

COASTAL CONSERVANCY

Staff Recommendation
August 5, 2010

**MA-LE'L DUNES COOPERATIVE MANAGEMENT AREA
ACCESS IMPROVEMENTS**

File No. 06-048
Project Manager: Su Corbaley

RECOMMENDED ACTION: Approval of the Ma-le'l Dunes Cooperative Area Access Management Plan; adoption of a CEQA Mitigated Negative Declaration and Mitigation Monitoring Program for the Plan, and authorization to disburse up to \$175,000 to the United States Fish and Wildlife Service to carry out access improvements at the Ma-le'l Dunes Cooperative Management Area.

LOCATION: Town of Manila on the north spit of Humboldt Bay, Humboldt County (Exhibit 1).

PROGRAM CATEGORY: Public Access

EXHIBITS

- Exhibit 1: [Project Location and Site Map](#)
 - Exhibit 2: [Access Management Plan](#)
 - Exhibit 3: [CEQA Documentation](#)
 - Exhibit 4: [Mitigation and Monitoring Program](#)
 - Exhibit 5: [Letters of Support](#)
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RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31000 *et seq.* of the Public Resources Code:

“The State Coastal Conservancy hereby:

1. Approves the Ma-le'l Dunes Cooperative Area Access Management Plan attached as Exhibit 2 to the accompanying staff recommendation.
 2. Adopts the Mitigated Negative Declaration prepared under the California Environmental Quality Act (“CEQA”) for the Ma-le'l Dunes Cooperative Area Access Management Plan and attached as Exhibit 3 to the accompanying staff recommendation.
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3. Adopts the Ma-le'l Dunes Cooperative Area Access Plan Mitigation Monitoring Program attached as Exhibit 4 to the accompanying staff recommendation.
4. Authorizes disbursement of an amount not to exceed one hundred seventy-five thousand dollars (\$175,000) to the United States Fish and Wildlife Service to implement Phase One of the Ma-le'l Dunes Cooperative Management Area Access Plan, subject to the following conditions:
 - a. Prior to disbursement of any funds, the Executive Officer shall approve in writing a work plan, budget and schedule, detailed project designs, and any contractors to be used for the activities under this authorization.
 - b. With respect to work funded by the Conservancy and constituting an improvement or development, the grantee shall provide evidence that all permits necessary to this project have been issued.
 - c. Conservancy funding shall be acknowledged by erecting and maintaining on the property a sign or signs that has been reviewed and approved by the Executive Officer.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed project is consistent with Chapter 9 of Division 21 of the Public Resources Code, regarding public access to and along the coast.
2. The proposed project is consistent with the Project Selection Criteria and Guidelines approved by the Conservancy on June 4, 2009.
3. The Conservancy has independently reviewed and considered the Mitigated Negative Declaration/Finding of No Significant Impact and Mitigation Monitoring Program prepared under CEQA and the National Environmental Protection Act, and attached to the accompanying staff recommendation as Exhibits 3 and 4, respectively, and finds that there is no substantial evidence that the project as mitigated will have a significant effect on the environment, as defined in 14 California Code of Regulations Section 15382.
4. The proposed project will serve greater than local needs.”

PROJECT SUMMARY: The proposed authorization would enable the United States Fish and Wildlife Service (“FWS”) to carry out access improvements on the Ma-le'l Dunes Cooperative Management Area on the north spit of Humboldt Bay in Humboldt County (Exhibit 1).

The project area is located on the north spit of Humboldt Bay in an area that is highly regarded for its natural beauty and easy access to the ocean and dunes. The property was historically owned by Louisiana-Pacific Corporation. For a time in the 1990s, it was open to the public for access use under a cooperative agreement between the owners and several land management agencies and organizations, and quickly became a popular destination. However, in 1994, Louisiana-Pacific sold the property to a private organization that used it exclusively for recreational off-highway vehicle recreation by its members, and public access to the site was lost. (See “Project History” section for additional detail.)

