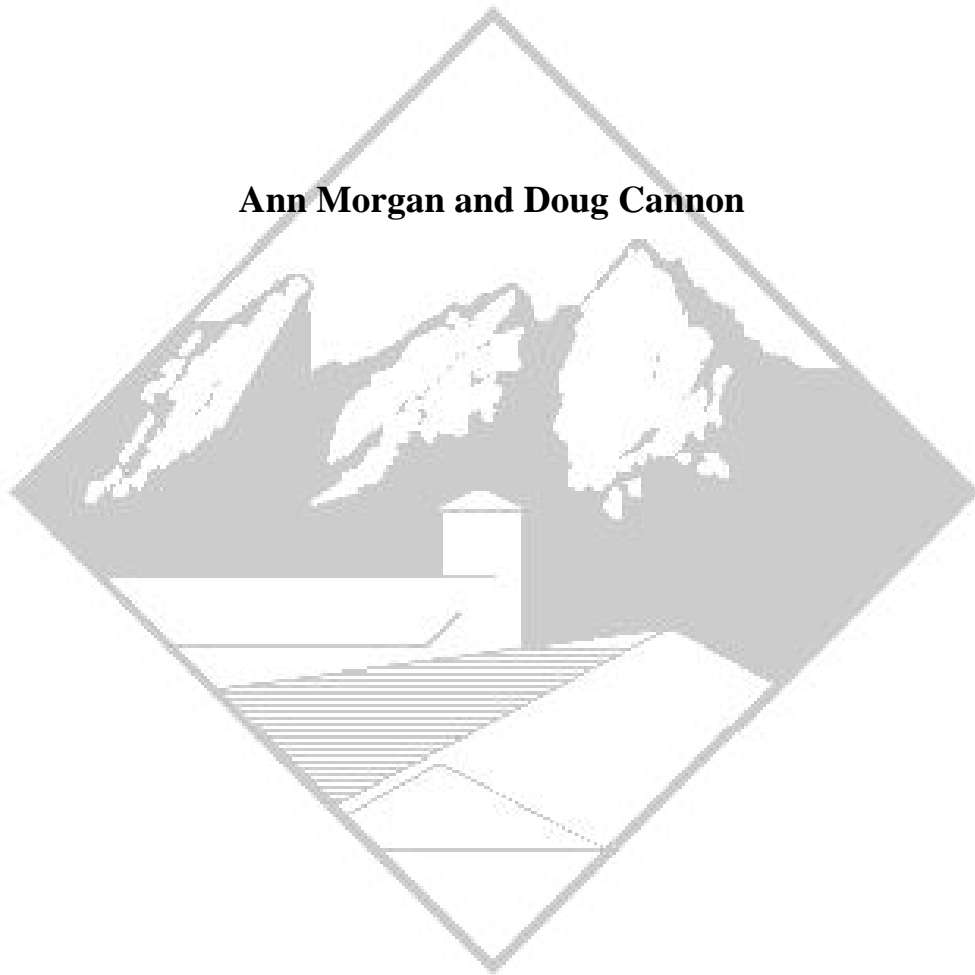


# **KING RANGE NATIONAL CONSERVATION AREA CASE STUDY**

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**Natural Resources Law Center  
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## BACKGROUND

The King Range National Conservation Area was established by the Secretary of the Interior in 1974 under the authority given to him by Congress through Public Law 91-476.<sup>1</sup> The area is located in northern California about 60 miles south of Eureka and 200 miles north of San Francisco. The area currently includes about 63,000 acres of land<sup>2</sup> and includes 35 miles of shoreline between the mouth of the Mattole River and the Sinkyone Wilderness State Park.<sup>3</sup> The area includes numerous landscapes ranging from beaches to Douglas fir clad peaks, King Peak being the highest at 4,087 feet.<sup>4</sup> The area is often referred to as “the lost coast” due to the ruggedness of the cliffs that make up the area.<sup>5</sup> The Secretary of the Interior administers the area through the Bureau of Land Management.<sup>6</sup> The King Range National Conservation Area (KRNCA) is the first of thirteen special conservation areas authorized by Congress on Bureau of Land Management (BLM) managed lands.

The purpose of establishing the KRNCA was to preserve the diverse geography and ecology of the region.<sup>7</sup> The enabling act’s statement of purpose is “to consolidate and manage the public lands in the area with the purpose of conserving and developing, for the use and benefit of the people of the United States, the lands and other resources there in under a program of multiple useage and of sustained yield.”<sup>8</sup> The area includes some primitive area that is virtually untouched by man. In addition it contains some of the most rugged and beautiful coastline in California.<sup>9</sup> The area also contains the largest area of coastal roadless area in California.<sup>10</sup> Congress saw it necessary to create the National Conservation Area (NCA) to help ease the complicated land management scheme in the area caused by the



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<sup>1</sup> 16 U.S.C.A § 460y (West 2003).

<sup>2</sup> 57,000 acres are publicly owned and the other 6,000 are privately held within the conservation area boundaries. See U.S. Dept. Of Int. and Bureau of Land Management, *Scoping Report for the King Range National Conservation Area*, 2, (Feb. 2003).

<sup>3</sup> Bureau of Land Management, <[http://www.ca.blm.gov/arcata/king\\_range.html](http://www.ca.blm.gov/arcata/king_range.html)>, (July 3,2003).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> 16 U.S.C.A § 460y (West 2003).

<sup>7</sup> S. Rep. No. 91-1270, 1, (Oct. 5, 1970).

<sup>8</sup> 16 U.S.C.A § 460y (West 2003).

<sup>9</sup> S. Rep. No. 91-1270, 2, (Oct. 5, 1970).

<sup>10</sup> *Id.*

checkerboard of private and public lands.<sup>11</sup> In addition, the condition of the private lands within the KRNCA was seriously degraded from clearcutting, poor road building, and over grazing. Both the condition of the private lands and the deleterious impacts they were having on adjacent public lands was well documented.<sup>12</sup> In fact, the final act specifically mentions the need for reforestation, revegetation, and the construction of soil and water-conserving works to reduce erosion.<sup>13</sup>

As the first National Conservation Area ever created by Congress, the KRNCA authorizing legislation has some unique features not found with other subsequent NCA designations. Instead of the act creating the NCA, Section 3 of the act lays out the procedures for establishment.<sup>14</sup> The Secretary of the Interior was authorized to establish the area after a period of at least ninety days, and after he had submitted a management program to the President of the Senate and the Speaker of the House of Representatives, the Governor of the State of California, and the governing body of the counties in which the KRNCA is located. Public hearings, notices and a notice in the Federal Register were also requirements for establishment of the area.

## **PUBLIC LAW 91-476**

The establishment statute does give some guidance on how the area should be managed, but a majority of the management is done through the management plan promulgated by the BLM. In the first section of the establishment act it says the area is to be managed “. . . with the purpose of conserving and developing. . . the lands and other resources therein under a program or multiple usage and of sustained yield.”<sup>15</sup> The act goes on to say “the Secretary shall utilize and develop the resources in such a manner as to satisfy all legitimate requirements for available resources as fully as possible without undue denial of any such requirements and without undue impairment of any resource. . . .”<sup>16</sup> The act states that this policy implies;

1. That there will be a comprehensive plan created for land use in the area and the plan will be based on an inventory of available resources.
2. The plan will indicate primary or dominant uses to be permitted in various portions of the area.
3. The plan will weigh the relative values that can be obtained through the development of resources with the object of obtaining the greatest value on a continuing basis; consideration will also be given to intangible values.
4. Secondary or collateral uses are allowed as long as they do not impair the primary use.
5. Renewable resources will be managed to obtain a sustained, regular yield.
6. In making a plan all legitimate uses must be considered including, but not limited to, recreation, hunting, fishing, forest production, mining, grazing, water resources, wildlife management, occupancy and access.<sup>17</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> See generally *1974 King Range National Conservation Act Management Program*; BLM-California, *Economic Impact Analysis of the King Range National Conservation Area*, (May 1974).

<sup>13</sup> 16 U.S.C.A § 460y-5 (West 2003).

<sup>14</sup> 16 U.S.C.A § 460y-3 (West 2003).

<sup>15</sup> 16 U.S.C.A § 460y (West 2003).

<sup>16</sup> 16 U.S.C.A § 460y-1 (West 2003).

<sup>17</sup> 16 U.S.C.A. 460y-1(b)(1)-(8) (West 2003).

So although resource development is allowed in the conservation area the development and extraction of these resources cannot impair the values for which the area was set aside.

Resource development was not the major concern in creating the KRNCA. Congress recognized that the KRNCA contained large areas of private land and development on these private lands posed a threat to the area. Based on this threat, Section 1 of the act provides for an unusual amount of federal control over private land. The Secretary is required to “utilize and develop resources in such a manner as to satisfy all legitimate requirements for the available resources as fully as possible without undue denial of any of such requirements and without undue impairment of any of the resources, *irrespective of ownership* or location.”<sup>18</sup>

An important feature of the act is the requirement for the plan to “zone” the KRNCA into areas and identify the primary or dominant uses for each area. Secondary or collateral uses may only be permitted to the extent that they are compatible with, and do not unduly impair, the primary uses.<sup>19</sup> This notion of primary and secondary uses is in contrast to the land management direction given by Congress to the BLM for the majority of the public domain lands several years later with the passage of the Federal Land Policy and Management Act (FLPMA).

