

May 19, 2022

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Re: **Request for “Win-Win” Reopener of the Commission’s Conditional Concurrence for BLM’s RMPA for Cotoni-Coast Dairies to Move Toward Opening to the Public by the End of 2022 by Curing BLM’s Noncompliance**

Dear Chair Brownsey and Executive Director Ainsworth:

On December 11, 2020, the California Coastal Commission (CCC or Commission) approved a Conditional Concurrence as to BLM’s Federal Consistency Determination for the Resource Management Plan Amendment (RMPA) for Cotoni-Coast Dairies (C-CD). BLM is noncompliant with this CCC approval in two critical aspects with long-term consequences:

(1) **Location of Parking Lots.** BLM’s Consistency Determination submitted to CCC for Concurrence states that “implementation decisions for recreation identify the *site-specific designs and location* for the BLM to construct parking areas...,” HOWEVER, the Southern Entrance cannot obtain the necessary easement and Northern Entrance has been redesigned without a Supplemental Consistency Determination to 40% less capacity, being directly visible from Highway 1, and its driveway unsafely relocated<sup>1</sup>; and

(2) **BLM Refusal to do required Baseline Inventory.** RMPA 1.3.2.A as submitted to the CCC for Concurrence requires production of a “reliable inventory enabling the management of C-CD to understand the significance and extent of objects and values this unit of the CCONM is intended to protect,” Appendix C “requires gathering baseline or status information,” and the Concurrence itself requires “effectiveness monitoring to evaluate whether resource objectives were met.” HOWEVER, on 3/16/2022 the BLM Field Manager was a Panelist at a Public Meeting of the RBDA and made clear that BLM did not intend to provide a Baseline Inventory. Without dependable and accurate initial baseline data there will be no way to determine whether future activities are having a negative impact and evaluate whether to approve a Phase 2 separate Consistency Determination, particularly with respect to threatened and endangered species and Objects of the Monument.

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<sup>1</sup> [Central Coast Field Office Coastal Consistency Determination](#), Section IV. Proposed Action, p.3.

We believe the best way to cure this noncompliance is to utilize the Commission's right to a "reopener" as explained near the end of the CCC's Public Hearing on December 11, 2020 by the Deputy Director for Federal Consistency, Dr. Huckelbridge. Commencing at 6:05:23 she stated as follows:

Dr. Huckelbridge: Furthermore, if we're looking, as Staff, monitoring reports and we're seeing things that are concerning or impacts that aren't well explained or there is no information, **we have the ability to reopen this Consistency and bring it back to you.** I think first we would be working with BLM cooperatively to fix problems as we do in most cases, but **we do have that reopener** and would bring it back to you if we feel that is appropriate.

(Emphasis added.) Friends of the North Coast (FONC), Davenport North Coast Association (DNCA), and Rural Bonny Doon Association (RBDA) believe that a "**win-win**" solution is achievable and have been promoting one for a long time.<sup>2</sup> Department of the Interior Secretarial Order 3308 relating to "Management of the National Landscape Conservation System" requires that "[t]he NLCS components [including C-CD] shall be managed as an integral part of the larger landscape, **in collaboration with** the neighboring land owners and **surrounding communities....**"

#### **Location of Southern Entrance Parking Lot.**

The problems: BLM's upper terrace parking lot and access road ([Exhibit 3 pp. 3-4](#) - also attached as Exhibit A) **has no access**<sup>3</sup> because The Trust for Public Land (TPL) has definitively denied BLM the easement bisecting TPL's Agricultural Field which is under an Agricultural Conservation Easement. The Santa Cruz County Farm Bureau concluded that BLM's proposed bisecting road would "effectively render the southern half of that land unusable for agriculture (approximately 15 acres or more)" and "would be inconsistent with the Agricultural Conservation Easement." See [TPL](#) and [Farm Bureau](#) Declarations filed in [IBLA Appeal](#). The upper terrace parking lot would have also harmed wildlife habitat and corridors, placed sheltered picnic areas in a County-mapped Critical Fire Hazard Area, paved a road through an ephemeral wetland/streambed (ESHA), and despoiled what BLM's RMPA acknowledges is a "key scenic feature" of Cotoni-Coast Dairies.

