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October 23, 2020

Via Overnight Delivery and ePlanning website

BLM Director (210)
Attention: Protest Coordinator
2850 Youngfield Street
Lakewood, CO 80215

Re: Cotoni-Coast Dairies, a Portion of the California Coastal National Monument
Draft Resource Management Plan Amendment and Environmental Assessment

Dear BLM Director and Protest Coordinator,

Pursuant to 43 C.F.R. § 1610.5-2, Friends of the North Coast (“FONC”) hereby submits this protest challenging BLM’s Proposed Resource Management Plan Amendment (“RMPA”), Environmental Assessment (“EA”) and Finding of No-Significant Impact (“FONSI”) adopted by BLM California State Director Karen Mouritsen for the Cotoni-Coast Dairies unit (“Monument”) of the California Coastal National Monument.

I. FONC’S INTEREST AND PARTICIPATION.

FONC is a non-profit corporation established to honor and preserve the natural and cultural legacy of Santa Cruz County’s North Coast. FONC has been actively involved in advocacy aimed at preserving the Cotoni-Coast Dairies from development and overuse in light of its status as a part of the National Landscape Conservation System. FONC’s mailing address and telephone number is:

Friends of the North Coast
1927 Smith Grade
Santa Cruz, CA 95060
(831) 423-8265

FONC and its members have a strong interest in the Cotoni-Coast Dairies area. FONC’s members include recreationists, scientists, and advocates who frequently use lands in and around the Cotoni-Coast Dairies area. Once the monument is open to the public, FONC’s members will be frequent users of the area for hiking, bird watching, sightseeing, and wildlife study. In furtherance of their strong interest in the Cotoni-Coast Dairies unit, FONC and its members submitted a series of comments on the proposed RMPA and EA. These comments included scoping comments submitted on August 2, 2019; extensive comments by FONC and numerous experts submitted on April 1, 2020 (attached hereto as Exhibit A); supplemental comments submitted on August 3, 2020 identifying significant new information and a detailed alternative

that would avoid significant impacts to fire risks, wildlife habitat, scenic vistas, and other impacts (attached hereto as Exhibit B); and, further supplemental comments submitted on August 17, 2020 providing an expert traffic engineer's peer review of BLM's belated release of a traffic analysis (attached hereto as Exhibit C). Numerous other community groups and residents submitted comments as well consistent with FONC's concerns. *See, e.g.* Comments of Rural Bonny Doon Association ((attached hereto as Exhibit D). Each of the issues raised below was raised during the planning process or is new information that has come to light since the end of the formal public comment period.

II. STATEMENT OF ISSUES BEING PROTESTED.

- A. The State Director lacked authority to approve the RMPA and FONSI because her appointment was not valid having been carried out by Acting BLM Director William Pendley when he had no authority to act pursuant to the Appointments Clause of the U.S. Constitution, U.S. Const. art. II, § 2, cl. 2, and the Federal Vacancies Reform Act of 1998 ("FVRA"), 5 U.S.C. § 3345 et seq.
- B. The State Director failed to take a hard look at the fire risks that will be exacerbated by the RMPA and provide for adequate Wildfire Prevention Planning. This ground for Protest relates to the language in the Proposed RMPA and is in no way intended to undermine the enormous gratitude of North Coast residents for BLM's contribution of a fire crew to fight the fire and likely saved Davenport and prevented further harm in the Bonny Doon area.
- C. The EA is inadequate as a matter of law because it fails to analyze a no project alternative.
- D. The State Director failed to comply with NEPA because the Draft RMPA and Draft EA released to the public on February 14, 2020 failed to identify BLM's proposed action or preferred alternative and then failed to recirculate the final EA in order for the public to review and comment on BLM's Proposed Action (Preferred Alternative D) made known to the public for the first time on September 25, 2020.
- E. Alternative D and its inclusion of Warrenella Top and Marina Ranch Gate concentrates large compounds for parking and picnicking (with restrooms) too far inland (adjacent to wildfire fuels), too close to habitat for mountain lions and other wildlife (making noise causing greater loss of fire-diminished habitat), and too close to delineated wetlands and ephemeral riparian areas. These compounds represent flawed Resource Management planning inconsistent with the Presidential Proclamation and Federal Coastal Zone Management Act of 1972 ("FCZMA")/Coastal Act. Furthermore, as described in J and K below, superior proffered alternatives for each exist and both Warrenella Top and Marina Ranch Gate have their individual additional adverse impacts.
- F. Alternative D is inconsistent with law and may not be feasible because it includes a management practice asserting that BLM will be able to withdraw water from streams within the monument for construction and dust abatement despite the fact that the

- Grant Deed reserves all of the water rights on the site to the Trust for Public Land.
- G. Alternative D is inconsistent with the FCZMA because the proposed trails and access areas are inconsistent with California’s Coastal Program’s protection standards for environmentally sensitive habitat areas (“ESHAs”) including the entire monument’s designation as critical habitat for red-legged frogs, which prohibits any significant disruption of habitat values within an ESHA and allows only uses dependent on red-legged frog habitat. Thus, mountain biking, e-biking, archery hunting, parking and other proposed uses that pose threats to the red-legged frog cannot legally be allowed in the monument or should be subjected to precise mitigations that would avoid any impacts to ESHAs and red-legged frogs.
- H. Alternative D authorizes motorized bicycles on trails within the monument which is contrary to: (1) Presidential Proclamation No. 9563 and the grant deed which prohibit motorized off-road vehicles and (2) Secretarial Order 3308’s direction to manage the monument as an integral part of the larger landscape in collaboration with neighbors because it does not extend the existing ban on e-bikes in San Vicente Redwoods Park.
- I. The State Director failed to comply NEPA by failing to reassess the RMPA’s impacts to wildlife, including sensitive species such as salmonids, red-legged frogs, mountain lions and other wildlife, soils, trail locations, vegetation management, and water quality as a result of the significant changes to vegetation coverage, soil integrity, debris slides, and erosion rates caused by the recent CZU Lightning Complex Fire.
- J. The State Director failed to comply with NEPA by failing to include a reasonable range of alternatives and arbitrarily ignoring or misunderstanding feasible alternatives with fewer impacts that is consistent with the Proclamation, the FCZMA and Conservation Land System policies.
- K. The State Director failed to comply with NEPA because the BLM failed to prepare an EIS despite evidence raising numerous substantial questions that the RMPA and implementation decisions may cause significant degradation of the environment.
1. The inclusion of the Marina Ranch Gate Compound in Alternative D will have individualized additional adverse impacts, including significantly degrade scenic and visual resources and create a traffic safety hazard and analysis (or the lack thereof) of these impacts in EA is arbitrary and capricious.
 2. The inclusion of recreational archery hunting by admittedly “limited experience” hunters will significantly degrade habitat of sensitive species, including mountain lions and other wildlife, and pose significant risks to other recreational users such as hikers, bikers, equestrians, nearby residents, farmers, farmworkers, ranchers and cattle. Furthermore, archery hunting is contrary to Secretarial Order 3308’s direction to manage the monument as an integral part of the larger landscape in collaboration with neighbors because it does not extend the existing ban on hunting in San Vicente Redwoods.

3. The inclusion of broadcast spraying of pesticides from motorized vehicles may significantly degrade the environment by risks of toxicity to riparian and aquatic habitats and environments and adjacent organic farmlands by vague or inadequate buffer zone and timing mitigations, made all the more egregious by the absence of any pre-spraying notice requirements. The use of Dicamba, 2,4-D and other pesticides within the monument may significantly degrade the environment by posing unnecessary impacts to wildlife, cattle, and adjacent organic farms and the EA's analysis of the impacts of these pesticides is arbitrary and capricious.
4. The expansion of use of the monument may significantly degrade the environment from increased incidents related to the "4Ts" of trash, toilets (human waste), traffic, and trauma because the phasing for Alternative D and discussion of mitigation measures is vague and open-ended. As a result, significant adverse impacts remain likely.
5. The EA's analysis of impacts to biological resources, including vegetation communities, particular wildlife species, salmonids, and water quality, is arbitrary and capricious and inconsistent with law by failing to provide a reasonable baseline from which to evaluate these impacts. As a result, the RMPA may significantly degrade vegetation communities, wildlife, salmonids and water quality.
6. The EA's analysis of impacts from noise is arbitrary and capricious because there is no information establishing the baseline noise levels for each of the alternatives or the relative noise levels of each alternative. As a result, the RMPA may significantly degrade the monument area from increased noise levels.
7. The EA fails to address the scientific evidence establishing that any of the alternatives allowing for recreational uses in the monument where currently there are none will significantly degrade wildlife habitat and behavior. This potential significant degradation requires the preparation of an EIS.
8. The EA improperly defers analysis of the proposed trail and access routes by failing to survey and document the locations of plants, biotic communities, and presence of sensitive wildlife species in the areas generally identified to construct and operate these project features; failing to estimate the amount of sediment runoff from proposed trails and access areas and; failing to estimate noise levels at relevant distances from trails and access areas. As a result, the RMPA's proposed trails and access areas may significantly degrade the environment.
9. The EA's analysis of impacts to red-legged frogs taken together with reports from experts in comment letters demonstrate that the RMPA may significantly degrade habitat and behavior of red-legged frogs within the monument requiring the preparation of an EIS.
10. The approval of the use of mountain bikes and motorized e-bikes fails to address contrary scientific evidence indicating that these uses will have significant

adverse impacts on wildlife, especially red-legged frogs and mountain lions, requiring the preparation of an EIS.

11. The EA fails to adequately address the habitat fragmentation and disruption to wildlife movement that will result from the alternatives and proposed uses.
12. The EA fails to address potential impacts to murrelets in critical habitat in close proximity to the monument resulting from increases in crows, jays, magpies and raven that will accompany the proposed increase in visitors, requiring the preparation of an EIS.
13. There is a substantial question that sediment from proposed trails may cause significant degradation of water quality and salmonid habitat.
14. The EA is arbitrary and capricious because it fails to address contrary expert reviews of the traffic study prepared five months after the draft EA and released about a month after its tardy preparation. Keith Higgins' expert peer review submitted by FONC raises numerous questions, including about attendance (visitorship), trip generation, and distribution. The increased traffic resulting from implementation of the Proposed RMPA may significantly degrade the environment by increasing safety risks where access roads intersect Highway 1 by, among other things, inadequate turn lanes. Additional degradations include increases in parking on the shoulders and pedestrian crossings of Highway 1. The traffic impacts identified in the expert reviews require the preparation of an EIS.
15. Experts and other knowledgeable commenters from the communities in the vicinity of the Monument criticizing components of the RMPA demonstrate that the RMPA, especially Alternative D, will have effects on the environment that are highly controversial, including but not limited to unnecessary intrusions to scenic vistas, impacts to endangered and sensitive species, and safety impacts associated with allowing hunting and the locations of traffic access areas to and from Highway 1. The findings of the FONSI cannot withstand scrutiny.

III. STATEMENT OF PARTS OF RMPA BEING PROTESTED.

FONC challenges the RMPA/EA in its entirety because the State Director was required to prepare an EIS, the EA's analysis fails to take the requisite hard look at the issues discussed above and below or otherwise comply with NEPA, and the State Director is without authority to approve the RMPA and EA.

In addition to those concerns and each of the issues raised in this Protest, FONC protests the State Director's adoption of Alternative D, including its inclusion of MRG and WT Compounds, the permission to withdraw water from the streams for construction and dust abatement; the permitted number of visitors; the location and density of trails and access roads; the use of motorized bikes, the allowance of archery hunting; the allowance of broadcast spraying of pesticides, including in particular dicamba and 2,4-D; its failure to analyze and adopt FONC's alternative parking and access at Yellow Bank Creek; its failure to address the new

circumstances from the CZU Lightning Complex Fire; and its failure to prohibit firemaking, cooking, smoking, and fireworks.

IV. CONCISE STATEMENT WHY STATE DIRECTOR'S DECISION IS WRONG.

A. The State Director lacked authority to approve the RMPA and FONSI because her appointment was not valid having been carried out by Acting BLM Director William Pendley when he had no authority to act.

On September 25, 2020, The Honorable Judge Brian Morris of the United States District Court for the District of Montana issued an order declaring that William Perry Pendley has served unlawfully as the Acting BLMP Director since his appointment on July 29, 2019. *Bullock v. U.S. Bureau of Land Management, et al.*, slip op. 4:20-cv-00062-BMM (Sept. 25, 2019); *Id.*, Order dated Oct. 16, 2020 (attached hereto and incorporated by reference as Exhibits A & B.) For each of the reasons set forth in the District Court's orders, Mr. Pendley was without authority to take any actions in the capacity of Acting BLM Director since his appointment on July 29, 2019. Mr. Pendley's lack of authority extends to any action to appoint a BLM State Director, including the appointment of Karen Mouritsen as California State Director. On October 9, 2019, Mr. Pendley appointed California State Director of BLM, Ms. Karen Mouritsen. Ms. Mouritsen is the BLM official who has signed the FONSI and has proposed the final RMPA. Because Mr. Pendley had no authority to take any action as the BLM Director, his appointment of the California State Director is void and without effect. Any "action taken by any person" not properly serving as an acting officer "in the performance of any function or duty of a vacant office to which [the Federal Vacancies Reform Act ("FVRA")] appl[ies] shall have no force or effect" and "may not be ratified." *Id.* § 3348(d)(1)–(2). A "function or duty" is defined as one "established by statute" or "by regulation" and "required by statute" or "by such regulation to be performed by the applicable officer (and only that officer)." *Id.* § 3348(a)(2)(A)–(B). Because Mr. Pendley's appointment of the California State Director on October 9, 2019 was made at a time when Mr. Pendley was not properly serving as the Acting BLM Director, that action to appoint the California State Director has no force and effect. As a result, Ms. Mouritsen was without authority to take any actions in her capacity as California State Director. Accordingly, Ms. Mouritsen's approval of the FONSI and the proposed RMPA for the Cotoni Dairies also is void and without effect.

B. The State Director failed to take a hard look at the fire risks that will be exacerbated by the RMPA and provide for adequate Wildfire Prevention Planning.

The BLM states in its nonbinding cover letter to the Proposed RMPA that it believes the management actions detailed in the Proposed RMPA will strengthen future wildland fire prevention. Yet no new fuel break creation is proposed. Instead, there is only a vague mention of a non-quantified expansion of the shaded fuel breaks along Warrenella Road and Bonny Doon Road.

The BLM also states in its nonbinding cover letter to the Proposed RMPA that it authorizes the BLM to use a wider range of tools to address the impacts of recent wildland fires

and help prevent future ones on the Cotoni-Coast Dairies property. These tools include the use of prescribed controlled burns and mechanical treatments to reduce the available fuels that feed wildland fire, as well as treatment of emergent non-native plant infestations and long-term grazing that will prevent encroachment of woody vegetation into the wildland-urban interface. However, mere authorization of use of a wider range of tools is inadequate Wildfire Prevention Planning without identification of those tools and a commitment to use those tools pursuant to specific prevention plans.

At section 2.5.1 of the Proposed RMPA Goal #4 states: “Establish a fire management program that is *cost-efficient and commensurate* with threats to life, property, public safety, and resources.” In that same section under Fire Management Objectives, the Proposed RMPA states: “*Limit the intensity of wildland fire suppression efforts to the most economical response consistent with the human and resource values that are at risk.*” This leaves too much discretion to BLM which has provided no evidence of an adequate budget for management of this property.

As to the shaded fuel break on Warrenella Road, the Proposed RMPA notes at section 3.2.2 that branches of Warrenella are maintained at varying levels that *may* be improved upon for access in the future but *no description of such improvements is given or committed to*. There is also a PG&E substation along Warrenella Road that is on private land surrounded by BLM-administered lands. This power substation is currently one of the most likely sources of fire starts (*i.e.* unintended ignitions). There is likewise *no commitment by BLM to work with PG&E to prioritize reduction of this risk*.

As to Bonny Doon Road serving unintentionally as a shaded fuel break, no commitment is made at section 3.2.2 for expansion or improvement of its fuel break capacity.

As to cut and pile (and burn) techniques for undesired brush and woody debris, BLM acknowledges at section 3.2.2 that cut and pile techniques have already been used successfully on C-CD to promote meadow restoration and cultural site protection. *Yet BLM makes no mention of, or commitment to, utilizing cut and pile and burn techniques for fire prevention.*

FONC appreciates BLM’s prohibition public camping and campfires. San Vicente Redwoods Rules also preclude camping and campfires. No public camping should expressly preclude hunters participating in the typical “two-day hunt” from camping overnight or firemaking of any kind. The Proposed RMPA does not preclude “firemaking,” or “smoking.” San Vicente Redwoods Public Access Plan precludes both. Section 3.2.2 of the Proposed RMPA states that “[t]he primary source for fire in the area has been human caused for as long as there is a written record.” The high likelihood for cook stoves, barbeques, and similar picnic food heating devices to be used at Picnic Shelters or tailgating in Parking Lots warrants elimination of the Warrenella Top Parking Compound and the Marina Ranch Gate Parking Compound, since each brings human firemaking or smoking too close to wildfire fuels. On the BLM website, BLM states that:

As of September 8, 2020 Due to high fire danger, BLM California has increased fire restrictions on all BLM-managed public lands in the state

prohibiting use of all open flames, including campfires, BBQ's and stoves.

