

**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS**

))
) IBLA Docket No. IBLA-2021-0313
)
)
) URGENT PETITION FOR STAY OF
) IMPLEMENTATION ACTION: MA-REC-
) 23 ESTABLISHING A DAY USE SITE
) (PARKING) AT WARRENELLA ROAD
) GATE

FRIENDS OF THE NORTH COAST, DAVENPORT)
NORTH COAST ASSOCIATION, and RURAL BONNY)
DOON ASSOCIATION,)
Appellants.)

I. INTRODUCTION.

Appellants Friends of the North Coast (“FONC”), Davenport North Coast Association (“DNCA”), and Rural Bonny Doon Association (“RBDA”) (collectively “Appellants”) hereby urgently petition the Board of Land Appeals immediately to stay the Bureau of Land Management’s implementation of the portion of Implementation Action MA-REC-23 which would construct and operate a day use parking site at the intersection of Cement Plant Road and Warrenella Road (“Warrenella Gate Parking Area” or “Parking Lot”). The urgency is based upon BLM Field Manager Ben Blom having informed DNCA at an on-site meeting on March 28, 2022 that BLM had changed the location of the entrance to the Warrenella Gate Parking Area and, despite that change, intends to commence construction of the Parking Area “in June” and “would not wait for an IBLA action before proceeding to construction.” Declaration of Brian McElroy (“McElroy Dec’l”), Declaration of John Barnes (“Barnes Dec’l”), Declaration of Colin Hannon (Hannon Dec’l”), and Declaration of Michael R. Eaton (“Eaton Dec’l”). A review of the changed entrance location by an expert traffic engineer reveals that “[s]ignificant vehicular conflict, interference as to use of Warrenella Road, and safety impacts will occur if the newly proposed BLM Access is implemented.” Declaration of James C. Jeffery III, P.E., PTOE, Attachment, p. 4 (report entitled “Impacts on Warrenella Road Intersection with Cement Plant Road from Proposed BLM Access to Cotoni-Coast Dairies” dated April 24, 2022) (“Jeffery Dec’l”). All of this and other flaws in BLM’s Implementation Action MA-REC-23 can easily be avoided and the public interest served by BLM’s

1 utilization of the Mocettini Barn Parking Lot Alternative instead. That Alternative is about 460 feet to the
2 north, has been promoted to BLM by DNCA since 2018, and was acknowledged by the BLM Field
3 Manager at that same March 28, 2022 meeting as needed to serve BLM’s intended Living History Center
4 in the soon to be restored historic Mocettini cheese barn. Eaton Dec’l, ¶¶ 3-4. BLM recently has received
5 a \$2.5 Million funding commitment for such restoration through the Great American Outdoors Act and
6 has already entered into a design contract. Declaration of Lisa Ortiz, RBDA Video Archive Custodian, ¶ 4
7 (March 16, 2022 RBDA Meeting); Barnes Dec’l, ¶9.A. Appellants believe that the Mocettini Barn
8 Alternative parking location can be utilized to open Cotoni-Coast Dairies by BLM’s current November
9 2022 target date.

10 **II. FACTUAL BACKGROUND.**

11 Appellants pending appeal (which term includes its Supplemental Appeal filed herewith)
12 challenges Implementation Action MA-REC-23 on a number of grounds, including the selection of a
13 southern entrance at Marina Ranch Gate that is not feasible because the required easement had already
14 been definitively rejected by the property owner, The Trust For Public Land. Statement of Reasons
15 (“Statement”), Exhibit B. By proceeding solely with the northern entrance at Warrenella Gate Parking
16 Area, BLM is proceeding inconsistent with the Cotoni-Coast Dairies (“C-CD” or the “Monument”)
17 Resource Management Plan Amendment’s (“RMPA”) express decision to have two entrances to the
18 monument in order to avoid concentrating visitor impacts at “a singular parking area and/or trailhead”
19 (here the Davenport New Town area). RMPA 13. The appeal also challenges the Warrenella Gate Parking
20 Area because of BLM’s failure to prepare a supplemental EA or EIS evaluating the action’s potential
21 impacts on habitat for the Monarch butterfly (*Danaus plexippus plexippus*), which species was newly
22 identified as a candidate for listing by U.S. Fish & Wildlife Service (“USF&WS”). Statement, p. 12:8-
23 13:3. The appeal also points out the absence of any environmental review of the expansion of the parking
24 area disclosed in the final RMPA on September 25, 2020 and the parking area’s substantial (but
25 unidentified) grading impact. *Id.*, p. 13:4-17. The appeal also points to the obvious visual impacts to
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1 residents of Davenport and members of the public, other local impacts, and the unreasonable refusal of
2 BLM to consider the nearby Mocettini Barn Alternative that would eliminate all of these significant
3 impacts. *Id.*, p.15:16-16:1; 24:15-22; 26:134-27:13; and Ex. C.