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<sup>2</sup> A win-win solution could possibly resolve the still pending Administrative Appeal filed by FONC, DNCA, and RBDA to the Department of Interior Board of Land Appeals (IBLA) as to the "implementation actions" for the parking lots on July 22, 2021. Led by DNCA we filed a Petition to Stay the Northern Entrance parking lot on May 11, 2022. This avenue for Appeal is not available as to the Baseline Inventory issue which unless resolved would have to go to Federal Court.

<sup>3</sup> FONC got wind that this may be a problem the day before the Public Hearing on Federal Consistency and submitted [a letter](#) raising the issue and FONC's President spoke by phone with CCC's Larry Simon who stated that if there was no access, the Concurrence would have to be reopened. Note that the RMPA contained the misleading statement that "...BLM entered into an agreement with the Trust for Public Lands (TPL) on June 3, 2020 to grant two 45-foot roadway easements ..." [for Warrenella road top and Marina Ranch gate.] RMPA § 4.13.4. This was not correct as refuted in the Declaration of Christy Fischer filed in the IBLA Appeal (linked below).

Curing these problems is critical for the **additional reason** that without a viable southern entrance, there is a violation of the RMPA's mandate to implement parking areas in the north (RMZ 1) and the south (RMZ 3) during Phase 1 to disperse visitor use and reduce the concentration of impacts at a singular parking area and/or trailhead. RMPA/EA, p. 13.<sup>4</sup> Nor did the EA evaluate any impacts of opening the C-CD with only one entrance.

The solution: Find Consistency for the Yellow Bank Alternative described in 7/1/2021 Joint Proposal to BLM from the "7 Organization Group" [TPL, Sempervirens, Santa Cruz Puma Project, Santa Cruz County Farm Bureau, Big Creek Lumber, FONC, and RBDA]. **BLM supports this in concept as of its 7/30/2021 letter** and has been working out the details with TPL. The RRM Yellow Bank Trailhead Southern Entrance Plan, Cover Memo, and Higgins Traffic Engineer Evaluation ([Exhibit B](#) attached) were provided by TPL to BLM in early March 2022 which is ready to move forward as far as FONC, DNCA, and RBDA are concerned.

#### **Location of Northern Entrance Parking Lot.**

The problems: BLM unilaterally and without any prior notice or process decided to modify its Warrenella Gate Parking Lot in several ways from what it showed the CCC for its "site-specific designs and location." These modifications include moving the access driveway 190 feet south to be unsafely close to Warrenella Road, removing four large eucalyptus trees which currently block the view of the parking lot from Highway 1 while serving as habitat for Monarchs, and making drastic alteration of natural landforms. Compare [Exhibit 3 p.1](#) (also attached as Exhibit C - 12/11/2020 Plan at CCC) to BLM's [4/13/2022 Modified Site Plan](#) attached as Exhibit D. Per "Federal Consistency in a Nutshell" on the CCC Website, under 16 U.S.C. § 307(c)(1)&(2) and 15 CFR § 930.31(e) if a Federal Agency Activity (which includes development) was previously reviewed, the modification is subject to a new Federal Consistency review (Determination and Concurrence) if its effect on coastal uses and resources is substantially different than those previously reviewed by the CCC. *See also* 15 C.F.R. § 930.46.<sup>5</sup>

Clearly the effect of BLM's Modified Site Plan on land uses or natural resources of the Coastal Zone is substantially different than previously reviewed by or described to the CCC. Examples include:

- (1) The Access driveway is too close to the Warrenella Road intersection with Cement Plant Road and "significant vehicular conflict, interference as to use of Warrenella Road, and safety impacts will occur if the newly proposed BLM Access is

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<sup>4</sup> Policy acknowledged and not disputed by BLM in its Answer in the [IBLA Appeal at 11:3-8](#).

<sup>5</sup> Under 15 CFR §930.11, the phrase "any coastal use or resource" means "any land or water use or natural resource of the coastal zone." *See, also*, the "Nutshell" discussion of 15 CFR §930.45 stating that the CCC will monitor approved federal activities and request the federal agency (BLM) to take **remedial action** if the CCC determines that a federal activity is having an effect on any coastal use or resource substantially different than originally described.

