

LANCE WENGER  
Regional Solicitor  
ERICA L. ANDERSON  
Attorney-Advisor  
U.S. Department of the Interior  
Office of the Regional Solicitor  
Pacific Southwest Region  
2800 Cottage Way, Room E-1712  
Sacramento, California 95825  
Telephone (916) 978-6131  
Facsimile (916) 978-5694

Attorney for Respondent Bureau of Land Management

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

	)	
	)	IBLA 2021-0313
Friends of the North Coast, Davenport	)	
North Coast Association, and Rural	)	BLM'S ANSWER
Bonny Doon Association,	)	
	)	
Appellants,	)	
	)	
vs.	)	
	)	
Bureau of Land Management	)	
	)	
Respondent	)	

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**ANSWER**

Pursuant to 43 C.F.R. § 4.414(a), Bureau of Land Management (BLM) submits its Answer in this appeal to two implementation decisions related to recreational access approved in the Cotoni-Coast Dairies Resource Management Plan Amendment.

## **I. Background**

As detailed in the Decision Record (DR),<sup>1</sup> in 2014, BLM agreed to accept donation of the 5,843 acres Cotoni-Coast Dairies (C-CD) unit with deed restrictions, including: (1) prioritizing public recreational access, open space, and grazing; (2) prohibiting timber operations; and (3) prohibiting motorized off-road vehicles. Presidential Proclamation No. 9563 added the property to the California Coastal National Monument and instructed that the land “become available for public access upon completion of a management plan.”<sup>2</sup>

Prior to adoption of the Cotoni-Coast Dairies Resource Management Plan Amendment for the California Coastal National Monument (RMPA), the 2005 Resource Management Plan (RMP) was the operative management plan for the C-CD unit. The RMP provides management direction for offshore rocks and islands, but not onshore units like C-CD. BLM also operated under an Interim Management Plan, finalized in 2014 upon taking ownership of the property. To comply with the Proclamation to make the land available for public access as well as establish land use decisions, management actions and allowable uses for the onshore unit, BLM began preparing the RMPA and environmental assessment (EA) to analyze the environmental effects of various alternatives.

The draft RMPA/EA analyzed three alternatives, including a no action alternative (Alternatives A, B, and C). The following is a summary of the alternatives’ public access and parking site terms. Under the no action alternative (Alternative A), public access would be limited to day-use hiking from two public parking areas approved in the 2014 Interim

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<sup>1</sup> Unique ID# 2081 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), Decision Record for C-CD RMPA (public), pages 3-4.

<sup>2</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 1, page 1.

Management Plan. BLM would continue to lead or authorize guided tours on the property, as appropriate.<sup>3</sup> Alternative B included three public parking areas (Warrenella Road Gate, Warrenella Road Top, and Marina Ranch Gate).<sup>4</sup> Alternative C identified four public parking areas by adding the Swanton Road Gate location to the other three parking areas being considered in Alternative B.<sup>5</sup>

After public scoping and review of comments on the Draft RMPA/EA, BLM published the Proposed RMPA/EA on September 25, 2020.<sup>6</sup> In addition to analyzing Alternatives A, B, and C, the Proposed RMPA/EA analyzed a “preferred alternative” identified as Alternative D. The preferred alternative consists of elements from Alternatives A, B, and C and was crafted based on options already analyzed to meet the purpose and need for the Proposed RMPA.<sup>7</sup> Under Alternative D, day use facilities/parking areas would be the same as those proposed under Alternative B, with three-day use/parking areas (two year-round parking areas, one seasonal parking area), and pedestrian/bicycle connections to San Vicente Redwoods and the North Coast Rail Trail. Trail-based recreation opportunities would consist of trail concepts (with modifications) considered under Alternatives B and C. Like Alternatives A and B, the property would be managed for day-use only.<sup>8</sup>

More specifically, Alternative D establishes four Recreation Management Zones

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<sup>3</sup> Unique ID# 2081 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), Decision Record for C-CD RMPA (public), page 27.

<sup>4</sup> *Id.* at 27-28.

<sup>5</sup> *Id.* at 28.

<sup>6</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters).

<sup>7</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 2, page 7.