4 On March 28, 2022, Central Coast Field Manager Ben Blom met on-site with Appellant
5 Davenport North Coast Association “(DNCA”) Board members and others for the purpose of presenting
6 his intentions regarding implementation of the Warrenella Gate Parking Area. McElroy Dec’l; Barnes
7 Dec’l; Hannon Dec’l; Eaton Dec’l. During that meeting, Mr. Blom announced that BLM was planning on
8 beginning construction in June, 2022. *Id.*

9 Also during the meeting, Mr. Blom showed DNCA a Site Plan which he allowed them to
10 photograph but stated was the only copy he had and still incomplete. McElroy Dec’l, ¶ 4. In response to
11 McElroy’s request Mr. Blom agreed to provide a copy when the plans were complete in a couple of
12 weeks. *Id.*, ¶ 5. McElroy followed up on April 14, 2022 and received Page 1 of 9 from Mr. Blom on April
13 18, 2022. *Id.*, ¶ 6. The Site Plan corroborates for the first time the extensive grading necessary to construct
14 the proposed Parking Lot, Barnes Dec’l, ¶ 9, Ex. B, The Site Plan also shows that BLM has changed the
15 Access location, shape, size and configuration of the Warrenella Gate Parking Area from that adopted in
16 the RMPA and different from that to which the California Coastal Commission gave Federal Consistency
17 Conditional Concurrence. *Id.*, Exs. A & B. BLM’s Consistency Determination submitted to the California
18 Coastal Commission for the required concurrence states that “implementation decisions for recreation
19 identify the *site-specific designs and location* for the BLM to construct parking areas...” Unique ID
20 #6076 (Sheet F. External Communications, State and local agencies/California Coastal Comm’n, Final
21 BLM, Central Coast Field Office Coastal Consistency Determination, Section IV. Proposed Action, p.3).

22 Of greatest immediate concern is BLM’s decision to move the Parking Lot Access on Cement
23 Plant Road approximately 190 feet to the south to be within 60 feet of the intersection with Warrenella
24 Road – a road heavily traversed by logging trucks, agricultural tractor-trailer trucks and other large and/or
25 trailered vehicles. Barnes Dec’l, Ex. B, Ex. A. As explained in the accompanying Declaration of expert
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1 traffic engineer James C. Jeffery III, P.E., PTOE, that change creates a substantial public safety impact
2 that is inconsistent with the RMPA and which was not disclosed or discussed in the Environmental
3 Assessment for the RMPA. Jeffery Dec’l, Attachment. *See also* Declaration of Mark Lipson (“Lipson
4 Dec’l”), ¶¶ 1-8; *id.*, Ex. A (Apr. 26, 2022 letter from Big Creek Lumber to County Public Works Director
5 requesting reconsideration of the Encroachment Permit to BLM); McElroy Dec’l, ¶¶ 10-12. Indeed,
6 RMPA Section 4.12.2 under **Transportation and Travel Management** provides that: ... “The primary
7 impact of concern would be any performance degradation of roadways providing key access to the
8 parking areas on the Monument.” Unique ID# 2081 (Sheet B, NEPA Docs, Proposed RMPA-EA (public),
9 Cotoni-Coast Dairies Proposed RMPA-EA chapters), Ch. 4, page 58, § 4.12.2. Appellants have made a
10 demand on BLM to provide supplemental NEPA analysis in that regard and BLM has not agreed to do so.
11 Appellants’ Notice of Substantial Change in Approved Implementation Action MA-REC-23, Attachment
12 (May 4, 2022).

13 In addition to showing the Site Plan during the March 28, 2022 meeting, Mr. Blom also disclosed
14 that another parking lot will need to be constructed by BLM to serve the intended Living History Center
15 in the soon to be restored historic Mocettini cheese barn. Barnes Dec’l, ¶ 9.A-C; Eaton Dec’l, ¶ 4;
16 Hannon Dec’l, ¶ 6. BLM has received \$2.5 Million in funding through the Great American Outdoors Act
17 and has entered into a design contract for a project restoring the Mocettini cheese barn. Barnes Dec’l, ¶
18 9.A; Ortiz Dec’l, ¶ 4. Mr. Blom further stated that the restored barn would require a parking lot closer
19 than the planned Parking Lot at the top of the knoll as shown in the Site Plan. *Id.*, ¶ 9.C; Eaton Dec’l, ¶ 4;
20 Hannon Dec’l, § 6.C. Mr. Blom indicated that the likely site for this additional parking lot was the very
21 area that the Appellant DNCA has long advanced as a preferred site for parking for trail access. *Id.* BLM,
22 of course, will have a process for identification of parking needs and placement alternatives as part of
23 planning for restoration and reuse. However, as a practical matter, parking will be needed and the only
24 feasible option is the DNCA-proposed Alternative in order to satisfy the ADA and avoid existing
25 constraints (topography, distance, land ownership, Agua Puerca riparian corridor, corral). Because the
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1 Mocettini barn parking site is a viable alternative for accessing the northern Monument trails with fewer
2 impacts, and it would serve the public's access to the restored historic barn project, means that BLM can
3 avoid the expense of constructing and operating two separate parking lots.