Yet in its Proposed RMPA released 17 days later BLM did not include this prohibition.

Fireworks need to be expressly prohibited and this prohibition enforced. The North Coast has been notorious for fireworks being set off in large volume on the 4th of July. Recent County regulation and law enforcement efforts have substantially reduced this problem. If fireworks are not banned at Cotoni-Coast Dairies as federal land open to the public there is a significant potential for it to become a new fireworks mecca.

C. The EA is inadequate as a matter of law because it fails to analyze a no project alternative.

“The ‘no-action’ alternative must receive some analysis” in an EA. *See City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir.1990); 40 C.F.R. § 1502.14(d). In the EA, BLM claims that Alternative A is a no action alternative. This is not the case. Under NEPA, no action is determined by the status quo. *See, e.g. Akiak Native Cmty. v. U.S. Postal Serv.*, 213 F.3d 1140, 1148 (9th Cir. 2000).

Alternative A would change the status quo in a number of obvious ways. First, this alternative describes constructing 1.74 miles of new trails, which amounts to 36,744 square feet of land disturbance for these trails. BLM dramatically tips the scales against “no action” by placing almost the entire length of those new trails within 25 to 50 meters of the creeks and coho critical habitat. EA, § 4.5.3. Alternative A would construct two Day Use Site and parking facilities. One would be adjacent to Swanton Road at the Molino Creek crossing and the other would be adjacent to Bonny Doon Road at Liddell Creek. *Id.*, Chapter 2, p. 30-31. In addition, Alternative A would open these new trails and portions of the existing road system to day hikers. Currently, as is dictated by the Proclamation, public access must await the completion of the RMPA. No hikers currently are lawfully accessing these nonexistent trails. The EA acknowledges that Alternative A will increase the number of hikers as well as dogs using the Monument over the current status quo. *See id.*, § 4.4.2 (“Given that recreational use of C-CD has been minimal to date, all three alternatives would increase visitor use of the site through the development and use of trails”); *Id.*, § 4.4.3 (“The current influence of dogs on wildlife at C-CD is minimal since no one has been authorized to bring dogs to C-CD during the periods of BLM and previous management”).

Given these affirmative changes to the status quo, Alternative A is not a no action alternative and does not reflect the current ongoing management of the Monument. By failing to include a true no-action alternative, BLM has denied the public the ability to properly weigh the true impacts of each affirmative alternative presented by BLM.

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D. The State Director failed to comply with NEPA because the EA Failed to identify BLM's proposed action - Alternative D - and then failed to recirculate the final EA in order for the public to review and comment on the preferred Alternative D.

When originally released to the public, the EA/RMPA did not include a proposed action. Instead, BLM indicated that it would prepare a preferred alternative and proposed action after the close of the comment period on the three exemplar alternatives set forth in the draft EA/RMPA. Draft EA, pdf p. 17.

NEPA mandates the identification of a proposed action. NEPA is entirely focused on the presence of a proposed action:

all agencies of the Federal Government shall -- (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

- (i) the environmental impact of *the proposed action*,
- (ii) any adverse environmental effects which cannot be avoided should the *proposal be implemented*,
- (iii) alternatives *to the proposed action*,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the *proposed action* should it be implemented.

42 U.S.C. § 4332(C) (emphasis added). EAs, in particular, “[s]hall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts *of the proposed action and alternatives.*” 40 C.F.R. § 1508.9(b) (emphasis added).

Likewise, the Council on Environmental Quality (“CEQ”) regulation addressing alternatives is entitled “Alternatives *including the proposed action.*” 40 C.F.R. § 1502.14. “[Section 1502.14] is the heart of the environmental impact statement.” *Id.* It also applies to EAs. *See, e.g. Earth Island Inst. v. U.S. Forest Serv.*, 697 F.3d 1010, 1022 (9th Cir. 2012). The EIS or EA “should present the environmental impacts of *the proposal* and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” *Id.* (emphasis added). The need for a proposed action is repeated throughout this key NEPA provision. Thus, the agency must “[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits....” 40 C.F.R. § 1502.14(b). Likewise, the agency must “[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives.” 40 C.F.R. § 1502.14(f).

Even if BLM does not identify a preferred alternative, the agency still had to identify a discrete proposed action in the draft EA/RMPA. By only identifying three conceptual alternatives from which various components would be selected by BLM to divulge a proposed

action (Alternative D) at a later date, BLM rendered it impossible for the public or the agencies – including BLM – to evaluate “the environmental impact of the proposed action”, compare the proposed action to alternatives, or to have a clear basis of choice among options with the issues sharply defined. Limiting an EA to reviewing only alternatives to an undisclosed proposed action fails to take a hard look at the environmental consequences of a proposed action, as is required by NEPA. *See, e.g. Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998).

Furthermore, on August 3, 2020 the public was led to believe that a “public review” process would be provided once BLM’s Proposed RMPA was released. Several months after the conclusion of the formal public comment period, BLM staff e-mailed an update to commenters thanking them for their interest and explaining that:

We appreciate all of your continued engagement in the future of this spectacular unit of the California Coastal National Monument. The next step in the planning process is a Proposed Resource Management Plan Amendment, *which we anticipate to release for public review within the next 3-4 weeks. Once available for review, we will send another update to this mailing list.* (Emphasis added)

E-mail from Benjamin Blom, BLM (Aug. 3, 2020). When the Proposed RMPA was released about 7-8 weeks later, the public review promise had disappeared. *See* BLM News Release (Sept. 25, 2020) (announcing release of the Cotoni-Coast Dairies proposed RMPA/EA and the initiation of the 30-day public protest period rather than an opportunity to provide further comments)

E. Alternative D and its inclusion of Warrenella Top and Marina Ranch Gate concentrates large compounds for parking and picnicking (with restrooms) too far inland (adjacent to wildfire fuels), too close to habitat for mountain lions and other wildlife (making noise causing greater loss of fire-diminished habitat), and too close to delineated wetlands and ephemeral riparian areas. These compounds represent flawed Resource Management planning inconsistent with the Presidential Proclamation and Federal Coastal Zone Management Act of 1972 (“FCZMA”)/Coastal Act. Furthermore, as described in J and K below, superior proffered alternatives for each exist and both Warrenella Top and Marina Ranch Gate¹ each has its have their individual additional adverse impacts.

The State Director chose the Marina Ranch Gate and the Warrenella Road Top Compounds to be in BLM’s Preferred Alternative despite FONC’s emphatically stating (and supporting with facts) its preference for “NO CONSTRUCTION AT OR ACCESS TO MARINA RANCH GATE BY ANY METHOD” and NO ACCESS TO OR OVER WARRENELLA ROAD, WARRENELLA GATE, ... BY ANY METHOD.”

¹ Individualized adverse impacts of Warrenella Top are left to the comments of DNCA, Sempervirens, and POST contained in the administrative record.

Adjacency to Wildfire Fuels.

As noted above, the high likelihood for cook stoves, barbeques, and similar picnic food heating devices to be used at Picnic Shelters or tailgating in Parking Lots warrants elimination of the Warrenella Top Parking Compound and the Marina Ranch Gate Parking Compound, since each brings *human firemaking or smoking too close to wildfire fuels*. The Proposed RMPA does not preclude “firemaking,” or “smoking.” San Vicente Redwoods Public Access Plan precludes both. Section 3.2.2 of the Proposed RMPA states that “The primary source for fire in the area has been human caused for as long as there is a written record.” On the BLM website, BLM states that:

“As of September 8, 2020 Due to high fire danger, BLM California has increased fire restrictions on all BLM-managed public lands in the state prohibiting use of all open flames, including campfires, BBQ’s and stoves.”

Yet in its Proposed RMPA released 17 days later it did not include this prohibition.

These potential significant impacts should be avoided and in any event require the preparation of an EIS.

Too Close to Habitat for Mountain Lions and Other Wildlife.

Humans gathering at parking lots, picnic shelters, and restrooms at the inland sites of Marina Ranch Gate and Warrenella Road Top will make noise which several reports from wildlife experts establish result in greater loss of ever diminishing habitat for mountain lions and other wildlife. As Sempervirens recently put it:

The plan would allow cars ... to access some parts of the monument that are critical for wildlife and where the effects of human presence should be minimized. Specifically, the seasonal parking area deep in the heart of the monument will be harmful.

It would be contrary to the Proclamation, the National Landscape Conservation System laws and policies, and the Coastal Act to include in the RMPA either of these two Parking Lot Compounds (each with parking for over 40 vehicles (including RVs), as well as Picnic Shelters (with covered picnic tables and benches [and visitor’s barbeques cook stoves, etc.]) and Restrooms. In each case these are “*into the heart*” of the monument (and maybe with radios or other sound-makers blasting).

Here is what some of the experts on impacts on wildlife habitat have said in FONC’s Comment Letter and Supplemental Comment Letter and/or Exhibits thereto:

Dr. Chris Wilmers: our recent work on mountain lions suggests that the *mere presence of people talking in the forest can negatively impact mountain lions*. Simply having human voices in the forest can also impact whole animal communities. In one experiment, Suraci (2019) demonstrated avoidance and/or reduced activity of areas with

human voices by mountain lions, bobcats, skunks and opossums. Such **human activity reduces the efficiency with which mountain lions move around the landscape** (Suraci et al. 2019) resulting in increased energetic expenditures by mountain lions (Wang, Smith & Wilmers 2017). Smith et al (2017) demonstrated that mountain lions fear people. This results in **mountain lions fleeing their kill sites when humans are nearby with a concomitant reduction in feeding time at the kill site of roughly 50%**. Mountain lions with more human activity in their home ranges can kill up to 50% more deer a year as a result of this reduced feeding time at kills (Smith, Wang & Wilmers 2015) potentially negatively impacting deer populations (and **harming Objects of the Monument which include Mule deer**), and increasing the energetic expenditure of mountain lions (Wang, Smith & Wilmers 2017) needing to kill more prey. Finally, our research has shown that **mountain lions usually require a buffer of at least 600 meters from human activity to site nurseries to raise their kittens** (Wilmers et al. 2013).

In an email to the Coastal Commission dated October 22, 2020 (Ex. C attached), Dr. Wilmers expresses his “concern for the two parking lots on the upper terraces up the Warenela road and above the Marina Ranch Gate in the proposed BLM access plan for Coast Dairies.” He states that “[o]ur research has shown that local carnivore species such as bobcats and the state threatened mountain lion are negatively impacted by human voices.” He also states that “[o]ur research also shows that the placement of parking lots directly impacts the number of people present in the forest with human activity falling off the further you are from a parking lot (Nickel et al 2020). As such, I would recommend that parking lots be placed adjacent to highway 1, so that natural areas in the core parts of mountain lion habitat are not impacted by an overabundance of people.”

Dr. Jacob Pollock: In addition to trails, **the proposed parking lots, picnic tables, ... will have the same buffer zone avoidance effects**. Comment Letter Ex. A Pollock Comments, p. 5. These features **adverse effects on habitat could be greater than the trail impacts**. **Id. The impacts of these uses would be exacerbated by increased trash, increased noise**, Habitat loss is a leading cause of reduction in population viability (Kerr & Deguise, 2004, Stein et al, 2000) and most species by these high levels of habitat loss. 20% loss of habitat has clear potential to significantly reduce population numbers, 40% almost surely will reduce population numbers and 60% habitat will definitely reduce population numbers of most species (Yin et al, 2017). Dr. Pollock noted that the EA itself acknowledged that:

Recreational usage causes direct impacts to wildlife behavior such as increased flight and vigilance; interrupted foraging; avoidance of otherwise suitable habitat; declines in abundance, occupancy or density; and psychological stress” (Section 4.4.2). These impacts are all negative impacts and all of them can significantly reduce richness and abundance of species impacted (Ballantyne et al 2015, Taylor and Knight 2003, Larsen et al 2016).

A critical compendium prepared by the California Department of Fish & Wildlife of eight new scientific studies explores in detail impacts of recreational uses on wildlife and habitats in

natural areas. The articles were recently published in the California Fish and Wildlife Journal for the Conservation and Management of California's Species and Ecosystems, Special Issue on "Effects of Non-consumptive Recreation on Wildlife in California" (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=178943&inline>). As Dr. Pollock's brief review indicates, what these scientific papers "make clear is that ***these two management goals, recreational use and wildlife protection, are opposed to each other: more recreational use means less protection for wildlife.*** Additionally, the articles make it clear that ***managers must understand these incompatibilities and account for them in their planning and management.***" Jacob F. Pollock, Ph.D, Comment (July 24, 2020) (attached as Exhibit C to FONC's Aug. 3, 2020 Comment).

Thus, the planning to include Warrenella Top and Marina Ranch Gate in BLM's Proposed RMPA is inconsistent with the Presidential Proclamation and Federal Coastal Zone Management Act of 1972 ("FCZMA")/Coastal Act. This is particularly problematic given that superior alternatives have been proffered.

Additionally, the required fencing along both sides of the long inter-terrace Access Road up to and including to the Marina Ranch Gate Parking Compound and along Warrenella Road up to and including the Warrenella Top Compound is shown as approximately six feet high and would be a barrier to Mule deer (Objects of the Monument) and some other wildlife (and maybe all wildlife since wildlife accessible fencing is not being required in the Proposed RMPA). *See*, road cross section on concept map C https://eplanning.blm.gov/public_projects/lup/120855/20012873/250017666/RMPA_Appendix_B_Marina_Ranch_Gate_Parking_Concept_C.pdf.

These potential significant impacts should be avoided and in any event require the preparation of an EIS.

Too Close to Delineated Wetlands and Ephemeral Riparian Areas

The EA ignores scientific evidence of the presence of delineated wetlands and ephemeral riparian areas in the vicinity of the proposed parking and access sites at Warrenella Top, Warrenella Road Gate, and Marina Ranch Gate and significant impacts that may result to these sensitive habitats from development of the access areas, including roadway expansion and trampling by visitors. These potential significant impacts should be avoided and in any event require the preparation of an EIS.

Inconsistency with National Landscape Conservation System policies

These unnecessary impacts of Alternative D and the high visitation levels anticipated in Phase 2 are inconsistent with the language of the Presidential Proclamation. Although the Presidential Proclamation establishing the Monument as part of the National Conservation Lands System and the deed restrictions that continue to apply to the property call for public access to the Monument, such access is ***subordinate to BLM's primary duty to protect the objects identified in the Proclamation.*** *See* Presidential Proclamation 9563 (Jan. 12, 2017). The Proclamation specifies that the objects to be protected within the Monument are limited to the

ecosystem and wonderful array of habitats, the numerous species that depend on those habitats, and the Native American cultural values that are present throughout the Monument. *Id.*, pp. 3-4. The only recreational objectives mentioned in the Proclamation are visitors experiencing the Monument's stands of coast redwoods and the enhanced opportunity for birdwatching in the area. *Id.* Indeed, the EA emphasizes that "[t]he central purpose [of the Proclamation] is clearly stated as protection of the natural, cultural, and biological resource that the C-CD lands represent." EA, § 2.2.2, p. 3. Pursuant to the Federal Land Management Policy Act ("FLPMA"), BLM must manage the Monument in accordance with these identified purposes of the Monument. FLPMA elevates the uses and objects identified in the Proclamation over the multiple use goals generally applicable to BLM lands: "where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law." 43 U.S.C. § 1732(a). Any scope or type of use that does not "conserve, protect and restore" the ecosystem, plants and wildlife, quiet recreation, and cultural values of the Monument is forbidden. Alternative D and its desecration of the higher, more inland terraces in the Monument fails to conserve and protect these values.

The Proclamation states that "[t]he Secretary of the Interior shall manage the area being added to the monument through the BLM *as a unit of the National Landscape Conservation System* [NLCS], pursuant to the applicable authorities, to protect the objects identified above." The 2009 Omnibus Bill (Omnibus) established the National Conservation Lands as a permanent system of protected lands, "...to conserve, protect and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations." Secretarial Order No. 3308 governs "Management of the National Landscape Conservation System." Section 4. Policy, subsection a., states that "[t]he BLM *shall ensure* that the components [Cotoni-Coast Dairies is a "component"] of the NLCS *are managed to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values. If consistent with such protection, appropriate multiple uses may be allowed*, consistent with the applicable law and the relevant designations under which the components were established. Likewise, the National Landscape Conservation System 15-Year Strategy (2010-2025) states that: "All NLCS units are designated in keeping with an *overarching and explicit commitment: to conserve, protect, and restore natural and cultural resources as the prevailing activities* within those areas, *shaping all other aspects of management.*" NLCS Strategy, p. 8 (emphasis added).

F. Alternative D is inconsistent with law and may not be feasible because it includes a management practice asserting that BLM will be able to withdraw water from streams within the Monument for construction and dust abatement despite the fact that the Grant Deed reserves all of the water rights on the site to the Trust for Public Land.