<sup>8</sup> *Id.*

(RMZs).<sup>9</sup> RMZ 1 is the furthest north, with RMZ 2 south of RMZ 1, RMZ 3 south of RMZ 2, and RMZ 4 south of RMZ 3. Based on public comments on the Draft RMPA/EA, the stacked loop trails that are considered under Alternative D would span smaller portions of RMZ 1 and RMZ 3 than the other action alternatives. For example, Alternative D eliminates trail segments that traversed steeper terrain where emergency services would be difficult to provide and recreational use would also impact a wider variety of wildlife habitats.<sup>10</sup>

Alternative D includes a total of 26.6 miles of trails to be developed in two phases in RMZ 1 and RMZ 3, with Phase 1 including 17.5 miles of trail, and another 9.1 miles in Phase 2 subject to management outcomes.<sup>11</sup> Under Phase 1, BLM would pursue development of two permanent parking areas/day use sites, with one located in RMZ1 (Warrenella Road Gate) and one in RMZ 3 (Marina Ranch Gate) to disperse visitor use and reduce potential for concentration of impacts at a singular parking area and/or trailhead. Phase 2 includes one additional seasonal parking/day use area in RMZ1 (Warrenella Road Top).<sup>12</sup>

Development of two of the three parking areas described above (Marina Ranch Gate and Warrenella Road Top) would require modified access easements from the neighboring private landowner, the Trust for Public Lands (TPL). Towards this end, on June 3, 2020, BLM entered into a Memorandum of Understanding (MOU) with the TPL and the Land Trust of Santa Cruz County (LTSC), whereby TPL would grant BLM public easements along two existing roads that

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<sup>9</sup> See Unique ID# 2050 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Appendix A, RMPA Appendix A Figure 05D\_AltD\_Trails).

<sup>10</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 1, page 13.

<sup>11</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 2, page 37.

<sup>12</sup> *Id.*, Ch. 2, page 31.

BLM and other authorized motorists use currently under an administrative easement, one for the Marina Ranch Gate access point and the other for the Warrenella Road Gate access point.<sup>13</sup> BLM and TPL then developed draft easement language that went through multiple rounds of internal review.<sup>14</sup> Negotiations regarding the Marina Ranch Gate access point easement are ongoing.<sup>15</sup>

The publication of the Proposed RMPA/EA initiated a 30-day public protest period.<sup>16</sup> BLM received 24 protests, including several that requested changes to the layout and location of day use/parking areas, such as a proposal to relocate the Warrenella Road Gate access point to Mocettini cheese barn as well as one to relocate the Marina Ranch Gate access point to Yellow Bank South (also referred to as the Yellow Bank Creek proposal), a site on lands managed by TPL adjacent to BLM-managed property. As to the Warrenella Road Gate access point, the BLM protest resolution report found that the Mocettini cheese barn proposal would not provide sufficient parking without substantial impacts and noted that design and implementation opportunities would address community concerns related to visual impacts of the proposed Warrenella Road Gate access point. As to the Yellow Bank South proposal, BLM noted that it does not have authority to make decisions regarding private lands.

Based upon the EA and a Finding of No Significant Impact, BLM signed the DR

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<sup>13</sup> Unique ID# 6060 (Sheet F. External Communications, Organizations and Individuals, Trust for Public Land, FINAL SIGNED ROADS MOU SH 5\_15\_20).

<sup>14</sup> Unique ID# 6062 (Sheet F. External Communications, Organizations and Individuals, Trust for Public Land, Marina Ranch Grant of Easement and Maintenance Agreement\_BLM\_9\_16\_2020) & 6066 (Sheet F. External Communications, Organizations and Individuals, Trust for Public Land, Warrenella Road Grant of Easement and Maintenance Agreement BLM\_9\_16-2020).

<sup>15</sup> See, e.g., Unique ID #6061 (Sheet F. External Communications, Organizations and Individuals, Trust for Public Land, Mail - Blom, Benjamin Z - Outlook 4.23.2021).