In 2004 the Center for Natural Lands Management, a nonprofit conservation organization, was able to acquire the property with funds from the Conservancy and the U.S. Fish and Wildlife Service ("FWS") bringing it one step closer to re-opening for public use. The southern portion of the property was transferred from the Center for Natural Land Management to the Bureau of Land Management ("BLM") in late 2004 and the northern portion was transferred to FWS in 2005. Anticipating a lengthy planning period by the federal agencies, the Conservancy initiated a planning and environmental review process with consultants, BLM, FWS and interested organizations to facilitate the planning process for long-term management and open the property as soon as practicable to public access. The completed Ma-le'l Dunes Cooperative Management Area Access Management Plan ("the Plan") and the California Environmental Quality Act ("CEQA")/National Environmental Policy Act ("NEPA") documents are attached to this staff recommendation as Exhibits 2 and 3, respectively.

Conservancy staff is recommending funding Phase One of the plan, to ensure that the property is opened to the public as soon as possible. The work will be carried out in concert with federal coordination and consultation. Though the Plan specifies Phase Two activities, in addition to the Phase One activities proposed herein, those are not proposed for funding at this time.

The Phase One activities expected to be completed under this authorization include:

- improving the main access road and security gate(s);
- installing new fencing to separate road use from nearby private residences and provide added security for adjacent private recreational owner;
- closing casual parking area(s) to direct traffic to formal parking area(s);
- upgrading formal parking area(s); installing trash receptacles, picnic tables, bike racks and temporary restrooms;
- upgrading historic existing trails through erosion control and installation of steps;
- revegetating casual trails throughout the forest and creek areas to remove these trails from use;
- re-routing the forest ingress/egress trail;
- installing trail markers;
- installing a plank-bridge at a wetland crossing;
- developing and installing highway coastal access signs, a directional sign at the Highway 255 turnoff, a sign at the main entrance to the property, regulatory signs and kiosks, and property boundary signs between adjacent private owners and FWS and BLM lands.

Additional activities that will be carried out by the federal agencies include developing special permits for overnight camping and gathering on specific areas only, developing law enforcement protocol, and developing interpretive programs. The majority of the work will involve improvements to the northern (FWS-owned) portion of the Ma-le'l Dunes Cooperative Management Area. Once completed, the northern portion will be opened to the public. It is anticipated that activities will be completed by late summer 2011.

Site Description: The Ma-le'l Dunes Cooperative Area is approximately 444 acres on the north spit of Humboldt Bay in Humboldt County. It comprises two portions: the "Ma-le'l North", comprising approximately 290 acres owned and managed by FWS, and the "Ma-le'l South", comprising approximately 154 acres owned and managed by BLM. The site is bounded on the west by the Pacific Ocean, on the east by the Mad River Slough, on the north by the Humboldt Bay National Wildlife Refuge, and on the south by additional coastal dunes environment undergoing restoration. The property comprises wetland and associated uplands including dunes and maritime forest within a barrier island ecosystem and includes habitat for the endangered Menzies Wallflower, and beach layia, as well as the rare dune mat plant community. While none has been documented, it could be possible, through future restoration actions, that the property could contain suitable habitat for the Western Snowy Plover.

Project History: The Conservancy has a long history with projects on the North Spit, and specifically as related to the preserve areas adjacent to the project properties. In 1986 and 1987, the Conservancy provided funding to The Nature Conservancy to acquire what is now the FWS Lanphere-Christensen Dunes Unit (transferred to FWS with Conservancy approval in 1998) located north of the subject project area.

In 1990, the Conservancy granted \$80,000 to the County of Humboldt to conduct an alternative uses study and prepare the Humboldt Beach & Dunes Management Plan with recommended planning activities. The Coastal Commission approved the preferred plan and in 1993 the County amended the Humboldt Bay Area Local Coastal Plan of the Humboldt County General Plan to incorporate by adoption the Humboldt Beach & Dunes Management Plan preferred alternatives. The Conservancy approved the Humboldt Beach & Dunes Management Plan on March 20, 1995. The plan recommended public acquisition of the Ma-l'el Dunes Cooperative Area for resource protection and public access.