4 **III. CRITERIA FOR ISSUING A STAY.**

5 The accompanying Declarations and Exhibits, Appellants' Statements of Reasons and Exhibits,
6 other Filings, and the Administrative Record herein warrant the issuance of a stay of BLM's further
7 implementation of the Warrenella Gate Parking Area pending the outcome of the appeal. Appellants meet
8 their burden to establish that each of the criteria for issuing a focused stay are met in this instance.

9 43 C.F.R. § 4.21 sets forth the criteria applied by the Board when considering a stay request:

10 (1) A petition for a stay of a decision pending appeal shall show sufficient justification
11 based on the following standards:

- 12 (i) The relative harm to the parties if the stay is granted or denied,
- 13 (ii) The likelihood of the appellant's success on the merits,
- 14 (iii) The likelihood of immediate and irreparable harm if the stay is not granted, and
- 15 (iv) Whether the public interest favors granting the stay.

16 43 C.F.R. § 4.21(b)(1). "The appellant requesting the stay bears the burden of proof to demonstrate that a
17 stay should be granted...." 43 C.F.R. § 4.21(b)(2). The Board has authority to consider a petition for stay
18 at any time during a pending appeal. *Robert E. Oriskovich*, 128 IBLA 69, 70 (1993) ("Nothing in the
19 regulations precludes the filing of a subsequent petition for stay...."). "When a timely appeal has been
20 filed, a petition for stay may be filed any time during the appeal, and the request may be considered in the
21 exercise of the Board's discretion." *The Klamath Tribes*, 135 IBLA 192, 195 (1996). Furthermore, this
22 petition for stay is filed concurrently with a Supplemental Appeal.

23 **IV. ARGUMENT.**

24 **A. Appellants' Will Be Irreparably and Imminently Harmed If the Warrenella Gate
25 Parking Area is Allowed to Proceed During This Appeal; and the Relative Harm to
26 BLM (if any) is Minimal (43 C.F.R. § 4.21(b)(1)(i) and (iii)).**

27 The RMPA anticipates 150,000 to 250,000 annual visitors to Cotoni-Coast Dairies. Unique ID#
28 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-

1 EA_chapters), Ch. 4, page 3, § 4.1.4. This will dwarf the community of Davenport and overwhelm its
2 public services. The very least BLM should do is respect the local knowledge of Davenport community
3 members and utilize a previously developed location which focuses visitors attention on Cotoni-Coast
4 Dairies, enhances their enjoyment, preserves visual resources, avoids alteration of natural landforms,
5 minimizes interference with access roads for local logging and agriculture, and minimizes invitation to
6 disturb quiet residential areas. *See* Hannon Dec'1, ¶ 3. Among the Goals and Objectives established by
7 RMPA §2.14.1 is “minimizing conflicts with adjacent property owners.” Unique ID# 2081 (Sheet B.
8 NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA_chapters), Ch. 2,
9 page 22, § 2.14.1. Secretarial Order 3308 relating to “Management of the National Landscape
10 Conservation System” requires that “[t]he NLCS components [including monuments] shall be managed
11 as an integral part of the larger landscape, in collaboration with the neighboring land owners and
12 surrounding communities....”

13 DNCA is a community-based organization whose board is elected bi-annually by the residents of
14 Davenport, New Town (Davenport), Molino Creek, Davenport Landing, Swanton Road, Last Chance,
15 Waddell, Whitehouse Canyon, and other coastal areas north of Santa Cruz. The DNCA was founded in
16 the 1950's and represents the interests of about 415 households along the North Coast of Santa Cruz
17 County.

18 The DNCA:

- 19 • Operates as a clearinghouse of information between public/private entities and our
- 20 constituents;
- 21 • Advocates for responsible land use and resource planning and full coordination by
- 22 various agencies,
- 23 • Supports public safety for residents and visitors;
- 24 • Protects the natural resources of the North Coast; and
- 25 • Promotes measures to manage the effects of increasing numbers of visitors to the
- 26 area.

27 Appellants, especially the Davenport community served and represented by DNCA, will suffer
28 irreparable harms from BLM proceeding with construction of the Warrenella Gate Parking Area in the
manner currently planned.

1 By proceeding solely with the northern entrance at Warrenella Gate Parking Area, BLM is
2 proceeding inconsistent with the C-CD RMPA's express decision to have two entrances to the Monument
3 in order to avoid concentrating visitor impacts at "a singular parking area and/or trailhead" (here the
4 Davenport community area) by virtue of BLM's knowing selection of a southern entrance at Marina
5 Ranch Gate that is not feasible because the required easement had already been definitively rejected by
6 the property owner, The Trust For Public Land. Statement of Reasons ("Statement"), Exhibit B; *id*, pp. 7-
7 9, 21-22. This concentrated addition of 150,000 to 250,000 visitors (and corresponding vehicles) adjacent
8 to New Town/Davenport at a singular parking area/trailhead will greatly interfere with the peaceful
9 enjoyment of the Davenport Community members' own lands in terms of traffic, trash, toilets, and trauma
10 (greater need for emergency services and law enforcement), the "4Ts" DNCA has fought to assure are
11 adequately addressed. *See* Hannon Dec'l, ¶ 3-4; Unique ID #5156 (Sheet E. Public Comments on Draft
12 RMPA/GOV and NGO/NGO, DNCA Comments (Apr. 2, 2020); Unique ID #6033-6038 (DNCA e-
13 mails); Unique ID #5186 (Sheet E. Public Protests on Proposed RMPA/Public Protests/Attachments –
14 ORG, DNCA Protest (Oct. 23, 2020). This will be in violation of the RMPA prohibition against such
15 concentration.