<sup>16</sup> Unique ID# 2081 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), Decision Record for C-CD RMPA (public), pages 6-7).

selecting Alternative D on June 23, 2021. As the DR explains, Alternative A was not selected because it did not meet the purpose and need for the RMPA as it did not provide sufficient public access to meet public demand for recreation opportunities.<sup>17</sup> Although Alternative B included the same three public parking areas as the selected Alternative D (Warrenella Road Gate, Warrenella Road Top, and Marina Ranch Gate), it was not selected based on public comments expressing concerns that the alternative failed to provide sufficient trail miles to meet public demand for recreation opportunities. Alternative C was not selected after residents and neighbors voiced opposition to increased traffic and visual impacts related to the additional parking area, as well as public safety concerns related to the Swanton Road Gate access point.<sup>18</sup>

The DR notes that the proposed Marina Ranch Gate access point requires approval from TPL for improvements to a 0.10-mile section of road that traverses their privately-owned agricultural parcel and that the access point was included in the Proposed RMPA/EA because TPL had committed to working with BLM on these improvements in the June 3, 2020 MOU.<sup>19</sup> The DR also discloses that in December 2020, “BLM learned that TPL was reconsidering their support for this road improvement project” but that “discussions are ongoing” and “[t]herefore, the BLM has kept the Proposed Marina Ranch Gate access point in the RMPA should TPL authorize this road improvement project at a later date.”<sup>20</sup>

In a letter dated June 16, 2021, TPL informed BLM that it could not “accommodate a plan that facilitates the upper parking location” but that it “remains a willing partner in finding a

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<sup>17</sup> *Id.* at 27-28.

<sup>18</sup> *Id.* at 28.

<sup>19</sup> *Id.* at 7.

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

path forward that will address these issues and provide for a southern access point.”<sup>21</sup> BLM received its copy of the Notice of Appeal (NOA) on July 23, 2021, and the Statement of Reasons (SOR) on August 5, 2021. The appeal is specific to MA-REC-23 and MA-REC-24.

## **II. Argument**

Because Appellants disagree with the agency’s decision to provide parking in three locations, Appellants allege the agency violated the Federal Land Policy and Management Act of 1976 (FLPMA) FLPMA and National Environmental Policy Act of 1969 (NEPA) in approving implementation decisions MA-REC-23 and MA-REC-24. However, as indicated below, Appellants have failed to meet their burden as to either.

### **A. Adoption of MA-REC-24 Does Not Violate FLPMA**

Appellants argue that because MA-REC-24 is “infeasible” and “inconsistent with the RMPA” its adoption violates FLPMA.<sup>22</sup> But Appellants’ arguments are neither factually nor legally supported.

The record before the Board does not show that Marina Ranch Road parking, MA-REC-24, is infeasible. Although TPL’s June 16, 2021 letter indicates that TPL might not issue the public easement as originally agreed to in the June 3, 2020 MOU,<sup>23</sup> BLM continues negotiations with TPL and other interested parties regarding southern access.<sup>24</sup> The development of the original MOU and subsequent development of draft easement language to implement that MOU

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<sup>21</sup> Unique ID #6065 (Sheet F. External Communications, Organizations and Individuals, Trust for Public Land, TPL Response to BLM's hybrid approach 6.16.2021).

<sup>22</sup> SOR at 21-22.

<sup>23</sup> Unique ID #6065 (Sheet F. External Communications, Organizations and Individuals, Trust for Public Land, TPL Response to BLM's hybrid approach 6.16.2021).

<sup>24</sup> *See, e.g.*, Unique ID #6061 (Sheet F. External Communications, Organizations and Individuals, Trust for Public Land, Mail - Blom, Benjamin Z - Outlook 4.23.2021).

demonstrate the feasibility of the Marina Ranch Road parking lot notwithstanding TPL's consideration of the Yellow Bank South alternative access proposal on their privately owned lands.<sup>25</sup> BLM's interpretation of TPL's June 16, 2021 letter, as described in the DR, is not proven false or unreasonable by Appellants' different interpretation.<sup>26</sup>

Appellants' argument about consistency with the Proposed RMPA is somewhat unclear, but it appears Appellants contend that because they believe the challenged implementation decision, MA-REC-24, is infeasible and therefore must be reversed by the Board, the resulting lack of a southern entrance would render the RMPA's management objectives unobtainable.<sup>27</sup> Appellants are not, however, challenging the RMPA's management objectives in this appeal as the Board is without jurisdiction to review decisions to approve or amend resource management plans.<sup>28,29</sup>

## **B. BLM's Environmental Analysis Supporting the Adoption of MA-REC-23 and MA-REC-24 Complies with NEPA**

### **1. The RMPA/EA Considered an Appropriate Range of Alternatives**

Appellants argue that BLM failed to consider an adequate range of alternatives because it did not fully consider the Yellow Bank South Gate and Mocettini Barn northern access alternatives.<sup>30</sup> These alternatives, according to Appellants, are "reasonable alternatives" that

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<sup>25</sup> See Unique IDs# 6060 (Sheet F. External Communications, Organizations and Individuals, Trust for Public Land, FINAL SIGNED ROADS MOU SH 5\_15\_20) & 6062 (Sheet F. External Communications, Organizations and Individuals, Trust for Public Land, Marina Ranch Grant of Easement and Maintenance Agreement\_BLM\_9\_16\_2020).