- implemented” per a [Traffic Engineer Analysis](#). This will adversely affect coastal zone agricultural uses, including logging of a “Working Forest,” a requirement associated with a California Wildlife Conservation Board grant that helped facilitate the acquisition of San Vicente Redwoods.
- (2) Parking Lot capacity will be reduced from 69 to 42, reducing coastal access and increasing pressure for illegal parking along Cement Plant Road given that BLM anticipates 150,000 to 250,000 annual visitors. [Declaration of John Barnes, Architect](#).
  - (3) Four large eucalyptus trees will be removed instead of two as in the RMPA Plan, but most importantly the modified location of their removal will create a view corridor directly from Highway One into the parking lot, particularly during much of the year when the weeds have been cut down. *Id.*; and Declaration of Michael R. Eaton, Photos 7-9. [Declaration of Michael R. Eaton, Photos 7-9](#).

The solution: Utilize DNCA's Mocettini Barn Alternative ([RRM Northern Entrance Plan + Notes – Exhibit E](#)). This is the same location BLM acknowledged during an on-site meeting with DNCA on 3/28/2022 will be needed for its now funded and being designed \$2.5 Million Living History Center.<sup>6</sup> This constitutes changed circumstances and new information warranting a Supplemental Consistency Determination by BLM and a Concurrence by the CCC to approve **combining the parking for the restored Mocettini Barn and the Northern Entrance Trailhead** as long proposed by DNCA. There is no realistic alternative since BLM also acknowledged that the Warrenella Gate parking lot on the knoll above cannot serve as parking for the Mocettini Barn Living History Center. The visiting public who park in the parking lot for the restored Mocettini Barn will predictably head for the trails just to the east from that parking lot when they get back to their vehicles. The professionally prepared Drawing and Notes in Exhibit E show that at least 67 parking spaces can be provided at the Mocettini Barn Alternative Parking Lot, nearly the number (69) approved by the CCC Concurrence for the Warrenella Gate Parking Area. If the ADA spaces were moved to Cement Plant Road adjacent to the Mocettini Barn you could get 69 spaces. BLM's current 4/13/2022 Modified Site Plan for Warrenella Gate reduces the number of parking spaces to 42.

**That new BLM acknowledgement itself negates the never-substantiated concerns BLM expressed at times regarding the DNCA-proposed Mocettini Barn Parking Lot Alternative.** Furthermore, those never substantiated concerns were refuted by DNCA as part of the Public Hearing process on Coastal Commission Concurrence. DNCA provided strong evidentiary references, much of it from experts, demonstrating the viability of the Mocettini Barn Alternative as to possible Steelhead in Agua Puerca, Impacts to Cultural Resources (historic Mocettini Barn), Disturbance of the On-Going Grazing Operations, and Wetland Conditions, *see*, F13c-12-2020 Correspondence at 17-18, 91-92 and 100-106). In a 4/24/2022 email to DNCA's John

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<sup>6</sup> *See*, Barnes Dec'l, ¶ 9.A-C; Eaton Dec'l, ¶ 4; Hannon Dec'l, ¶ 6. Field Manager Blom further stated that the restored barn would require a parking lot closer than the planned Parking Lot at the top of the knoll as shown in the Modified Site Plan. *Id.*, ¶ 9.C; Eaton Dec'l, ¶ 4; Hannon Dec'l, § 6.C. Field Manager Blom pointed out the likely site for this “restored barn” parking lot, which was the very area that the DNCA has long advanced as a preferred site for parking for trail access. *Id.* Barnes, [Eaton](#), [Hannon](#), [McElroy](#)

Barnes and various political representatives and others, BLM's Field Manager reiterated those listed in BLM's Decision Record and added a couple of new ones, specifically highly saturated soils, susceptibility to flooding, and that introducing public access immediately adjacent to the Mocettini cheese barn building would bring the public too close to a public safety hazard. On the other hand, when informed that his Plan drawn for DNCA had been shown to BLM and included in DNCA's Petition for Stay, RRM's Brian Hannegan, ASLA, and Manager of Landscape Architecture, responded by email on 5/16/2022 saying:

When I visited the barn site with BLM group back in 2017, it seemed like a great interpretive opportunity and serve as a trailhead.

Good luck!

Because the issue apparently could use some further explanation despite BLM's Field Manager having pointed out this location as the site for a parking lot for visitors to the restored Mocettini Barn, we have attached as Exhibit F a "Compilation of Concerns and Responses re Mocettini Barn Alternative."