Section 1 also provides some pre-FLPMA balancing language on multiple use that can hardly be said to provide clear guidance. The management plan is required to be based on “a weighing of the relative values to be obtained by utilization and development of the resources for alternative possible uses, and will be made with the object of obtaining the greatest values on a continuing basis, and that due consideration will be given to intangible values as well as to tangible values such as dollar return or production per unit.”<sup>20</sup>

In Section 4 several new authorities are given to the Secretary in administering the new conservation area. In an effort to acquire land, or an interest in land, the Secretary “may not acquire, without the consent of the owner, any such lands or interests therein which are utilized on the effective date of the Act for residential, agricultural, or commercial purposes so long as he finds such property is devoted to uses compatible with the purposes of this Act.”<sup>21</sup> In other words, the Secretary may condemn private land within the boundaries of the KRNCA if the uses occurring on that land are not compatible with the management plan.

New authorities to facilitate land exchanges were also outlined along with a provision that the land offered and received in the exchanges must be in the same county or counties.<sup>22</sup>

Unlike most other NCAs, the KRNCA was not withdrawn from mining or minerals leasing. Although the lands within the KRNCA were considered to have low mineral potential, there was a manganese mine located near Queen Peak at the time of the designation. Section 4 of the act addresses mining on both lands within the KRNCA as well as lands that may be disposed of by

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<sup>18</sup> 16 U.S.C.A § 460y-1 (West 2003), emphasis added.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 16 U.S.C.A § 460y-4 (West 2003).

<sup>22</sup> *Id.*

the BLM in an exchange. Either party of an exchange may reserve minerals and when minerals are reserved in a conveyance by the United States, “any person who prospects for or acquired the right to mine and remove the reserved mineral deposits shall be liable to the surface owners according to their respective interests for any actual damage to the surface or to the improvements thereon resulting from prospecting, entering, or mining operations; and such person shall, prior to entering, either obtain the surface owner’s written consent, or file with the Secretary a good and sufficient bond or undertaking to the United States in an amount acceptable to the Secretary for the use and benefit of the surface owner to secure payment of such damages as may be determined in an action brought on the bond or undertaking in a court of competent jurisdiction.”<sup>23</sup> Section 5 of the act also addresses mining giving the Secretary the authority to promulgate regulations to ensure protection of the scenic and esthetic values of the KRNCA against undue impairment and to assure against water pollution in the area. Interestingly, any patent issued on a mining claim located after the effective date of the act “shall recite this limitation and continue to be subject to such regulations.”<sup>24</sup>

Also allowed in the NCA are other traditional resource uses like timber harvesting, grazing, hunting, and fishing.<sup>25</sup> In the original report that accompanied the bill it was estimated that there were about 800 animal unit months (AUMs) on the public lands within the conservation area.<sup>26</sup> 435 of these AUMs were actually under lease at the time the conservation area was established.<sup>27</sup> As for timber in the area it was estimated that there was about 240 million board feet (mbft) of merchantable timber in the area at the time of passage.<sup>28</sup> This worked out to an allowable cut of about 10 mbft per year, mostly in the form of Douglas fir.<sup>29</sup>

Finally, the act shows a strong commitment by Congress to appropriate funds for land acquisition. Section 9 of the act authorizes a \$1.5 million appropriation for land acquisition and this was followed up in 1978 with Public Law 95-352 authorizing additional expenditures totaling \$10 million.<sup>30</sup>

## LEGISLATIVE HISTORY

The King Range National Conservation Area’s history is not a short one. In 1929 President Herbert Hoover withdrew from settlement portions of the now existing King Range National Conservation Area.<sup>31</sup> This withdrawal occurred after the California State Department of Beaches and Parks recommended that the federal government withdraw the public lands in the King Range area due to their high potential for recreational use.<sup>32</sup> This withdrawal was slightly reduced by an executive order in 1931.<sup>33</sup> Then in 1934, following the passage of the Taylor

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<sup>23</sup> *Id.*

<sup>24</sup> 16 U.S.C.A § 460y-5 (West 2003).

<sup>25</sup> S. Rep. No. 91-1270, 3-4, (Oct. 5, 1970).

<sup>26</sup> *Id.* at 2.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> 16 U.S.C.A § 460y-9 (West 2003).

<sup>31</sup> E.O. 5237 (Dec. 10, 1929).

<sup>32</sup> Ed Hastey, Director California BLM, Remarks, (1995).

<sup>33</sup> E.O. 5718 (Sept. 17, 1931).

Grazing Act, the remainder of the area was withdrawn from settlement and reserved for classification.<sup>34</sup> These orders remained in effect until the establishment of the NCA in 1970.

The legislative efforts to protect the area began in 1961 when Representative Clem Miller (CA-D) proposed H.R. 6793, a bill to establish the King Range National Conservation Area.<sup>35</sup> This bill was referred to the House Committee on Interior and Insular Affairs and never advanced beyond the committee.<sup>36</sup>

In 1962 Representative Miller requested the Department of the Interior conduct a resources inventory and analysis of the King Range. The inventory was not a substitute for legislation, however, and Representative Miller tried again in 1962 when he proposed H.R. 10830.<sup>37</sup> Once again the bill was referred to committee and never went any further.<sup>38</sup> This was Mr. Miller's last attempt due to his death in 1962.

In 1963 Representative Donald Clausen (CA-R) took over the efforts to protect King Range. He proposed H.R. 6489, which was once again sent to committee and died.<sup>39</sup> Representative Clausen was persistent and went on to also propose legislation in 1965 (H.R. 11164) to protect King Range but it also failed to get out of committee.<sup>40</sup>

In 1967 the efforts to protect Kings Range really heated up. Four separate bills were proposed in the House and one was proposed in the Senate. In the House Representative Clausen first proposed H.R. 7742.<sup>41</sup> This bill not only proposed to establish King Range National Conservation Area but it also attempted to establish the Redwood National Park. Very similar bills were proposed by Representative John Hunt (NJ-R) and Representative Joshua Eilberg (PA-D) who proposed H.R. 838342 and 8776, respectively.<sup>43</sup> Both of these bills would have not only created King Range NCA but also Redwood National Park.<sup>44</sup> The idea of attaching King Range NCA legislation to Redwood National Park legislation was not a popular idea when these bills reached committee.<sup>45</sup> The committee sought to keep the Redwood issue separate from other issues.<sup>46</sup> Each of these bills died in committee.<sup>47</sup> In response Representative Clausen proposed H.R. 14023<sup>48</sup> and at the same time Senators Thomas Kuchel (CA-R) and George Murphy (CA-R) proposed S.2654<sup>49</sup> in the Senate. These bills one again tried to preserve King Range by itself.

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<sup>34</sup> E.O. 6910 (Nov. 26, 1934).

<sup>35</sup> 107 Cong. Rec. Index, 1251 (1961).

<sup>36</sup> *Id.*

<sup>37</sup> 108 Cong. Rec. Index, 947 (1962).

<sup>38</sup> *Id.*

<sup>39</sup> 109 Cong. Rec. Index, 1340 (1963).

<sup>40</sup> 111 Cong. Rec. Index, 1552 (1965).

<sup>41</sup> 113 Cong. Rec. Index, 1805 (1967).

<sup>42</sup> *Id.* at 1822.

<sup>43</sup> *Id.* at 1832.

<sup>44</sup> See notes 28 and 29.

<sup>45</sup> 113 Cong. Rec. 32721 (1967).

<sup>46</sup> *Id.*

<sup>47</sup> See notes 27-29.

<sup>48</sup> 113 Cong. Rec. Index 1959 (1967).

<sup>49</sup> *Id.* at 1609.

Although these bills did get briefly discussed on the floor of the House and Senate<sup>50</sup> no formal action was ever taken except to refer these bills to the respective committees where the bills suffered the same fate as their predecessors.<sup>51</sup>

Although Representative Clausen had been turned away numerous times, he did not give up. In 1969 he was back with two more bills. He first proposed H.R. 2496.<sup>52</sup> This bill was once again sent to committee and died.<sup>53</sup> Still determined the representative proposed H.R. 12870 which was also sent to committee and died.<sup>54</sup>

Then in 1970 Representative Clausen finally received the support he needed. He once again proposed legislation to create the King Range National Conservation Area. The bill was once again numbered H.R. 12870.<sup>55</sup> The House Committee on Interior and Insular Affairs finally gave the proposed bill a favorable report and sent the bill on to the full House for a vote.<sup>56</sup> In addition, the Department of the Interior, which had earlier convinced the committee to accept and include agency amendments to the bill, stood in strong support of the bill.<sup>57</sup> When the bill got to the floor of the House Representatives Wayne Aspinall (CO-D) and John Saylor (PA-R) both spoke in support of the bill.<sup>58</sup> After just 3 speakers in support of the bill (the third being Representative Clausen) the House rules were suspended and the bill was passed.<sup>59</sup> The bill was then sent to the Senate which also passed the bill without debate.<sup>60</sup>

Outside the government the bill also seemed to have fairly wide spread support, at least as reported by Representative Clausen. Representative Clausen had been working with the local community throughout the time he was trying to get these bills passed. He had won the support of the local county supervisors and had also been successful in putting together a citizens committee that discussed concerns about the bill and provided feedback to Representative Clausen throughout the process.<sup>61</sup> The record does not discuss any of the parties that opposed the bill, but due to the fact that all of the traditional resource uses were still allowed to occur within the area the amount of opposition toward the bill would have been drastically reduced.