<sup>26</sup> Unique ID# 2081 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), Decision Record for C-CD RMPA (public), page 7.

<sup>27</sup> SOR at 21-22.

<sup>28</sup> See 23 C.F.R. § 1610.5-2(b); *see also* Randy L. Witham, 187 IBLA 298, 301 (2016).

<sup>29</sup> SOR at 22 (citing *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 69 (2004)).

<sup>30</sup> SOR at 24-27.



BLM was required to consider in detail.

But “NEPA does not require BLM to explicitly consider every possible alternative to a proposed action.”<sup>31</sup> Instead, NEPA requires that an EA include a brief discussion of alternatives selected based on BLM’s stated purpose and need for the proposed action.<sup>32</sup> “A difference of opinion as to the proper alternative does not establish error in BLM’s choice of alternatives.”<sup>33</sup>

Here, BLM reviewed Appellants’ comments concerning the Yellow Bank South Gate and the Mocettini Barn alternatives and explained in the Proposed RMPA/EA and DR why the alternatives were considered but not analyzed in detail.<sup>34</sup> First, neither alternative was presented to BLM during public scoping or during the public comment period on BLM’s Draft RMPA/EA. Second, as explained in the Decision Record, BLM determined that the Yellow Bank South Gate alternative was outside the scope of the RMPA because the proposed access point is on private land and BLM is without authority to make decisions on private land. Third, BLM explained that the Mocettini Barn Alternative would not provide sufficient parking without negative impacts to livestock operations, a historic site, and riparian habitat.<sup>35</sup> Although Appellants prefer the Yellow Bank South Gate and Mocettini Barn alternatives, such preference is insufficient to

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<sup>31</sup> *S. Utah Wilderness All.*, 182 IBLA 377, 392 (2012) (quoting *Wilderness Society v. Wisely*, 524 F. Supp. 2d 1285, 1309 (D. Colo. 2007)).

<sup>32</sup> *Wildlands Def.*, 192 IBLA 383, 399 (citations omitted).

<sup>33</sup> *S. Utah Wilderness All.*, 182 IBLA 377, 390 (2012); *see also Southern Utah Wilderness Alliance*, 152 IBLA 216, 224 (2000) (“The fact that a party may favor an alternative other than that adopted by BLM does not render the action taken by BLM erroneous.”).

<sup>34</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 2, pages 42-43; Unique ID# 2021 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), RMPA\_Appendix D\_final), pages 6-7.

<sup>35</sup> Unique ID# 2021 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), RMPA\_Appendix D\_final), pages 6-7.

establish a NEPA violation.<sup>36</sup> Because BLM explained why it eliminated these alternatives based on the purpose and need of the proposed RMPA, Appellants have failed to show that BLM did not consider an appropriate range of alternatives.

## **2. Supplementation of the EA Is Not Required**

Appellants argue that BLM's EA must be supplemented because new information exists as to (1) the feasibility of the Marina Ranch Gate parking site and access roads; and (2) the Warrenella Road Gate parking area.<sup>37</sup>

An agency must prepare a supplemental NEPA document “if a major Federal action remains to occur, and: (i) The agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”<sup>38, 39</sup> The decision not to prepare a supplemental environmental impact statement is controlled by the arbitrary and capricious standard.<sup>40</sup>

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<sup>36</sup> *Wildlands Def.*, 192 IBLA 383, 400 (citations omitted); *S. Utah Wilderness All.*, 182 IBLA 377, 390 (2012); *see also Southern Utah Wilderness Alliance*, 152 IBLA 216, 224 (2000) (“The fact that a party may favor an alternative other than that adopted by BLM does not render the action taken by BLM erroneous.”).

<sup>37</sup> SOR at 22-24.

<sup>38</sup> 43 C.F.R. § 1502.9(c)(1); *see also 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).