For several years until 1994 the northern segment was used for public access under an agreement between the landowners and operators. The agreement was a requirement of a Conservancy acquisition grant to The Nature Conservancy for an addition to the adjacent Lanphere Christensen Dunes Preserve, where access was restricted due to sensitive habitat. Unfortunately, in 1994 the property was sold to a private organization for off-highway vehicle (OHV) use, and public access ceased. Approximately 41 acres of the southern segment had also been used for OHV activities, by lease agreement and then by ownership, by the private party that acquired the northern segment in 1994. The northern segment and the 41 acres of the southern segment remained under that ownership for OHV uses until 2003 when both were acquired by the Center for Natural Land Management with funds from the Conservancy. Funding for that acquisition was authorized by the Conservancy in April 2002 and included \$442,200 in Conservancy funds and \$399,000 grant awarded to the Conservancy from the U.S. Fish and Wildlife Service's National Coastal Wetland Conservation Grant Program. In 2004 and 2005 the southern and northern portions were transferred to BLM and FWS, respectively, and were added to those agencies' existing adjacent ownership resulting in the 444 total acres covered by this proposed project.

In 2003-2004 the Conservancy undertook planning activities to address long-term management that would provide for public access while protecting the myriad resources present. Through a series of public and stakeholder meetings over the course of nearly three years, a public access management plan for the Ma-le'l Dunes Cooperative Management Area ("the Plan") was developed. Since it was anticipated that state funding would be involved in implementing the Plan

on federal lands, an evaluation of potential environmental impacts was conducted under CEQA and NEPA.

After several years of planning, and with considerable assistance from FWS since 2008 to complete the documents, the Conservancy has completed the Ma-le'l Dunes Cooperative Area Access Management Plan (March 2010) and has conducted a review to evaluate environmental impacts. As discussed later in the "Compliance with CEQA" section of this staff recommendation, the completion of the Plan and environmental review experienced several delays due to the need to revise the Plan and CEQA document (twice) following public comment periods in 2007 and 2008, and by restrictions imposed on state funding in December 2008 disallowing authorizing funds for this (or any) new project until June 2010. In 2009, FWS undertook the completion of these documents, which were completed in March and June 2010. While BLM and FWS each accepted ownership of the properties to manage them for public access and resource protection, and have staff available to undertake the work, each does not have all of the necessary capital to complete the planned improvements. BLM has been able to make some improvements that allow Ma-le'l South to be open to the public, but the northern FWS portion remains closed. Conservancy funds will facilitate implementation of Phase I of the Plan so that the Ma-le'l Dunes Cooperative Management Area can be fully open to the public.

PROJECT FINANCING:

Coastal Conservancy	\$175,000
Bureau of Land Management (staff time and materials)	TBD*
Fish and Wildlife Service (staff time and materials)	<u>TBD*</u>
Total Conservancy Cost	\$175,000

The expected source for the Conservancy funds for this project is the fiscal year 2008-2009 appropriation from Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) for Coastal Conservancy state-wide resource protection projects, which can be used for the development of public access consistent with Division 21 of the Public Resources Code, the Conservancy's enabling legislation.

*FWS has indicated it would provide staff time and funds to secure necessary permits for the project. FWS and BLM will provide approximately a combined \$7,500.00 toward access road improvements (FWS) and establishment of caretaker facility (BLM). Additionally, FWS and BLM will cover annual expenses for access road maintenance, caretaker salary and utilities (FWS), and enforcement backup (BLM).

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

The proposed project would be undertaken pursuant to Chapter 9 (Sections 31400 *et seq.*) of Division 21 of the Public Resources Code, regarding public access to the coast. Section 31400 states the Legislature's intent that the Conservancy have a principal role in the implementation of a system of public accessways to and along the state's coastline. The goal of the proposed project is to improve existing, and construct new, access amenities to provide public access to and along the coast. The proposed funding authorization is thus consistent with §31400.

Section 31400.1 allows the Conservancy to award grants to public agencies to develop, operate, or manage lands for public access purposes to and along the coast. FWS is a public agency that will carry out this project with the purpose of developing public access to and along the coast. Thus, this project is consistent with §31400.1.

