

CALIFORNIA COASTAL COMMISSION

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



December 12, 2002

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

Subject: CD-052-02, Consistency Determination for Interim Management Plan, Humboldt Bay
South Spit, Humboldt County.

Dear Ms. Roush:

On December 11, 2002, the California Coastal Commission conditionally concurred with the above-referenced consistency determination. The Commission adopted the following condition:

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

The Commission concluded that such a condition was necessary in order to bring BLM's proposed Interim Management Plan (IMP) into conformity with Section 30240 of the California Coastal Act of 1976, an enforceable policy of the California Coastal Management Program (CCMP). Section 30240 provides that:

(a) Environmentally sensitive habitat areas shall be protected against any 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 Commission found that the provision of the IMP that allowed off-highway vehicles (OHVs) to travel the wave slope of the South Spit on a year-round basis (except on the 3,000-foot-long reach in front of the western snowy plover restoration area that would be closed by the BLM to all vehicle use between March 1 and September 15) would lead to adverse effects on

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environmentally sensitive habitat that could be used for nesting and foraging by the threatened western snowy plover. The Commission concluded that OHV use during the nesting season was incompatible with plover habitat restoration plans and plover management actions contained in the IMP. However, the Commission did find that allowing commercial fishermen, tribal members, and mobility-impaired persons to use OHVs on the waveslope (except for the aforementioned closure zone in front of the snowy plover restoration area) during the snowy plover nesting season was consistent with Section 30240 if such use was provided through a permit system that would control access to and reduce the numbers of OHVs on the waveslope.

For the foregoing reasons, at its hearing on December 11, 2002, the Commission determined pursuant to Section 930.4¹ of the regulations that implement sections 307(c)(1) and (2) of the Coastal Zone Management Act (CZMA)² that the BLM's consistency determination for the proposed IMP for the Humboldt Bay South Spit must be conditioned to limit OHV use of the waveslope in order to enable the Commission to find the project consistent with Section 30240 of the Coastal Act, an enforceable policy of the CCMP.

The CZMA regulations preclude the BLM from proceeding to implement the IMP unless: (1) the BLM modifies the IMP pursuant to the Commission's condition; or (2) the BLM determines that the IMP is fully consistent with the CCMP.

When a state agency conditionally concurs, Section 930.4(a)(2) of the CZMA regulations provides in part that:

The Federal agency . . . shall modify the applicable plan . . . pursuant to the State agency's conditions. The Federal agency . . . shall immediately notify the State agency if the State agency's conditions are not acceptable.

Section 930.4(b) of the CZMA regulations further states that:

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

In the event that the BLM does not accept the condition and the Commission's conditional concurrence is treated as an objection, Section 930.43(d) of the CZMA regulations provides, in part that:

... Federal agency shall not proceed with the activity over a State agency's objection unless: ... (2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management

¹ 15 CFR § 930.4

² 16 USC § 1456(c)(1) and (2).

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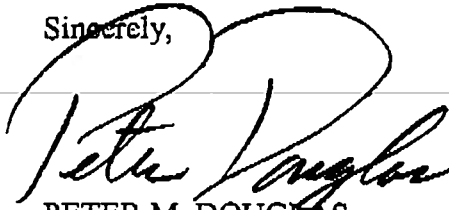
*program, though the State agency objects.*³

In addition, Section 930.43(e) of the CZMA regulations requires the BLM to inform the Commission of its decision to proceed to implement its IMP for the Humboldt Bay South Spit over the Commission's objection. This section provides, in part, that:

*If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency ... the Federal agency shall notify the State agency of its decision to proceed before the project commences.*⁴

If you have any questions or need additional information on this matter, please contact Larry Simon at (415) 904-5288.

Sincerely,



PETER M. DOUGLAS,
Executive Director

cc: North Coast District Office
Director, Office of Ocean and Coastal Resource Management
Department of Water Resources
Governor's Washington, D.C., Office

³ 15 CFR § 930.43(d).

⁴ 15 CFR § 930.43(e).