DNCA, FONC, and RBDA jointly requested that the CCC issue a Concurrence including the Mocettini Barn Alternative along with the Warrenella Gate and allow the Executive Director to choose which best qualifies as consistent with the CCMP or bring it back to the Commission if BLM did not agree. . F13c-12-2020 Correspondence at 12. The point is that Commission and the public had the opportunity to consider evidence about the Mocettini Barn Alternative and hence the Commission could act on it more quickly. Neither the Commission nor the public have been presented with the 4/13/2022 Modified Site Plan for Warrenella Gate.

**Expedited Opening to the Public at Northern Entrance – Targeting November 2022.** DNCA, FONC, and RBDA further propose as a compromise that in order to expedite opening C-CD to the public the CCC allow a temporary parking lot in the location of the Mocettini Barn Alternative by analogizing to the temporary event or use exemption of Public Resources Code Section 30610(i) as was allowed to occur in the City of Santa Cruz so that the Kaiser Permanente Arena could be approved, constructed, and opened for the Santa Cruz Warriors in 2012. Such an exemption would make sense because it would be applied in a location where a staging area will be needed and a parking lot will have to be installed in any event for the soon to be restored Mocettini Barn Living History Center, it involves minimal grading of natural land forms unlike the Warrenella Gate Plans, and it is not visible from Highway 1.

Procedurally, under 15 CFR §930.46, since the implementation action for a Northern Entrance has not begun, BLM would submit a **Supplemental Consistency Determination** for the Mocettini Barn Alternative and, as part of that, request the CCC to approve immediate commencement of a "temporary" parking lot at that location (with toilets and picnicking out of the high winds on the knoll). The Supplemental Consistency Determination for that Mocettini Barn parking lot would then proceed through the standard process and receive a Concurrence by the Coastal Commission.

**BLM Refusal to do Baseline Inventory.**

The context: FONC, DNCA, and RBDA, have sought adequate environmental documentation and review since the BLM scoping process in August 2019 (or earlier). BLM Manual 6220 §1.6.A.3 and G.4.a require specifically identifying and inventorying objects and values for which the Monument was designated. The Decision Record identifies the C-CD monitoring program as being described in Appendix C, which provides that: monitoring “requires knowledge of **detailed information on existing conditions** ... [f]or example trend assessment **requires gathering baseline or status information.**” The RMPA includes many provisions which implement this requirement as well as do the broader requirements of NEPA. Similarly, Appendix C governing Monitoring includes the following requirement for thresholds:

A monitoring system **requires** the development and use of indicators and thresholds based on guidelines. **Thresholds are measurable indicators of when a change in management needs to be made.** For example, the specific amount of resource impacts that would be tolerated before a trail would be closed to public use and rehabilitated is a threshold.

BLM's Biological Monitoring Plan does not contain the word “threshold,” “outcome,” or even the word “standard.”

The problems: When we finally obtained a copy of BLM's “still being refined” Biological Monitoring Plan from Coastal Commission staff it was critically defective as we pointed out in a detailed Comment letter to BLM and CCC on 2/25/2022<sup>7</sup>, as follows:

- The lack of a specific commitment to produce a reliable baseline inventory document;
- The "Subject to Availability of Funding" language for most of the Wildlife monitoring; and
- The statement that "formal monitoring protocols for each species discussed in the Proclamation is not recommended or proposed.

We are still awaiting the “shared (BLM and CCC) response” promised by BLM on 3/15/2022.<sup>8</sup> However, on 3/16/2022 the BLM Field Manager was a Panelist at a Public Meeting of the RBDA and made clear that he did not intend to provide a Baseline Inventory as can be seen in the transcribed excerpts below from the Video Archive of that meeting:

(1:16:57) *Mary Flodin:* Sorry, but I don't think you have addressed the whole concern that many people have expressed that we need to have baseline data about the wildlife

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<sup>7</sup> [Comment Letter on BLM's Biological Monitoring Plan](#)

<sup>8</sup> Nor have we had a reply to [separate follow up emails](#) requesting to schedule a phone call with us and Sempervirens sent to BLM's Central California District Manager (4/27/2022) or the Coastal Commission's Deputy Director for Federal Consistency, etc. (4/26/2022).



before the park opens, and I don't think that's possible with a summer '22 opening. I feel like you're just kind of not heard that. Many people have mentioned it this evening. (1:17:18)

(1:17:21) *Ben Blom*: Yeah, I hear what you're saying, that there's this desire in the RBDA that we need to do additional baseline monitoring of specific wildlife species or specific measures. From our perspective. The plan was finalized in June 2021, and we're meeting our obligations that the plan was approved by the Coastal Commission, US Fish and Wildlife Service, National Marine Fisheries Service, all these entities. And we are starting monitoring. But we don't feel like some of these research questions that are being asked, how is trail development going to impact the Grasshopper Sparrow? That's really interesting information that we would love to have, but it's not necessarily a prerequisite before we would open the property to the public. And that's where we, I think, are going to have to agree to disagree tonight about what is required before we can open the property of the public.

