

Friends of the North Coast Update

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Cotoni-Coast Dairies Resource Management Plan Amendment (RMPA)

Friends of the North Coast (FONC) decided to get involved in BLM's RMPA in February of 2020. More than a year later on June 23, 2021 BLM issued its Decision approving its Preferred Alternative with a few revisions. The deadline to appeal the RMPA's Implementation Actions (e.g., parking lot locations, e-bikes, pesticides near organic farms) to the Interior Board of Land Appeals (IBLA) is July 23, 2021. The deadline to file a court challenge on other issues (e.g., hunting, NEPA noncompliance including failure to collect baseline information) is six years.

The purpose of this Update is to report on where things stand on FONC's most important issues and what our options are at this point. Of the 24 formal Protests filed, only FONC and DNCA were found by BLM to have raised "protestable" issues. RBDA should have qualified as well since it adopted FONC's Protest by reference. Sempervirens' Protest also looks like it should have qualified.

A. IMPLEMENTATION ACTIONS CHALLENGEABLE BY APPEAL TO IBLA

Implementation Action MA-REC-24: Establish a Day Use Site (parking) at Marina Ranch Road [2nd Terrace]. Elimination of the 2nd Terrace Parking Compound (42-car, 4-equestrian trailer parking lot plus 3 covered picnic shelters and a restroom building and its accompanying 0.5 mile access road bisecting agricultural land and harming an ephemeral stream at Marina Ranch Gate has been a major focus of FONC. An alternative access on the 1st Terrace just south of Yellow Bank Creek Canyon-top has been proposed by FONC.

Trust for Public Land (TPL) owns the agricultural land over which BLM needs an easement for its proposed access road to the Parking Compound on the 2nd Terrace. On June 16, 2021 TPL culminated its 6-month (or longer) negotiation with BLM with the attached letter declining to convey the easement sought by BLM and offering instead to provide TPL land on the 1st Terrace in the vicinity of FONC's proposed alternative. See attached "TPL Response to BLM's hybrid approach." On June 23, 2021 BLM issued its Decision on the RMPA in which BLM continued to include the Marina Ranch Gate 2nd Terrace Parking Compound and Access Road should TPL authorize this road improvement project bisecting the TPL agricultural land at a later date. Regarding relocation of the southern entrance to the 1st Terrace site offered by TPL, BLM's Decision states that BLM does not have the authority to make decisions regarding private lands and therefore, a decision to relocate the access point to this location is outside the scope of the RMPA.

On July 1, 2021 a 7 Organization Joint Proposal was sent to BLM by TPL, Sempervirens, Santa Cruz Puma Project, FONC, RBDA, Big Creek Lumber, and the Santa Cruz County Farm Bureau. See attached "Joint Proposal Cotoni-Coast Dairies southern entrance." In the Joint Proposal:

- (1) TPL formally proposes to make an Offer to Dedicate Land to BLM so that the 1st Terrace Access Point would be within the scope of the RMPA;

- (2) FONC notes that if it files an appeal to the IBLA and, for example, invokes the ADR process, the solution contained in in the Joint Proposal could occur within the scope of the current RMPA; and
- (3) Santa Cruz County Farm Bureau points out that
 - a. the access easement sought by BLM bisecting that agricultural land would effectively render the southern half of that land unusable for agriculture (approximately 15 acres or more). This would not comply with the recorded restriction requiring that “the land currently in agricultural row crop production will be managed in such a way that continued agricultural use is feasible to the maximum extent possible.” Instead it would qualify as public recreational uses being “at the expense of agriculture,” a violation of Coastal Development Permit 3-11-035; and
 - b. the Farm Bureau does not support development on farmland, but recognizes that that the Agricultural Conservation Easement allows “voluntary conveyance to a governmental agency for public access purposes,” it is willing to find a southern entrance utilizing TPL’s agricultural land, access along the Highway 1 frontage to a parking lot at the northern end of that agricultural land impacting ~2-3 acres to be acceptable, as long as the Farm Bureau is given notice of the specific design in time to be able to request agriculture-protective modifications.

The Joint Proposal requests that within 30 days BLM meet with the signatories to the Joint Proposal to resolve the core concerns identified therein – either through the adoption of the proposed solution or acceptable alternative approaches that would successfully address these issues. The Joint Proposal further states that “[i]f desired, these discussions could perhaps be facilitated by Senator Laird or Assemblymember Stone to assist in ensuring timely and productive efforts to secure an agreement and speed its implementation.”

Since the deadline for appealing the Marina Ranch Gate Parking Compound Implementation Action will expire prior to the end of the 30 day period and since an appeal could benefit the favorable resolution of this issue, FONC has decided to file an appeal to the IBLA.

