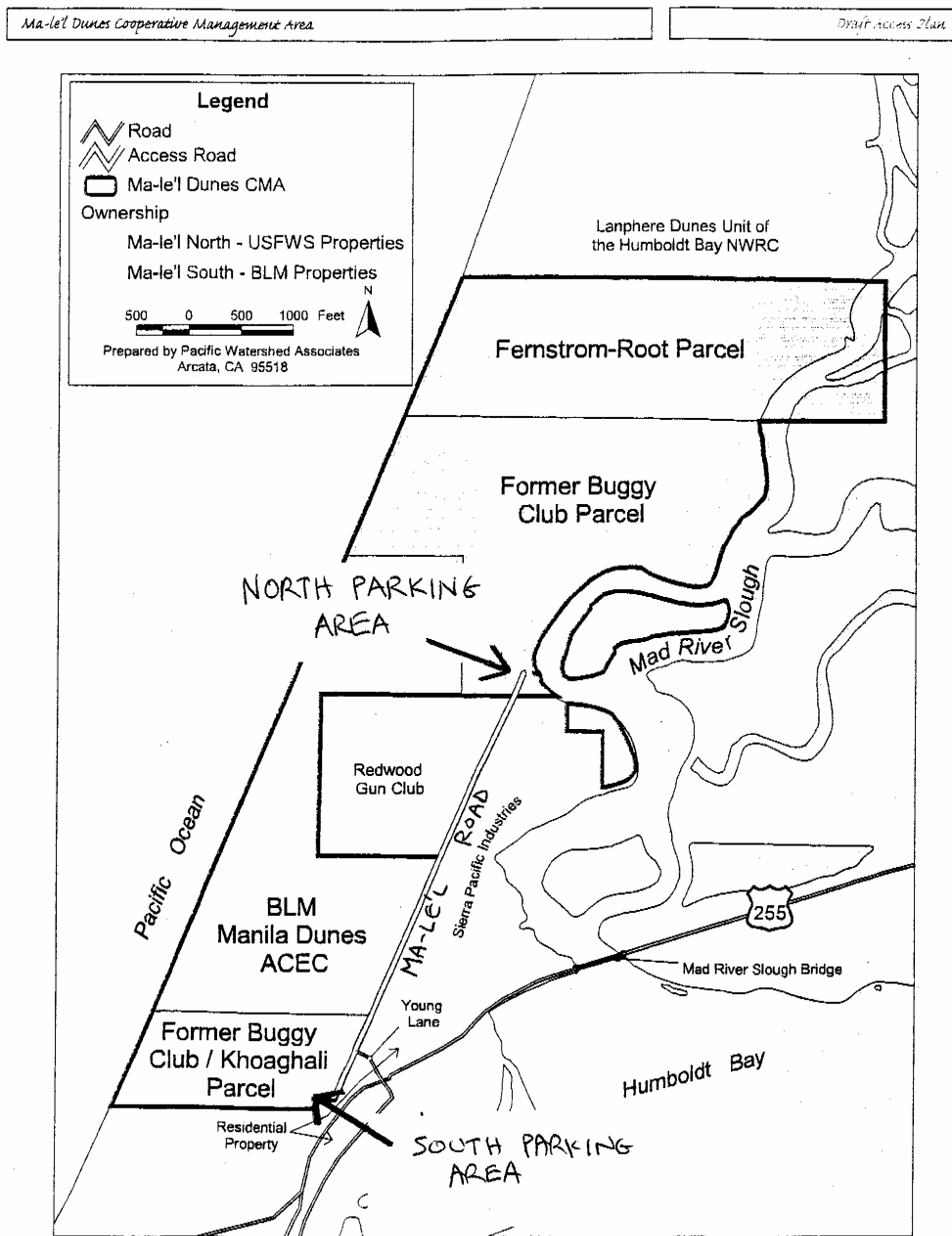


Figure 1-2. Ma-le'l Dunes CMA Map

MALEL DUNES CMA

1-5

EXHIBIT NO. 2

APPLICATION NO.