Note that RBDA, FONC, and DNCA are seeking a Baseline as to the Objects of the Monument and a scientifically appropriate set of indicator species. Grasshopper sparrows (according to our experts) are an indicator species.

The solution: From the same RBDA Meeting:

(1:24:51) *Frans Lanting*: Hey, Ben, if your own calculations are that this monitoring effort would cost \$500,000 or more, it seems to me like a no brainer for you to have a follow up conversation with Jacob if he has a proposition that comes in at a fraction of the cost. And I've got to believe that whatever you could work out together would be supported by other people, including several people who are present in this meeting right now. And I just want to say one more time that this is a historic opportunity. All the other publicly protected properties on the North Coast have seen major incursions from recreational use over the last couple of decades. Here is a unique case study, and I really would like the BLM to step up to the plate in a way that is commensurate with the opportunity and the responsibility. This isn't just any BLM property. This is Conservation Land status property that has been elevated to National Monument status. And I really think that, as a parallel to the significant investment that is being made in trail development, we need to see something as a parallel to that to invest in the natural resources. And I'm sorry, but I haven't heard anything yet in this conversation this evening that shows that you're willing to make a step forward to meet some of the people here halfway. (1:26:34)

### **Compromise Proposal and Conclusion.**

FONC, RBDA, and DNCA are proposing as a compromise that Cotoni-Coast Dairies be opened to the public via DNCA's Mocettini Barn Alternative targeting November 2022 by means of the "temporary use" exemption (similar to the Kaiser-Permanente Arena in Santa Cruz) and concurrently processing a Supplemental Consistency Determination including the modifications

to the CCC Concurrence to make the Mocettini Barn and Yellow Bank Alternatives the final Implementation Actions in the RMPA. That compromise way forward should be conditioned on:

- (1) BLM providing an expedited schedule for agreements with TPL necessary to proceed with the Yellow Bank South Gate Alternative and implementing that Alternative as the Southern Entrance; and
- (2) BLM adopting, funding, and implementing:
  - a. for RMZ 1 (north of Warrenella) a reasonably effective baseline and thresholds for adaptive management (given that trails are already being constructed and some of this baseline information will be collected after trail construction and public visitation), and
  - b. in RMZ 2, 3, and 4 (south of Warrenella) a more robust version of a baseline and thresholds the extent of which would be agreed upon by CCC and BLM after a facilitated meeting of at least 4 hours duration among BLM, CCC, FONC, RBDA, DNCA, and Sempervirens Fund scientific experts.

The result shall be a Baseline Document agreed upon as adequate for use to compare future monitoring results and determine whether adverse impacts to resources have occurred and base decisions as to whether Phase 2 can proceed and whether any threshold has been exceeded so as to warrant management action to reduce or eliminate those impacts.

Thank you for your consideration of our comments.

Respectfully yours,  
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*Jonathan Wittwer*  
By: Jonathan Wittwer, President

Sincerely,  
Davenport North Coast Association  
*John Barnes*  
John Barnes, Authorized Board Member

Respectfully yours,  
Rural Bonny Doon Association  
*Kendra Turk-Kubo*  
By: Kendra Turk-Kubo, Authorized Board Member



Cc: Karen Mouritsen, BLM State Director  
Chris Heppe, BLM Central California District Manager  
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Christina Fischer, TPL Bay Area and Central Coast Conservation Director  
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Chris Wilmers, Santa Cruz Puma Project, Principal Investigator  
Jess Brown, Santa Cruz County Farm Bureau Executive Director  
Janet McCrary Webb, Big Creek Lumber President and Chief Forester  
Matt De Young, Santa Cruz Mountains Trail Stewards Executive Director  
Debbie Boscoe, Santa Cruz Horsemen's Association Director