Although no parties that actually opposed the bill can be identified through the records currently available it is possible to identify through the congressional comments some of the issues that were contentious. The most contentious issue appears to be the way in which private in-holdings within the conservation area were to be treated. The citizens committee that was referred to above stated in a report to Representative Clausen that it was concerned with the Department of Interior's condemnation authority in this case and felt the authority should only be used to

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<sup>50</sup> For comments on the Senate floor see 113 Cong. Rec. 32525 (1967); For House comments see 113 Cong. Rec. 32721 (1967).

<sup>51</sup> See notes 34-35.

<sup>52</sup> 115 Cong. Rec. Index, 1717 (1969).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 1960.

<sup>55</sup> 116 Cong. Rec. Index, 1330 (1970).

<sup>56</sup> H.R. Rep. No. 91-1440,1, (Sept. 9 1970).

<sup>57</sup> *Id.* at 1-2, 10-12.

<sup>58</sup> 116 Cong. Rec. 32787-32790 (1970).

<sup>59</sup> *Id.* At 32790-32791.

<sup>60</sup> 116 Cong. Rec. Index 1330 (1970); see also S. Rep. No. 91-1270 (Oct. 5, 1970).

<sup>61</sup> 116 Cong. Rec. 32790 (1970).

condemn lands “when there is a clear showing that the use of the property is not compatible with the overall purposes and objectives of the proposal.”<sup>62</sup> In addition, the committee was concerned with the two-year window that was created through the proposed bill to facilitate land exchanges in the area. The committee felt a five-year window was more appropriate in order to work through the complicated negotiations often involved in land exchanges.<sup>63</sup> Both of these suggestions were eventually included in the bill that passed.<sup>64</sup>

To further clarify how private lands within the conservation area were to be treated Representative Aspinall stated: “[o]ne of the unique features of H.R.12870 is that it does not contemplate or intend to eliminate private holdings or private enterprises within the area. These private holdings and interests are expected and will be encouraged to continue and to contribute to the overall economy and attractiveness of the area. However, in order to properly safeguard certain overriding values in the area, provision is made that private uses within the area must conform to the overall purpose of the conservation area.”<sup>65</sup>

Although one of the main purposes of the bill was to facilitate land exchanges between the Department of the Interior and the private lands holders, and thereby consolidate public holdings in the area, it was not the purpose of the bill to completely acquire all of the private land in the area.<sup>66</sup>

## **ESTABLISHING THE NCA**

On September 21, 1974 Jack Horton, the Assistant Secretary of the Interior, certified that all of the requirements of the King Range Act, including the development of a management program, public notice and review, and the development of a boundary map, had been met thus formally establishing the KRNCA four years after the bill was signed into law.<sup>67</sup>

Congress’ decision to make the creation of the KRNCA effective after a management plan was developed by the Bureau of Land Management had some interesting ramifications. The four year delay allowed numerous land owners the opportunity to subdivide their land, therefore increasing its value for sale or exchange purposes. Several of these newly created parcels were sold to private parties creating further management problems once the NCA was officially established. Other private landowners clearcut the timber from their land during this four year period and then made the land available for sale or exchange to the government.<sup>68</sup> Much of this residential development and clearcutting would have been inconsistent with the KRNCA management plan and this would have made the private land available for acquisition through condemnation under the eminent domain authority in the King Range Act.

In 1976, two years after the official creation of the KRNCA, Congress undertook a major revision of public land law through the passage of the Federal Land Policy and Management Act

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> H.R. Rep. No. 91-1440, 5-6, (Sept. 9, 1970).

<sup>65</sup> 116 Cong. Rec. 32789 (1970).

<sup>66</sup> *Id.* at 32790.

<sup>67</sup> Department of the Interior memorandum signed by Jack O. Horton, (Sept 21, 1974).

<sup>68</sup> Phone interview with Gary Pritchard-Peterson, KRNCA Manager, July 29, 2003.

(FLPMA).<sup>69</sup> Included within FLPMA were a number of provisions that expanded or created various areas of special land designation. One of the areas that was expanded was the King Range National Conservation Area.<sup>70</sup> The bill actually expanded the area by about 5500 acres.<sup>71</sup> Although the expansion was originally only included in the House version of the bill, the Conference Committee assigned to the bill compromised in favor of the expansion.<sup>72</sup> There did not appear to be any debate about the expansion and it seemed to go through relatively easily. No further expansions have been made to the area.

The legislative history of the KRNCA must be put into context to fully appreciate it. In 1961 Representative Clem Miller introduced the very idea of a national conservation area for special lands that were being managed by the BLM. He was actively involved with the passage of the 1960 Multiple Use-Sustained Yield Act and was very conscious of the growing role of recreation on the public lands and he built both concepts into the KRNCA legislation. Also in 1961 the very first national wilderness bill was introduced by Senator Hubert Humphrey and a new debate over land management of primitive areas came onto the national scene. In some ways, Representative Miller introduced concepts that would be seen again fifteen years later when FLPMA was enacted in 1976. Concepts such as inventorying natural resources, land use planning with full state and local government involvement, improved authorities for and emphasis on land exchanges, and managing lands for ecological values as well as commodity values.

While the large roadless tracks in the King Range were noted during legislative debates the Wilderness Act was not passed until 1964 and the public domain lands were not subject to the provisions of The Wilderness Act until the passage of FLPMA. Of the thirteen special conservation areas managed by the BLM and created by Congress, seven include wilderness areas designated at the same time.

Of particular note is the way private lands are handled in the King Range Act. At the time the concepts of federal land use planning for private lands and the authority for condemnation if private land uses conflict with the KRNCA plan were built into the authorizing legislation, the property rights movement in American had not gotten into full swing.

BLM managed conservation areas range in size from as small as 22,000 acres to over 1.2 million acres. While most conservation areas were created by Congress in the 1990s and early 2000s, the agency's experience with the very first conservation area has surely influenced Congress' interest in setting aside these areas for special designation.

## **1974 KRNCA MANAGEMENT PROGRAM**

The KRNCA Management Program was completed in 1974, two years before FLPMA provided guidance on resource inventories and land use planning to the BLM. The Management Program was based on extensive field inventories conducted in 1972. The KRNCA's authorizing

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<sup>69</sup> 43 U.S.C.A § 1701-1784 (West 2003).

<sup>70</sup> P.L. 94-579 § 602 (Oct. 21, 1976).

<sup>71</sup> H.R. Rep. No. 94-1163, 44, (May 15, 1976).

<sup>72</sup> H.R. Conf. Rep. No. 94-1724, 21, (Sept. 29, 1976).

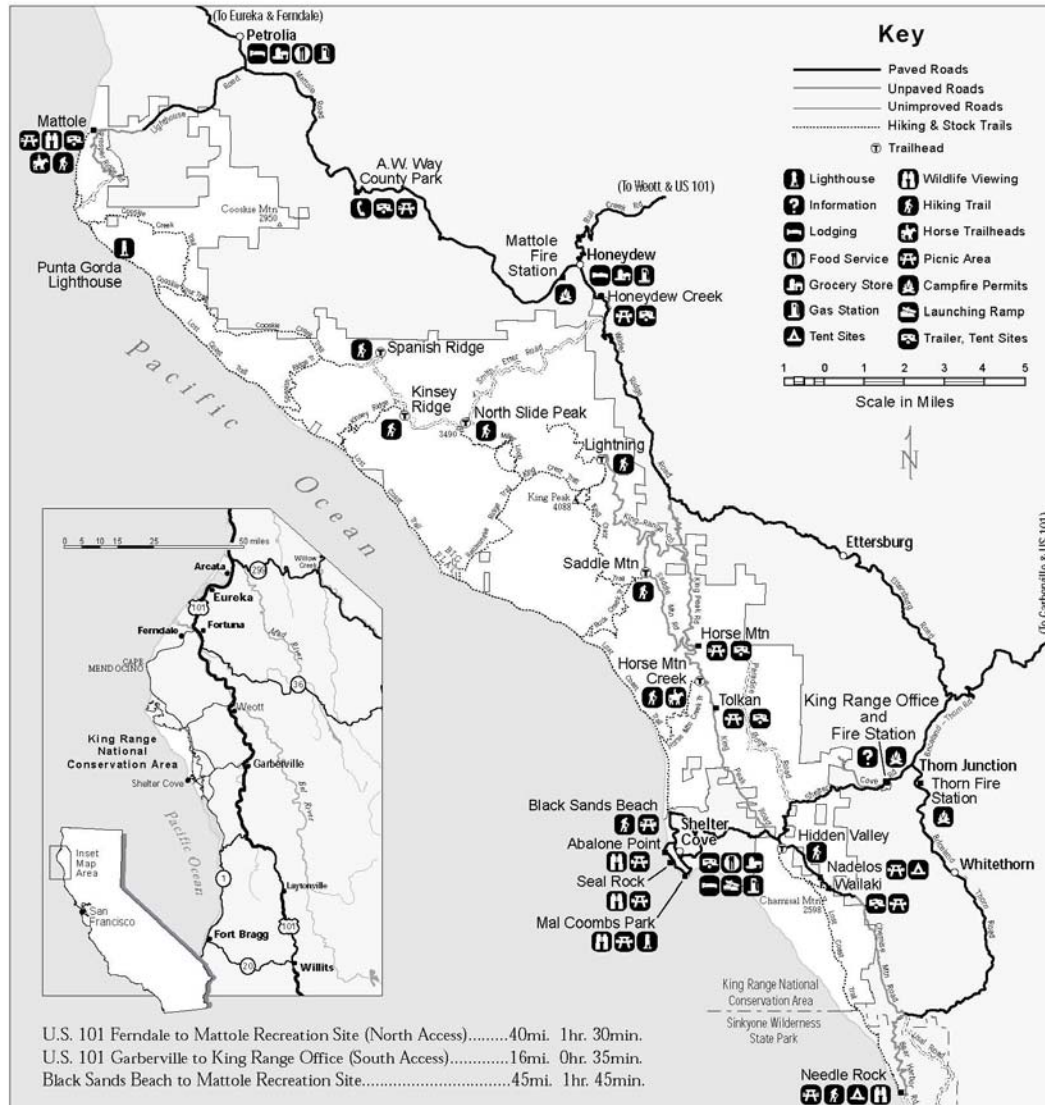
**Figure 1. Map of King Range National Conservation Area.**