16 Appellants, especially members of DNCA, also will suffer all of the harms from BLM proceeding
17 with construction of the Warrenella Gate Parking Area. DNCA members will have to observe the
18 construction of the parking area on this currently untrammled portion of the Monument. *See* Eaton
19 Dec'l, Ex. A. Appellants have an uninterrupted view of the proposed parking area location. *Id*. Observing
20 the construction activities will irreparably harm Appellants and their members currently view of the
21 undisturbed landscape. *Id*. (Photos 1 – 4, 14). Once built, the parking area, including vehicles and RVs
22 accessing the area, will continue to be readily visible to Appellants and their members into the future. *Id*.
23 Similarly, the view corridor currently experienced by Appellants and others driving past the proposed
24 Warrenella Gate Parking Area on either Highway One or Cement Plant Road will be irreparably altered
25 by the removal of the trees that will expose the parking area to these travelers. *Id*. (Photos 7, 8 & 9).

1 Appellants also will suffer harm by the unnecessary, premature grading of the Warrenella Gate
2 Parking Area. The California Coastal Act prohibits the alteration of natural landforms of a coastal
3 resource. Pub. Res. C. §30251. Appellants will no longer enjoy the natural landform in the 1.6 acre
4 location proposed to be covered by the parking area. Appellants' members also use and enjoy the local
5 watersheds and beaches. The evidence in the record indicates there may be ephemeral wetland areas
6 within the swale proposed to be filling in at the Warrenella Gate Road parking area. FONC April 4, 2020
7 Comments, pp. 31-32; *Id.*, Ex. B, p. 7 (pdf p. 85). However, the EA failed to disclose any information on
8 the habitat in that area. Statement, pp. 13, 23-24; *See* FONC June 7, 2021 Letter, Ex. 5 by DNCA, p. 4
9 [pdf p.124].¹ Obliteration of that area pending this appeal would irreparably harm Appellants' interests in
10 protecting local wetlands and the ecological benefits those areas provide and was not addressed in the EA.
11 *See, e.g., Id.*

12 BLM's recent changes will further exacerbate these potential harms. The EA and BLM ignore the
13 effect of the significant new circumstance that restoration of the historic Mocettini cheese barn is
14 proceeding and will require a parking lot in the very location DNCA has sought since 2018. *See supra*, p.
15 4-5. To date, BLM has been unwilling to give genuine consideration to the Mocettini Barn Alternative.
16 Statement of Reasons, pp. 26-27. This refusal has now become particularly egregious in light of BLM's
17 recent acknowledgment that it will soon likely use the Mocettini Barn Alternative as a parking lot for its
18 intended Living History Center in the soon to be restored historic Mocettini cheese barn for which BLM
19 has received \$2.5 Million in funding. *See, Barnes Dec'1 ¶9.A; Supra*, p. 4. If the requisite Mocettini barn
20 parking were combined with northern parking for the Monument, that arrangement would eliminate the
21 visual, wildlife and safety impacts posed by the Warrenella Gate Parking area.
22
23

24 _____
25 ¹ Unique ID #6046 (Sheet F. External Communications, organizations and Individuals, Attachment to
26 6.17.21 Email to State Director - Blom, Benjamin Z - Outlook. The attachment is Appellant FONC's
27 supplemental comments dated June 7, 2021, which is part of the record and can be opened from the link
at p. 3 of the June 17, 2021 e-mail string. However, BLM's electronic record failed to provide an open
pdf of the attachment.

1 The recent changes to the proposed Warrenella Gate Parking Area will be harmful to existing
2 uses such as logging, agriculture, firefighting, and utility substation maintenance by causing significant
3 safety and transportation impacts at the intersection of Warrenella Road and Cement Plant Road.
4 Architect John Barnes identifies four new significant impacts that will result from this change to the final
5 version of the Warrenella Gate Parking Area adopted in the RMPA. Barnes Dec'1, ¶5. First and of
6 greatest concern, the change aligns the relocated access driveway so close to Warrenella Road as to
7 necessarily create significant conflicts between vehicular traffic using the trail access and traffic using
8 Warrenella Road (most critically logging, agricultural, firefighting, and utility truck traffic). *Id.*; Dec'1 of
9 James C. Jeffery III, P.E., PTOE, Attachment (*infra*, p. 14); Lipson Dec'1, ¶¶ 1-8; *id.*, Ex. A. Second, the
10 change reduces number of parking spaces from 69 spaces to 42 spaces, increasing the pressure for illegal
11 parking along Cement Plant Road. Barnes Dec'1, ¶ 5. Third, the change removes 4 mature eucalyptus
12 trees that if allowed to remain would significantly screen views of the parking area from Highway One
13 and adjacent roads and provide habitat for Monarch butterflies. *Id.* See also Eaton Dec'1, Ex. A (Photos 7,
14 8, 9, and 12). Fourth, the change places the relocated Access so close to Warrenella that it will induce
15 users (bikers and hikers) to perceive Warrenella to be a legitimate alternative access into the Monument
16 since there is no continuous fence to prevent it, contrary to BLM's management goals. Eaton Dec'1 ¶3.d;
17 Barnes Dec'1, ¶5.