The State Director's approval includes a presumption by BLM that the agency will withdraw water from streams. Although not mentioned in the main body of the RMPA/EA, Appendix D states:

Water withdraw from streams (for use in construction and dust abatement, as necessary) will employ necessary screening and reduction of pumping rates to prevent entrainment of aquatic species. Access to streams for purposes of water

withdraw will minimize disturbance to streambanks and riparian vegetation.

RMPA/EA, App. D, p. 4. There is no discussion of how much water might be needed for these purposes or what impacts those withdrawals might have on the Monument's aquatic Objects, including listed salmonids and red-legged frogs. In addition, the provision for water withdrawals by BLM violates Grant Deed in which all water rights were reserved to TPL. Grant Deed, p. 2 ("RESERVING unto Grantor any and all water rights owned by Grantor, and the right to all proceeds from the sale of such rights"). Given the uncertainty of BLM's access to water, the EA must further assess the potential significant dust and air quality impacts that may result from implementing the RMPA.

G. Alternative D is inconsistent with the FCZMA because the proposed trails and access areas are inconsistent with California's Coastal Program's protection standards for ESHAs including the entire monument's designation as critical habitat for red-legged frogs, which prohibits any significant disruption of habitat values within an ESHA and allows only uses dependent on red-legged frog habitat.

A key component of California's Coastal Program is the protection of ESHAs. "Environmentally sensitive area' means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." Pub. Res. Code § 30107.5. The Coastal Act contains strict provisions protecting ESHAs:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Pub. Res. Code § 30240(a). *See Sierra Club v. California Coastal Com.* (1993) 12 Cal.App.4th 602, 611 ("development in ESHA areas themselves is limited to uses dependent on those resources"); *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 929, (2008), *as modified* (Jan. 20, 2009) ("together, the two restrictions limit development inside habitat areas to uses that are dependent on the resources to be protected and that do not significantly disrupt habitat values").

The entire Monument is designated as critical habitat for the California red-legged frog. 75 Fed.Reg. 12835. That critical habitat includes aquatic breeding and non-breeding habitat as well as dispersal and upland habitat within 1 mile of these aquatic features. *Id.* at 12835-36. The creeks within the Monument also are critical habitat for coho salmon. EA, pdf p. 64. Each of these critical habitat designations qualify as ESHAs. In addition to these overarching habitat designations, ESHAs as defined by the Coastal Act in the Project and its vicinity include: wetlands, coastal prairie, northern coastal scrub, riparian areas, Monterey pine forest, maritime chaparral, and habitat for all rare and endangered species. Hayes Comments, p. 6. Maritime chaparral and coastal scrub are both considered ESHAs by the Coastal Commission. *See Id.*, p. 2 (these biotic systems are ESHAs because they are special in nature and could be easily disturbed or degraded by human activities). Wetlands and riparian areas also qualify as ESHAs. Whether areas are wetlands and an ESHA is based on applying the Coastal Commission's definition of

wetlands. *See*, Pub. Res. Code §30121; 14 CCR § 13577; *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493; *Kirkorowicz v. California Coastal Com.*, 83 Cal. App. 4th 980; Exhibit K “Definition and Delineation of Wetlands in the Coastal Zone Background Information Handout, California Coastal Commission Briefing Oct. 5, 2011. Such wetlands are not limited to the CWA’s definition of “waters of the United States” nor to the U.S. Fish and Wildlife Service definition. *See id.*

As a result, BLM’s management plan, to be consistent with the Coastal Act, cannot include any features or uses that will result in any significant disruption of any habitat within the Monument and each use or facility must be dependent on the resources that make an area a protected habitat—i.e., “plant or animal life or their habitats [that] are either rare or especially valuable because of their special nature or role in an ecosystem...” *McAllister*, 169 Cal.App.4th at 928. Furthermore, the notion must be rejected that resource-dependent uses are allowed even if they cause significant disruption because that is inconsistent with the statutory mandate that habitat areas be protected against any significant disruption. *McAllister*, 169 Cal.App.4th at 930. Nor does the Coastal Act authorize the separation of habitat values from an existing habitat and the relocation of those values elsewhere as a form of protective mitigation. Rather, the statute protects the designated habitat area itself, regardless of its continued viability, and mitigation measures could not be used to circumvent the statute’s strict limits on the uses permissible in habitat areas. *McAllister*, 169 Cal.App.4th at 932-933; *Bolsa Chica*, 71 Cal.App.4th at pp. 507-508. Nor would the fact that a project includes enhancement, maintenance, and restoration measures convert it’s residential (or here recreational) purpose into a resource-dependent use. *McAllister*, 169 Cal.App.4th at 933.

The Recovery Plan for the California red-legged frog highlights that trail development and facilities construction associated with parks and other public lands in red-legged frog habitat can degrade habitat quality. USF&WS, Recovery Plan for the California Red-Legged Frog, p. 22 (May 28, 2002) (“CRLF Recovery Plan”). “Heavy recreational use of parks (e.g., fishing, hiking, use of developed sites, dispersed camping) can also degrade habitat for the [CRLF].” *Id.* “Mountain bikes may also pose a threat to [CRLFs].” *Id.* The Recovery Plan identifies nearby Wilder Ranch as an example of mountain bike use likely driving the frog out of a nearby watershed. *Id.* Activities leading to sediment deposition in the frog’s aquatic habitat, including from recreational uses, also could eliminate or reduce the habitat necessary for the growth and reproduction of the California red-legged frog by increasing the sediment deposition to levels that would adversely affect a frog’s ability to complete its life cycle.” 75 Fed. Reg. 12855-56.

Most, if not all, of the uses and trails identified by BLM in the three alternatives and the new Alternative D do not depend on the threatened species and rare habitats that comprise the ESHA extending throughout the Monument. Certainly, no basis is discussed in the EA. The only conceivable use that would be dependent would be a modest number of pedestrian-only trails carefully designed to allow access for individuals attempting to observe these rare habitats and species. Archery hunting plainly is not dependent on these species and habitats. Neither is mountain biking or e-biking for that matter. Any parking areas within the critical habitat or wetland areas (as defined by the Coastal Commission) also are not dependent at all on the sensitive/endangered species and their habitat. Accordingly, with the exception of carefully designed and regulated access for people to enjoy and observe some of the sensitive areas within

the Monument, all of the other uses, trails and parking areas are prohibited because they are inconsistent with the Coastal Act's provision protecting ESHAs.

In addition to not being dependent on the sensitive species and their habitats, many of the proposed uses, trail and parking proposals will significantly disrupt the ESHA, as is discussed in detail below.

H. The Decision to authorize motorized bicycles on trails within the monument is (1) contrary to Presidential Proclamation No. 9563 and the grant deed which prohibit motorized off-road vehicles and (2) contrary to Secretarial Order 3308's direction to manage the monument as an integral part of the larger landscape in collaboration with neighbors by not extending the existing bans on e-bikes in San Vicente Redwoods Park.

Alternative C and preferred Alternative D propose to open to electric bicycles those trails designated for mountain biking, referencing recently issued Secretarial Order 3376, dated August 29, 2019. Without reference to Order 3376, Alternative B would authorize the Field Manager to permit individuals requiring accommodation to use e-bikes on any trail designated for biking.

In relevant part, Order 3376 provides that "(b) E-bikes shall be allowed where other types of bicycles are allowed; and c) E-bikes shall not be allowed where other types of bicycles are prohibited. Order 3376, § 4(b).

However, the Grant Deed executed on April 9, 2014 for the Monument prohibits any "motorized off-road vehicles", with some very limited (and inapplicable) exceptions:

The use of motorized off-road vehicles shall not be permitted on the Subject Property outside of established or designated roadways, except to the extent necessary for management of the Subject Property, or to protect public health and safety, or in response to other emergency situation.

Grant Deed, Provision (c).

Presidential Proclamation No. 9563 incorporates this prohibition, and limits BLM to allowing only non-motorized mechanized vehicle use on designated trails:

Consistent with the care and management of the objects identified above, and except for emergency or authorized administrative purposes, motorized vehicle use in areas being added to the monument shall be permitted only on designated roads, and non-motorized mechanized vehicle use shall be permitted only on designated roads and trails.

Proclamation No. 9563 (Jan. 17, 2017), p. 6.

At the time BLM signed the Grant Deed and the President signed Proclamation No. 9563, federal law clearly identified low-speed electric bicycles as a vehicle with a motor. Section 2085 of Title 15 provides that:

For the purpose of this section, the term “low-speed electric bicycle” means a two- or three-wheeled *vehicle* with fully operable pedals and an electric *motor* of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when *powered solely by such a motor* while ridden by an operator who weighs 170 pounds, is less than 20 mph.

15 U.S.C. § 2085 (emphasis added) (signed into law on December 4, 2002). Thus, electric bicycles are motorized vehicles that, if traveling on trails within the Monument, are off-road vehicles that are expressly prohibited by the Grant Deed and Proclamation No. 9563. At the time BLM signed the Grant Deed in 2014 or the President signed the Proclamation, there was no Secretarial policy conflicting with Section 2085’s identification of electric bicycles as being motorized and a type of vehicle.

In any event, the language of the Grant Deed and the Proclamation controls. Because no motorized vehicles may be used within the Monument, Secretarial Order No. 3376 has no effect within the Monument and the proposals in Alternatives B, C & D to allow electric bikes are incompatible with the Proclamation and Grant Deed. FLPMA expressly requires BLM to comply with the terms of the Proclamation establishing the monument. Although the principles of multiple use apply generally to BLM lands, “where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” 43 U.S.C. § 1732(a). *See also* Secretarial Order No. 3308 (Nov. 15, 2010), § 4(a) (“[t]he BLM shall ensure that the components of the NLCS are managed to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values”); *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1042 (9th Cir. 2013).

I. The State Director failed to comply with NEPA by failing to reassess the RMPA’s impacts to wildlife, including sensitive species such as salmonids, red-legged frog, mountain lions and other wildlife, soils, trail locations, vegetation management, and water quality as a result of the significant changes to vegetation coverage, soil integrity, likelihood of debris slides, and erosion rates caused by the recent CZU Lightning Complex Fire.

“Once an agency has prepared an EA and issued a FONSI, an agency must supplement its analysis if there are “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” *Oregon Nat. Res. Council Action v. U.S. Forest Serv.*, 445 F.Supp.2d 1211, 1219 (D. Or. 2006); 40 C.F.R. § 1502.9(c)(1)(ii); *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1152 (9th Cir.1998) (holding that an EA must be supplemented in the same manner as an EIS). “There is an obligation to supplement an EA if there remains major federal action to occur and the new information shows that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered.” 445 F.Supp.2d at 1219, citing *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 374 (1989).

The CZU Lightning Complex Fire is a significant new circumstance relevant to some of the most important potential impacts of the RMPA, including water quality and habitat impacts for listed red-legged frogs and salmonids. According to Section 1.3.1 of the RMPA, the burned

areas include 1,052 acres in the Molino, Agua Puerca, and San Vicente watersheds. The CZU Lightning Complex Fire “tore through” “roughly 1,000 acres on the Cotoni-Coast Dairies.” (BLM 9/25/2020 Press Release). *See* Various Maps attached hereto as Exhibit H. As a result, the baseline conditions for an extensive portion of the monument are now entirely altered. Much of that area is now much more sensitive to disturbance and potential debris flows. BLM must reset the baseline identified in the EA in order to assess the potential direct and cumulative impacts associated with the proposed RMPA and these now deteriorated conditions in the monument.

BLM is obligated to use the Burn Area Emergency stabilization and Rehabilitation process (BAER) to assess the need for soil stabilization following wildfires and to determine and implement needed actions as provided in the CCNM RMP (BLM 2005a) Project Design Features. *See* RMPA, § 4.8.1. A BAER assessment usually begins before the wildfire has been fully contained. BLM should complete burned area assessments, adopt Emergency Stabilization/Burned Area Emergency Response (ES/BAER) Plans and Burned Area Rehabilitation (BAR) plans to protect, remediate, and rehabilitate the lands subject to these wildfires. All of these activities should be part of the RMPA. Specific baseline conditions and potential impacts that must be addressed include 1) the changed soil conditions in burned areas and the potential of additional soil erosion from proposed activities and trails in the RMPA; 2) additional public safety concerns from locating any trails within or adjacent to burned areas; 3) damage to roads and infrastructure that may affect the feasibility of selected access points; 4) changes to cumulative impacts from fire-related damage to riparian and aquatic habitats and species and increased risks from debris flows and erosion; 5) changes to vegetation management and increases in proposed pesticide use as a result of new weeds recolonizing burnt areas; and 6) increased stresses to mountain lions and related increase in disruptions from users, trail locations, archery hunting and other activities. These baseline changes and impacts must be addressed in an updated EA/RMPA and recirculated for further public review and comment.

Indeed, BLM acknowledges changed circumstances in its Proposed RMPA, but fails to identify, address or evaluate how these changes will affect the Preferred Alternative, the Objects to be preserved as identified in the Proclamation, or other natural, coastal, or cultural resources. The changed circumstances mentioned in the Proposed RMPA are the following:

Under section 3.2.2 BLM acknowledges concern with an increase in the potential for floods, debris torrents, and debris flows. Also of concern is the long-term loss of mechanical support of hillslope materials in the upper portions of the Waddell Creek, Scott Creek (including tributaries), Molino Creek, and San Vicente Creek. In areas where the fire intensity was more severe, hydrophobic soils may have developed from waxy substances released by plant materials into the soil making portions of the slope impervious to water. Since these drainages are very steep, loose materials may mobilize into sediment laden masses during heavy rains, leading to the accumulation of debris that may flow downstream from the burned areas. BLM references a post-fire USGS debris-flow hazard assessment and characterizes the areas most vulnerable to flash floods and debris flows as not being on Cotoni-Coast Dairies.

BLM’S proposed RMPA acknowledges (section 3.2.2 under *forecast*) that:

the potential for increased mobility of post-fire sediment is a concern for breeding salmonids and the California red-legged frog, which may be expected to see a reduction in successful reproduction in the short-term.

Yet BLM does not propose any action to reduce this threat to already endangered species.

A subsequent Staff Report by the County of Santa Cruz <http://www.co.santa-cruz.ca.us/portals/0/county/firerecovery/videos/9.29%20debris%20flow%20presentation.mp4> references a post-fire map of landslide hazards at https://landslides.usgs.gov/hazards/postfire_debrisflow/detail.php?objectid=299. See also USGS, Preliminary Hazard Assessment Web Page (Aug. 16, 2020) (attached hereto as Exhibit I). The County further states that the situation is more threatening than indicated by the map because it was based on aerial photos on which green canopy masked major burning below. See also Supervisor Ryan Coonerty Newsletter (Oct. 6, 2020) (attached hereto as Exhibit J).

The Proposed RMPA/EA is also flawed because it fails to identify the post-fire hazard of falling burned trees or limbs. This is a well-documented danger to public safety associated with trees burned during the recent CZU Complex Fire (*Hazard Tree Alert*, USDA Forest Service, Forest Health Protection, Northeastern California Shared Services Area, Ex. K attached; *Hazards, Dead Trees*, John Crisp, Resource Forester, Wyoming State Forestry Division, Ex. L attached); Comment of Bob Berlage (Oct. 21, 2020) (attached hereto as Exhibit M). The main dangers include trees falling over as well as damaged limbs falling from trees. These likely outcomes pose an immediate and future danger to anyone using proposed road or trail systems that go through any forested sections of C-CD that burned during this fire. This is also a legitimate concern on any future trail connections between C-CD and San Vicente Redwoods. This danger exists immediately and into the future, certainly for the next five years.

For the safety of BLM employees, their contractors and any future visitors, BLM should have qualified tree experts conduct an inventory and mapping of all individual hazard trees. These trees should be felled by qualified timber fallers **prior** to allowing public access. The tree removal area should extend 300 feet on both sides of each proposed trail. A 150 foot tall tree can hit another dead or damaged tree, resulting in that tree falling. This creates an effective danger distance of at least 300 feet. The resulting level of tree removal also should be assessed in the EA to determine any potential impacts to wildlife.

The FONSI is required to consider the degree to which the Proposed RMPA affects public safety. Due to the changed circumstances resulting from the CZU fire the hazard of falling burned trees or tree limbs affects public safety and has not been identified or assessed in the Proposed RMPA/EA.

J. The EA fails to comply with NEPA by failing to include a reasonable range of alternatives and arbitrarily ignoring a feasible alternative with fewer impacts that is consistent with the Proclamation, the FCZMA and Conservation Land System policies.