**King Range Office** is open 8am–4:30pm, Mon.–Sat. during Summer (call ahead for winter hours) (707) 986-5400.

**Arcata Field Office:** 1695 Heindon Rd, Arcata, CA 95521, open 7:45am–4:30pm, Mon.–Fri. (707)825-2300.

Internet: [www.ca.blm.gov/arcata](http://www.ca.blm.gov/arcata)

A large, full-color map/guide to the King Range can be purchased from the BLM and area businesses.



legislation directed the agency to develop a management plan that identifies the primary and secondary uses for each zone within the NCA. The agency claimed to read the authorizing legislation's definition of primary or dominant use quite literally and only secondary uses that were compatible or did not unduly impair the primary use were to be allowed. However, as the BLM noted in the 1974 Management Program, "this provision permits considerable exercise of judgment".

The Management Program acknowledges the serious impacts to watersheds, wildlife and fisheries from years of private timber cutting, road building and over grazing (although there is no acknowledgement of any federal contribution to these problems).

A key facet of the Management Program was its applicability to all lands within the NCA regardless of ownership. This is a critical feature since condemnation of private lands is allowed if the activity on those private lands is not compatible with the Management Program.

The Management Program summarizes three planning documents referred to as "primarily dynamic, working tools."<sup>73</sup> These planning tools are:

1) Unit Resource Analysis which includes the basic resources inventories, descriptions of the situation as it existed in 1974 and development opportunities for each resource.

2) Management Framework Plan (the precursor to the post-FLPMA Resource Management Plans) which analyzes the opportunities described in the Unit Resource Analysis and records the decisions on which of these should be carried out.

3) Coordinated Activity Plans, organized by activity (i.e. recreation, timber, grazing) upon which actual implementation is based including cost and timing of implementation.

Seven zones were delineated in the Management Program. The associated primary and secondary uses and management objectives are shown in Table 1 and described in more detail below. Maps of each of these areas are included in the 1974 KRNCA Management Program.

| TABLE 1                                     |                        |   |               |
|---|------------------------|---|---------------|
| <u>Zone</u>                                 | <u>Primary Use</u>     | <u>Secondary Uses*</u>  | <u>Acres</u>  |
| 1   | Recreation             | Wildlife, grazing   | 274           |
| 2   | Recreation             | Watershed, wildlife, fisheries, grazing                       | 23,031        |
| 3   | Residential            | Recreation  | 3,507         |
| 4   | Recreation (Primitive) | Watershed   | 3,606         |
| 5   | Residential            | Recreation  | 1,276         |
| 6   | Timber                 | Watershed, wildlife, fisheries, recreation, minerals, grazing | 12,047        |
| 7   | Wildlife               | Fisheries, timber, watershed, recreation                      | 10,458        |
|   |                        |   | <b>TOTAL</b>  |
|   |                        |   | <b>54,199</b> |
| * Not exclusive, major secondary uses only. |                        |   |               |

<sup>73</sup> 1974 King Range National Conservation Act Management Program, 79.

### **Zone 1 Punta Gorda**

The primary use of this coastal area is recreation with most of the recreational activities involving interest in the Punta Gorda lighthouse and use of the beach by hikers and off-road vehicles. The beach will be zoned into a mechanized use area and a non-mechanized use area. Grazing is allowed from June through October (117 animal unit months) and livestock will be controlled by fences including along the beach area. The Management Program states that “increased vegetative cover” will result from this grazing management system.<sup>74</sup> The high season of use for recreationists (primary use) coincides with the grazing season (secondary use).

### **Zone 2 West Slope**

The primary use of this zone is recreation with an emphasis on retaining the wild and scenic values of the steep mountain slopes facing the ocean and preserving the unique character of the beach. The Management Program calls for land acquisition to improve legal beach access, prohibiting vehicle use on most of the beach, and establishing a parking area at Spanish Flat as well as primitive camping facilities. The Smith-Etter Road, Spanish Ridge Trail and Saddle Mountain Trail are planned to provide vehicle access. Extensive watershed restoration activities are planned along with the reintroduction of a Roosevelt elk herd. Livestock grazing (sheep) is permitted June through October (1105 animal unit months) and the construction of reservoirs and development of springs for livestock are planned. The plan calls for a reduction in the number of sheep allowed after the Roosevelt elk herd is established. Timber harvest is not allowed due to the critical watershed problems on the steep western slopes.<sup>75</sup>

### **Zone 3 Shelter Cove**

The primary use of this zone is residential due to the nearly 5,000 lots in the Shelter Cove subdivision (most range from one-tenth to one acre in size). In 1974 there were only 40 residences constructed and while the trend within the previous years was about five new construction starts per year, the developer projected future construction starts to be at the rate of 60-80 per year. While this estimate has proved rather ambitious, the number of homes in Shelter Cove has grown to 450 with over 50 new homes being built in 2003 alone. The secondary use of the area is recreation and the beaches are popular for off road vehicle use, fishing, hiking, swimming and sunbathing. The beach will be zoned with a little over three miles open to vehicles (from Telegraph Creek to Gitchell Creek) and the rest closed to vehicles.<sup>76</sup>

### **Zone 4 Point No Pass**

The primary use of this zone is primitive recreation and the Chemise Mountain area is included in this zone (later to be designated a Primitive Area and then a Wilderness Study Area). No camping facilities will be constructed and the area will be managed to provide opportunities for solitude. No timber harvesting will be conducted and development of minerals involving surface disturbance or mechanized equipment is not compatible with the maintenance of primitive values in this zone.<sup>77</sup>

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<sup>74</sup> BLM-California, *1974 KRNCA Management Program*, 34.

<sup>75</sup> *Id.* at 36.

<sup>76</sup> *Id.* at 40.

<sup>77</sup> *Id.* at 42.

### **Zone 5 Whale Gulch**

The primary use of this zone is residential as most of the area is privately owned with a number of full-time residents. While the secondary use is noted as recreation, no recreation objectives are included in the Management Program.

### **Zone 6 Bear Creek**

This zone is on the eastern side of the ridge and has some of the most serious watershed problems due to past logging and road building, primarily on private land. The primary use of this zone continues to be intensive, maximized timber production including the plans for nearly 17 miles of timber sale road construction and 8 miles of multi-purpose road construction. In a nod towards the secondary uses of watershed, fisheries, wildlife, and recreation, approximately 60% of all timber harvest in the area will be harvested by partial cutting or selective systems with the remaining 40% to be logged in small clear cut units not to exceed 25 acres in size. The Paradise Ridge area of this zone is used for livestock grazing and due to overgrazing, the reductions will occur until vegetative conditions have improved. The Queen Peak Mine is in this zone but the only management objective identified in the Management Program is to cooperate with the owners “to arrest erosion of the mining area by providing better cross-drainage and re-vegetating disturbed areas.”<sup>78</sup>

### **Zone 7 Honeydew Creek**

The primary use for this zone is management of wildlife habitat with a particular emphasis on threatened or endangered species such as the spotted owl. Activities that might negatively impact these species such as timber harvest, road construction, vehicle use or intensive recreation development will be excluded until the full extent of species and their habitats are understood. No timber harvesting is planned for at least five years and investments will be made in watershed restoration. Existing roads will remain open, including the Smith-Etter Road.<sup>79</sup>

In the seven zones combined, an aggressive, optimistic multiple use management program emerges. The plan calls for a range of resource outputs in the first five years including producing 1.9 million board feet of timber annually, 1,222 animal unit months of livestock grazing, clearing 35 miles of blocked fisheries streams, reintroducing Roosevelt elk, restoring 1,800 acres of seriously disturbed watershed, acquiring 17,000 acres of land, and accommodating 97,000 visitors annually.<sup>80</sup> The cost for this ambitious management program was estimated to be over \$5.8 million for the first five years, over one million dollars per year.<sup>81</sup>

Over the years the 1974 KRNCA Management Program has been supplemented with other planning guidance in the form of activity plans and amendments. The following list identifies the updates to the Management Program:

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<sup>78</sup> *Id.* at 44.