CD-069-06

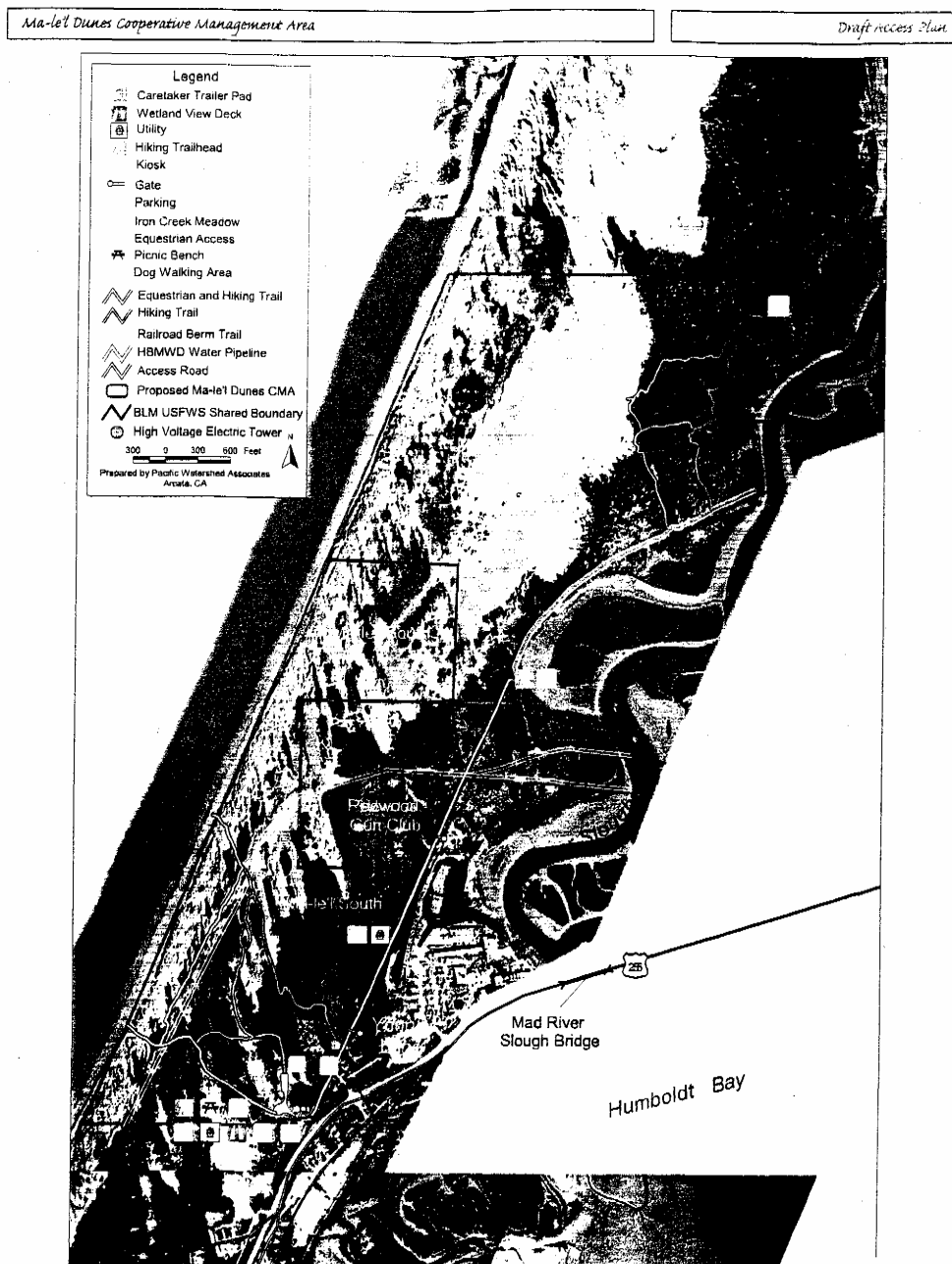


Figure 3-1. Existing Features Map

Mamala, California

3-3

EXHIBIT NO. 3

APPLICATION NO.