Section 31400.2 allows the Conservancy to fund up to the total cost of the initial development of public accessways by public agencies. The Conservancy will contribute funds for the project, and BLM and FWS will contribute staff time and materials to assist with project coordination, oversight, and monitoring.

Section 31400.3 allows the Conservancy to aid public agencies in establishing a system of public coastal accessways. FWS is a public agency that will carry out the proposed project for the purposes of establishing public coastal access on the north spit of Humboldt Bay. The proposed funding authorization thus meets the requirement of §31400.3 to aid public agencies in establishing a system of public coastal accessways, and is thus consistent with this section.

The proposed project is also consistent with §31408(a), directing the Conservancy to coordinate the development of the California Coastal Trail, and §31409, which authorizes the Conservancy to award grants and provide assistance to establish and expand inland trail systems that may be linked to the California Coastal Trail. The trails planned for construction would serve as spur trails to the California Coastal Trail on and around Humboldt Bay.

Section 31410, effective in January 2008 (AB 1568, Berg), designates the portion of the Ma-le'l Dunes in Humboldt County that is part of the California Coastal Trail and is under the jurisdiction of the Conservancy as the Senator Wesley Chesbro Coastal Trail. The Conservancy is directed to erect appropriate signage, upon receipt of specific funding, after the date on which Wesley Chesbro ceases his service in the Legislature or on January 1, 2009, whichever occurs later. (Mr. Chesbro is currently a member of the Assembly.)

CONSISTENCY WITH CONSERVANCY'S 2007 STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 2 Objective C** of the Conservancy's Strategic Plan, the proposed project will open an area that is currently closed to the public while respecting the rights of nearby landowners and the need to minimize impacts on sensitive natural resources. Adjoining property owners have been consulted throughout the planning process to help guide the location and design of roadways, paths, and signs directing visitors to the site and avoid conflict with those private uses.

Consistent with **Goal 2 Objective E** of the Conservancy's Strategic Plan, the proposed project will increase newly constructed and improved public accessway opportunities by reestablishing

trails, developing improved observation points for wildlife viewing, and constructing Americans with Disabilities Act-compliant pathway(s).

**CONSISTENCY WITH CONSERVANCY'S
PROJECT SELECTION CRITERIA & GUIDELINES:**

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines updated June 4, 2009, in the following respects:

Required Criteria

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.
3. **Support of the public:** This project has broad public support and is endorsed by Congressman Mike Thompson, Senator Patricia Wiggins, Assemblymember Wes Chesbro, and Humboldt County. See letters of support in Exhibit 5.
4. **Location:** The project would be located within the coastal zone on the north spit of Humboldt Bay, County of Humboldt. The proposed project will facilitate increased public access to the complex of public dunes and trails along the north spit.
5. **Need:** Presently, the northern tract of the Ma-le'l Dunes Cooperative Management Area is closed to the public. Yet there is increasing demand for use by the public of this area that had historically been open for public access use, until 1997, under a cooperative management agreement. The transfer of the property to FWS and BLM was the first step to re-opening this area to the public, and the southern, BLM-owned portion has been opened. However, because the northern FWS-owned portion has abundant natural and cultural resources that warrant protection, it could not be opened until planning to allow access while protecting the natural and cultural resources was completed. The proposed project would allow the northern Ma-le'l unit to be opened in 2011.
6. **Greater-than-local interest:** The Humboldt Bay area is a destination for visitors from all over the world who are drawn to northern California for the mountains, redwoods, and oceans, and to Humboldt County for its atmosphere and aesthetics. Increasing the available dunes and beach access will expand the appeal of this unique area for tourism.
7. **Sea level rise vulnerability:** The project area ranges in elevations from approximately 5' to 100' above current sea level and thus is not vulnerable to impacts from anticipated sea level rise for the years 2050 through 2100. At Ma-le'l North, the Tsoutsgish Trail (berm trail) and the parking area could become marginally influenced in the event of a 100-year flood combined with sea level rise (*FWS Comprehensive Conservation Plan (Humboldt Bay NWR Complex, September 2009)*) if a sea level rise of 55 inches is realized. Other areas throughout the project area that could potentially be impacted by this scenario would be low lying wetland area amongst the dunes. Access infrastructure is not planned for those areas and would not be affected by sea level rise. FWS and BLM will adaptively manage areas in the event of changes in erosion rate due to protect infrastructure and provide safe access to the public.