<sup>79</sup> *Id.* at 48.

<sup>80</sup> *Id.* at 26.

<sup>81</sup> *Id.* at 67.

1974 KRNCA Management Program  
 1975 BLM Order 3202 establishing the Chemise Mountain Primitive Area  
 1976 FLPMA expands boundary and land management authorities  
 1979 Vehicle closure for beaches from Gitchell Creek to Mattole River  
 1980 Final Intensive Wilderness Inventory (delineates 2 WSAs in KRNCA)  
 1981 Area of Environmental Concern designation for Mattole Beach  
 1983 King Range Big Game Habitat Management Plan  
 1984 King Range Watershed Activity Plan  
 1986 KRNCA Transportation Plan  
 1988 King Range Fire Management Plan  
 1988 Final EIS and Wilderness Recommendations  
 1991 California Statewide Wilderness Study Report  
 1992 KRNCA Visitor Services Plan  
 1994 Northwest Forest Plan  
     Nooning Creek Aquatic Plan  
     Bear Creek Aquatic Plan  
     Mattole Estuary Plan  
 1995 Lost Coast Trail designated a National Recreation Trail by Secretary of the Interior  
 1997 Rangeland Health Standards and Guidelines  
 1998 Plan Amendment Black Sands Beach Vehicle Closure

## **ECONOMIC IMPACT OF DESIGNATION**

No economic studies exist that show the impact of the KRNCA on the local area over time. At the time of the designation the BLM anticipated that there would be very little impact overall. Estimated total impact to seasonal employment (direct and indirect) in Humboldt County was estimated to be the addition of 54-80 jobs each summer for the first five years and then dropping back down as the construction work is completed. Since budgets never met planned estimates it is unlikely this forecast came true. The largest potential economic impact was thought to be in the area of timber harvesting. Any reductions in timber harvesting were thought to be offset by increased harvesting on the lands exchanged out of federal ownership (outside of the KRNCA).<sup>82</sup> Estimates of timber production were never realized due to threatened and endangered species issues and the Northwest Forest Plan rather than from restrictions associated with the designation of the NCA. At the time of designation, there was not a very robust timber industry in the region even though numerous mills sites remained from the timber boom in the 1950s through the mid-60s. The boom ended when the private lands were largely denuded of merchantable timber.<sup>83</sup>

## **IMPLEMENTATION OF THE MANAGEMENT PROGRAM**

### **Land acquisition program**

The acquisition of private land within the boundaries of the KRNCA is one of the most important features of the management program. Not only was the land acquisition program one of the primary reasons for the creation of the NCA, it also has driven the BLM's ability to manage

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<sup>82</sup> BLM-California, *Economic Impact Analysis of the King Range National Conservation Area*, (May 1974).

<sup>83</sup> *Id.*

lands (including roads, access, recreation and potential wilderness) and to conduct watershed restoration activities.

Exchanges of land are preferred over purchases or condemnation in the management plan. According to the enabling legislation, exchanges must be within Humboldt and Mendicino Counties. The original concept was to dispose of scattered BLM tracts outside of the KRNCA that were covered with timber but difficult to harvest and gain private in-holdings within the KRNCA. However, most of the BLM tracts outside of the KRNCA were not suitable for exchange to the average King Range in-holder because they were generally isolated, lacked legal access, and did not possess the recreational home site value desired. To overcome these obstacles, BLM entered into a third-party land exchange program whereby timber companies purchased the available in-holdings within the KRNCA and transferred them to the BLM in exchange for BLM timber land outside the NCA.<sup>84</sup>

Between 1970 and 1974 (when the NCA was actually established) 25% of the private land designated for acquisition had been acquired. About 17,000 acres of private land was identified for acquisition in the 1974 Management Program. Since 1970, private in-holdings have been acquired using the following methods:

|  |                                 |
|--|---------------------------------|
| 3,076.33 acres acquired through 69 purchases         | (12% of acquisitions)           |
| 21,847.89 acres acquired through 43 exchanges        | (86% of acquisitions)           |
| 440.08 acres acquired through 2 condemnation actions | ( 2% of acquisitions)           |
| <u>.69 acres</u> acquired through 4 donations        | <u>(&lt;1%</u> of acquisitions) |
| 25,364.99 acres                                      | 100%                            |

### **Mineral Leasing and Hardrock Mining**

Unlike most national conservation areas, the KRNCA remains open to both mineral leasing and hardrock mining although none of these activities have occurred since the creation of the NCA. Supplementary regulations were issued for the KRNCA requiring a mandatory plan of operations for all mining activities exceeding casual use and then later including the KRNCA under the same criteria as the California Desert Conservation Area.<sup>85</sup> Under these criteria the Secretary must manage the General Mining Law of 1872 in the KRNCA in such a way as to prevent undue impairment.

### **Livestock Grazing**

Livestock grazing has continued in the KRNCA in Zones 1 and 2 on four allotments. In 1970 at the time P.L. 91-476 passed, an estimated 435 animal unit months (AUMs) were under lease.<sup>86</sup> The 1974 Management Program anticipated 1,222 animal unit months of grazing within the NCA. Current levels are 2,050 AUMs under lease with an actual use being about 1,800 AUMs

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<sup>84</sup> Francisco J. Urbina, *The Wilderness Designation Process: Case Study of the King Range National Conservation Area*, Master's thesis for Master of City Planning at Massachusetts Institute of Technology, (June 1986).

<sup>85</sup> 59 Fed. Reg. 24512, (1994).

<sup>86</sup> S. Rep. No. 91-1270, (Oct. 5, 1970).

in an average year.<sup>87</sup> Since the creation of the NCA the BLM and the lessees have both installed range improvements including spring developments and water troughs and extensive amounts of fencing.<sup>88</sup> At the time the 1974 Management Program was written it was anticipated that AUMs would decrease in Zone 2 as the Roosevelt elk herd became established and increased. It is unclear what role the acquisition of private in-holdings has had on the dramatic increase in AUMs over time.

Gary Pritchard-Peterson, the KRNCA Manager says “the major change to grazing management has been in relation to riparian areas, with fine-tuning or tightening up management, or eliminating grazing altogether in areas with significant riparian resources.”<sup>89</sup>

A little over 1% of the comments received on the draft management plan update dealt with livestock, most suggesting that grazing be reduced or eliminated. One local organization repeated their concerns that livestock grazing was causing damage to cultural sites at Spanish Flat (Zone 2).

### **Timber Harvesting**

While timber harvesting was anticipated to occur in Zones 6 and 7, this was delayed until inventories could be done to fully understand the range and habitat of numerous threatened and endangered species. Management is now guided by the Northwest Forest Plan which has severely restricted the amount of timber harvesting originally envisioned in the 1974 Management Program. The original 1974 Management Program estimated an allowable cut potential of 1.9 million board feet. Only two timber sales have occurred since 1974, both were fire salvage timber sales. One occurred after the Finley Creek fire (1975) removing 2,799 million board feet from 305 acres and the second was after the Saddle Mountain fire (1988) removing 24 million board feet from five acres.<sup>90</sup>

No timber harvests are planned due to the Northwest Forest Plan designations for the KRNCA. 45,437 acres of the NCA are designated late-successional reserves designed to serve as habitats for old-growth related species and 15,688 acres are administratively withdrawn from timber harvest.<sup>91</sup> However, lands designated as late-successional reserves can be treated with silvicultural practices to enhance the development of old-growth forest characteristics.

### **Recreation**

A visitor survey conducted in 1979 found that the KRNCA is a destination area.<sup>92</sup> Of the visitors surveyed:

- 10% live within 1 hour drive
- 26% live within 1-4 hour drive
- 57% lived in California but over 4 hours away

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<sup>87</sup> 10/23/03 e-mail communication from Gary Pritchard-Peterson, KRNCA Manager.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Colorado State University, *King Range Study Final Report Measuring Dispersed use and Visitor Preferences on the BLM's National Resource Lands*, (April 24, 1981).

8% lived outside of California

In 2003 the KRNCA can still be considered a destination, although one that is within a four hours drive of approximately 10 million people.<sup>93</sup>

The 1979 survey found that 85% of visitors surveyed walked or hiked in the KRNCA. More than half of the visitors engaged in wildlife viewing, photography, sightseeing/auto driving or camping. Four primary categories of visitors were noted:

- 12% roadside users (camping near auto, sightseeing/auto driving, picnicking)
- 38% backcountry users
- 21% ocean fishers
- 12% nature observers (nature study, wildlife viewing, photography)

In 1979, as is still true today, most King Range users preferred to recreate in a primitive to semi-primitive setting.<sup>94</sup>

The KRNCA 1974 Management Program noted 56,400 visitor days annually and made projections of 145,000 visitor days annually. Today, the BLM estimates that there are about 160,000 visits<sup>95</sup> to the KRNCA annually including 17,000 visitor-days along the most popular, 25 mile Lost Coast Trail segment between Mattole and Black Sands beaches.<sup>96</sup>

### **Transportation and Off Road Vehicles (ORVs)**

By far the most controversial recreational use within the KRNCA has to do with motorized vehicle access of all kinds. This includes normal vehicle travel, four wheel drive travel and the use of All Terrain Vehicles (ATVs) and motorcycles/motorbikes.