<sup>39</sup> The Council on Environmental Quality issued new NEPA-implementing regulations in 2020. *See* 85 Fed. Reg. 43,304 (July 16, 2020). Because the administrative action challenged in this appeal were subject to the previous regulations, *see* 40 C.F.R. § 1506.13, all citations herein are to the version of the regulations in effect at the time the relevant decisions were made, 40 C.F.R. Part 1500 (2019).

<sup>40</sup> *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 376 (“An agency’s decision not to supplement an EIS will be upheld if it was reasonable.”); *see also Stop H-3 Ass’n v. Dole*, 740 F.2d 1442, 1463 (9th Cir. 1984) (“An agency’s decision not to supplement an EIS will be upheld if it was reasonable.”).

As to the feasibility of the Marina Ranch Gate site, the agency has not made any changes to the Marina Ranch Gate parking site (MA-REC-24) requiring supplementation. The agency has not determined that the site is infeasible nor has it selected an alternative site.<sup>41</sup> Appellants contend that supplementation is required because, due to the infeasibility of the Marina Ranch Gate access point, “BLM has effectively adopted an implementation scheme concentrated on the town of Davenport, the impacts of which were not addressed in the EA.”<sup>42</sup> But as explained above, the agency has not yet approved any change to MA-REC-24 and thus no supplementation is required.

With respect to the new information about the Warrenella Road Gate parking area, Appellants point to two developments: (1) the U.S. Fish and Wildlife Service’s (USFWS) December 2020 announcement that the monarch butterfly is a candidate for listing; and (2) alleged additional fill and grading issues. BLM, however, considered Appellants’ supplemental comments regarding the monarch butterfly and determined that supplementation was not necessary because: (1) candidate species receive no statutory protection under the Endangered Species Act; (2) the proposed Warrenella Road Gate parking area is not located near any documented overwintering groves; (3) removal of approximately two eucalyptus trees would constitute less than 5% of the trees in the grove; and (4) any indirect impacts to monarch butterflies would be avoided through implementation of project design features (PDFs).<sup>43</sup>

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<sup>41</sup> See *supra* II.A.

<sup>42</sup> SOR at 22.

<sup>43</sup> Unique IDs# 6047 (Sheet F. External Communications, Organizations and Individuals, FONC, 6.17.21 Email to State Director – Blom, Benjamin Z Outlook) and 6050 (Sheet F. External Communications, Organizations and Individuals, FONC, Update to Address Supplemental Comments 2.0 6.17.21).

Appellants have failed to show the unreasonableness of BLM's determination that no supplementation was required.

As to Alternative D's new configuration of the Warrenella Road Gate parking area, the Proposed RMPA/EA explains that BLM made slight design improvements to address issues identified in public comments on the range of alternatives analyzed in the draft RMPA.<sup>44</sup> The combination of the two parking areas, as approved in MA-REC-23, allows for more vehicle spaces and avoids direct impacts to Warrenella Road than the previous Warrenella Road Gate proposal that was analyzed in the Draft RMP for both alternatives B and C.<sup>45</sup> Appellants argue that the approved Warrenella Gate Road parking lot requires supplementation because the changes implicate grading and drainage for the area, including the covering of a swale.<sup>46</sup> But BLM has found no evidence that the "swale" constitutes a wetland, as alleged, and the Proposed RMPA/EA provides for mitigation of impacts to water resources:

The total impervious area created in the establishment of parking areas, trail creation and CXT type restroom structures located at the parking areas would not place any substantial demands on groundwater. The proposed parking areas would include storm water drainage systems.

. . . Implementation of the PDF's identified in Appendix D would minimize and/or avoid water quality impacts to the ephemeral drainages and intermittent to perennial streams.

All storm water drainage as a result of the project would be managed on site and would not exceed the capacity of any storm water drainage system.<sup>47</sup>

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<sup>44</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 4, page 66.

<sup>45</sup> *Id.*

<sup>46</sup> SOR at 13, 24.

<sup>47</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 4, pages 45-46.

Moreover, the Proposed RMPA/EA acknowledges the potential issue of effects to water resources by stating that BLM would be required to comply with the National Pollutant Discharge Elimination System (NPDES) Permit and submit Permit Registration Documents to the State Water Resources Control Board (SWRCB) prior to the start of construction of the parking areas.<sup>48</sup> Appellants also argue that the new design is “a significant change,” but the new design is the same size (~1.62 ac.) as the previous Warrenella Road Gate proposal that was analyzed in the Draft RMPA for both action alternatives B and C (~1.61 ac.).<sup>49</sup> This analysis indicates that BLM has considered MA-REC-23’s impacts to water resources and that there is no new information or circumstance relevant to environmental concerns requiring supplementation.