Implementation Action MA-REC-23: Establish a Day Use Site (parking) at Warrenella Road Gate [and] During Phase 2, establish a second Day Use Site (parking) at Warrenella Road Top for weekend use from May to October each year.

FONC has worked closely with Davenport North Coast Association (DNCA) in its efforts to adjust the location of the Warrenella Road Gate Parking Area and to eliminate the Warrenella Road Top Parking Area. The Warrenella Road Top Parking Area has been delayed to Phase 2 by BLM and the Coastal Commission has required a separate Federal Consistency Determination for it.

As to the Warrenella Road Gate Parking Area, DNCA has sought, and FONC has supported, moving the access and parking about 150 feet further north of BLM’s site along Cement Plant Road. Such a move would avoid two significant environmental impacts and save BLM money;

- (1) BLM's Parking Area spans over an existing drainage way where the current slopes are between 25-33%. To make this work in the field there would be substantial earth relocation that would appear to require a retaining structure and would disrupt the natural drainage way. The drainage way would require grading by filling an area at least 25 feet deep and 100 feet across; and
- (2) there is a woodland stand of eucalyptus trees along Cement Plant Road specifically at the side of (and encompassing the entrance to) the Proposed Warrenella Gate Parking Lot. Monarchs have been observed in this precise location, numerous in population at times.

DNCA's alternative does not involve either of these problems.

Implementation Action MA-REC-20: Allow for use of low-speed electric bicycles (Class I and Class II, operated in the pedal assist mode) on trails designated as open to bicycling.

FONC has worked closely with Sempervirens regarding the e-bikes issue. The Deed Restrictions required by the Coastal Commission in its 2012 CDP (and accepted by BLM in the 2014 conveyance to it) and the Presidential Proclamation both prohibit motorized off-road vehicles. Furthermore, the adjacent San Vicente Redwoods Preserve prohibits e-bikes and has trails that will interconnect with BLM trails.

BLM authorizes e-bikes on its bicycle trails "in line with secretarial order 3376 *Increasing Recreational Opportunities through the use of Electric Bikes.*" FONC's attorney submitted a Protest as to e-bikes and substantial legal authority to the effect that a Secretarial Order cannot trump deed restrictions or the Presidential Proclamation.

In an Exhibit to FONC's Comment Letter, Dr. Jacob Pollock explains how allowing mountain bike and e-bike uses within the Monument will exacerbate the habitat impacts discussed above. Pollock Comments, p. 5. "Because of the relative speeds of mountain bikes and hikers, mountain bikes can have up to 4 times the effect on wildlife and loss of wildlife habitat in the buffer areas."

BLM's Decision offers only that "BLM stands committed to working with partners throughout implementation to address concerns, including measures to prohibit e-bike use on specific trails where impacts to private lands or resources are observed or foreseeable as a result of e-bike use."

BLM's Alternative B (not chosen but still included in the RMPA) would authorize the BLM Field Manager to permit only individuals requiring accommodation to use e-bikes on any trail designated for biking.

Sempervirens Fund timely filed an official Protest in which it stated that "Sempervirens Fund protests the use of e-bikes on C-CD." The "Requested Remedy" it sought was:

"Prohibit all classes of e-bikes from being used on C-CD, with particular consideration given to the Molino Bank Loop trail to avoid conflicting use issues with the neighboring San Vicente Redwoods trails."

Yet the BLM Decision “dismissed” Sempervirens Protest as “comments only” and not raising “protestable issues.” This does not appear to be a correct decision. Sempervirens is considering its options.

Implementation Action MA-REC-8: Adopt the C-CD Weed Management Plan and Pesticide Use Proposal (PUP) detailed in Appendix F. FONC worked with CCOF on its Comment Letter seeking to protect adjacent organic farms. This Weed Management Plan allows for broadcast spraying of pesticides from trucks and backpacks. The EA does not adequately address how the use of pesticides will not adversely affect the adjacent organic farms.

The Weed Management Plan specifies the use of Standard Operating Procedures (SOPs) for pesticide application near organic agricultural fields. The SOP is specifically as follows:

Establish a buffer between treatment areas and private, organic farms based on guidance, per 7 CFR 205.202, with a minimum buffer of 50 feet for broadcast treatment applications.

This wrongfully places the burden on the organic agriculture farmer and is contrary to the Pesticide Label for Dicamba.

7 CFR § 205.202 establishes “land requirements” which must be met by any farm parcel from which harvested crops are intended to be represented as “organic.” These requirements include:

(c)... distinct, defined boundaries and buffer zones to prevent the unintended contact with a prohibited substance applied to adjoining land that is not under organic management.