On January 23, 1986 the BLM approved the King Range Transportation Plan<sup>97</sup> designating sixteen areas and roads open as either unrestricted or limited vehicle use by the general public. The plan recommended grading and repairing several roads and it closes 25 miles of roads to public use. The transportation management plan was finalized six years after two Wilderness Study Areas (WSAs) had been established within the KRNCA. Seventy public comment letters were received on the transportation plan. Forty-nine (70%) favored closing the entire King Range coastline to ORVs. Fifty-eight comments (83%) favored closure of all roads within the King Range WSA boundaries.<sup>98</sup> By zone, the plan can be summarized as:

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<sup>93</sup> U.S. Dept. Of Int. and Bureau of Land Management, *Scoping Report for the King Range National Conservation Area*, 2, (Feb. 2003).

<sup>94</sup> See both Colorado State University, *King Range Study Final Report Measuring Dispersed use and Visitor Preferences on the BLM's National Resource Lands*, (April 24, 1981) and U.S. Dept. Of Int. and Bureau of Land Management, *Scoping Report for the King Range National Conservation Area*, 2, (Feb. 2003).

<sup>95</sup> A "visit" could be someone getting out of their car at Black Sands Beach for 30 minutes while a "visitor day" is an estimate of the number of visits that last an entire day.

<sup>96</sup> 10/23/03 e-mail communication from Gary Pritchard-Peterson, KRNCA Manager

<sup>97</sup> Arcata Bureau of Land Management, *Environmental Assessment and Plan Amendment for the KRNCA Proposed Black Sands Beach Vehicle Closure*, (October 1997).

<sup>98</sup> Francisco J. Urbina, *The Wilderness Designation Process: Case Study of the King Range National Conservation Area*, Master's thesis for Master of City Planning at Massachusetts Institute of Technology, (June 1986).

Zone 1 Closes entire zone to all vehicle use.

Zone 2 Beach areas remain closed to vehicles and no roads remain open to the public all the way down to the beach to prevent vehicle access to the beach. Of the seven roads, one is open to general travel, one is closed and five are open to four-wheel drive, motorcycles and ATVs.

Zone 3 Black Sands Beach (now in the King Range WSA) from Telegraph Creek to Gitchell Creek remains open to vehicles and also keeps the Kaluna Cliff Road open.

Zone 4 All roads closed to vehicle use (now in Chimney Mountain WSA).

Zone 5 Closes Whale Gulch Road.

Zone 6 Of the seven roads, one is open to general travel, one is closed, two are open to four wheel drive, motorcycles and ATVs, and three are open in part and closed or limited in part.

Zone 7 King Range Road remains open and a portion of the Smith-Etter Road is seasonally closed.

The Travel Management Plan was appealed to the Interior Board of Land Appeals (IBLA) by the Sierra Club and the Wilderness Coalition and IBLA found that BLM's decision to keep the five roads within the King Range WSA open to vehicle travel by the general public must be reversed.<sup>99</sup> BLM then petitioned for reconsideration due to recent land purchases that helped prevent illegal ORV use and increased law enforcement capability on staff that could help prevent illegal vehicle use in the WSA. At the same time, the California Association of 4WD Clubs filed an amicus curiae brief in support of the BLM. IBLA reversed their decision and supported the transportation plan in full.<sup>100</sup> Later that same year the BLM took administrative action to close the Smith-Etter Road near the boundary of the King Range WSA pending action by Congress on wilderness designation.

While the 1986 Travel Management Plan did set management for most of the KRNCA areas, the stretch of Black Sands Beach between Telegraph Creek and Gitchell Creek remained open to vehicle travel despite being in the King Range WSA. It was not until 1998 when the Plan Amendment Proposed Black Sands Beach Vehicle Closure became effective that this stretch of controversial beach was closed to motorized use.

Appendix A gives the chronological history of three of the most controversial road or access issues in the KRNCA.

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<sup>99</sup> 101-IBLA-18 (Jan. 25, 1988).

<sup>100</sup> 105-IBLA-196 (Nov. 2, 1988).

## **Fire Management**

The summer of 2003 was a good test of the King Range Fire Management Plan due to a series of late summer fires that burned nearly 11,000 acres of the NCA. While three bulldozer lines of about 6 miles total were authorized within the King Range Wilderness Study Area, there were few alternatives to keep the fire from burning south into the community of Shelter Cove. The King Range Fire Management Plan takes into account not only the Wilderness Study Area designations but also the steep slopes and critical habitats throughout the NCA. The plan played a large role in suppression of the fire, specifically bulldozer restrictions, pre-established fuel breaks, pre-used hand and bulldozer lines from historical fires, pre-designated helicopter landing spots, and many other strategic approaches to minimizing the impacts of fire suppression.<sup>101</sup>

## **Implementation Budget**

The 1974 Management Program calls for nearly \$1.2 million per year to implement all of the management strategies outlined.<sup>102</sup> Approximately \$700,000 per year was identified as being necessary for operation of the KRNCA, exclusive of land acquisition and construction programs. Annual budgets for the KRNCA have, however, historically been about \$300,000 and it was not until the BLM created the National Landscape Conservation System that budgets began to meet those identified as necessary for operations back in 1974. The KRNCA currently receives about \$780,000 for annual operations and labor (exclusive of deferred maintenance, fire or fuels management).<sup>103</sup>

## **WILDERNESS STUDY AREAS WITHIN THE KRNCA**

The 1980 final intensive wilderness inventory resulted in the creation of two Wilderness Study Areas (WSAs) within the boundaries of the KRNCA, the King Range WSA and the Chemise Mountain WSA. In 1985 the Draft Environmental Impact Statement (EIS) was released with a proposed action of 21,200 acres recommended suitable for wilderness designation for the King Range WSA and no acres recommended suitable for the Chemise Mountain WSA.<sup>104</sup>

Eight major issues were identified in the Draft EIS:

1. Recreation, particularly relating to vehicle use.
2. Livestock grazing and the concern that wilderness may limit vegetation manipulation and range improvements.
3. Timber management and concerns that logging would be precluded from Zones 6 and 7.
4. Soils and watershed rehabilitation work needed to repair damage from logging and poor road building and the concern that this work may be hindered by limiting the use of heavy equipment.
5. Generalized mineral and energy development issues.
6. Fire management and the concern that designation would hinder pre-suppression and suppression activities.

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<sup>101</sup> 10/23/03 e-mail communication from Gary Pritchard-Peterson, KRNCA Manager.

<sup>102</sup> BLM-California, *1974 KRNCA Management Program*, 67.

<sup>103</sup> 10/23/03 e-mail communication from Gary Pritchard-Peterson, KRNCA Manager.

<sup>104</sup> Bureau of Land Management, *Draft EIS Preliminary Wilderness Recommendations for the Arcata Resource Area Chemise Mountain WSA and King Range WSA*, (1985).

7. Wildlife habitat and the concern about limitations on wildlife habitat manipulation.
8. Concerns that wilderness values will be adversely affected by developments unless the area is protected.

### **King Range WSA**

The King Range WSA encompasses 34,033 acres of BLM land and 548 acres of private in-holdings. The western boundary follows the mean high tide line of the Pacific Ocean for 22 miles of remote and undeveloped coastline. The King Range rises from a coastline of tidepools, beaches, massive rocks and cliffs to rugged mountains exceeding 4,000 feet in elevation and containing areas of old-growth Douglas fir forest.

The area contains 15 miles designated as part of the National Recreation Trails System and Humboldt County has designated the 22 mile shoreline the “Coastal Trail”. The accompanying intertidal zone was designated as an Area of Special Biological Significance by the California Water Resources Control Board. Portions of the King Range WSA became an Instant Study Area as mandated by Section 603 of FLPMA.<sup>105</sup>

The 1985 Draft EIS proposed action was 21,200 acres recommended suitable for wilderness and 12,544 acres non-suitable, however, the final 1991 Record of Decision recommended 20,517 acres as suitable and 13,237 acres as non-suitable (with 269 acres of private in-holdings recommended to be acquired and included with the suitable acres). Nearly all the boundary of the area recommended suitable for wilderness designation follows major physiographic features.

Numerous range improvements and abandoned logging and ranch roads adorn the area recommended as non-suitable. The active use and maintenance of the range improvements was a key element in the agency recommendation for non-suitability.

The suitability recommendation precluded any further vehicular use of about 21 miles of primitive access routes of travel but failed to close the final 3.5 miles of beach to ORVs despite overwhelming public support. Of the total 515 oral and written comments received, 475 (92%) remarked in favor of the all-wilderness alternative (rather than the agency recommended 63% wilderness alternative). The District Advisory Council recommended a 40% wilderness alternative which was also supported by the Humboldt County Board of Supervisors.<sup>106</sup>

The agency’s rationale for selecting only 63% of the area as suitable was:

1. Lands in the 63% contain outstanding wilderness values.
2. 16.5 miles of unroaded shoreline would be protected.
3. Designation of the recommended portion would have minimal conflicts with other resources.
4. Using physiographic features for boundaries will improve manageability.
5. Recommendations are consistent with the 1974 KRNCA Management Program.