18
19 By BLM proceeding immediately with the construction and operation of the Warrenella Gate
20 Parking Area on the knoll, Appellants' communities as well as visitors to Cotoni-Coast Dairies are
21 threatened with the likelihood that additional new parking for a restored Mocettini Barn will have
22 additional cumulative impacts, including the covering of a greater area of the Monument with asphalt and
23 hardscape by a second parking lot. Consolidating both parking lots in the Mocettini parking area,
24 avoiding interference with Warrenella Road tractor-trailer traffic, shielded from Davenport residents by a
25 hill and away from the potential Monarch butterfly habitat, avoiding major grading altering a natural
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1 landform, sheltering visitors from major winds on the knoll, and saving taxpayer dollars would eliminate
2 all of these impacts. *See Barnes Dec., Ex. C.*

3 All of these harms will be irreparable in that the location of these BLM proposed improvements is
4 intended to be in perpetuity. The harm is imminent in that BLM's Field Manager informed DNCA on
5 March 28, 2022 that he intends to commence construction of the altered Warrenella Gate Parking Area
6 "in June" and "would not wait for an IBLA action before proceeding to construction." *McElroy Dec'l;*
7 *Barnes Dec'l;* *Hannon Dec'l;* *Eaton Dec'l.* A stay pending this appeal would ensure that a successful
8 appeal set the stage for BLM to alter its decisions to avoid these impacts and meet the objectives of the
9 RMPA, the Presidential Proclamation, and the National Landscape Conservation System. The stay will
10 allow Appellants and BLM to jointly consult with the Coastal Commission to discuss a compromise
11 enabling an appropriately conditioned approval and the relocation of this access area to the Mocettini
12 Barn Alternative which Petitioners believe would facilitate BLM in its efforts to open Cotoni-Coast
13 Dairies this November.

14 BLM will suffer no harm by a short stay of Warrenella Gate Parking Area. BLM has only just
15 announced its intention to try to start construction in June. *McElroy Dec'l;* *Barnes Dec'l;* *Hannon Dec'l;*
16 *Eaton Dec'l.* This appeal was filed on July 22, 2021. Presumably, the Board of Land Appeals will issue
17 its order on the appeal in the not-too-distant future and any delay would not be unreasonable.

18 Furthermore, there is no evidence that BLM has presented its changed Site Plan to the California Coastal
19 Commission or that the Commission will agree with the changes exhibited in the Warrenella Gate Parking
20 Area's design plans. And because BLM cannot proceed at all with its selection of an infeasible southern
21 entrance at Marina Gate Road, a stay would ensure that the RMPA's goal of not concentrating visitors at
22 a single entrance and day use area would be enforced and the negative results that otherwise would accrue
23 to Appellants and the general public would be avoided.

1 Proposed RMPA-EA_chapters), Chapter 1, § 1.8, p. 13 (“Under the Proposed RMPA, the BLM would
2 pursue development of the parking areas in RMZ1 and RMZ 3 during Phase 1 to disperse visitor use and
3 reduce potential for concentration of impacts at a singular parking area and/or trailhead”). The absence of
4 a feasible southern entrance also prevents any equestrian uses consistent with the RMPA. *Id.*, §4.11.6, p.
5 64. None of the impacts of these omissions were addressed in the EA. *Id.*, §1.8, pp. 10-13; § 2.20, pp. 42-
6 43. Appellants are likely to prevail on this inconsistency between the implementation actions and the
7 RMPA. A stay would ensure that the two entrance, dispersed visitor, and equestrian use objectives of the
8 RMPA be implemented rather than arbitrarily omitted by BLM.

9 **2. Appellants’ claim that the EA failed to consider a reasonable range**
10 **of parking and day use alternatives, including a parking area at the**
11 **Mocettini Barn site, likely will prevail.**

12 Appellants also are likely to prevail on the claim that the range of alternatives considered for the
13 northern entrance is inadequate. Statement, p. 26:13-27:9. As noted above, the option to locate the
14 northern parking and day use area on the southern edge of the Mocettini Barn area would address the
15 impacts and concerns posed by the selected Warrenella Gate Parking Area. *Supra*, pp. 4-5, 8-9.