CD-069-06

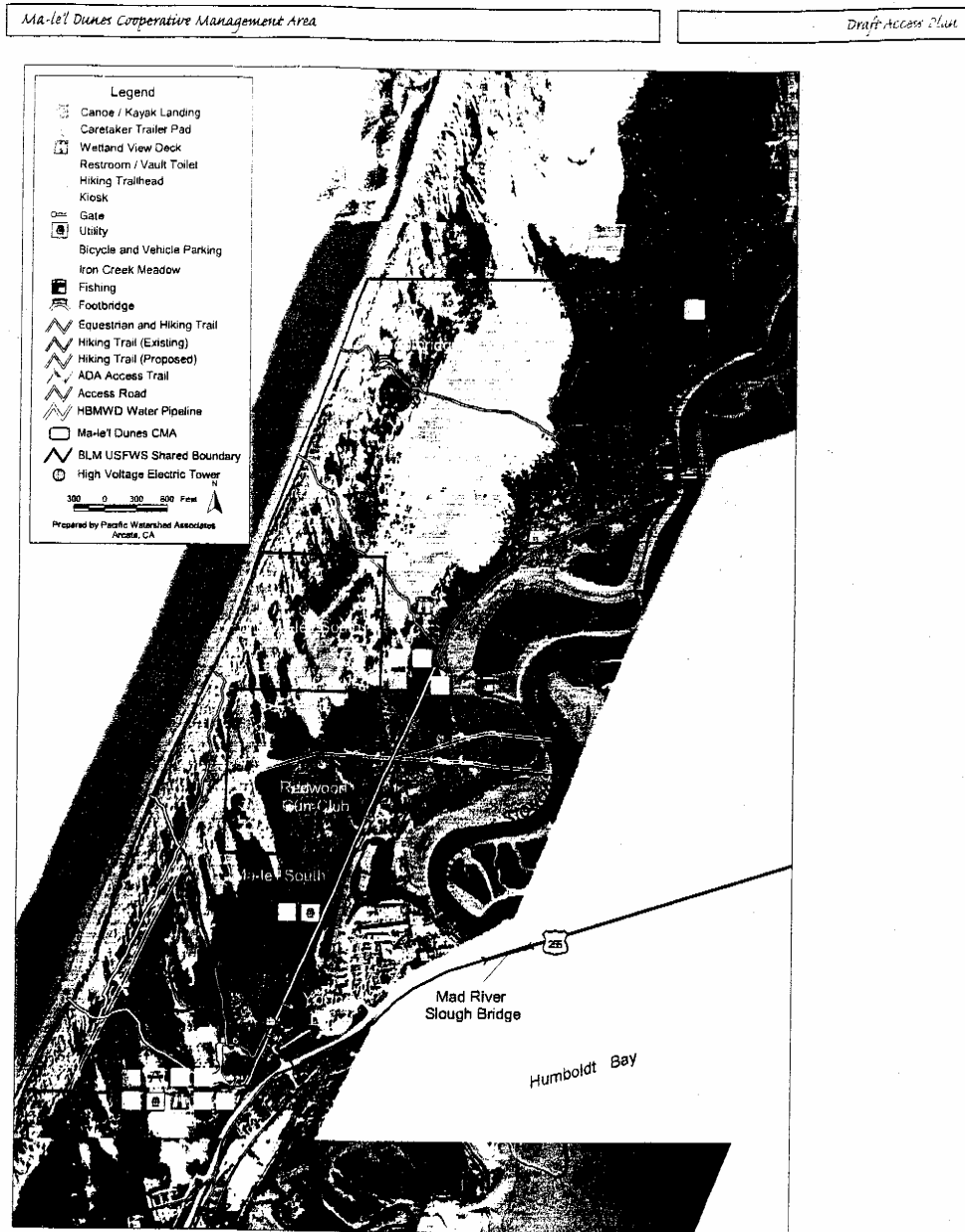


Figure 4-1. Proposed Improvements Map

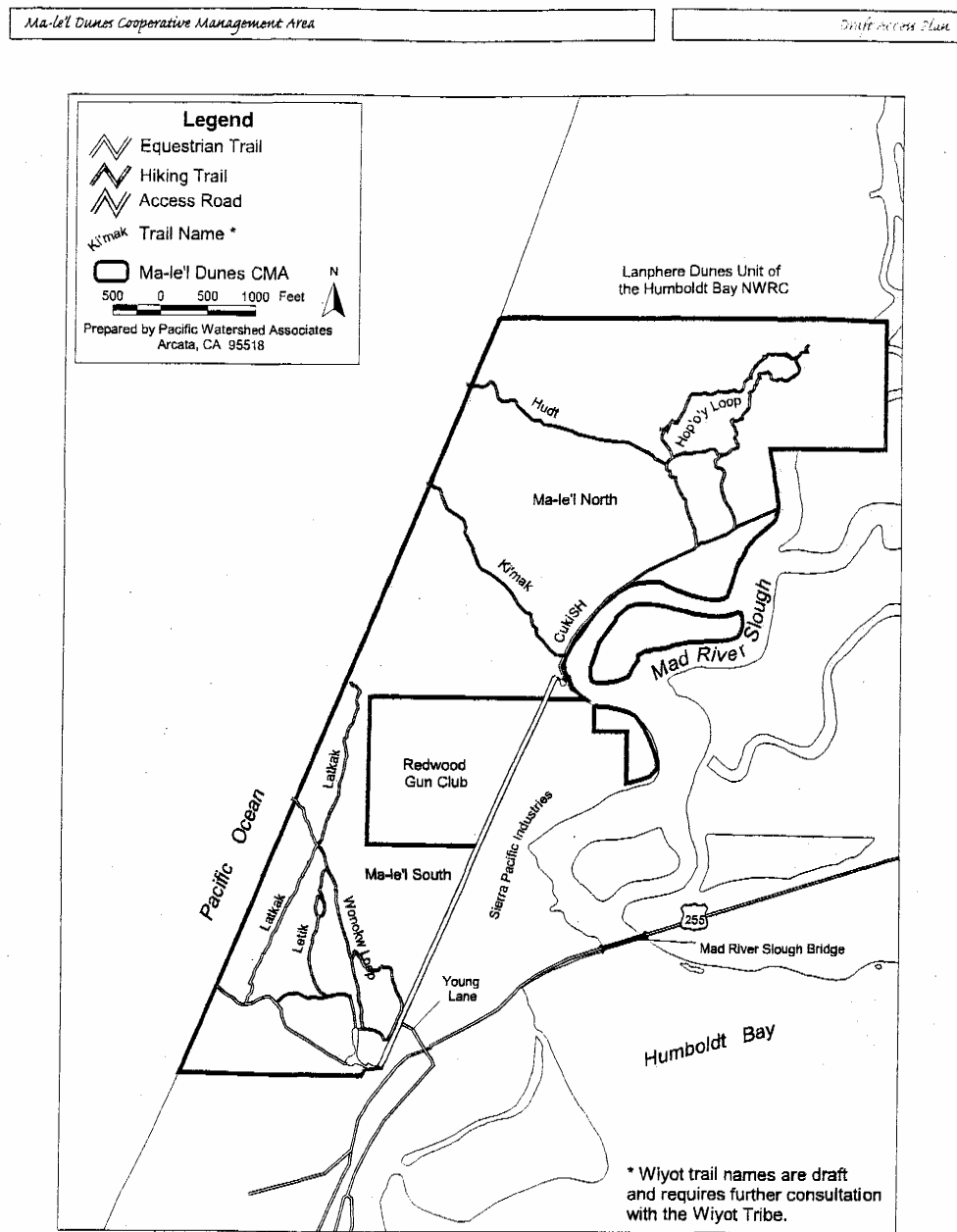


Figure 4-4. Trail Route Map

Appendix D

Implementation Tasks Phase One and Two

PHASE ONE IMPROVEMENTS	RESPONSIBILITY
INFRASTRUCTURE	
1. Establish caretaker trailer pad	BLM
2. Improve Ma-le'l Road	USFWS
3. Relocate Ma-le'l North entry gate	USFWS
4. Install new board fencing, along Ma-le'l Road adjacent to private residential properties	BLM
	USFWS
5. Close parking area at power tower and install 1,000 ft walkway along Ma-le'l Road	BLM
6. Install new gate and fencing to HBMWD easement on east side of Ma-le'l Road	USFWS
7. Install live fence plantings along Ma-le'l Road adjacent to SPI property	USFWS
8. Install new post and wire fencing along Ma-le'l Road adjacent to RGC	USFWS
9. Upgrade parking areas	USFWS
10. Install temporary restrooms	USFWS
11. Install trash receptacles/picnic tables/bikes racks	USFWS
TRAIL WORK	
12. Preliminary upgrade of Gokwera Trail and control erosion	USFWS
13. Install trail steps at Hop'o'y Trailhead	USFWS