NEPA requires federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action.” 42 U.S.C. § 4332(2)(E). This provision applies whether an

agency is preparing an EIS or an EA. *Ctr. for Biological Diversity v. Salazar*, 695 F.3d 893, 915 (9th Cir. 2012); *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1245 (9th Cir.2005). The EA must include brief discussions of alternatives as required by section 102(2)(E) of NEPA. 40 C.F.R. § 1508.9(b). As the Ninth Circuit explains,

NEPA and its implementing regulations only require the following with respect to the number of alternatives that must be considered by an agency: 1) the agency must consider “appropriate” alternatives to recommended courses of action, 42 U.S.C. § 4332(2)(E); 2) an EIS must “[r]igorously explore and objectively evaluate all *reasonable* alternatives” and must explain why it has eliminated an alternative from detailed study, 40 C.F.R. § 1502.14(a) (2000) (emphasis added); 3) the agency must consider a “no action” alternative, *id.* § 1502.14(d); and 4) the agency must designate a “preferred” alternative, *id.* § 1502.14(e).

Native Ecosystems Council, 428 F.3d at 1245–46. “NEPA requires that in the EA an agency must evaluate a reasonable range of alternatives to the agency’s proposed action, to allow decision-makers and the public to evaluate different ways of accomplishing an agency goal.” *Pac. Marine Conservation Council, Inc. v. Evans*, 200 F.Supp.2d 1194, 1206 (N.D. Cal. 2002), citing 42 U.S.C. § 4332(2)(E) (requiring alternatives analysis); 40 C.F.R. § 1508.9(b)(same). The touchstone of whether an EIS’s or EA’s selection and discussion of alternatives is reasonable is whether the range and content of the alternatives “fosters informed decision-making and informed public participation.” *Headwaters, Inc. v. Bureau of Land Management*, 914 F.2d 1174, 1180-81 (9th Cir.1990).

The range of alternatives that must be considered need not extend beyond those reasonably related to the purposes of the project. *Surfrider Found. v. Dalton*, 989 F.Supp. at 1327, citing *Laguna Greenbelt, Inc. v. U.S. Dep’t of Transp.*, 42 F.3d 517, 524 (9th Cir. 1994). The first step in identifying feasible alternatives is to define the purpose of the proposed action. *Surfrider Found. v. Dalton*, 989 F.Supp. at 1327. “Alternatives that do not advance the purpose of the [Project] will not be considered reasonable or appropriate.” *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1247 (9th Cir. 2005). However, “***an unreasonable failure to consider a viable alternative renders an alternatives analysis inadequate.*** *Surfrider Found. v. Dalton*, 989 F.Supp. 1309, 1326–27 (S.D. Cal. 1998) (emphasis added), *aff’d sub nom. San Diego Chapter of the Surfrider Found. v. Dalton*, 196 F.3d 1057 (9th Cir. 1999), quoting *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir.1992). *See also Pac. Marine Conservation Council, Inc. v. Evans*, 200 F.Supp.2d at 1207.

1. **The EA is arbitrary and capricious because the discussion rejecting FONC’s alternative siting a public access area at the top of the canyon adjacent to the south side of Yellow Bank Creek, mistakenly states that the parking would be “at Yellow Bank Creek” rather than the canyon top near Highway 1. This resulted in an erroneous understanding as to the potential impacts to red-legged frogs. In fact, far less impact would result from selecting this public access site as compared to BLM’s preferred Marina Ranch Gate site.**

FONC has prepared an alternative for clustered access and parking at the Yellow Bank

canyon top area. FONC's alternative, like BLM's Alternative D, borrows from some of the components conceptualized in the draft EA/RMPA but also provides modifications and features that directly address potential impacts and reduce impacts relevant to BLM's generic alternatives. Rather than the simplistic and limited range of alternatives BLM identifies going from fewer features to more, FONC's alternative selects a level of activities and changes to locations that directly address in detail potential impacts while retaining all of the project's objectives consistent with the Proclamation and CZMA. Until BLM includes this alternative, the alternatives analysis is deficient.

The benefits of FONC's proposed alternative Yellow Bank access site may be summarized as follows. Yellow Bank:

- a. is consistent with Coastal Act;
- b. enables coordination with Rail Trail vehicular access and pedestrian/bicycle overpass;
- c. provides an opportunity for existing or parallel City water line to be used for the public using both Cotoni-Coast Dairies and Panther Beach, including opportunity to avoid pit toilets;
- d. provides an opportunity for electrical connections;
- e. eliminates conflict of Marina Ranch Gate access with Farm Complex access approx. 70 feet to the north on Highway 1; and
- f. utilizes already graded historic roadbed rather than grading new road and roundabout traversing from 1st Terrace to 2nd Terrace while dividing row crop agricultural land into two pieces.

Access and parking for a Southgate at Yellow Bank canyon top can be created by use of a restored Old Coast Road. The quickest and least expensive initial method would be for a driver (whether travelling north or south) to head inland from current Highway 1 at the location of the existing informal entrance to the *ad hoc* (soon to be redeveloped by Rail-Trail) Panther Beach Parking Lot and within about 50 feet be on the no-longer-used Old Coast Road. There is ample room here for a left turn lane and acceleration and deceleration lanes. Once on Old Coast Road a driver would travel north roughly parallel to current Highway 1 to a newly-constructed Parking Lot on BLM land on the south side of Yellow Bank canyon. From that 1st Terrace Parking Lot there is already access for pedestrians, bicyclists and equestrians (and apparently some vehicles, including contractor/volunteer transport of disabled individuals to the 2nd Terrace). This location is also the terminal point for BLM's proposed Bridge for pedestrians and bicyclists over Highway 1 from the Rail-Trail's proposed redeveloped Panther Beach Parking Lot where BLM envisions shared parking could occur.

A more complete explanation of the benefits of this Yellow Bank Alternative is set forth in FONC's Addendum to Preferred Alternative, Exhibit A to FONC's Supplemental Comment

Letter.

2. The EA is arbitrary and capricious when it rejects DNCA's proposed Northgate alternatives at Mile Marker 30.22 or at the Mocettini Barn off of Cement Plant Road.

Section 20.20.3 rejects the Mile Marker 30.22 alternative (despite its being supported by the 3rd District County Supervisor, FONC and RBDA in addition to DNCA) on the grounds that the potential impacts (beneficial or adverse) of development at this location are substantially the same as other access points analyzed in the original range of alternatives. The Proposed RMPA states specifically that BLM's proposed Warrenella Road Gate access point would accomplish many of the same goals as Mile Marker 30.22, with fewer resource impacts. As to resource impacts, Section 2.20.3 states: Mile Marker 30.22 is situated between two riparian areas. However, as the aerial in FONC's Preferred Alternative submittal discussing Northgate shows, only one creek would need to be crossed to reach the Molino Loops and the connection to San Vicente Redwoods. Warrenella Road Gate on the other hand would require crossing three creeks to do the same. BLM's other objection to Mile Marker 30.22 is that it is off Highway 1 between two County roads (but FONC notes having ample site distance in both directions) should be trumped by the adverse impacts to Davenport's New Town property owners and the adverse impacts to the Cement Plant Road they must travel to reach home which is already in extremely poor repair, appearing to suffer from an inadequate road bed for the water table underneath. BLM's Proposed RMPA states its goal of "minimizing conflicts with adjacent property owners." Section 2.14.1 Goal 3. Mile Marker 30.22 would be a way to demonstrate compliance.

BLM's resistance to Mile Marker 30.22 caused DNCA to offer an alternative location in the vicinity of the Mocettini Barn that is about 100 feet north of BLM's Warrenella Gate Road site. This site was proposed to BLM by DNCA Board members during a "walkabout" with BLM to look at all of the sites before the Draft RMPA/EA was released. At that time DNCA urged BLM to include it in their study, but this did not occur. Subsequent to filing their Comment Letter on the Draft RMPA/EA, DNCA had several discussions on June 3 and June 12 with Field Director Blom regarding the Mocettini Barn site. The Proposed RMPA contains no indication of any consideration of DNCA's suggested access at the Mocettini Barn site off of Cement Plant Road. The Mocettini Barn site will be addressed in detail in DNCA's Protest.

FONC Board members have spent considerable time and effort during this past Spring investigating the Mocettini Barn site and discussing it with DNCA Board members. It is clearly a reasonable, appropriate, and viable alternative and BLM's unreasonable failure to consider it renders BLM's alternatives analysis legally inadequate.

K. The State Director did not comply with NEPA because the agency failed to prepare an EIS despite evidence raising substantial questions that the RMPA and implementation decisions may cause significant degradation of the environment.

NEPA "is our basic national charter for protection of the environment." *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1185 (9th Cir. 2008). NEPA "is a procedural statute intended to ensure environmentally informed decision-

making by federal agencies.” *Cal. ex rel. Lockyer*, 575 F.3d at 1012. NEPA “does not ‘mandate particular results, but simply provides the necessary process to ensure that federal agencies take a hard look at the environmental consequences of their actions.’” *Id.* “The ‘hard look’ ‘must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.’” *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 491 (9th Cir. 2011). Nor can an EIS or EA’s discussion of adverse impacts “improperly minimize negative side effects.” *Id.* at 491.

NEPA requires that an EIS be prepared for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C). The “threshold question in a NEPA case is whether a proposed project will ‘significantly affect’ the environment, thereby triggering the requirement for an EIS.” *Blue Mountains Biodiversity Project v. Blackmore*, 161 F.3d 1208, 1212 (9th Cir. 1998). As a preliminary step, an agency may prepare an EA to decide whether the environmental impact of a proposed action is significant enough to warrant preparation of an EIS. 40 C.F.R. § 1501.5. An EA is a “concise public document that briefly provides sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact.” 161 F.3d at 1212. Where an agency decides it does not need to prepare an EIS, “it must supply a ‘convincing statement of reasons’ to explain why a project’s impacts are insignificant.” 161 F.3d at 1212. “Whether an action may ‘significantly affect’ the environment requires consideration of ‘context’ and ‘intensity.’” *Ctr. for Biological Diversity*, 538 F.3d at 1185.

Intensity refers to the “severity of impact,” which includes both beneficial and adverse impacts, “[t]he degree to which the proposed action affects public health or safety,” “[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial,” “[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks,” and “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.”

Ctr. for Biological Diversity, 538 F.3d at 1185-1186. “An action may be ‘significant’ if one of these factors is met.” 538 F.3d at 1220 (citations omitted).

“An EIS must be prepared if ‘substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor.’” *Ocean Advocates v. United States Army Corps of Eng’rs*, 402 F.3d 846, 864-865 (9th Cir. 2005). To trigger an EIS, “a plaintiff need not show that significant effects will in fact occur, but raising substantial questions whether a project may have a significant effect is sufficient.” *Id.* at 865. “This is a low standard.” *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006); *Cal. Wilderness Coalition v. United States DOE*, 631 F.3d 1072, 1097 (9th Cir. 2011).

The Monument is located “in one of the most important biodiversity hotspots of the U.S.” Hayes Comments, p. 1, citing Stein et al., 2000, Dobson et al., 1997. Given the rarity and importance of the habitat within the Monument, a substantial question of potential adverse impacts is more likely to arise from proposed development and uses. Hayes Comments, p. 1. See *Californians for Alternatives to Toxics v. Troyer*, No. CIVS051633 FCD-KJM, 2005 WL

2105343, at *3 (E.D. Cal. Aug. 31, 2005) (where possible effects on the environment involve unique risks, an EIS must be prepared).

- 1. The inclusion of the Marina Ranch Gate Compound in Alternative D will have individualized additional adverse impacts, including significantly degrade scenic and visual resources and create a traffic safety hazard and analysis (or the lack thereof) of these impacts in EA is arbitrary and capricious.**

BLM states that “[t]he broad view of the Pacific Ocean and *sweeping marine terraces are the key scenic features* of C-CD.” RMPA/EA p.37 (emphasis added). These “marine coastal terraces overlooking the Pacific Ocean” are expressly highlighted by the Proclamation as a significant reason for adding Cotoni-Coast Dairies to the California Coastal National Monument. Indeed, BLM’s photographs of the monument feature beautiful views of the terraces. Despite the importance of these unique scenic vistas, Alternative D proposes to locate the Marina Ranch Gate Parking Lot Compound and Access Road right on top and in the middle of the viewshed looking down on the marine terrace.

The California Coastal Act, Pub. Res. Code 30,000 *et seq.*, constitutes “California's coastal zone management program within the coastal zone for purposes of the Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451, *et seq.*)....” Pub. Res. Code § 30008. The entire Monument lies within California’s coastal zone. *See* Map showing Coastal Zone Boundary from 2012 Coastal Development Permit enabling land division for transfer to BLM, CCC Exhibit A, page 1 (attached as Exhibit N). The presence of Cotoni-Coast Dairies lands within the coastal zone triggers a duty on the part of BLM to ensure its management plans and activities are consistent with California’s Coastal Act and to seek the State’s input on that determination. “Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.” 16 U.S.C. § 1456(c)(1)(A). *See* 43 C.F.R. § 1610.3-2(a) (“resource management plans ... shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other ... State and local governments ..., so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands...”). “In making their consistency determinations, Federal agencies shall ensure that their activities are consistent to the maximum extent practicable with the enforceable, policies of the management program.” 15 C.F.R. § 930.39(c). “The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement.” 15 C.F.R. § 930.39(a).

In furtherance of this duty “[e]ach Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 1455(d)(6) of this title at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.” 16 U.S.C. § 1456(c)(1)(C); *see also* 43 C.F.R. § 1610.3-

2(e). “[T]he burden of establishing compliance with a state program is on the federal agency proposing the contemplated action, and not on the state.” *Conservation Law Found. v. Watt*, 560 F. Supp. 561, 576 (D. Mass.), *aff’d sub nom. Com. of Mass. v. Watt*, 716 F.2d 946 (1st Cir. 1983). “The requirement of consistency with federally-approved state coastal zone management programs is not one to be dismissed lightly; full consistency is called for, unless “compliance is prohibited based upon... statutory provision, legislative history, or other legal authority.” 15 C.F.R. § 930.32(a). *Id.*

Under the Coastal Act “‘Sensitive coastal resource areas’ means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity.” Pub. Res. Code § 30116. “‘Sensitive coastal resource areas’ include the following: (a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan. (b) Areas possessing significant recreational value. (c) Highly scenic areas. *Id.* The Coastal Act further mandates that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. ***Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms***, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.. . .

Pub. Res. Code § 30251 (emphasis added). Thus, the Coastal Act protects the majestic view from the trails planned at Cotoni-Coast Dairies overlooking the sweeping marine terrace.

The proposed Marina Ranch Gate Parking Lot Compound and Access Road will degrade rather than protect the iconic views sought to be protected by the Proclamation, the Coastal Act and the FCZMA. FONC’s comments depict the massive blemish on the landscape emphasized in BLM’s own photos exemplifying the monument’s scenic vistas. *See* FONC Supplemental Comment Letter (August 3, 2020), Exhibit A). BLM admits in the EA/RMPA the siting the Marina Ranch Gate area on top of the marine terrace will degrade the existing view of that marine terrace area from a VRI Class II rating to a VRI Class III rating. In its Visual Impacts Analysis BLM concludes that the Marina Ranch Gate Parking Lot **Compound and Access Road** “**would have a localized moderate to major adverse impact on scenic quality** ... consistent with the VRM Class III objective.” *See*, RMPA/EA, § 4.10.4. The EA’s effort to downplay the parking areas impact on scenic vistas as being “localized” is not supported by the numerous locations from which it will be readily visible to future users. *See* FONC Supplemental Comment Letter, Ex. A.

The adverse impact on scenic quality to these sweeping marine terraces is compounded by the long, fenced, inter-terrace Access (Entry) Road through the beautiful draw (a riparian area leading to a potential wetland) and across the 2nd Terrace meadow to the Parking Lot near the top of the 2nd Terrace, together with requiring alteration of natural land forms by grading a total of 4.57 acres. The Parking Lot for 42 vehicles and 4 equestrian trailers is 1.82 fenced acres and will include at least two of the three Picnic Shelters (with benches and tables), as well as a Restroom Building. The entire area shaded in light blue on the Topographic Map submitted with

FONC's Addendum to Preferred Alternative attached as Exhibit A to FONC's Supplemental Comment Letter will have a view of the Parking Lot Compound and/or the Access Road to it. Thus, the Marina Ranch Gate Compound and Access Road is located right in an area where it is visible from vast portions of the 2nd and 3rd Terraces.

Furthermore, the intersection of Marina Ranch Gate access with Highway 1 presents a safety hazard as identified in Traffic Engineer Keith Higgins' Peer Review of BLM's Final Traffic Study submitted by FONC. "The warrant for a left turn lane at the Marina Ranch Gate needs to consider potential conflicts and associated safety impacts of the farm complex access road on the Coastal side of Highway 1 approximately 70 feet north of the proposed Marina Ranch Gate. A second access road to the farm complex is provided about 250 feet north of the Marina Ranch Gate. This results in the potential for a northbound left turn encountering an opposing southbound left turn into the Marina Ranch Gate." See photo attached as Ex. P.