### **3. The FONSI Is Supported by the EA and No EIS Is Required**

Appellants argue that BLM needed to prepare an environmental impact statement (EIS) because “substantial questions” are raised regarding impacts to (1) visual resources, (2) biological resources, (3) wildfire risks, and (4) safety related to road grading.<sup>50</sup>

An EIS must be prepared if, after drafting an EA, “there are substantial questions about whether a project *may* cause significant degradation of the human environmental.”<sup>51</sup> An agency’s decision not to prepare an EIS is reviewed under the arbitrary and capricious standard.<sup>52</sup> The Board “will uphold a decision to proceed with a proposed action pursuant to an EA when the record demonstrates BLM took a ‘hard look’ at potential environmental impacts

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<sup>48</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 4, page 46.

<sup>49</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 4, page 66.

<sup>50</sup> SOR at 27-30.

<sup>51</sup> *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005).

<sup>52</sup> *Id.*

and made a convincing case no significant impact will result or that appropriate mitigation measures will reduce the impact to an insignificant level.”<sup>53</sup> Here, BLM did just that.

With respect to visual resources, the EA considers the approved parking sites’ impacts on visual resources and explains that although the sites and construction of the parking areas will adversely impact scenic quality, proposed mitigation measures would allow BLM management of the access points to “be consistent with a VRM Class III objective with implementation of PDF’s.”<sup>54</sup> Appellants’ argument that a substantial question is raised about visual resources is based on their own evidence and a difference of opinion as to what constitutes “significant.”<sup>55</sup> That there are impacts does not mean that such impacts are “significant” and the record here demonstrates that BLM considered the issue and determined that the parking lots would not significantly impact visual resources.

As to mountain lions, Appellants argue that “BLM fails in the EA to eliminate the substantial questions that the proposed parking areas on the marine terraces may have significant impacts to mountain lions.”<sup>56</sup> But this is not the standard. Instead, in the context of a challenge to an EA, it is an appellant’s burden to “demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance, or otherwise failed to comply with section 102(2)(C) of NEPA.”<sup>57</sup> Here, the EA discusses potential impacts to

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<sup>53</sup> *Eureka Cty., Nevada*, 193 IBLA 193, 203 (2018). *See also Ocean Advocs. v. U.S. Army Corps of Engineers*, 402 F.3d 846, 864 (9th Cir. 2005) (noting that an EA must “put forth a ‘convincing statement of reasons’ that explain why the project will impact the environment no more than insignificantly.”).

<sup>54</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 4, page 57.

<sup>55</sup> SOR at 27-9.

<sup>56</sup> SOR at 29.

<sup>57</sup> *Eureka Cty., Nevada*, 193 IBLA 193, 202-203 (2018).

mountain lions, including how mountain lions fear humans and the requisite buffer from human activity to site nurseries.<sup>58</sup> Based on the protective measures incorporated into Alternative D and the utilization of PDFs,<sup>59</sup> BLM determined that the impacts to fish and wildlife, including mountain lions, would be less than significant.<sup>60</sup> Appellants argue that the agency's determination is not supported because other experts opine that the parking areas will have significant impacts and the EA fails to address the impacts of fencing access roads to the parking areas.<sup>61</sup> But pointing to the opinions of other experts does not raise substantial questions when the agency has relied on its own expert material, as identified in Appendix H to Proposed RMPA/EA.<sup>62</sup> Additionally, the SOR does not explain how fences would serve as a physical barrier to mountain lions, which can either jump over or crawl under livestock and vehicle barrier fencing.

As to wildfire risks, Appellants contend that the Proposed RMPA/EA fails to address increased fire risks posed by additional visitors.<sup>63</sup> But the Proposed RMPA/EA does

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<sup>58</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 3, pages 14-15 & Ch. 4, pages 17-21.

<sup>59</sup> For biological resources, PDFs include conducting species-specific surveys, species avoidance, and habitat protection measures to minimize impacts of management actions on wildlife, wetlands, and special status species. *See* Unique ID# 2021 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), RMPA\_Appendix D\_final), pages 2-3.