14. Repair step and rail on Hop'o'y Trail	USFWS
15. Re-vegetation of casual trails throughout forest and at Iron Creek	BLM
	USFWS
16. Re-route forest egress/Establish Hudt Trail with markers	USFWS
17. Establish Ki'mak Trail with markers	USFWS
18. Install puncheon bridge over wetland on Hudt Trail	USFWS
19. Remove unwanted fences	BLM
	USFWS
20. Dismantle dilapidated structures	BLM
	USFWS
21. Remove existing kiosks	USFWS
SIGNAGE AND PUBLICATIONS	
22. Install new main entry signage at Young Lane	BLM
	USFWS
23. Install Ma-le'l North entry signage	USFWS
24. Install highway and coastal access signage	BLM

EXHIBIT NO. 6

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PHASE ONE IMPROVEMENTS, continued	RESPONSIBILITY
SIGNAGE AND PUBLICATIONS, continued	
25. Install jurisdictional boundary signage (for RGC, SPI, HBMWD)	USFWS
26. Install regulatory signage	USFWS
27. Install temporary signage	BLM
28. Install trail markers	USFWS
29. Install orientation signage	BLM
	USFWS
30. Update Humboldt Bay Beach and Dunes map and create trail brochure	BLM
	USFWS
OPERATIONS	
31. Hire Caretaker	USFWS
32. Develop special permits for overnight camping and vegetative and traditional gathering	BLM
	USFWS
33. Develop and execute agreement between USFWS and BLM	BLM
	USFWS
34. Develop law enforcement protocol	BLM
	USFWS
35. Develop and execute other agreements with partners (RGC, SPI, FOD, Wiyot Tribe)	BLM
	USFWS
36. Organize and conduct opening ceremony	CMA Partners
37. Begin interpretive programs	CMA Partners
PHASE TWO IMPROVEMENTS	RESPONSIBILITY
INFRASTRUCTURE	
38. Upgrade benches	USFWS
39. Install new boat ramp and stairs	USFWS
40. Install vault toilets	USFWS
TRAIL WORK	
41. Upgrade ADA Railroad Trail	USFWS
42. Install new board fencing, along Ma-le'l Road adjacent to private residential properties	USFWS
43. Install cable steps at forest egress/Hudt Trailhead	USFWS
44. Wetland view deck repair	
45. Dune view deck installation	USFWS
46. Replace 100 ft section of step and rail and install 30 ft boardwalk on Wonowk Trail	BLM
SIGNAGE	
47. Install interpretive signage	BLM
	USFWS

EX-6, CONT.