The Marina Ranch Gate Access Road represents the creation of a new intersection with Highway 1 contrary to Section 2.20.3 which states "Caltrans encouraged the BLM to limit development of additional intersections on Highway 1 due to concerns about *public safety* and engineering constraints." Higgins Peer Review further states "Project alternatives need to be analyzed including the following Friends of the North Coast ... alternative[.]. These alternatives could facilitate parking areas and access roads closer to Highway 1 that would result in slight reductions in trip lengths. Road Trailhead and parking in the vicinity of Yellow Bank Beach (entering from either southern end of Panther Beach Parking Lot or Fambrini Farm Stand)." FONC's Alternative combines the Southgate Access with the intersection for the existing Panther Beach Parking Lot (which Rail-Trail has plans to redevelop including a left turn lane).

BLM makes no effort to avoid or minimize these impacts. FONC and others have identified alternative access areas with sufficient parking and without the scenic impacts prioritized by the Coastal Act. FONC's detailed analysis of the Yellow Bank Canyon Alternative demonstrates an access point leading to a Trailhead identified by BLM located at the BLM proposed Pedestrian/Bicycle Overpass over Highway 1 between the Rail-Tail parking at Panther Beach and Cotoni-Coast Dairies. Parking picnicking and restrooms at this location will avoid the visual impacts of the Marina Ranch Gate proposal. FONC Supplemental Comment Letter, Ex. A; FONC Comment Letter, Ex. A, pp. 1-7. In order to comply with the FCZMA, BLM must select the alternative with the least visual impacts.

2. The inclusion of archery hunting may significantly degrade habitat and pose significant risks to other recreational users and nearby residents, farmers, farmworkers, ranchers, cattle.

The inclusion of recreational archery hunting (sometimes referred to as "bow hunting") on 2,568 acres of RMZ2 (about 40 percent of the Monument) is inconsistent with that zone's management as a core habitat area for fish and wildlife (*See*, Proposed RMPA 2.4) and will significantly degrade habitat of sensitive species, including mountain lions, mule deer, and other wildlife.

Archery hunting is described at RMPA section 2.14.1 AU-REC-14 as follows:

a permitted special hunt program established by the California Department of Fish and Wildlife (CDFW) in coordination with the BLM and interested parties. Through their special hunt program, CDFW would establish specific days, species and number of permits issued.

The full description of archery hunting is set forth in RMPA section 4.1.14 (and again at 4.4.1) as an **“Assumption” without explanation** as to any basis enabling these assumptions, as follows:

The CDFW would establish a special hunt program for Cotoni-Coast Dairies to ensure public safety and avoid conflicts with other recreationists. The BLM and CDFW *estimate* the number of hunting permits to be issued - based on a lottery system – would be *similar* to Canada de Los Osos in Santa Clara County. For example, there the CDFW hosts five permitted-hunts each year with two turkey hunts, two pig hunts and one deer hunt. Each hunt is a two-day period. For the Cotoni-Coast Dairies, the BLM *anticipates* the number of hunters for each hunt would be 2-4 people. The BLM, CDFW, and other partners **would need to do some baseline surveys** for deer in the area to determine how many individuals could be taken based on an annual survey. Furthermore, the BLM would provide notice **[WHAT KIND OF NOTICE WOULD “ENSURE PUBLIC SAFETY”]** to hunters and other recreationists **[WHAT ABOUT RESIDENTS, FARM WORKERS, FARMERS AND RANCHERS?]** during the **open season [IS IT A “SEASON” OR FIVE 2-DAY HUNTS?]** to inform and educate visitors when and where hunting activity is allowed in RMZ 2. To avoid potential impacts to residents of adjacent properties; the BLM would publish maps that delineate areas in RMZ 2 that are closed to hunting near agricultural operations and the communities of Bonny Doon and Davenport, CA. These maps would be issued to licensed hunters that are permitted under the CDFW special hunt program to access C-CD.” **[BRACKETED MATERIAL ADDED BY FONC.]**

RMPA section 3.13 further provides that:

“Throughout the year, the CDFW offers hunt opportunities designed especially for new hunters, youth hunters, women hunters, mobility-impaired hunters and other **individuals who have limited experience or opportunity to hunt on their own**. The harvesting of wildlife under this program is carefully regulated to ensure an equilibrium between species’ populations, economic feasibility, habitat feasibility, public safety, and demand for recreation opportunities. Participants in the CDFW’s special hunt program are chosen by lottery, but applicants must meet certain qualifications. Every hunt specifies a maximum hunting party size -- in most cases, that’s two hunters, but family hunts may include up to four people.” **The RMPA/EA does not establish or disclose any limit on the number of hunt days, species, or number of permits which may be issued**. Rather the RMPA provides estimates and improperly defers evaluation of impacts, unless archery hunting is precluded for the first 8 to 12 years by the below statement in Section 3.13 under **“Forecast.”**

For the next 8-12 years, remediation efforts will be occurring within the central portion of C-CD. Remediation boundaries are approximately Bonny Doon Road

to the Southeast and Warrenella Road to the northwest. This reduces the suitability of RMZ2 for trail development as ***health and safety concerns make it undesirable to have public recreation within this central portion during remediation activities.***

Since the Proposed RMPA/EA does not state whether this means recreational archery hunting will not occur sooner than eight years from commencement of remediation efforts, there has been inadequate disclosure to the public and the decisionmakers. If on the other hand this means that commencing upon approval of a Final RMPA archery hunting will be allowed (or allowed only in the portion of RMZ2 between Bonny Doon Road and the north-easterly line of RMZ3 - near the East Branch of Liddell Creek), then there has been an improper deferral of evaluation of impacts of such archery hunting.

The deer hunt allowed by the Proposed RMPA violates the Proclamation because it will promote killing of Objects of the Monument rather than protecting them. Black-tailed mule deer are identified as a protected Object by Proclamation 9563. Proclamation, p. 4. As Dr. Pollock points out, [h]unting in the management area will directly and significantly, negatively impact (via death) the objects of the hunt, which are also protected objects of the monument and protected by the Grant deed.” Pollock Comments, p. 6. Dr. Pollock also cites various studies which, in his expert opinion, indicate that the proposed hunting would have “potential significant negative impacts at the population level from the loss of individuals, including density dependence and allee effects (Hoffman et al 2010, Mooring et al, 2004).” *Id.* And because hunting includes off-trail movement within RMZ 2, such off-trail use “can be much more detrimental to wildlife than on-trail use (Mallord et al. 2006; Miller et al. 2001; Taylor and Knight 2003; Soulard 2017).” *Id.* The proposed hunting area would adversely affect a significant portion of the Monument’s acreage not already being disturbed by the proposed trails. *Id.* Significant habitat disruption from hunting would occur throughout the hunting area.

Furthermore, the CDFW’s compendium, as well as the expert reports and analyses submitted with FONC’s Comment Letter demonstrate that recreational use and wildlife protection, are opposed to each other: more recreational use means less protection for wildlife. This is indisputably true in the case of hunters traipsing through wildlife habitat for the purpose of killing some of the wildlife. Hunting simply cannot be reconciled with protection of the Objects of the Monument or management of RMZ2 as a core habitat area for fish and wildlife.

Rather than address these expert comments, the EA simply assumes that because the hunt would be permitted by CDFW, there would no significant impact on the deer population or other wildlife. Final RMPA/EA, § 4.4.1. As a result, a substantial question remains that Alternative D’s archery hunting use will significantly degrade wildlife currently using the Monument.

Archery hunting will also pose significant risks to other recreational users such as hikers, bikers, and equestrians, as well as residents of adjacent Davenport and Bonny Doon and farmers and farmworkers in their fields and ranchers and their cattle. The notice to “visitors” to the Monument and the “maps” given to licensed hunters to protect “residents” described in Section 4.1.14 and 4.4.1 of the Proposed RMPA are inadequately described to be able to evaluate their effectiveness and in any event omit protection of farmers, farmworkers, ranchers, and cattle.

The Proposed RMPA/EA continues to violate Secretarial Order 3308, particularly with regard to the adjacent San Vicente Redwoods. Section 4.4.6 of the Proposed RMPA captioned Alternative D (Preferred Alternative) states that:

The protected area of RMZ2 would connect to adjacent protected areas on the adjacent San Vicente Redwoods property. This would have a long-term permanent beneficial impact on fish and wildlife species.

As explained above, hunting will degrade Objects of the Monument, as well as environmentally sensitive habitat areas (ESHA). Furthermore, hunting is contrary to Secretarial Order 3308's direction to manage the Monument as an integral part of the larger landscape in collaboration with neighbors because it does not extend the existing ban on hunting in San Vicente Redwoods.² This noncompliance is made even more egregious because the boundary with San Vicente Redwoods could easily be breached by hunters, arrows, or wildlife injured by arrows.

Nor does the EA discuss the fact that archery hunting is controversial, having been banned in the United Kingdom and described by the Animal Welfare Institute in its Fall 2014 Quarterly as having "documented inefficiency and potential for animals to be non-fatally wounded and suffer considerably," an occurrence likely to be more common for the program BLM proposes which is *for "individuals who have limited experience or opportunity to hunt on their own."* See RMPA section 3.13.

The EA's description and analysis of archery hunting are vague, arbitrary and capricious, and in some cases improperly deferred. As a result, the EA fails to take a hard look at the implications of archery hunting on the Monument and its protected resources.

3. The inclusion of broadcast spraying of pesticides from motorized vehicles may significantly degrade the environment by risks of toxicity to riparian and aquatic environments and adjacent organic farmlands by vague or inadequate buffer zone and timing mitigations.

Although the preferred alternative would prohibit aerial spraying, it still allows for broadcast spraying of pesticides from trucks and backpacks. The EA does not adequately address how the use of herbicides will not adversely affect the nearby and adjacent organic farms. The EA/RMPA does indicate that:

The use of appropriate herbicide formulations, establishing buffer zones from sensitive species and their habitats, and following herbicide label instructions and standard operating procedures during application will minimize any potential

² Also notable is the fact that hunting is prohibited in all County Parks: County Code §10.04.070. Nor do the County General Plan or County Code expressly authorize hunting anywhere, and under the Zoning Regulations uses of land, such as for a hunting activity, are unlawful unless listed as permitted or discretionary use, or qualifying as a legal nonconforming use. See, e.g., County Code §13.10.275. The County Code allows for "Organized Camps" but these are expressly defined to exclude "hunting camps. See, County Code §7.44.010.

adverse impacts to non-target upland terrestrial vegetation.

See, e.g. EA/RMPA § 4.2.6. Each of these measures is too vague or inadequate to remove substantial questions of adverse impacts of herbicides on the monument's sensitive environments, including organic farms.

Appendix F (weed management plan) provides some additional detail on the proposed buffer zones for applying pesticides. The plan states that it will "Establish a buffer between treatment areas and private, organic farms based on guidance, per 7 CFR 205.202, with a minimum buffer of 50 feet for broadcast treatment applications." RMPA, App. F (WMP), p. 29. Because a minimum of 50 feet is established, this measure does not eliminate risks to organic farms. The label for Dicamba (Ex. O attached, pp.10-12) requires well more than a 50 foot buffer:

Buffer Requirement The applicator must always maintain a 110 foot downwind buffer (when applying up to 22 fluid ounces of this FeXapan / MSTR Amend /11T05T18 11 product per acre) or a 220 foot downwind buffer (when applying greater than 22 up to 44 fluid ounces of this product per acre) between the last treated row and the nearest downwind field edge (in the direction the wind is blowing). ***

Sensitive Crops

DO NOT APPLY this product when the wind is blowing toward adjacent non-dicamba tolerant sensitive crops;

This serious error in the RMPA demonstrates another reason why the RMPA's pesticide impact disclosures are legally inadequate. Nor is there adequate disclosure as to how other herbicides will be prevented from drifting onto organic farmlands. *See, e.g.* 4.2.6.

As to harm to endangered species, the Dicamba Label states (p.3) as follows:

Endangered Species Concerns – Use of this product in a manner inconsistent with its labeling may pose a hazard to endangered or threatened species. When using this product, you must follow the measures contained in the Endangered Species Bulletin for the area in which you are applying the product. To obtain Bulletins, no more than six months before using this product, consult: <https://www.epa.gov/endangered-species> or call 1-844-447-3813. You must use the Bulletin valid for the month in which you will apply the product.

It is a Federal offense to use any pesticide in a manner that results in the death of an endangered species.

The Proposed RMPA/EA identifies the endangered species on Cotoni-Coast Dairies but makes no effort to inform the public or the decisionmakers (not to mention future BLM applicators) as to what potential harm could be caused to those endangered species by Dicamba or the measures required to avoid that harm.

The long list of approved pesticides does not explain why their use in the monument will not have significant adverse impacts on sensitive habitats and organic farms. For but one example, the inclusion of Dicamba on the list does not mean this pesticide does not degrade the environment. Indeed, just this past June, the Ninth Circuit ordered that the registration of dicamba be vacated in large part due to the agency downplaying its volatile nature and capacity to drift into sensitive areas. *Nat'l Family farm Coalition, et al. v. U.S. Env't'l Protection Agency*, Case No. 19-70115 (slip op. June 3, 2020). Thus, merely including a pesticide on a list does not address or analyze whether the use of that pesticide may degrade the environment. The Comment Letter from CCOF recommended against the use of 2,4-D in the vicinity of organic farms. Likewise, glyphosate not only poses significant risk to nearby organic farms but also has been identified by the World Health Organization as probably carcinogenic. <https://www.iarc.fr/wp-content/uploads/2018/07/MonographVolume112-1.pdf>. There is no specific discussion in the EA analyzing the harmful effects of these pesticides and how these and other herbicides will be prevented from drifting onto organic farmlands or causing harm to endangered species. *See, e.g.* 4.2.6

Instead of appreciating the quantified adverse impacts to wildlife, including Rodeo's adverse impacts on larval stages of frogs and lower parts of the food and Glyphosate's impacts on bees (*see* RMPA/EA, §§ 4.4.6, 4.5.6), the EA resorts to a conclusory assertion that excluding herbicides, as opposed to other non-pesticide based management measures, "would have long term, major, negative effects" on vegetation habitat. *See* RMPA/EA, §§ 4.2.3, 4.2.6. The EA's depiction of pesticide use as a necessary element to control exotic species fails to provide a reasoned analysis. There is no explanation why other weed control alternatives cannot be equally effective. The EA does not provide a hard look that allows a reader to understand the relative impacts to bees, frogs, and other wildlife as compared to any additional exotic plant invasion that may result from applying non-pesticide based vegetation management. As to impacts of the herbicides on organic agricultural operations, California Certified Organic Farmers (CCOF) has provided a letter which raises substantial questions regarding potentially significant affects to organic agriculture operations which the EA does not address. *See* FONC April 1, 2020 Comment, Exhibit H.

The CCOF raises substantial questions regarding potentially significant affects related to the activities and uses proposed by BLM's three Alternatives. The CCOF letter confirms that the monument boundaries are adjacent to a number of certified organic farms for which herbicide drift can cause economic damages. The coastal environment in particular can result in volatilization and post-application drift of herbicides in foggy conditions. A certified organic producer in the area successfully sued a pesticide application company for \$1 million in damages due to herbicide drift in 2007. <https://caselaw.findlaw.com/ca-court-of-appeal/1549214.html>. The particular chemicals applied in that case were chlorpyrifos, diazinon, and dimethoate, among others. Application of chemicals in the watershed creates potential that chemicals could be carried in water off-site and contaminate certified organic land or crops that come in contact with the water.

In its letter, CCOF requests that BLM maintain and refer to a current map of certified organic operations adjacent to monument boundaries whenever herbicide use is contemplated. BLM could base this map upon state organic registration data and use the map as a reference

when it considers spraying synthetic herbicides to manage invasive weed species.

Additionally, BLM should develop specific procedures or guidelines to notify certified organic producers when prohibited materials will be applied.

BLM's weed management strategy should emphasize working with the natural process of ecological succession to ensure that weed growth is halted and that desirable plant species occupy the spaces left by the weeds. BLM should consider sowing and planting seed of desired native plants in addition to the proposed weed removal activities. BLM should also specify that it will consider biological control options. For example, there are numerous insects that prey on and kill spotted knapweed, yellow star thistle, Canada thistle, and Scotch broom.

The monument plan should specify that herbicide applications will be used as a last resort in managing non-native weeds and that cultural methods will be prioritized over use of synthetic pesticides. The plan should commit to using an IPM approach, not simply describe what one is. Although CCOF's comments credit BLM for emphasizing preventing new infestations; proposing to use a range of cultural weed management approaches including grazing, prescribed fire, manual, and mechanical methods; and for mentioning IPM; however the draft RMPA doesn't appear to commit BLM to actually using an IPM approach.

- 4. The implementation of the Alternative D in the Proposed RMPA may significantly degrade the environment from increased incidents implicating the "4Ts" of Trash, Toilets (deposits of human waste), Traffic (excesses, hazards, parking deficiencies), Trauma (calls for police, fire/rescue, or medical services) because the phasing for Alternative D and discussion of mitigation measures is vague and open-ended. As a result, significant adverse impacts remain likely.**

BLM should follow the lead of the San Vicente Preserve and provide specific standards for dealing with the 4Ts - trash, toilets, traffic, and trauma incidents. San Vicente Redwoods also provides consequences for failure to meet those standards. Compare Proposed RMPA MA-REC-16 with FONC Preferred Alternative Section 5 for details. The RMPA uses vague, ambiguous, and unenforceable terminology while the SVR Rules contain actual quantified, enforceable standards.