Additional Criteria

8. **Urgency:** The Ma-le'l Dunes Cooperative Management Area is partially opened to the public, with the southern BLM-managed portion open for recreational use since summer 2005. However, the northern FWS-managed portion is not formally opened, which could result in unauthorized public access flow-over from the south. Because of the sensitive habitat and cultural resources present on that northern portion, it is imperative to implement the Access Plan to properly direct foot traffic and institute protective management methods.
9. **Resolution of more than one issue:** The Ma-le'l Dunes Cooperative Management Area includes separate parcels owned by BLM and FWS. Because these two resource agencies allow for different levels and types of recreational use, the potential for conflicting use exists when users cross from own property ownership to the other. The access plan provides the framework to resolve any use conflicts. Implementing Phase I of the Access Plan improvements will facilitate the resolution of use-conflict through signage and user interpretation information, and will protect sensitive habitat and cultural resources.
13. **Readiness:** The grantee is prepared to engage in this work as soon as a grant agreement can be executed. Potential subcontractors are identified and can be quickly engaged.
14. **Realization of prior Conservancy goals:** The Conservancy has a long history of assisting with access development and improvements on the dunes system along the north spit of Humboldt Bay, as detailed under the "Project History" section above. This action would further existing goals for the north spit specifically, and for public access in the region generally, as outlined in the Humboldt Beach and Dunes Management Plan.
16. **Cooperation:** The Plan was developed through collaboration between the Conservancy, the FWS and BLM. FWS and BLM will contribute necessary staff time to secure permits, contribute toward assist in start-up costs/activities, and work together through formal agreement to outline responsibilities and coordinate management across their separate ownerships.
17. **Vulnerability from climate change impacts other than sea level rise:** It is unclear whether other climate change impacts such as higher air temperatures, altered precipitation patterns, more severe El Nino climate events, increased storm frequency and intensity, higher coastal erosion rates, greater fire intensity and frequency, etc. will adversely impact the Ma-le'l Dunes Cooperative Management Area. However, changes in rainfall, storm patterns, sedimentation, littoral transport, and wind speed could affect dune stability/migration. FWS and BLM will pursue an adaptive management approach to maintaining the new trails up to and including moving sections of the trails if needed in response to the impacts of climate change.
18. **Minimization of greenhouse gas emissions:** The proposed project is located in an area that is easily reached by bicycle and public transportation providing opportunities for visitors to access the site without the need for vehicles. Both Ma-le'l South and North will be closed to motorized vehicles, and access to the Ma-le'l North parking area will be open to vehicular traffic only four days per week (Friday through Monday). This will promote the use of alternative means of transportation by visitors to the site, thus further reducing greenhouse gas emissions as a result of implementing the project.

During construction, there will be short-term greenhouse gas emissions from the use of heavy equipment and vehicles associated with rehabilitation of the access road to Ma-le'l North parking lot, and improvements to the parking areas at Ma-le'l North and South, and to the Tsoutsuish Trail. The greenhouse gas emissions from those construction activities will be minimized to the extent possible, as follows. Idling time of heavy or other fueled equipment will be minimized either by shutting equipment off when not in use or reducing the time of idling to a minimum amount (e.g., 3 – 5 minutes). All construction equipment will be maintained in proper working condition. Utilizing hand equipment for most trail building and other improvements will cause no increase in greenhouse gases. No major excavation of materials will occur, so there is no need for dump trucks to haul away materials. FWS and BLM each have tools and equipment available locally, and will seek to secure a local source of materials for the access road and parking area improvements. All of these practices incorporated into the project reduce the generation of greenhouse gases associated with equipment and material hauling.