16 Nevertheless, BLM failed to consider that alternative at all in the EA for the RMPA. Statement, p. 26:13-
17 14. Significant new circumstances and information demonstrating the feasibility of this alternative
18 northern parking location was provided by BLM in its recent meeting with DNCA and in a public
19 meeting held by the RBDA.

20 During the RBDA meeting on March 16, 2022 BLM Field Manager stated as follows:

21 Ben Blom: We’ve also received funding through the Great American Outdoors Act to
22 restore a historic site on the property. It’s an old cheese barn that’s located along Cement
23 Plant Road. So we just started a design contract to try to figure out what’s feasible,
24 what’s salvageable with that building that we would really like to turn into a living
25 history center on the property.

26 Ortiz Dec’l, ¶4.

27 During the meeting with DNCA on March 28, 2022, Field Manager Blom informed those in
28 attendance that:

- 1 A. funding for the Mocettini “cheese barn” restoration has been approved in the amount
of \$2,5 Million and that planning for restoration has been initiated;
- 2 B. Blom stated that the expected use of the restored barn is to be a “living history”
3 facility with interpretive displays, used for educational purposes, and hosting special
4 events;
- 5 C. In response to a question, Blom stated that the renovated barn would require a
parking lot closer than the planned lot at the top of the knoll and that the likely site
for this parking would be the area he pointed out, which was the site that the
Appellant DNCA has advanced as a preferred site for parking for trail access;

6 *See*, Barnes Dec’1, ¶ 9. *See also*, Eaton Dec’1, McElroy Dec’1, and Hannon Dec’1.

7 Declarant John Barnes also states that on behalf of DNCA, he spearheaded efforts (in 2018) to
8 develop an alternative to the original parking site proposed by BLM (which ultimately became the RMPA
9 plan) and arranged for a conceptual site plan to be developed by RRM, a design consulting firm also used
10 by BLM for the plans in its RMPA. Barnes Dec’1, ¶6; Ex. C. Declarant Barnes attaches to his Declaration
11 that site plan as Exhibit C, RRM Site Plan and Notes. *See also* Unique ID #5156 (Sheet E. Public
12 Comments on Draft RMPA/GOV and NGO/NGO, DNCA Comments (Apr. 2, 2020); Unique ID #6033-
13 6038 (DNCA e-mails); Unique ID #5186 (Sheet E. Public Protests on Proposed RMPA/Public
14 Protests/Attachments – ORG, DNCA Protest (Oct. 23, 2020); Unique ID #5187 (Sheet E. Public Protests
15 on Proposed RMPA/Public Protests/Attachments – ORG, DNCA Supplemental Protest (Oct. 26, 2020).

16 Thus, there is nothing infeasible about locating the Monument parking nearer to the Mocettini
17 Barn and providing parking for both the Monument trails and the Mocettini Barn. This all points to the
18 likelihood that Appellants will prevail on the claim that the alternatives for the northern parking area were
19 unreasonably truncated in the RMPA’s EA by BLM.

20 The recent meeting between appellant DNCA and BLM also disclosed yet another inconsistency
21 with the RMPA specific to the Warrenella Gate Parking Area. Both the RMPA’s selected configuration
22 and the RMPA’s alternative for the Warrenella Gate Parking Area depict the Access (entrance driveway)
23 located approximately 250 feet north of the intersection of Warrenella Road. Final EA, Appendix B
24 (Warrenella Road Gate Parking Concepts A and A.2); Barnes ¶ Dec’1, Ex. A. However, the design plans
25 shared with DNCA during the March 28, 2022 meeting show that the access road for the RMPA is in a
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1 different location from that depicted in the approved RMPA. Barnes ¶ Dec'l, Ex. B. According to the new
2 plans, the Access to the parking area will be only approximately 60 feet from the intersection with
3 Warrenella Road (centerline to centerline). Barnes ¶ Dec'l, Ex. B; Eaton Dec'l, ¶ 3. The relocation of the
4 Access results in new significant impacts to public safety that were not addressed in the EA. As expert
5 traffic engineer, James C. Jeffery III, P.E., PTOE states in the accompanying declaration:

6 The short 60 foot distance between Warrenella Road and the BLM Access does not allow
7 for the margin of maneuverability that is needed for tractor-trailers turning right from
8 Warrenella Road onto Cement Plant Road and heading north. Thus, vehicular conflict
9 will occur between large trucks and passenger vehicles as a result of the new BLM
Access being located only a very short distance of 60 feet from the existing Warrenella
Road intersection. Utilizing AASHTO standards and terminology discussed in the next
paragraph, Turning Templates were applied to determine that such conflicts will occur.