<sup>60</sup> Unique ID# 2092 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), RMPA\_FONSI\_082620\_signed) at page 2; Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 4, page 19-21.

<sup>61</sup> SOR at 29.

<sup>62</sup> Unique ID# 2088 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), RMPA\_Appendix H\_proposed); *see also Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 378 (1989) (“When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts even if, as an original matter, a court might find contrary views more persuasive.”).

<sup>63</sup> SOR at 14, 29-30.

acknowledge wildfire risks and the impacts to wildfire risks associated with the selection of Alternative D, including that an increased number of visitors has a commensurate effect on the risk of wildfires.<sup>64</sup> Based on this analysis, the Proposed RMPA/EA includes protective measures intended to reduce wildfire risks, including a year-round prohibition on campfires.<sup>65</sup> Additionally, the DR includes goals and objectives related to wildfire risks and approves numerous vegetation management actions directly related to reducing the risk of wildfire.<sup>66</sup> Appellants have not shown how BLM's consideration of wildfire risks is deficient or that the agency failed to consider a substantial environmental question of material significance.

As to Appellants' argument about grading steepness standards,<sup>67</sup> the Warrenella Road Top parking is part of phase 2 not phase 1.<sup>68</sup> BLM anticipates that some Warrenella road improvements would be necessary to ensure the road meets public safety standards prior to the phase 2 implementation of the Warrenella Road Top parking area.<sup>69</sup> Such improvements would be subject to further environmental analysis, coordination with partners and neighbors, and

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<sup>64</sup> Unique ID# 2081 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 4, 75-76.

<sup>65</sup> Unique ID# 2081 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), Decision Record for C-CD RMPA (public), pages 10-11 & 17.

<sup>66</sup> Unique ID# 2019 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 4, pages 9, 44, 48.

<sup>67</sup> SOR at 30.

<sup>68</sup> Unique ID# 2081 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), Decision Record for C-CD RMPA (public), page 20.

<sup>69</sup> Unique ID# 2081 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), Decision Record for C-CD RMPA (public), page 21 (MA-TTM-3 includes "mak[ing] capital improvements necessary to support increased vehicle traffic and meet public safety standards; Unique ID# 2019 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 4, pages 69.



consistency review by the California Coastal Commission.<sup>70</sup> The Proposed RMPA/EA notes that public use of the access road to the Warrenella Road Top parking lot would be minimized due to it being a seasonal weekend only day use parking lot.<sup>71</sup> Also, because BLM MS 9113 is an internal policy not relevant to whether BLM has satisfied its NEPA obligations, Appellants' reference to it does not raise a substantial question.

### **III. Conclusion**

Based on the foregoing, Appellants have not met their burden of demonstrating BLM error. Accordingly, BLM requests that the Board affirm its MA-REC-23 and MA-REC-24 decisions.

Dated this 20th day of December 2021.

Respectfully submitted,

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Erica L. Anderson  
Attorney-Advisor

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<sup>70</sup> Unique ID# 2081 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), Decision Record for C-CD RMPA (public), pages 5 (distinguishing between land use plan level and implementation decisions and indicating that land use plan decisions “guide future management actions and subsequent site-specific implementation decisions) & 32 (noting that phase 2 activities subject to California Coastal Commission consistency review).

<sup>71</sup> Unique ID# 2019 (Sheet B. NEPA Docs, Proposed RMPA-EA (public), Cotoni-Coast Dairies Proposed RMPA-EA\_chapters), Ch. 4, pages 37. *See also* Unique ID# 2021 (Sheet B. NEPA Docs, APPROVED RMPA - DR (public), RMPA\_Appendix D\_final), page 4 (PDFs for transportation management activities).

**CERTIFICATE OF SERVICE**

RE: Friends of the North Coast, et al. v. Bureau of Land Management, IBLA 2021-0313.

I, the undersigned, declare that:

I am a citizen of the United States, over the age of eighteen. On December 20, 2021, I served the

**BLM'S ANSWER**

by placing a true copy via email addressed as follows:

[ibla@oha.doi.gov](mailto:ibla@oha.doi.gov)

and by placing a true copy via email addressed as follows:

[michael@lozeaudrury.com](mailto:michael@lozeaudrury.com)

I certify under penalty of perjury that the foregoing is true and correct. Executed on the 20th day of December 2021, at San Diego, California.

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Erica L. Anderson  
Attorney-Advisor