The Trash in the form of litter (including food not discarded in the trash receptacles) will be closest to wildlife habitat at Warrenella Top and Marina Ranch Gate Picnic Shelters.

There is no mention of the Toilet problem resulting from deposit of human waste by individuals not using toilets, and at Southgate the concrete vault toilet will be up at the far side of the 2nd Terrace when it could be down near the termination of the Pedestrian/Bicycle Bridge over Highway 1 and close to the Trailhead at Yellow Bank under the FONC Preferred Alternative and Addendum. Nor, unlike San Vicente Redwoods, is there mention of dog waste courtesy stations (at trailheads for trails where dogs are allowed).

As to Traffic and Parking, just one example is BLM's intention to charge parking fees in the face of clear existing demonstration of visitors' willingness to park along Highway 1 in a

very hazardous fashion in order to avoid paying a parking fee.

Section 2.4 also contains some language designed to provide some assurance as to assuring the adequacy of infrastructure to accommodate visitor use:

The BLM proposes to use a two-phased approach to the implementation of public recreation facilities, with *implementation of phase two dependent on effective recreation management under Phase 1*. Emphasis will be placed on the *adequacy of infrastructure to accommodate visitor use*.

Nor does the FONSI capture the RMPA's assertion that the effectiveness of recreation management will be evaluated before proceeding with Phase 2. Instead, FONSI, Finding 2 only refers to expanding facilities: "Prior to implementing Phase 2 of recreational facility and trail development, the BLM will evaluate the adequacy of its facilities to meet anticipated increased visitation." The post-Phase 1 evaluation must focus not only on facilities but all aspects of the adequacy of recreation management in Phase 1.

There also is no assurance as to when, if ever, Phase 2 would occur so the evaluation of the effectiveness of recreation management under Phase 1 might not occur for a considerable time. FONC submits that in order to avoid such an open-ended approach, such evaluation should occur every three years after Phase 1 is open to the public, prior to implementation of Phase 2, whichever comes first. There should also be a transparent process for such evaluation with reasonable notice and opportunity for the public to participate.

The San Vicente Redwoods Public Access Plan, in contrast, says:

Monitoring and maintenance activities shall include but not be limited to:

- i. Inspect restrooms three times a week and maintain restrooms at least weekly and more frequently when necessary;
- ii. Clean graffiti and fix vandalism within 48 hours of discovery to demonstrate evidence of stewardship and resistance to vandalism;
- iii. Ensure maps and educational materials are stocked;
- iv. Track the availability of parking, and whether the parking area is regularly filled to capacity.

Compare Section 1.8.v.f of the Proposed RMPA which provides: "the BLM would conduct regular maintenance, patrols, and monitoring to help keep visitors and surrounding communities safe [presumably to avoid Trauma] under all alternatives...."

- 5. The EA's analysis of impacts to biological resources, including vegetation communities, particular wildlife species, salmonids, and water quality, is arbitrary and capricious and inconsistent with law by failing to provide a reasonable baseline from which to evaluate these impacts. As a result, the RMPA may significantly degrade vegetation communities, wildlife, salmonids and water quality. Nor does the EA comply with NEPA and its FONSI is invalid due to its improper deferral of analysis of impacts, as to mitigating the impacts it does**

identify, adequate evaluation of cumulative impacts, incomplete federal consultations re endangered species, and violation of state and local laws.

BLM has a duty to assess, in some reasonable way, the actual baseline conditions in the area affected by a proposed action. *Oregon Nat. Desert Ass'n v. Jewell*, 840 F.3d 562, 569 (9th Cir. 2016); *Oregon Nat. Desert Ass'n v. Rose*, 921 F.3d 1185, 1190 (9th Cir. 2019), *reh'g denied* (July 3, 2019). “Without establishing the baseline conditions” before a project begins, “there is simply no way to determine what effect the project will have on the environment and, consequently, no way to comply with NEPA.” *ONDA v. Rose*, 921 F.3d at 1190; *Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016). The description of the affected environment “shall be no longer than is necessary to **understand the effects of the alternatives**.” 40 C.F.R. § 1502.15 (emphasis added); *See W. Watersheds Project v. Bureau of Land Mgmt.*, 552 F.Supp.2d 1113, 1126–27 (D. Nev. 2008). Although “an agency need not measure ‘actual baseline conditions in every situation—it may estimate baseline conditions using data from a similar area, computer modeling, or some other reasonable method.’” *ONDA v. Rose*, 921 F.3d at 1191, quoting *Great Basin*, 844 F.3d at 1101.

To comply with NEPA’s “hard look” mandate, courts have held that agencies are obligated to maintain a current inventory of resources so that an adequate baseline exists to evaluate the environmental impacts of a proposed action. It is against baseline information that environmental impacts are measured and evaluated; therefore, it is critical that the baseline be accurate and complete. *Ctr. For Biol. Diversity v. Bureau of Land Mgmt.*, 422 F.Supp.2d 1115, 1163 (N.D.Cal.2006) (citing *Am. Rivers v. Fed. Energy Regulatory Comm’n*, 201 F.3d 1186, 1195, n. 15 (9th Cir.1999)).

Landwatch v. Connaughton, 905 F.Supp.2d 1192, 1197 (D. Or. 2012). BLM’s duty to establish a baseline is heightened within a national monument. BLM policy requires the preparation of “inventories of the objects and values for which the Monument ... was designated” (Bureau of Land Management, 2012) (#D7, p. 1-7).

By failing to survey and document the locations of plants and presence of sensitive wildlife species in the areas generally identified to construct and operate trails and access routes; failing to estimate the amount of sediment runoff from proposed trails and access areas and; failing to estimate noise levels at relevant distances from trails and access areas, the EA has not provided a reasonable analysis of the Project’s impacts. As a result, the RMPA’s proposed trails and access areas may significantly degrade the environment.

- a. The EA does not include an adequate baseline from which one can understand the potential impacts to biological resources, including impacts to vegetation communities, salmonids and the water quality.**

The EA does not live up to the “hard look” standard when discussing the potential harm to salmon and steelhead from sediment impairment and sensitive vegetation communities within the Monument. In each case, the EA fails to provide sufficient baseline information from which one can reasonably discern the potential impacts of the alternatives.

All six of the perennial streams in the Monument are designated as critical habitat for coho salmon. EA, pdf p. 64. Indeed, San Vicente Creek was the only creek in the entire Central Coast evolutionary significant unit (“ESU”) where coho have occurred. *Id.* The EA notes that “San Vicente Creek is a relatively productive steelhead stream providing adequate spawning and rearing habitat for the species” and, relative to the other creeks in the Monument, “contains the highest steelhead density.” EA, Chapter 3.5, p. 21. However, the EA also notes that “San Vicente Creek has generally high levels of sand and silt...” *Id.* “Generally high levels of sand and silt in [San Vicente] creek may create sub-optimal salmonid conditions, ...” *Id.*, p. 31. Steelhead also are present in Liddell Creek. The EA states that steelhead are limited by “sedimentation due to soil type and mining.” *Id.*, p. 21. “All three branches of Liddell Creek are exposed to severe sedimentation, which appears to be the primary limiting factor in this watershed...” *Id.*, p. 32. In Laguna Creek, “fine substrate materials increase” as you go upstream. *Id.*, p. 32.

No mention is made of what levels of sedimentation and turbidity must be avoided in order not to degrade steelhead and coho salmon and their habitat. No information attempting to quantify the existing conditions of the creeks is provided. No modeling was conducted to evaluate how much sediment the proposed trails, parking areas, hundreds of thousands of users on bike, horse, or walking would disturb and cause to erode into the creeks and how that might affect the existing but unidentified baseline conditions of the creeks. In short, beside the general assurance that BLM intends to do a good job, there is no baseline from which a reader or BLM could assess the significance of additional impacts from the three management alternatives.

Review by two sedimentation and erosion experts confirms the absence of any meaningful baseline information that would allow them and others to evaluate and understand the potential impacts of the various alternatives on stream sedimentation. Dr. Rubin notes that “[t]he draft FONSI gives an inadequate, non-quantitative, treatment to the topics of erosion, sedimentation, and turbidity.” Rubin Comments, p. 1 (FONC April 1, 2020 Comment, Ex. C). In order to assess the proposals’ impacts on turbidity, sediment concentrations, sedimentation in gravel, and the resulting effects on salmonids all must start with “measurements of background concentration levels...” *Id.*, pp. 1-3; *id.*, p. 3 (the EA “provides no information regarding present grain sizes of sediment on the bed or predictions of how the actions might contribute additional fine sediment”).

Similarly, Dr. Hayes’ review of the alternatives’ potential impacts to vegetation communities is hampered by the absence of sufficient, reasonably current baseline information. He notes that Table 3.2-1 (and Figure 3) “does not accurately present the extent and acreage of various vegetation types.” Hayes Comment, p. 8 (FONC April 1, 2020 Comment, Exhibit B). Dr. Hayes points out the absence of any supporting references or data to substantiate the general vegetation claims, making it “impossible to ascertain how BLM arrived at the vegetation community results.” *Id.* He notes that in his experience, “minimum mapping scale, location of survey points, and methodology of vegetation community delineation would be referenced in a baseline vegetation report.” *Id.* In comparison, BLM’s references are very minimal and based on an “insufficient data collection from 20 years ago.” *Id.* He concurs with BLM’s acknowledgement that changes to vegetation can be significant over such time scales. *Id.*; EA, pdf p. 97. These inadequacies demonstrate the absence of a reasonable baseline from which to

evaluate the alternative's impacts to the Monument's sensitive vegetation communities. The EA suffers from the same baseline deficiencies for terrestrial wildlife as well. Dr. Pollock points out the absence of meaningful baseline information for the numerous species identified in the Proclamation. Pollock Comments, pp. 3-4 (FONC April 1, 2020 Comment, Exhibit A). He points out the importance of baseline information to the EA as well as BLM's intent to apply adaptive management to the Monument:

The baseline needs to cover all species and habitats protected by the presidential proclamation and deed restrictions. It should include trail use buffers and areas outside trail use buffers. This will allow comparison of the effects of trails on different types of habitats as well as provide statistically meaningful comparisons of the health of wildlife populations over time.

Id., p. 3. Dr. Pollock points out the importance of applying a timely baseline. *Id.* "Monitoring that is more than a few years old will present confounding effects that can make statistical analyses ambiguous." *Id.* He points out that "[i]nitial monitoring of wildlife species presence, abundance and densities prior to the initiation of human use is necessary both to determine the starting conditions for adaptive management as well as to understand the impacts of trail use and whether they may be significantly negative." *Id.* He cites to a recent study emphasizing the importance of baseline studies to evaluate impacts to recreational trails and uses. *Id.*, citing Soulard et al 2017 ("the effect of recreational trails and trail use on wildlife should not be deemed insignificant or non-existent without first conducting species specific monitoring in the field"). Dr. Pollock's comments confirm that the EA's baseline descriptions of terrestrial species cannot be relied upon to accurately describe the alternative's impacts and undermines the likelihood that any adaptive management efforts by BLM will mitigate impacts of the ultimate proposed action.

b. The EA fails to identify a reasonable baseline from which to evaluate wildlife impacts and implement adaptive management.

The EA also fails to conduct any surveys of wildlife within the Monument in order to establish a reasonable baseline of which species are present and where, their abundance and densities. Dr. Pollock points out this flaw and its compounding effect of setting up for failure any adaptive management efforts:

Initial species-specific monitoring of wildlife species presence, abundance and densities prior to the initiation of human use is necessary both to determine the starting conditions for adaptive management as well as to understand the impacts of trail use (including loss of buffer habitat as explained above) and whether they may be significantly negative. Soulard et al 2017, state that "the effect of recreational trails and trail use on wildlife should not be deemed insignificant or non-existent without first conducting species specific monitoring in the field."

Pollock Comments, p. 3 (FONC April 1, 2020 Comment, Ex. A). In regard to adaptive management:

[it] is necessary to have a starting point or baseline from which to measure change. The baseline needs to cover all species and habitats protected by the presidential proclamation and deed restrictions. It should include trail use buffers and areas outside trail use buffers. This will allow comparison of the effects of trails on different types of habitats as well as provide statistically meaningful comparisons of the health of wildlife populations over time. This baseline monitoring needs to be done just prior to allowing trail use. Monitoring that is more than a few years old will present confounding effects that can make statistical analyses ambiguous.

Without a reasonable understanding of how and where wildlife relies upon the Monument currently, the EA has no basis from which to evaluate the Alternatives' potential wildlife impacts.

c. The EA fails to include an adequate baseline to assess impacts to plants, biotic communities and wetlands.

The EA continues to omit discussion of sensitive plant species located in the monument. At a minimum, the EA should disclose detailed survey results for the areas in which trails, use areas, and other proposed facilities may be located. Without knowing what is in these areas, BLM cannot be sure of the proposed routes or the relative impacts of the various trail and use area proposals.

For example, Dr. Hayes points out that the Point Reyes Horkelia (*Horkelia marinensis*) has a very small population within the Monument “that is threatened by invasive species, changing disturbance regimes, and trampling from proposed trails.” Hayes Comments, p. 3 (FONC April 1, 2020 Comment, Exhibit B). Although the EA acknowledges that the rare Santa Cruz clover has been identified in the monument in the past, it dismisses any need to determine the baseline for this species, simply referring to “surveys in 2017 and 2018” without any reference or description of those survey efforts. EA/RMPA, § 3. Dr. Hayes further notes that limited mention is made in the EA of biotic communities and species specifically identified in Proclamation No. 9563. These include limited mention of woodlands, forests, riparian areas, and wetlands. Hayes Comments, p. 2. He also explains that, despite their sensitivity to introduced pathogens, vulnerability to invasions and conversion by native and non-native species, all of which could be introduced by users of the Monument, coastal prairies, naïve grasslands, maritime chaparral, coast live oak woodlands, and Monterey pine forest “are inadequately described in the document and the document does not include information about specific fine-scale surveys to locate these habitats along proposed trail routes.” *Id.*, p. 4. Without this information, substantial questions are present that the alternatives may significantly disturb these habitats.

No mention is made of numerous plant species identified in the Proclamation, including California buttercup, Brown-headed rush, Redwood sorrel, Elk clover, and Madrone. *Id.* In the absence of baseline surveys and discussion in the EA, the potential impacts to these many plant species and biotic communities remain undisclosed.

Older surveys relied upon by BLM emphasize a long list of plant species that “have

moderate or high potential for occurrence on the Property and are therefore ***presumed present until further survey results prove otherwise.***” Hayes Comments, p. 3 (citing Coast Dairies Existing Conditions Report (2001) (emphasis added) (FONC April 1, 2020 Comment, Ex. B)). These species include the Monterey spineflower (*Chorizanthe pungens* var. *pungens*), Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*), Robust spineflower (*Chorizanthe robusta* var. *robusta*), Santa Cruz tarplant (*Holocarpus macradenia*), and Hickman’s potentilla (*Potentilla hickmanii*). *Id.* No baseline is established for these many fragile plant species highlighted 20 years ago.

In addition, the EA fails to identify the locations of all wetlands within the Monument applying the wetlands definition and criteria applicable to determining wetlands within California’s Coastal Zone. Although Dr. Hayes notes that that “extensive areas of proposed trails and parking areas are depicted in areas that appear to be within wetlands and extensive areas of proposed trails and parking areas are depicted within 150’ of high water marks of waterways,” despite his expertise, there is “insufficient information ... provided in the [EA] about the location of the proposed facilities in relation to wetlands and waterways....” Hayes Comments, p. 7 (FONC April 1, 2020 Comment, Ex. B). This lack of an adequate wetlands baseline cannot support a finding of no significant impacts and instead raises a substantial question about whether there may be significant negative impacts to wetlands. *Id.*

6. The EA’s analysis of impacts from noise is arbitrary and capricious because there is no information establishing the baseline noise levels for each of the alternatives or the relative noise levels of each alternative. As a result, the RMPA may significantly degrade the monument area from increased noise levels.

FONC enlisted the services of expert noise consultant Derek Watry of Wilson Ihrig to review the EA. *See* FONC April 1, 2020 Comment, Exhibit E. Mr. Watry confirms that, although new noise sources will be introduced by the proposed alternatives including “hunting, construction work, dog walking, hiking, and bicycle riding, ... no attempt is made to quantify the noise levels in decibels from any of these activities....” Watry Comments, p. 1. This is despite the EA’s passing acknowledgements that noise could be a problem. *Id.* Although the EA states that camping will “introduce impacts which negatively impact wildlife,” including “introducing daytime and nighttime noise” and that “[n]oise from ridge top trails is broadcast over a wide area,” BLM and the EA make “no effort to assess the noise impacts on various noise-sensitive receptors such as neighboring residents, people using the Cotoni-Coast Dairies land for quiet, peaceful recreation, or wildlife that inhabit the property.” Watry Comments, p. 2.