10 Pursuant to AASHTO Section 2.8.1 (p.2-55), in the design of any roadway facility, the
11 designer should consider the largest design vehicle that is likely to use that facility with
12 considerable frequency. At Section 2.8.2, p. 62 AASHTO states that “[f]or local roads
13 and streets, the WB-40 [WB-12] is often considered an appropriate design vehicle.” The
14 Template for this design vehicle can be found at AASHTO p. 2-75, Figure 2-22, pursuant
to which it can be determined that **significant vehicular conflict, interference as to use
of Warrenella Road, and safety impacts will occur if the newly proposed BLM
Access is implemented.**

15 Jeffery Dec'l, Attachment, p. 4 (emphasis added).

16 In addition to triggering the requirement for a supplemental EA, this new information underscores
17 the likelihood that Appellants will prevail on their claim that BLM did not address a reasonable range of
18 parking and day use alternatives for the northern entrance.² This is a particularly strong claim because
19 there is a much reduced environmental impact from a single parking lot serving both the Trailhead and
20 the Living History Center at a restored Mocettini Barn combining all public/Monument interface in one
21 location. *Supra*, pp. 4-5, 8-9.

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24 ² Nor apparently did BLM ever consider the Peer Review of its Traffic Study submitted by FONC's
25 attorney on August 17, 2020. Attached hereto as Exhibit A. Per Registered Traffic Engineer Keith
26 Higgins Peer Review, traffic issues raised in his March 16, 2020 were never addressed. *See Ex. A*,
27 attached. The Peer Review does not appear to be in the Administrative Record or on the BLM Online
Documents page either. BLM should be required to consider the Peer Review prior to proceeding with the
relocated Access driveway.

1 **3. Appellants’ have a strong likelihood of prevailing on their claim that**
2 **BLM must prepare a supplemental EA or EIR to address recent**
3 **substantial changes to the Warrenella Gate Parking Area which also**
4 **constitute substantial new information relevant to the**
5 **Implementation Action’s environmental concerns.**

6 BLM’s newly announced changes to the Warrenella Gate Parking Area and, in particular, its
7 Access driveway, raise significant environmental concerns. “Agencies: (1) Shall prepare supplements to
8 either draft or final environmental impact statements if a major Federal action remains to occur, and: (i)
9 The agency makes substantial changes to the proposed action that are relevant to environmental concerns;
10 or (ii) There are significant new circumstances or information relevant to environmental concerns and
11 bearing on the proposed action or its impacts.” 40 CFR §1502.9(d)(1). *See Oregon Nat. Res. Council*
12 *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*
13 *Sporting Congress v. Thomas*, 137 F.3d 1146, 1152 (9th Cir.1998).

14 Here, BLM has made both substantial changes to the Warrenella Gate Parking Area and
15 acknowledged changed circumstances reinforcing the feasibility of the alternative Mocettini barn parking
16 site which trigger BLM’s duty to prepare a supplemental EA or EIR.

17 As explained by Traffic Engineer Jeffery, the relocation of the Parking Area’s Access driveway
18 to within 60 feet of the intersection of Warrenella Road and Cement Plant Road, “significant vehicular
19 conflict, interference as to use of Warrenella Road, and safety impacts will occur if the newly proposed
20 BLM Access is implemented.” Jeffery Dec’l., Attachment, p. 4. Likewise, the proposed reduction of
21 parking spaces, coupled with the absence of any southern access to the Monument for the foreseeable
22 future, may result in illegal and dangerous parking along Cement Plan Road. Barnes Dec’l, ¶ 5. And,
23 given the proximity to Warrenella Road, some people parking here may seek to access the Monument by
24 bicycling or hiking up Warrenella Road. *Id.* The four eucalyptus trees identified for removal will expose
25 the parking area to unrestricted views from Highway One. *Id.* Nor has those trees’ potential as habitat for
26 roosting Monarch butterflies been evaluated, disclosed or discussed in the prior EA. Statement, pp. 12-13.

1 In addition, the new circumstance and information regarding the need for a parking lot for the
2 soon to be restored Mocettini Barn at Appellants' preferred location qualifies as significant new
3 circumstance or information relevant to environmental concerns and bearing on the proposed action or its
4 impacts. *Supra*, pp. 4-5. Accordingly, Appellants are likely to prevail on their claim that a supplemental
5 EA or EIR must be prepared for the new configuration of the proposed Warrenella Gate Parking Area.

6 **4. Appellants' have a strong likelihood of prevailing on their claim that**
7 **the recent identification of the Monarch butterfly as a candidate for**
8 **listing is substantial new information triggering BLM's duty to**
9 **prepare a supplemental EA.**

10 There is no dispute that the Monarch butterfly was identified by USF&WS as a candidate species
11 for listing as a threatened or endangered after the release of the EA. Statement, p. 12:8-26. BLM's land
12 use handbook specifies that a change in status of special status species is new significant information.
13 BLM Land Use Handbook, p. 37. Yet neither the draft EA nor the final EA even mention the Monarch.
14 Nor was any effort made to document whether the eucalyptus trees along the proposed parking lot site -
15 preferred roosting habitat of Monarchs – was used as roosting habitat by the Monarchs despite a statement
16 provided by a local resident (Brian McElroy, a member of the Board of Directors of Appellant DNCA)
17 confirming observations of Monarchs using this habitat area. Statement, pp. 12-13; See McElroy Dec'l, ¶
18 13. Given the total lack of effort by BLM to evaluate that potential roosting habitat and the significant
19 new change in status of the Monarch, Appellants are likely to succeed on this claim that the EA needed to
20 be supplemented.³