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<sup>105</sup> Bureau of Land Management , *Record of Decision: California Statewide Wilderness Study Report*, (1991).

<sup>106</sup> *Id.*

During this process the BLM skirted the most controversial issue of continued ORV use on the coast by not analyzing closing the last 3.5 miles of open beach areas within the King Range WSA. Ever since the development of the Management Program, the public has made it clear that this is the sharpest issue of controversy and the Bureau acknowledged in 1974 that “The Bureau’s plan to zone the beach into mechanical and non-mechanical use areas satisfies neither viewpoint and both sides express skepticism on control capability.”<sup>107</sup> Even the designation of Wilderness Study Areas did not pressure the Bureau to act on the issue of the vehicle access on Black Sands Beach. It was not until 1998, when the Plan Amendment for Black Sands Beach Vehicle Closure finally became effective, that motorized access along the final 3.5 miles of coastline was finally closed.

The coastline is not entirely without motorized use even today. Motor boats bring surfers and others to shore and two private airstrips (one entirely on private property) are used by in-holders to access private property and to bring in surfers.

### **Chemise Mountain WSA**

The Chemise Mountain WSA contains 4,143 acres of BLM managed land, 243 acres of State land and 97 acres of private in-holdings. The topography is steep and rugged with an elevation drop of 2,600 feet to the ocean in about one half mile. Douglas fir fills the drainages and chaparral covers the saddles and ridges. The WSA’s shoreline abuts a state designated Area of Special Biological Significance in the state-owned intertidal zone.

In 1975 the BLM State Director designated 3,741 acres of the Chemise Mountain WSA a primitive area. As a primitive area, it was automatically subject to wilderness review as mandated by Section 603 of FLPMA and labeled an Instant Study Area.<sup>108</sup>

The 1985 Draft EIS Preliminary Wilderness Recommendations for the Arcata Resource Area analyzed a no wilderness alternative and an all wilderness alternative. The District Advisory Council recommended the no wilderness alternative and this was the proposed action in the Draft EIS.

However, public reaction was overwhelmingly in favor of the Chemise Mountain WSA and the 1991 Record of Decision recommends the all wilderness alternative. A total of 515 written and oral comments were received during the formal public review period. 90% supported wilderness designation. Unlike the District Advisory Council, the Humboldt County Board of Supervisors supported the wilderness alternative. The agency’s rationale for this final suitability recommendation was:

1. The area contains outstanding wilderness values and special features.
2. Inclusion in the National Wilderness Preservation System (NWPS) would allow a broad spectrum of people to have wilderness experiences due to its convenient location.

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<sup>107</sup>BLM-California, *1974 KRNCA Management Program*,24.

<sup>108</sup> Bureau of Land Management, *Record of Decision: California Statewide Wilderness Study Report*, (1991).

3. There are no resource conflicts.
4. The area is manageable as wilderness.
5. It would expand the diversity within the NWPS.

## **POTENTIAL FOR WILDERNESS DESIGNATION**

In 1991 the BLM sent its final report on wilderness recommendations to the President and in 1993 the President forwarded recommendations to Congress. There had been no action on wilderness in the KRNCA for nearly ten years when, during the 107<sup>th</sup> Congress in May of 2002, Senator Barbara Boxer (CA-D) proposed a statewide land preservation bill for California, the California Wild Heritage Act S.2535, that would have protected about 2.5 million acres of land and proposed 22 river segments for designation under the Wild and Scenic River Act.<sup>109</sup> This bill contained provisions that would have designated portions of the King Range National Conservation Area as wilderness. The bill was referred to the Senate Committee on Energy and Natural Resources where it died, despite the fact that the California legislature urged passage of the bill.<sup>110</sup>

Once again in March of 2003 Senator Boxer proposed S.738, which is an identical bill to S.2535 that was proposed in 2002.<sup>111</sup> An identical bill was presented in the House.<sup>112</sup> Included within these bills is a provision to designate about 41,100 acres of the King Range area as wilderness (the combined total for both wilderness study areas).<sup>113</sup> This bill is currently before the Energy and Natural Resources Committee.<sup>114</sup> This bill could potentially be the next major change to the King Range National Conservation Area although the bill still faces some stiff resistance.

## **2003 UPDATE OF THE 1974 MANAGEMENT PROGRAM**

The BLM is working on a Draft Management Plan and EIS for updates to the 1974 KRNCA Management Program due out soon (originally scheduled for the fall of 2003). This revised plan will guide management and stewardship of the KRNCA for the next twenty years. The KRNCA has grown from 35,000 acres of public land and 19,000 acres of private land back in 1974 to 57,000 acres of public land and 6,000 acres of private lands.

In addition, over the course of the past 30 years numerous changes to how the area is managed have occurred. As summarized in the Scoping Report:

Several additions and adjustments to the original management program have occurred since 1974 as environmental conditions, public needs, and management issues and strategies have changed: rule making has been implemented through the publishing of Federal Register notes; activity-level plans have been developed and implemented; and the Northwest Forest Plan (April 1994) amended all public land use management plan in the Pacific Northwest, including the King Range Management Program. An additional

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<sup>109</sup> 148 Cong. Rec. 4626 (2002).

<sup>110</sup> *Id.* at 8057.

<sup>111</sup> 149 Cong. Rec. 4527 (2003).

<sup>112</sup> H.R. 1501, 108th Cong., 1st Sess. (2003).

<sup>113</sup> 149 Cong. Rec. 4527-4528 (2003).

<sup>114</sup> 149 Cong. Rec. 4512 (2003).

plan amendment was made in 1998 to change management of Black Sands Beach to non-motorized use only.<sup>115</sup>

Several key planning decisions were carried forward into this process and will not be re-addressed in the draft management plan. These included the Northwest Forest Plan/Rangeland Health Standards and the west slope motor vehicle use designations.

The public scoping process for the draft management plan elicited over 1,200 individual comments from the various public meetings and 105 written submissions. “The clearest message from people who submitted comments during the scoping process was that they value the King Range for its primitive character—it represents a unique opportunity to experience the California coastline in a relatively undeveloped and natural state.”<sup>116</sup>

The key issues identified by the public fell into seven broad areas:

1. The area’s primitive character and values
2. Recreation use
3. Transportation and access
4. Education and interpretation
5. Community support and involvement
6. Resource conservation and management
7. Fire management

The majority of the comments in the area of recreation use and transportation and access support a continued emphasis on primitive, non-motorized recreation. The public is supportive of increased education and interpretation, especially as a way to reduce impacts from the growing numbers of visitors. Comments were received encouraging community involvement and collaboration in management, fire protection, rescues, litter removal, volunteering and raising funds. Resource restoration remains a top priority with the public even after 30 years of effort. Fire management was a concern with local communities due to safety concerns and with others as an ecosystem health concern. Only 16 comments regarding grazing were received, most of these called for a reduction or elimination of livestock grazing.

## **PUBLIC PERCEPTION**

Recent newspaper and magazine articles were reviewed to gage the general public perception of the KRNCA. A couple of issues seem to be at the center of a large majority of the conflicts surrounding the KRNCA. These issues are wilderness designation, off-road vehicle (ORV) use and access, and land use management practices as they relate to private land owners.

The KRNCA contains the longest stretch of undeveloped coastline in the U.S., outside of Alaska.<sup>117</sup> Groups like the California Wilderness Coalition have long had a desire to protect this

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<sup>115</sup> U.S. Dept. Of Int. and Bureau of Land Management, *Scoping Report for the King Range National Conservation Area*, 2, (Feb. 2003).

<sup>116</sup> *Id.*

<sup>117</sup> California Wilderness Coalition, *King Range Proposed Wilderness*, [http://www.calwild.org/campaigns/cwhc\\_act/kingrange.php](http://www.calwild.org/campaigns/cwhc_act/kingrange.php), (August 6, 2003).

area through formal wilderness designation. Wilderness supporters feel that wilderness designation would provide the best protection for the unique coastal ecosystem that is present in the King Range area. During the current Congressional session legislation was presented by Congressman Mike Thompson (D-CA) and Senator Barbara Boxer (D-CA) to designate about 41,000 acres of KRNCA land as wilderness.<sup>118</sup> Although Senator Boxer claimed that only areas with local support for wilderness designation would be included in the bill, it has not stopped the controversy.<sup>119</sup> Supporters of the wilderness bill argue the wilderness area should be created to preserve the wild country, to protect watersheds that provide drinking water for downstream municipalities, and designation will increase tourism in areas adjacent to the wilderness area.<sup>120</sup> One of the main points of opposition to wilderness is the fact that wilderness designation brings with it a ban on motorized vehicle use in the area. Although ORV use has been prohibited on the beaches for a number of years many off-road groups are still trying to get access restored and having the area designated as wilderness would close the door on that possibility. Another issue that has been raised is some locals feel that when a wilderness area is created they lose all input into how the land will be managed in the future. Even neighboring counties cannot agree on whether wilderness should be designated or not. The County Supervisors in Mendocino and Humboldt Counties, where the KRNCA is located, support wilderness designation. Yet neighboring Yost County is strongly opposed to wilderness in the region.<sup>121</sup>