Although Alternative D’s elimination of camping and shotgun hunting will result in less noise than including those uses, noises from mountain bikers, e-bikers and other users remain in the proposal, there still remains a fundamental omission in the EA due to its lack of a noise baseline. Given the sensitivity of wildlife to noises, noise impacts from Alternative D may significantly degrade the existing conditions at the monument and need to be disclosed and analyzed in a full EIS. *See* Willmers Correspondence (attached hereto as Exhibit G).

7. The EA fails to address the scientific evidence establishing that any of the alternatives allowing for recreational uses in the monument where currently there are none will significantly degrade wildlife habitat and behavior. This potential significant degradation requires the preparation of an EIS.

Dr. Jacob Pollock has identified a critical compendium prepared by the California Department of Fish & Wildlife of eight new scientific studies that explore in detail impacts of recreational uses on wildlife and habitats in natural areas. The articles were recently published in the California Fish and Wildlife Journal for the Conservation and Management of California's Species and Ecosystems, Special Issue on "Effects of Non-consumptive Recreation on Wildlife in California" (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=178943&inline>) and are attached as Exhibit B to FONC's August 3, 2020 supplemental comments. As Dr. Pollock's brief review indicates, the new scientific papers "make clear is that these two management goals, recreational use and wildlife protection, are opposed to each other: more recreational use means less protection for wildlife. Additionally, the articles make it clear that managers must understand these incompatibilities and account for them in their planning and management." Jacob F. Pollock, Ph.D, Comment (July 24, 2020) (attached as Exhibit C to FONC's Supplemental Comment dated Aug. 3, 2020).

When reviewing an action pursuant to the National Environmental Policy Act, 42 U.S.C. § 4332, *et seq.* ("NEPA"), the agency must take into account any responsible opposing scientific viewpoint, especially where such viewpoint has not been taken into account in the draft environmental review document, and "indicate the agency's response to the [scientific] issues raised." 40 C.F.R. § 1502.9(b). *See Ctr. for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1167 (9th Cir. 2003). "This disclosure requirement obligates the agency to make available to the public high quality information, including accurate scientific analysis, expert agency comments and public scrutiny, before decisions are made and actions are taken." *Id.* The use of an assessment should not be used as a means of avoiding the important role NEPA places on ensuring that BLM and other agencies meaningful confront the most recent science available on sometimes difficult policy decisions. The new scientific articles identified by Dr. Pollock are significant new information which is extremely relevant to BLM's formulation of a management plan for the Cotoni Dairies portion of the Monument. Indeed, because the Presidential Proclamation only identifies the ecosystem and habitats, species dependent on those habitats, Native American cultural values, and marine coastal terraces overlooking the Pacific Ocean, as the objects intended to be protected, it is essential that BLM's effort to introduce recreational uses in the Monument take extra care that those uses not undermine the Monument's ecological, wildlife, cultural, and scenic values. *See Presidential Proclamation 9563*, pp. 3-4 (Jan. 12, 2017).

"Once an agency has prepared an EA and issued a FONSI, an agency must supplement its analysis if there are "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." *Oregon Nat. Res. Council Action v. U.S. Forest Serv.*, 445 F.Supp.2d 1211, 1219 (D. Or. 2006); 40 C.F.R. § 1502.9(c)(1)(ii); *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1152 (9th Cir.1998) (holding that an EA must be supplemented in the same manner as an EIS). "There is an obligation to supplement an EA if there remains major federal action to occur and the new information shows that the remaining

action will affect the quality of the human environment in a significant manner or to a significant extent not already considered.” 445 F.Supp.2d at 1219, citing *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 374 (1989). The new studies published by Cal. Fish & Wildlife should convince BLM not to rely on an assessment and FONSI and instead prepare a full EIS for the management plan. At a minimum, BLM should recirculate the Assessment taking into account this new significant scientific information that has come to light.

8. The EA’s analysis of impacts to mountain lions, red-legged frogs, and other wildlife demonstrate that the RMPA may significantly degrade habitat and wildlife behavior within the monument requiring the preparation of an EIS.

Dr. Pollock’s review of the various trail locations, densities and alignments identifies a virtual certainty that the proposed alternatives, including new Alternative D, may all significantly degrade the Monument’s environment. Dr. Pollock bases his analysis on the flight initiation distance identified by the U.S. Department of Agriculture (“USDA”) and applicable to species identified as objects to be protected by the Proclamation. Pollock Comments, pp. 1-2 (attached as Exhibit A to FONC’s April 1, 2020 Comment). “Flight initiation distance” is “the distance at which an animal will start to move away from an approaching threat such as a trail user.” *Id.*, p. 2. Based on the USDA’s conservation buffer guidelines (Bentrap, 2008), Dr. Pollock notes that “impacts from trail users are expected to be several hundred meters or more.” Pollock Comments, p. 2. He then compares those impact distances to the flight initiation distances applicable to the Monument’s protected species. He provides two examples based on the USDA guidelines:

Mule deer have an FID of 250 m and some hawks have an FID of almost 900 m. Additionally, (Bentrap, 2008) notes that FID is the distance in which an animal just begins to react and additional 50 m setback should be added to minimize wildlife disturbance. Thus, the area encompassed by the 500-meter buffer noted in Appendix A Figure 12A, 12b and 12c, represents a reasonable estimate for the area for which wildlife habitat will flee is thus a reasonable estimate of the reduction in habitat. Animals will flee from this area when trail users are present. Although the EA is correct in noting that the impacts will vary and are not confined to these buffers, these buffer areas represent a predictable, minimum impact.

Id.

Dr. Pollock also discusses the scientific reports documenting the effects to wildlife of a “landscape of fear.” Pollock Comments, p. 3. Dr. Pollock explains that “fear of humans can suppress the movement and activities of large and medium-sized carnivores and have other effects such as decreased activity level and decreased foraging efficiency.” *Id.* Dr. Pollock cites Suraci et al, 2019 confirming that a “landscape of fear” extend 200 m or more from human activities. *Id.*

Based on the proposed trail layouts, the area of habitat degraded by trail use covers from 20 to 60 percent of the entire Monument. *Id.*, pp. 1-3. Dr. Pollock then evaluates the expected

rate of use of the various alternatives. Noting Reily et al 2007, Dr. Pollock notes that when looking at impacts of trail use, a high level of recreational use is 8 to 10 users per day, while earlier studies consider two to four users per day as a high level of use. *Id.*, pp. 5-6. These studies indicate that the proposed rate of use in each of the EA's three alternatives is expected to be a high rate of use for purposes of evaluating impacts to adjacent habitat. All three alternatives easily exceed the recognized high use levels. Alternative A's 50,000 users correlates to 14 users per hour during a 10 hour day for 2.7 mi of trail. *Id.*, p. 5. Alternative B's 150,000 users per year is 41 users per hour for 20 miles of trail. *Id.* Alternative C's 250,000 users per year is almost 70 users per hour for 29 miles of trail. *Id.* Dr. Pollock explains that these use levels amount to "***almost continuous loss of the majority of available habitat.***" *Id.*, p. 2 (emphasis added). Dr. Pollock concludes that losing and degrading habitat over 20 to 60 percent of the Monument just from trail use "has high potential to significantly and adversely affect wildlife populations within the planning area by significantly reducing their habitat due to avoidance." *Id.* These impacts will vary from species to species. For some territorial species, the impacts will be even greater:

for territorial animals, depending on the territory size and the amount of sharing of territory space, the actual habitat loss may be greater than simply the acreage of habitat lost due to trail use buffers because the amount of habitat left may not be enough to contain as many complete territories. Territoriality and territory size are different for different species. While studying and analyzing the effect of trail use buffers on individual species, taking into account territoriality and territory size may be important for determining significant negative impacts (Adams, 2001, Andren, 1994, Loewenthal et al, 2015).

Pollock Comment, p. 3.

The habitat degradation described by Dr. Pollock also will not be evenly distributed and "[s]ome habitats may experience much greater habitat losses than others, perhaps as much as 100% for some habitats." Pollock Comment, p. 4. "Because different species are associated with different habitat types (EA report sec. 3.4), some species could be severely, negatively impacted, certainly in abundance and perhaps even to the point of local extinction (extirpation) within the management area." *Id.*

In addition to trails, the proposed parking lots, picnic tables, and camping areas will have the same buffer zone avoidance effects. Pollock Comments, p. 5. These features adverse effects on habitat could be greater than the trail impacts. *Id.* The impacts of these uses would be exacerbated by increased trash, increased noise, increase corvid activity, and increased predator activity. *Id.* These impacts will adversely affect a wide range of animals, from the threatened California red-legged frog to larger carnivores, including mountain lions. Pollock Comments, pp. 2, 8. The EA's simple assessment that more parking areas, more camping and more trails will increase the impacts does not assist a reader to understand the extent of the impacts or allow any meaningful comparisons. *Id.*

Dr. Wilmers, a renowned expert on mountain lions and other wildlife, has been studying mountain lions and other wildlife for the last 12 years in this region including on the Coast Dairies BLM property. His comments express concern regarding some of the proposed

alternatives for allowing recreation on Coast Dairies and how these might impact wildlife populations. *See* FONC April 1, 2020 Comment, Exhibit F. *See also* Exhibit G attached. He states that “our recent work on mountain lions suggests that the mere presence of people talking in the forest can negatively impact mountain lions. For instance, Smith et al (2017) demonstrated that mountain lions fear people. This results in mountain lions fleeing their kill sites when humans are nearby with a concomitant reduction in feeding time at the kill site of roughly 50%. Simply having human voices in the forest can also impact whole animal communities. In one experiment, Suraci (2019) demonstrated avoidance and/or reduced activity of areas with human voices by mountain lions, bobcats, skunks and opossums. This decline in predator activity resulted in increased foraging activity by mice and rats. Research also has shown that mountain lions usually require a buffer of at least 600 meters from human activity to site nurseries to raise their kittens (Wilmers et al. 2013).

Dr. Wilmers recommends that BLM have an adaptive roll out of recreation on the property with the most restrictive measures first combined with monitoring to assess impacts on wildlife. If impacts are determined to be negligible, then and only then would further development be allowed. Special attention should be given to maintaining large tracts of land with at least a 600-meter buffer from human trails. Especially important will be maintaining drainage bottoms and ridges that wildlife use most for efficient movement on the landscape with large buffers from human activity.

The EA generally acknowledges the direct impacts of recreational but fails to meaningfully discuss the significance of those impacts. Thus, the EA states that “[r]ecreational usage causes direct impacts to wildlife behavior such as increased flight and vigilance; interrupted foraging; avoidance of otherwise suitable habitat; declines in abundance, occupancy or density; and psychological stress.” EA, pdf p. 110 (Section 4.4.2). Dr. Pollock confirms that “[t]hese impacts are all negative impacts and all of them can significantly reduce richness and abundance of species impacted.” Pollock Comments, p. 4. Nothing in the EA proposes any mitigations for these adverse effects. As Dr. Pollock notes, a post-RMPA detection level survey for the proposed trails and parking lots “does nothing to avoid negative impacts to ... wildlife....” *Id.*, p. 3.

Dr. Pollock’s expert comments and application of relevant studies raises a substantial question that the EA’s alternatives and proposed trails and uses may result in significant degradation of the wildlife and their habitat within the Monument, requiring BLM to prepare a full EIS evaluating its proposed management plan.

The EA pays little mind to the recovery plan prepared by USF&WS for the California red-legged frog. The Recovery Plan is based in part, on the recognized fact that CRLFs will travel for one quarter mile to two miles from their breeding locations ‘without apparent regard to topography, vegetation type, or riparian corridors.’ CRLF Recovery Plan, p. 13. The Plan explicitly points out that “trail development,” “facilities construction associated with parks and other public lands,” and “[h]eavy recreational use of parks (e.g., fishing, hiking, use of developed sites, dispersed camping)” located “in or adjacent to [CRLF] habitat can degrade habitat quality.” *Id.* Where users are allowed to go off trail, or where they elect to leave the trail despite rules to the contrary, they will “tend to congregate around aquatic areas and can trample vegetation,

trample frog eggs and young, increase noise levels, and change the environment.” CRLF Recovery Plan, p. 22. Likewise, the Recovery Plan documents that “[m]ountain bikes may also pose a threat to [CRLFs].” *Id.* The Plan cites data from the nearby Wilder Ranch where mountain biking is allowed and risks to red-legged frogs on a bike trail. *Id.*

Dr. Pollock’s analysis, as well as the CRLF Recovery Plan, raise serious questions that the proposed trails and uses outlined in each of the three alternatives may significantly degrade critical habitat for the CRLF as well as numerous other species within the Monument.

9. The approval of the use of mountain bikes and motorized e-bikes fails to address contrary scientific evidence indicating that these uses will have significant adverse impacts on wildlife, especially red-legged frogs and mountain lions, requiring the preparation of an EIS.

Evidence provided by Dr. Pollock explains how allowing mountain bike and e-bike uses within the Monument will exacerbate the habitat impacts discussed above. Pollock Comments, p. 5 (FONC April 1, 2020 Comment, Exhibit A). “Because of the relative speeds of mountain bikes and hikers, mountain bikes can have up to 4 times the effect on wildlife and loss of wildlife habitat in the buffer areas.” *Id.* “[F]or a 2-3 hour afternoon outing, a mountain bike will impact about 25 miles of habitat where a hiker will impact about 6 miles of habitat.” *Id.* Given the profound disturbance 8 to 10 hikers will have on the existing, almost entirely undisturbed wildlife in the Monument, the inclusion of mountain and motorized bikes raises substantial questions that such uses will significantly degrade wildlife habitat and movement over extensive areas of the Monument.

10. The EA fails to adequately address the habitat fragmentation and disruption to wildlife movement that will result from the alternatives and proposed uses.

The EA fails to adequately address the habitat fragmentation and disruption to wildlife movement that will result from the alternatives and proposed uses. Dr. Pollock notes that habitat fragmentation and edge effects can adversely affect wildlife movement, the “viability of the habitat to support various species,” species composition and overall biodiversity. Pollock Comments, p. 4 (FONC April 1, 2020 Comment, Exhibit A). This is especially the case for the trail densities and uses identified in Alternatives B and C. *Id.* As a result, they also will result from Alternative D. None of these potential impacts were seriously addressed in the EA. The absence of any serious analysis of these potential impacts in the EA, coupled with Dr. Pollock’s expert comments, raises a substantial question that each of the alternatives may significantly degrade the Monument’s environment.

11. The EA fails to address potential impacts to murrelets in critical habitat in close proximity to the monument resulting from increases in crows, jays, magpies and raven that will accompany the proposed increase in visitors.

Controlling populations of corvids (including for example crows, jays, magpies and ravens) in the vicinity of marbled murrelet habitat is a key management measure necessary to the

recovery of that species. Pollock Comments, p. 6. Critical murrelet habitat is located on properties adjacent to the Monument. *Id.* “Because of their long flight distance, the increased corvid activity from camping, picnicking and parking lots in the management area has potential to significantly and negatively impact any future marbled murrelet populations that are using or could use these old-growth redwoods as habitat.” *Id.* This impact must be addressed in an EIS and subject to consultation with USF&WS.

12. There is a substantial question that sediment from proposed trails may cause significant degradation of water quality and salmonid habitat.

The EA fails to identify any effort by BLM to quantify or meaningfully consider the potential direct or cumulative impacts the proposed networks of trails, parking lots, and uses will have on the six streams flowing through the Monument. Each of these streams is designated as critical habitat for the endangered coho salmon and San Vicente and Liddell Creek are critical habitat for the threatened steelhead. Sedimentation already is degrading San Vicente and Liddell Creeks to the point where the sedimentation levels limit the value of the habitat to steelhead and coho. EA, Chapter 3, pp. 21, 31-32. Despite this, the EA fails to make any effort to determine or disclose the existing quantitative sediment levels in the creeks, the levels of sedimentation that would be contributed by the trails and uses proposed in the various alternatives, the sediment thresholds above which degradation of salmonid habitat occurs, or a comparison of the resulting direct and cumulative sediment loading to those thresholds. *See* Comments of David M. Rubin, Ph.D. (“Rubin Comments”) ((FONC April 1, 2020 Comment, Exhibit C); Comments of Matt Hagemann, P.G., C.Hg., SWAPE ((FONC April 1, 2020 Comment, Exhibit D). “Turbidity is a very important component of the water column and highly turbid waters can have a variety of negative effects on salmonids, including avoidance response, reduced feeding rates, reduced growth rates, damage to fish gills, and fatality.” Rubin Comments, p. 2 (citing Salmonid Freshwater Habitat Targets for Sediment-Related Parameters, by the State of California North Coast Regional Water Quality Control Board, p. 36, 2004 (available at: https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/110504/110504-targets.pdf). “Turbidity is regarded by many as the single most sensitive measure of the effects of land use on streams. This is due partly to the fact that relatively small amount of sediment can cause a large change in turbidity, and partly to the estimated accuracy of turbidity measurements.” *Id.*, citing MacDonald et al. 1991, p. 105.