21 **5. Appellants are likely to prevail on their claim that the EA fails to**
22 **address the grading and fill impacts for the northern entrance and**
23 **new information identifying the need for significant grading and**
24 **filling at that location.**

25 Similarly, Appellants are likely to prevail on their claim that there was no effort to disclose or

26 ³ In fact, as confirmed by BLM Field Manager Blom at the March 16, 2022 public meeting of the RBDA
27 on the subject of Trails at C-CD for which he was a Panel Member, Mr. Blom does not agree that even a
28 Baseline Inventory for wildlife is required prior to opening C-CD to the public despite NEPA and BLM
Manual 6220. *See* Transcript in Declaration of Lisa Ortiz, RBDA custodian of Public Video Archives at
¶6.

1 discuss in the EA the impacts of the grading necessary for the Warrenella Gate Parking Area. Statement,
2 p. 23:22-24:14. The newly disclosed Site Plan makes this omission even more egregious, changing the
3 configuration of the parking area once again and showing for the first time that the construction involves
4 substantial alteration of the natural landform in multiple locations. These multiple changes to the parking
5 area left unaddressed by either the EA or a supplemental EA is a likely successful challenge pursuant to
6 NEPA.

7 **V. The Public Interest Supports a Stay**

8 The public interest supports a stay because it will enable:

- 9 (1) a potential win-win solution of a combined parking area for the Monument and the Mocetini barn
10 project, thereby saving taxpayer dollars and covering less National Monument land;
- 11 (2) it would not unreasonably delay the opening of the Cotoni-Coast Dairies given the need for BLM
12 to facilitate the California Coastal Commission’s review of the proposed changes to the
13 Warrenella Gate Parking Area and the ongoing effort to identify a feasible southern entrance;
- 14 (3) utilizing previously developed and used land and repurposing it for historical preservation and
15 education;
- 16 (4) honoring the intent of Cotoni-Coast Dairies being designated by the Proclamation as a part of the
17 National Landscape Conservation System where there is an overarching and explicit commitment
18 “to conserve, protect, and restore natural and cultural resources as the prevailing activities within
19 those areas, shaping all other aspects of management.” NLCS Strategy, p. 8.
- 20 (5) honoring “central purpose [of the Proclamation which] is clearly stated as protection of the
21 natural, cultural, and biological resource that the C-CD lands represent.” RMPA, § 2.2.2, p. 3.
- 22 (6) collaboration with BLM’s surrounded community of Davenport, and;
- 23 (7) eliminating or dramatically reducing many of the harms identified by Appellants and the
24 Davenport community.
25
26
27

1 **VI. Conclusion**

2 For the reasons given above it is respectfully requested that the IBLA grant a stay pending the
3 decision on the Appeal and Supplemental Appeal herein.

4 Respectfully submitted this 11 day of May, 2022.

5 

6 Michael R. Lozeau
7 LOZEAU DRURY LLP
8 Attorneys for Appellants Friends of the North Coast, Davenport North
9 Coast Association, and Rural Bonny Doon Association
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PROOF OF SERVICE

I, Toyer Grear, declare as follows:

I am a resident of the State of California, and employed in Oakland, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 1939 Harrison Street, Suite 150 Oakland, CA 94612. On May 11, 2022, I served a copy of the following documents:

- Petition for Stay of Implementation Action: MA-RREC-23 Establishing a Day Use Site (Parking) at Warrenella Road Gate

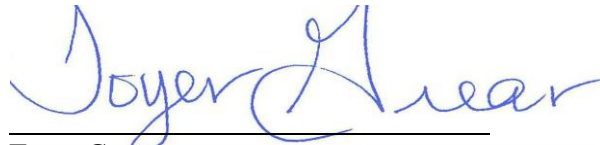
By electronically e-mailing a true and correct copy to the e-mail addresses set forth below.

United States Department of the Interior Office of Hearings and Appeals Interior Board of Land Appeals 801 N. Quincy St., Suite 300 Arlington, VA 22203 ibla@oha.doi.gov	Erica Anderson, Attorney-Advisor Office of the Regional Solicitor Pacific Southwest Region U.S. Department of the Interior 2800 Cottage Way, Room E-1712 Sacramento, CA 95825-1890 erica.anderson@sol.doi.gov
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By enclosing the documents in an envelope provided by an overnight delivery carrier and addressed to the persons listed below and placing the envelope for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier

BLM California State Director 2800 Cottage Way, W1623 Sacramento, CA 95825	Office of the Regional Solicitor Pacific Southwest Region U.S. Department of the Interior 2800 Cottage Way, Room E-1712 Sacramento, CA 95825-1890
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I declare under penalty of perjury (under the laws of the State of California) that the foregoing is true and correct, and that this declaration was executed May 11, 2022 at Oakland, California.



Toyer Grear