Consistency With Conservancy Standards And Recommendations For Accessway Location And Development

The Conservancy-adopted “*Standards and Recommendations for Accessway Location and Development*” is relevant to the proposed project. The proposed project is consistent with all applicable standards. Consistent with Standard No. 1, 2 and 5, the proposed project will protect the public and coastal resources by routing and signing trails to promote safe recreation onsite while protecting sensitive habitats, and protecting of the privacy of adjacent and nearby private landowner/dwellers; removing casual trails to reduce or eliminate dune erosion through forest or plant habitat; and installing a foot bridge over a wetland / dune swale.

Consistent with Standard No. 3, trails will be maintained at a minimum width. Also, an Americans with Disabilities Act (ADA) compliant parking space and trail segment will be constructed to provide view to the slough located on the eastern portion of FWS property.

Consistent with Standard 4, the proposed trails will be located safely away from private property, and the entrances to parking will be re-routed to prevent traffic contact with private property.

Consistent with Standards 6 and 7, lateral and vertical accessways will comply with LCP and coastal development permit requirements.

Consistent with Standard 8, the proposed project will provide trails connecting the shore to publicly owned lands and will provide safe trail access from parking lots to the slough overlook, and through the dunes to the beach, avoiding unstable or erosive soils. Trails will be signed to promote safe access and inform the public about the local environment; and restrooms, picnic table and benches, and trash receptacles will be provided where needed.

Consistent with Standards 9 and 13, the scenic overlook toward the slough, and the trail leading to it, will be accessible to the physically disabled. A handicapped accessible parking space(s) will also be provided, as will appropriate signage.

Consistent with Standard No. 12, the proposed project includes many support facilities to accommodate public use of the site, including signs, picnic tables, benches, trash cans, parking, restrooms and a kayak launch ramp. Upon authorization, staff will approve a signing plan for the

property.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

The proposed project would facilitate increased access facilities as outlined in local coastal plans. The Humboldt Bay Area Plan and its supporting zoning regulations form the Local Coastal Program (LCP) for the project area. Humboldt County's LCP consists of an integrated system of Land Use Plan and Implementation Plan documents. The Humboldt County LCP policies, which address resource protection and public access issues, are extensive. The preferred planning alternatives from the Humboldt Beach and Dunes Management Plan (HBDMP) were approved by the Coastal Commission and amended to the Humboldt Bay Plan (LCP) and the county General Plan on June 7, 1994; the Conservancy adopted the HBDMP in April 1995. Specifically, the LCP recommends additional accessway improvements and enhancement activities on the north spit of Humboldt Bay. Therefore, the proposed project is consistent with the LCP. Section 6.138p of the HBDMP states, with regard to the Ma-le'l CMA planning area (formerly referred to as "the CMA" in the HBDMP) that "pedestrian access in this area would be expanded to include the open sand areas encompassed by the boundaries of the CMA." The Ma-le-l planning area is within the boundaries of the former CMA. Therefore, the access improvements proposed in the project are consistent with the recommendations of the Humboldt Bay Area Plan.

COMPLIANCE WITH CEQA: The Conservancy is the lead agency for this project under the California Environmental Quality Act. On February 2, 2007, staff noticed and circulated for public review for the project a proposed Mitigated Negative Declaration ("MND"), attached as Exhibit 3. (Because the project will be carried out on lands owned by the U.S. Fish and Wildlife Service and the Bureau of Land Management, the project was jointly evaluated in the same document under NEPA for potential significant impacts. Consistent with NEPA, BLM and FWS are expected to determine the project, as proposed, mitigates to a level of insignificance any potential impacts. FWS and BLM are expected to publish a Decision Record of Finding of No Significant Impact ("FONSI").)