The EA ignores evidence raising substantial questions that the proposed trails and uses may result in significant direct or cumulative degradation of one or more of the Monument’s six creeks. Expert sedimentologist/hydrologist David M. Rubin, Ph.D. and hydrogeologist Matt Hagemann, P.G., C.Hg., have reviewed the EA and its referenced materials and determined that it lacks the most basic assessments of the alternatives’ impacts to water quality and salmonid habitat from increased sediment loading. As Dr. Rubin states, “[t]he draft FONSI gives an inadequate, non-quantitative, treatment to the topics of erosion, sedimentation, and turbidity.” Rubin Comments, p. 1. Rather than analyze the alternatives’ and uses’ potential sediment and erosion impacts, the EA dismisses these concerns with the generic assertion that “actions will be taken to “minimize erosion.” *Id.* Dr. Rubin points to the plethora of relevant studies of numerous watersheds in California and the substantial work done by the state to identify the thresholds of significance for determining sediment impacts to salmonids. Dr. Rubin identifies the substantial

work performed by the North Coast Regional Water Quality Control Board to identify turbidity and other in-stream conditions necessary to protect steelhead and other salmonids. He points to the turbidity limit established for the North Coast Creeks: “Turbidity shall not be increased more than 20 percent above naturally occurring background levels” (NCRWQCB 2001b, p. 3-3.00).” The Central Coast RWQCB has adopted the same turbidity standard for creeks, such as those flowing through the Monument, where the natural background turbidity is 50 Jackson Turbidity Units (JTU) or less. Central Coast RWQCB Basin Plan, p. 30 (“Where natural turbidity is between 0 and 50 Jackson Turbidity Units (JTU), increases shall not exceed 20 percent”). As Dr. Rubin points out, in order to determine whether the proposed actions will cause or contribute to violations of these water quality standard and fish protection criteria, “requires (a) measurements of background levels of suspended sediment and (b) quantitative predictions of whether the proposed actions will increase concentrations by more than 20%.” Rubin Comments, p. 2.

Mr. Hagemann notes that “no erosion control measure operates perfectly and a dirt road or trail will erode and emit some amount of sediment during rain events.” Hagemann Comments, p. 3. Noting the vague acknowledgements in the EA that several of the creeks already are limited by excess sediment and the proposed trail locations, Mr. Hagemann identifies a substantial question that the proposed trails and uses may violate the turbidity standard established by the Central Coast RWQCB and significantly degrade the Monument’s creeks. *Id.*

Dr. Rubin also quotes from the North Coast RWQCB’s 2004 report where it identifies a study by Klein (2001) finding that suspended sediment concentrations above 27 mg/L affects the ability of juvenile salmonids to forage for food. Rubin Comments, p. 2. Dr. Rubin confirms that because the EA does not contain “(a) measurements of background concentration levels and (b) quantitative predictions of whether the proposed actions will contribute additional sediment that increases concentrations of suspended sediment to a value above 27 mg/L,” there is no way of knowing whether the proposed trails, parking areas, and uses will cause or contribute to turbidity concentrations in the six creeks above this harmful level.

Dr. Rubin also notes the absence of any analysis in the EA or otherwise referenced that evaluates the proposed actions’ direct or cumulative effects on sediment accumulation in the stream’s gravel beds, consistent with the criteria identified, for example, in the Central Coast’s Basin Plan. The Central Coast RWQCB also has identified specific targets for residual pool volume, median diameter of sediment particles in spawning gravels, spawning gravel percent fine fines, and spawning gravel percent coarse fines necessary to protect steelhead. *Id.*, pp. 95, 100. Although these steelhead thresholds were adopted for the San Lorenzo watershed and for Chorro Creek and Los Osos Creek (which flow to Morro Bay), the same thresholds apply wherever steelhead are present. As Dr. Rubin notes, the EA “provides no information regarding present grain sizes of sediment on the bed or predictions of how the actions might contribute additional fine sediment.” Rubin Comments, p. 3. These conspicuous omissions in the EA make it impossible for a reader to understand the direct and cumulative impacts to water quality and salmonids from the proposed actions. Although it is common to debate whether trail use by horses, bikers or hikers causes the greatest erosion, there is no doubt that all of these activities will lead to erosion of trails. Dr. Rubin’s and Mr. Hagemann’s comments, as well as the Central Coast RWQCB’s Basin plan, raise substantial questions that the proposed actions may have significant adverse impacts on the Monument’s critical salmonid habitat.

13. The EA is arbitrary and capricious because it fails to address contrary expert reviews of the traffic study released after the draft EA. The increased traffic may significantly degrade the environment by increasing safety risks where access roads intersect Highway 1 with inadequate turn lanes and potential increases in parking on the shoulders of Highway 1.

On August 17, 2020, FONC provided BLM with the results of a Peer Review conducted by Traffic Engineer Keith Higgins of BLM's "Final Traffic Study" dated July 14, 2020 but not released to the public until August 4, 2020. (FONC Aug. 17, 2020 Supplemental Comment). Mr. Higgins also had provided comments on the EA/RMPA on March 16, 2020. Mr. Higgins identified a number of flaws in BLM's Final Traffic Study, including but not limited to the following:

- a. Expert dispute re attendance, trip generation, and distribution;
- b. Marina Ranch Gate Conflicts at B.6 and B.8;
- c. Expert dispute re whether left turn lanes required – see B.9;
- d. Parking along Highway not addressed – see photo attached as Ex. Q;
- e. Pedestrians crossing Highway 1 – C.1.b;
- f. Caltrans analysis, Encroachment Permits, channelization requirements, all missing and this should be acknowledged; and
- g. Traffic Study fails to satisfy NEPA requirements.

None of these items was addressed in the Proposed RMPA/EA or its supporting documents released more than a month later on September 25, 2020.

As to item a. above Mr. Higgins points out that there is no basis supplied for the traffic estimates, particularly, attendance, trip generation, distribution, and future increase.

Standard turning volume diagrams including Project traffic assignments would be necessary for an adequate explanation of how traffic volumes were derived. This needs to include raw counts or counts referenced from other sources, adjusted existing volumes to account for seasonality or growth if older counts are used, project traffic distribution and assignment by parking area, 2040 volumes without the project and 2040 volumes with the project.

At Page 2, 1st Paragraph – The RMPA estimates that during a typical weekend day there would be 350 visitors for Alternative A, 700 visitors for Alternative B and 1,500 visitors for Alternative C. It is unclear how these estimates were derived. For comparison, Point Lobos State Reserve had a detailed parking analysis entitled "Point Lobos State National Reserve Visitor & Parking Study," Idax Data Solutions, August 2018 (Point Lobos Parking Study) that is included herein as **Attachment C**. This Project needs a similar analysis to adequately inform the decision-makers and the public.

The vehicle occupancy at Point Lobos average auto occupancy was about 2.00 rather than the estimate of 2.5 provided by the RMPA. *This would increase*

project trip generation and parking generation estimates by 25%.

Project traffic distribution is assumed to be heavily oriented to and from the south. This has a significant effect on the amount of left turn or right turn traffic volumes at the Project access locations. It is therefore necessary to use turning volume counts at existing state beaches and parks to verify this assumption. At a minimum, this needs to include Ano Nuevo State Reserve and Wilder Ranch State Park. The Project could have a distribution approximating the average of these two comparable facilities. Wilder Ranch has approximately 472,000 visitors per year. Assuming its parking and attendance patterns are similar to Point Lobos, it would be expected to have an average attendance of about 1,293 per day. Peak weekends could experience about 2,148 visitors. Based on its Final General Plan and EIR, October 2008, Ano Nuevo State Reserve has about 150,000 visitors per year, which is a daily average of about 410. The peak weekend attendance probably is about 680, which would equate to about 680 vehicles per day.

The 2040 forecast estimates traffic will increase on Highway 1 by 23.3% from 2017 to 2040, which is a total of 23 years. This forecast is from the Association of Monterey Bay Area Governments (AMBAG), which is an authoritative source. However, the traffic volume on Highway 1 between Bonny Doon Road and Davenport was 9,200 in 1999 and 13,000 in 2009, which is an increase of 41.3% in 20 years. Consideration should be given to a greater increase in future traffic on Highway 1 in the study area.

As to item b. above Mr. Higgins states that: “the warrant for a left turn lane at the Marina Ranch Gate needs to consider potential conflicts and associated safety impacts of the farm complex access road on the Coastal side of Highway 1 approximately 70 feet north of the proposed Marina Ranch Gate. A second access road to the farm complex is provided about 250 feet north of the Marina Ranch Gate. This results in the potential for a northbound left turn encountering an opposing southbound left turn into the Marina Ranch Gate.” See photo attached as Ex. P. Mr. Higgins also alludes to the need for coordination between the Rail-Trail Parking entrance/number of spaces at Panther Beach and the Cotoni-Coast Dairies Parking entrance/number of spaces in the same vicinity, particularly in light of “[m]any existing parking spaces at Panther Beach being eliminated by the Rail-Trail Plans [; hence t]he effect on existing and future parking operations of both Rail-Trail and Cotoni-Coast Dairies need to be analyzed.” Mr. Higgins further states that: “Project alternatives needs to be analyzed including the following Friends of the North Coast ... alternative[.]. These alternatives could facilitate parking areas and access roads closer to Highway 1 that would result in slight reductions in trip lengths. Road Trailhead and parking in the vicinity of Yellow Bank Beach (entering from either southern end of Panther Beach Parking Lot or Fambrini Farm Stand).”

As to item c. above Mr. Higgins states that: “The July 2020 report determines that left turn lanes will not be warranted at any Project access location along Highway 1. The results may be different with higher Project attendance assumptions, a lower assumption of vehicle occupancy, a lower assumption of percentage of Project traffic by non-motorized modes of transport and a greater distribution of project traffic to and from the north. This warrants

discussion and analysis. Attachment D provides a spreadsheet to facilitate the discussion regarding Project attendance and left turn lanes warranted. The attendance and traffic volumes for the area north of Santa Cruz are consequential.”

As to item d. above Mr. Higgins states that: “[t]he parking analysis does not consider the excessive parking already occurring along the shoulders of Highway 1 in the Project vicinity, often in violation of law and/or no parking signs. As the population of the greater San Francisco Bay Area and northern California continue to increase, the ambient parking demand will increase as well. Unlike the State Parks or County beaches, the Project will have a state-wide and national exposure due to its designation as a National Monument. Today there are tourists who come from as far away as Sacramento for the day. A complete analysis of the “visitor-shed” that currently, potentially, and cumulatively come to this area needs to be discussed in the analysis. The parking analysis also needs to discuss the effect of charging an entrance fee on vehicles parking on the shoulders of Highway 1 and local roads.” See photo attached as Ex. Q.

As to item e. above Mr. Higgins states that: “Environmental review also requires that traffic safety be analyzed. [This] has not been provided for bicycle and pedestrian circulation. Additional pedestrian crossings will occur at multiple locations, including the following at a minimum. The impacts of these increases need to be analyzed [whereupon seven specific locations are listed followed by a statement that ‘[a]dditional pedestrian crossings will occur at multiple locations which need to be identified’].”

As to item f. above Mr. Higgins states that: “As a part of approval to obtain an encroachment permit for any work conducted in the Highway 1 right of way, Caltrans will require additional analysis and possibly additional road improvements such as channelization, even if the numerical warrants are not met. This should be acknowledged in the Traffic Study and the EA.”

As to item g. above Mr. Higgins states that: “This project is subject to the National Environmental Policy Act (NEPA), which still requires conventional operations analysis as an environmental consideration.”

14. Experts and other knowledgeable commenters from the communities in the vicinity of the Monument criticizing components of the RMPA demonstrate that the RMPA, especially Alternative D, will have effects on the environment that are highly controversial, including unnecessary intrusions to scenic vistas, impacts to endangered and sensitive species, and safety impacts associated with allowing hunting and the locations of traffic access areas to and from Highway 1.

All of the expert and knowledgeable community comments above demonstrate that the effects of the RMPA and Alternative D are highly controversial. Where a project’s effects are highly controversial is a significant factor that BLM must take into account in deciding whether to prepare an EIS. “The term ‘highly controversial’ refers to instances in which ‘a substantial dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use.’” *Friends of the Ompompanoosuc v. F.E.R.C.*, 968 F.2d 1549,

1557 (2nd Cir.1992). “[A] substantial dispute exists where the agency received numerous responses from conservationists, biologists, and other knowledgeable individuals, all highly critical of the ... [agency's determinations and conclusions].” *Hells Canyon Pres. Council v. Jacoby*, 9 F.Supp.2d 1216, 1242 (D. Or. 1998), citing *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1334 (9th Cir. 1992). “[I]n cases where “virtual agreement exists among local, state, and federal government officials, private parties, and local environmentalists, criticisms of the plaintiff and its experts are not sufficient to demonstrate the existence of a public controversy.” *Id.* However, where, as is the case with the RMPA comments, the local community and experts intimately familiar with the RMPA lands and wildlife exhibit virtual agreement that the effects of BLM’s RMPA decision will be significant despite options to minimize and avoid those impacts, those adverse effects are highly controversial warranting the preparation of an EIS.

The expert comments are undisputed that the RMPA and Alternative D likely will prove highly detrimental to mountain lions, red-legged frogs, and salmonids. This is especially true as a result of placing two parking areas and facilities on 2nd marine terraces within the Monument. These comments are not disputed, in many cases echoed in the revised RMPA. Likewise, the effect of selecting an alternative that will despoil the Monument’s incredible scenic vistas with parking, bathrooms and roads is highly controversial. The unanimous views of the community are that the 2nd terraces must be protected. Moreover, the community has come together in support of alternative access and parking that would achieve this goal that is critical to the integrity of the Monument. These and other examples of the RMPA’s adverse effects discussed above are highly controversial

In light of the Proposed RMPA’s adverse effects qualifying as highly controversial, it is even more problematic that the FONSI signed when the CZU fire was still substantially uncontained cannot withstand scrutiny and is demonstrably arbitrary and capricious. The most global flaw stems from required Finding 1 which states:

Impacts may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effects will be beneficial.”
(Italics added)

BLM’s 8/26/2020 FONSI Finding says:

Adverse effects are anticipated to be less than significant because of protective measures and project design features (Appendix D) incorporated into Alternative D.

This acknowledges that there are significant adverse effects but relies on “protective measures and project design features in Appendix D” to reduce these adverse effects to be less than significant. BLM has a duty to provide a reasonably complete discussion of possible mitigation measures as an important ingredient of an EIS, and its omission therefrom would undermine NEPA’s “action-forcing” function discuss mitigations. *Robertson v. Methow Valley Citizens Council* (1989) 490 U.S. 332. The need for such a discussion where no EIS is prepared is even more critical when, as here, the “protective [mitigation] measures and project design features

(Appendix D)” are ***being relied upon*** to reduce admittedly adverse effects to be less than significant. “If the agency finds no significant impacts based on mitigation, the mitigated finding of no significant impact shall state any enforceable mitigation requirements or commitments that will be undertaken to avoid significant impacts.” 40 C.F.R. § 1501.6(c). Hence, the discussion needs to explain which measures and features are being applied to each adverse effect, how it reduces that adverse effect to being less than significant, and whether a measure or feature creates any adverse effect itself. That has not occurred here. Instead Appendix D is basically a cafeteria-style menu “from which the BLM would select when implementing projects within C-CD in order to best eliminate or minimize impacts.” (Appx. D ¶1).

Nor does Appendix C – General Monitoring Plan (Adaptive Management) provide the requisite explanations of how adverse effects are being reduced to being less than significant. Indeed the very first sentence merely says “[t]he BLM will ***consider*** appropriate methods ... to avoid, minimize, rectify, and reduce impacts” Appendix C goes on to state that adaptive management is not NEPA compliance.

However, adaptive management does not relieve managers of their responsibilities to consider the effects to the human environment of actions proposed Managers would still be required to comply with the provisions of NEPA ... before such actions are applied. Certain actions proposed as adaptive management techniques may require revision of the RMPA with additional environmental review and public-involvement opportunities to evaluate changes to the plan.

Furthermore, at page 3 Appendix C acknowledges that:

Determining the specific monitoring approach for any question ***requires knowledge of detailed information on existing conditions***. For example, trend assessment ***first requires gathering baseline*** or status information.

As explained above the lack of baseline information is glaring here such that the EA is legally inadequate.

No FONSI can withstand scrutiny under the circumstances.

I. CONCLUSION.

For all of the above reasons, FONC respectfully requests that BLM vacate the State Director’s approval of the FONSI and the RMPA/EA and remand the decision back for further review and a directive to evaluate a preferred alternative omitting the Warrenella Top and Marina Ranch Gate access locations and facilities and including the Yellow Bank Creek and

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BLM Director
Friends of the North Coast Protest
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Mile Marker 30.22 or Mocettini Barn alternatives identified by FONC and DNCA. Thank you for your consideration of this Protest.

Sincerely,

A handwritten signature in blue ink that reads "Michael R. Lozeau". The signature is written in a cursive style.

Michael R. Lozeau
Lozeau Drury LLP
on behalf of Friends of the North Coast

Attachments (Exhibits A through Q)