Another issue that has raised conflict in the KRNCA is the closure of motorized access into the area, especially the beach areas. According to the Blue Ribbon Coalition the BLM has created a de-facto wilderness area in the KRNCA due to the way in which the agency has closed roads and shut out public access.<sup>122</sup> Conflicts over public access to the KRNCA have been ongoing since the area was created. In 1998 the Travel Management Plan closed the final 3.5 miles that remained open to ORV's on Black Sands Beach. This closure caused a group of recreationists to file suit to try and have the road reopened.<sup>123</sup> Don Amador the western representative for the Blue Ribbon Coalition was quoted as saying "the time has come for the BLM to acknowledge that motorized access to this scenic area for diverse interests is an important element of its duty to manage the King Range Conservation Area for multiple use."<sup>124</sup> On the other hand the BLM felt that continued beach ORV use was negatively impacting the "unique resources and recreational opportunities for the KRNCA coastline."<sup>125</sup> Although the lawsuit has failed to get the road reopened the off-road groups are trying another tactic. They are trying to get locals (specifically counties) to claim roads in the KRNCA as RS 2477 right of ways and that way it is tougher to close the road.<sup>126</sup>

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<sup>118</sup> Congress of the United States House of Representatives news release, *Bill Will Protect Local Wilderness Lands and Rivers*, (March 27, 2003); California Wilderness Coalition, *King Range Proposed Wilderness*, [http://www.calwild.org/campaigns/cwhc\\_act/kingrange.php](http://www.calwild.org/campaigns/cwhc_act/kingrange.php), (August 6, 2003).

<sup>119</sup> Uclia Wang, *Boxer Pushes New Wilderness Areas*, The Press Democrat (Santa Rosa, CA), B1, (Jan 22, 2002).

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<sup>121</sup> Uclia Wang, *Boxer Pushes New Wilderness Areas*, The Press Democrat (Santa Rosa, CA) B1, (Jan. 22, 2002)

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<sup>123</sup> *Recreation Coalition Files Suit Against BLM Land Closure*, Blue Ribbon Magazine

<sup>124</sup> *Id.*

<sup>125</sup> 64 Fed. Reg. 36917 (July 8, 1999)

<sup>126</sup> Elizabeth Arnold, *Profile, Civil War-era law sparks battle over ownership and use of public lands*, NPR Radio (May 20, 2003); Julie Cart, *Bush Opens Way for Counties and States to Claim Wilderness Roads*, LA Times A1, (Jan. 21, 2003).

One other issue that has upset some locals in the King Range area is the treatment of private landowners in the KRNCA. The original establishment bill allowed the BLM to acquire private lands within the KRNCA. Some locals have felt that the BLM has used bullying tactics to get unwilling sellers to convey their land to the BLM.<sup>127</sup> Some claim the BLM has also applied a double standard in dealing with landowners. For example, one conservative pro-access group claims that in 1989 one property owner planned to build a home on his property within the KRNCA and after applying for the correct permit from the BLM received a letter that informed him that condemnation proceedings were beginning to acquire his land because non-compatible uses were occurring on his land.<sup>128</sup> Some outside observers have contrasted this with the treatment of another property owner on Black Sands Beach where the BLM has allowed a homeowner to remodel and expand his home. The owner of this home is supposedly a founder and head of an environmental organization.<sup>129</sup> Some locals feel these management practices are a double standard and the BLM is catering to special interests.

The public outreach associated with the revision of the original Management Program has been extensive with numerous meetings and 1,200 comments coming in from both meetings and written submissions. Public perceptions of the KRNCA and the issues raised by the public over the past 30 years have remained surprisingly constant.

## **LESSONS LEARNED FOR WILDERNESS**

According to the BLM National Landscape Conservation System office there are thirteen National Conservation Areas, although not all of the individual pieces of enabling legislation that created the areas use the term “National Conservation Area”. About half of these areas include wilderness areas that were created at the same time as the NCA. The remaining do not have congressionally designated wilderness areas within them. The extent to which the NCA designation forestalls Congress from acting to provide further protection under the guise of wilderness designation is unknown.

In the case of King Range National Conservation Area, the focus on land acquisition has created opportunities for wilderness designation that probably would not exist otherwise. Both the purchase of private in-holdings to block up land and improve manageability and the ability to close roads no longer needed to access private in-holdings has created much larger areas suitable for wilderness designation. In addition, the threat of condemnation if the private land use is inconsistent with wilderness has most likely kept private property from being developed to the extent it might have otherwise.

Extensive watershed restoration work, including the rehabilitation of closed roads, has been undertaken in the KRNCA and the King Range WSA. In the opinion of the KRNCA Manager, this rehabilitation work, including the use of heavy motorized equipment, can easily be justified

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<sup>127</sup> Tom DeWeese, *All in the Name of Environmental Protection*, Blue Ribbon Magazine.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*; John Stewart, *Questionable Activities in Humboldt County*, Land Use News, [http://www.4x4wire.com/access/news/nca\\_king\\_range.htm](http://www.4x4wire.com/access/news/nca_king_range.htm), (June 25, 2003).

under the minimum tool analysis and could even be allowed if the area were a designated wilderness.<sup>130</sup>

Even though it has taken the BLM nearly 30 years to close motor vehicle use in the areas now designated as wilderness study areas, this has finally been accomplished. It could be argued that the intervening 30 years has not prohibited the area from wilderness designation. When the area was designated a National Conservation Area the public valued it for its primitive recreational opportunities. Thirty years later, as the public participates in a plan amendment, they still value it primarily for its primitive recreational values even though Congress has not yet considered this spectacular stretch of coastline in a wilderness debate.

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<sup>130</sup> 10/23/03 e-mail communication with Gary Pritchard-Peterson, KRNCA Manager.

## **APPENDIX A. CHRONOLOGIES**

### **Black Sands Beach**

- 1974 KRNCA Management Program allows vehicles allowed on Black Sands Beach from Telegraph Creek to Gitchell Creek (about 3.5 miles)
- 1978 BLM given authority from State to enforce vehicle use restrictions on state land below the mean high tide (set sand beaches)
- 1979 Majority of KRNCA beaches (from Gitchell Creek to Mattole River) closed to vehicles (Fed Reg Vol 44, No 126, 6/28/79)
- 1986 KRNCA Transportation Plan developed; vehicle use on Black Sand Beach reaffirmed
- 1988 Final EIS for Wilderness Recommendations submitted; despite all of Black Sand Beach, except southern most half mile being in the WSA, vehicles are still allowed on 3.5 miles of beach
- 1992 KRNCA Visitor Services Plan adds detail to management plan and recreation objectives for each zone. Black Sands Beach secondary use is primitive recreation but vehicles are still allowed on designated roads and areas (including the beach)
- 1997 Environmental Assessment and Plan Amendment Proposed Black Sand Beach Vehicle Closure closes the last 3.5 miles of the KRNCA coastal beaches to vehicles. Appeals and litigation follow.
- 1998 Closure of Black Sand Beach becomes final.

### **Punta Gorda Lighthouse**

- 1974 KRNCA Management Program allows vehicles on the beach north of Punta Gorda
- 1976 FLPMA adds 5,500 acres to KRNCA connecting Punta Gorda Zone 1 with the rest of the NCA
- 1978 BLM given authority from State to enforce vehicle use restrictions on state land below the mean high tide (wet sand beaches)
- 1979 Majority of KRNCA beaches (from Gitchell Creek to Mattole River) closed to vehicles (Fed Reg Vol 44, No 126, 6/28/79)
- 1986 KRNCA Transportation Plan reaffirmed closure
- 1992 KRNCA Visitor Services Plan adds detail to management plan and recreation objectives for each zone. Vehicle closure carried forward.

## **Smith-Etter Road**

- 1960s Smith-Etter access road built across public domain connecting private lands inland with the Smith and Etter in-holdings along the coast
- 1974 KRNCA Management Program identified the need to acquire land on the coast at the terminus of the road in order to provide public access and parking; BLM did not have full access rights to the road
- 1979 Wilderness inventories identified King Range WSA which was bisected by the Smith-Etter Road
- 1979 Majority of KRNCA beaches (from Gitchell Creek to Mattole River) closed to vehicles; exceptions given to private property in-holders; access was provided to in-holders via a permit (Fed Reg Vol 44, No 126, 6/28/79)
- 1983 BLM gains control of public access on Smith-Etter Road as a result of land acquisition
- 1984 BLM opened Smith-Etter Road to public use
- 1986 King Range Transportation Plan called for leaving road open up to ¼ mile from the beach; action appealed by Sierra Club and Wilderness Coalition to IBLA
- 1988 IBLA reversed BLM decision; ordered to close road at WSA boundary (101 IBLA 18 (1988))
- 1988 Later in year after petition to reconsider, IBLA reversed and upheld BLM (IBLA decision 86-1032)
- 1988 During the year BLM made an administrative decision to close the road near the boundary of the WSA pending action by Congress on wilderness
- 1991 California Statewide Wilderness Study Report affirms road closed to public at WSA boundary
- 1992 KRNCA Visitor Services Plan adds detail to management plan and recreation objectives for each zone. Vehicle closure carried forward with exception for reasonable access to private in-holders.
- 1997 Environmental Assessment and Plan Amendment Proposed Black Sand Beach Vehicle Closure also addresses the Smith-Etter Road by proposing access restrictions and stipulations on all of the associated in-holders.

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