Several comments were received during the public review period. Comments and responses are included in Exhibit 3, Appendix D. Comments pertinent to environmental effects included requests to reduce the number of days the Ma-le'l North area would be opened to vehicular traffic; to allow traditional gathering activities by Tribal members; to allow vegetation gathering by the public in certain areas; and to allow the ongoing uses of the slough waters and saltmarsh islands by hunters. In response to the latter issue, FWS has determined that hunting must be addressed through its Comprehensive Conservation Plan process, for which there was a final determination in 2009. Thus, the project area for this project was redefined to exclude the slough and saltmarsh islands. As there are no access improvements proposed for those areas on FWS lands, there is no effect to this planning process, and thus no alteration in scope of project. In response to the former comments, the MND/FONSI and Plan were changed to limit vehicular access to Ma-le-l North to Thursday through Monday, to allow traditional gathering activities by Tribal members under agreements with the agencies, and to allow for vegetation gathering by the public at certain times of the year in specified locations under permit agreement with BLM.

The revised proposed MND/FONSI was re-circulated for public comment in March 2008; the Plan was made available to the public for simultaneous review via FWS, BLM, Friends of the Dunes (a local non-profit dunes steward organization) and Conservancy websites and offices.

Comments were received from several individuals operating or involved in regulation of oyster farms in the Mad River Slough waters adjacent to Ma-le'l North. Comments responses are included in Exhibit 3, Appendix D to this staff recommendation. Comments pertinent to environmental effects included a request to prohibit launching / landing of non-motorized water craft at a site adjacent to the North Ma-le'l parking area to eliminate potential impacts to water quality from any increased boating use, and a request to manage pedestrian use of the berm trail to reduce water quality impacts from litter and other wastes.

In response to the former issue, boat launching as a proposed use was re-evaluated. Due to the presence of sensitive salt marsh habitat, the proposed boat launch site was eliminated from the Plan. Further, FWS determined, through its Comprehensive Conservation Plan process, that any use of Ma-le'l North for non-motorized boat landing and launching was not a compatible use on Ma-le'l North.

In response to the latter issue, the Plan was changed to include developing signage, in cooperation with the oyster industry representatives, to educate and inform the public of potential impacts to water quality from litter and other wastes.

The proposed MND/FONSI identified potentially significant impacts, if not mitigated, to biological resources and cultural resources. The potential effects and the proposed mitigation that will avoid, reduce, or minimize the possible effect to a level of insignificance are as follows:

With regard to **biological resources**, impacts could have an adverse effect on threatened, endangered or special status plants, fish and birds, or sensitive habitat.

Potential impacts to plant species include direct impact to the Humboldt Bay wallflower, beach layia and other rare dune plants, and to the special status salt marsh species, Humboldt Bay owl's-clover and Point Reyes bird's-beak, as a result of pedestrians, dogs or horses straying from designated trails, or from specific trail construction activities.

The northern red-legged frog and northwestern pond turtle could be adversely affected from the construction of the foot bridge over the seasonal wetland in the nearshore dunes and the wetland view deck over the freshwater/riparian swamp adjacent to railroad berm trail.

Potential impacts to avian special status species, including herons and egrets, raptors, and other land birds, include ongoing disturbance from routine vegetation clearing to maintain an open trail corridor through the project area, and disturbance to breeding birds associated during the expansion of the parking area at Ma-le'l North.

Potential permanent or on-going impacts to riparian and wetland habitats or other sensitive natural communities could result routine vegetation clearing to maintain an open trail corridor through the project area.

The project also includes the potential for disturbances to native resident or migratory wildlife species, or to established native resident or migratory wildlife corridors, or potential to impede the use of native wildlife nursery sites, including disturbance to breeding birds associated with routine vegetation clearing to maintain an open trail corridors, disturbance to breeding birds associated with the expansion of the parking area at Ma-le'l North, 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 and the wetland view deck, discussed above, and potentially impacting water quality and associate with fish habitat.

The above potential impacts to biological resources will be mitigated to a level of insignificance by implementing mitigation measures including:

- Planned improvements would occur during the dry season in seasonal wetlands and would incorporate Best Management Practices (BMPs) to control sediment transport, such as conducting work during low tide, and use of silt fencing if necessary.
- During the breeding season for birds likely to breed in the Ma-le'l Dunes Cooperative Management Area (CMA) (February 15 to August 15), construction activities and routine maintenance would utilize only non-mechanized equipment. Only hand tools and clippers would be allowed during this period, except to address emergency and/or public safety conditions when mechanized equipment would be allowed. The use of mechanized equipment within the breeding season for birds likely to breed in the Ma-le'l Dunes CMA to address emergency conditions would be conducted at the discretion of the Ma-le'l Dunes CMA managers.
- The FWS will implement Humboldt Bay wallflower seed collection from existing populations on the adjacent Lanphere Dunes Unit, and subsequent dispersal within newly restored areas of the Fernstrom-Root and Ma-le'l parcels. 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. The refuge will obtain a recovery permit.
- All construction activities occurring within or adjacent to endangered plant areas would be supervised by Ma-le'l Dunes CMA resource managers and would take place outside of the growing season 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 (reproductive season is approximately March 1 through the end of the summer), beach layia (reproductive season is March to May), Humboldt Bay owl's-clover (reproductive season is May through July), Point Reyes bird's-beak (reproductive season is approximately June 1 through end of summer), and other rare plant species located near construction areas would be flagged and the CMA resource managers would document any adversely affected individuals.
- The development of a maintenance program for the forest trails in Ma-le'l North to help ensure that routine vegetation clearing does not adversely affect locally rare plants identified by the CMA resource managers.

With regard to **cultural resources**, potential impacts to archaeological resources (artifacts and remains) have been identified and include a potential adverse change to the significance of archaeological resource or historic resource or property. Several pre-contact Wiyot and Old Nation use areas are known to exist within the project area, and artifacts are known to exist throughout. There is the potential that increased foot traffic near cultural sites or wandering from designated trails by the public could negatively affect these resources. Additionally, it is possible that additional cultural sites or artifacts could be encountered during installation of proposed improvements.

The potential impacts to cultural resources will be mitigated to a level of insignificance by implementing mitigation measures including:

- 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 registered professional archaeologist and designated representative of the Wiyot Tribe 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 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.

- Cultural monitors will be present during initial, native soil disturbance activities that occur at locations mutually agreed upon by the Wiyot Tribe, FWS, and BLM (as necessary) as areas of the greatest concern.
- Regulatory signing would state that in accordance to federal and state laws, destruction, and defacement of historical objects (Penal Code 655-1/2 and Antiquities Act) and relevant federal law) and removal of human remains (California Public Resources Code (PRC) 5097.5, PRC 70550.5, California Code of Regulations (CCR) Section 15064.5(e) and Archaeological Resources Protection Act (ARPA) at 43 CFR 7, Native American Graves Protection and Repatriation Act (NAGPRA at 43 CFR 10) relevant federal law) 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."
- As necessary, FWS, BLM and the Wiyot Tribal Governments would work collaboratively with a registered professional archaeologist to prepare a baseline review of the cultural resources that the Tribe and agency staff mutually agrees upon as the areas of greatest concern. Thereafter annual review with a registered professional archaeologist and designated representative of the Wiyot Tribal Governments would occur. Furthermore, Ma-le'l Dunes CMA managers would conduct regular monitoring to ensure against vandalism of cultural resources within mutually agreed upon areas of greatest concern. Results of cultural resources monitoring would be conveyed to the appropriate agencies and the Tribes.

With respect to **hydrology and water quality**, potential impacts listed above (e.g., siltation and wetland impacts) have been identified, but these activities would not have a significant environmental impact due to conducting all work during the dry season in seasonal wetlands and incorporate Best Management Practices, such as conducting work during low tide and using silt fencing, to control sediment transport.

The access improvement project will not cause environmental impacts that are cumulatively significant.

With the intended mitigations, staff believes that the potentially significant effects will be reduced to a level of insignificance. The required mitigations will be monitored through a Mitigation Reporting Program (Exhibit 4), consistent with Public Resources Code Section 21081.6. Specifically, the mitigation and monitoring program requires that all of the mitigation

measures outlined in the Mitigated Negative Declaration be implemented. FWS and BLM, as landowners and managers, will be responsible for monitoring project implementation to ensure that mitigation measures are being incorporated.

Staff therefore recommends that the Conservancy find that the project, as mitigated, will not have a significant effect on the environment.

Following the Conservancy's action, staff will file a CEQA Notice of Determination.