It is difficult to believe that this regulation is intended to apply to the situation where a subsequent non-agricultural governmental agency application is proposed. [Need to confirm this with CCOF]

Additionally because a minimum of a 50 foot buffer by the farmer is required by the RMPA, this measure does not eliminate risks to organic farms. The label for Dicamba, for example, requires well more than a 50 foot buffer and prohibits application when the wind is blowing toward sensitive crops:

Buffer Requirement The applicator must always maintain a 110 foot downwind buffer (when applying up to 22 fluid ounces of this FeXapan / MSTR Amend /11 T05 T18 11 product per acre) or a 220 foot downwind buffer (when applying greater than 22 up to 44 fluid ounces of this product per acre) between the last treated row and the nearest downwind field edge (in the direction the wind is blowing).

*** Sensitive Crops DO NOT APPLY this product when the wind is blowing toward adjacent nondicamba tolerant sensitive crops.

In its Comment Letter, CCOF requests that BLM maintain and refer to a current map of certified organic operations adjacent to monument boundaries. BLM could base this map upon state organic registration data and use the map as a reference when it considers spraying synthetic herbicides to manage invasive

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

CCOF is not requesting FONC to appeal the above issues.

B. NON-IMPLEMENTATION ACTIONS WHICH APPARENTLY CAN BE CHALLENGED ONLY BY LITIGATION

Hunting. The Decision Record clarifies that archery hunting (not hunting by firearm) in RMZ 2 would be implemented as part of the Phase 2 recreational program at C-CD. The delay of hunting to Phase 2 was required by the Coastal Commission which has not yet found hunting to be consistent with the Coastal Act so a separate Federal Consistency Determination will be required whenever BLM decides to proceed with Phase 2. Implementation of Phase 2 is “dependent on effective recreation management under Phase 1.”

In response to the many objections to hunting, the RMPA has been clarified to limit permitted archery hunts to not exceed 5 weekends per year with 2-4 hunters per weekend. No more than one (of the five) permitted hunt would be for native species (deer) per year, with the majority of permitted hunts focused on non-native species (e.g. pig and turkey).

FONC continues to oppose hunting because it is inconsistent with:

- (1) The Presidential Proclamation because the deer hunt allowed by the Proposed RMPA will promote killing of Black-tailed mule deer (which are Objects of the Monument) rather than protecting them;
- (2) Zone RMZ2's designated management as a core habitat area for fish and wildlife and the prohibition of entry and off-trail use by other members of the public; and
- (3) Secretarial Order 3308's direction to manage the Monument as an integral part of the larger landscape in collaboration with neighbors because it does not extend the existing ban on hunting in San Vicente Redwoods.

Additionally, there needs to be an unequivocal statement in the RMPA that the prohibition of “public camping” under Alternative D (Section 4.11.6) includes weekend hunters and that hunting will be “day-use only” (AU-REC-5) and camping will not be exempt from that requirement or allowed as part of any weekend hunt on a case-by-case basis or as “education” notwithstanding the statements in:

- (1) Table 2.19-1 that “Camping” is “Not allowed with exemptions authorized on a case-by-case basis;”
- (2) Section 4.4 that “camping is proposed in very limited scenarios under Alternative D;” and
- (3) Section 4.6.6 [in the context of discussing camping] that “Alternative D focuses on providing opportunities to organizations and groups that focus on cultural and natural resource research, **education**, and furthering traditional cultural practices.”

If hunting is pursued by BLM in Phase 2, and the Coastal Commission finds it consistent with the Coastal Act, FONC will have to determine whether to challenge it in court.

Failure to Collect Baseline Information and Other NEPA Violations. FONC has conferred with Coastal Commission Staff and provided them as well as BLM Staff with a 25-page document entitled "Proposal for Baseline Collection, Impact Identification, Mitigation, Monitoring, and Standards/Thresholds which may not be Exceeded." It incorporated BLM's language in Appendices C and D + the FONSI to a large extent, while organizing and consolidating the relevant aspects into one document. BLM acknowledges that:

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

However BLM has not provided a standard set of core data elements or assessment methodologies for collection of the baseline. The first seven pages of FONC's document does that.

Both the Coastal Commission Staff and BLM Field Manager Ben Blom responded, the latter stating that he shared it with the BLM team which is going to begin working with the Coastal Commission on this. He stated further that there may be some components of what FONC sent that could be incorporated into this effort.

The Decision Record states that BLM's RMPA will be implemented through ongoing inventory and monitoring programs. Actions implemented under the plan will allow the environmental baseline to be updated to reflect current conditions. ***Nevertheless, there again is no commitment to an initial collection of baseline information*** (which was required prior to the RMPA and certainly prior to development (*e.g.*, parking lots and trails) and opening to the public. FONC's attorney Mike Lozeau has built a strong case in FONC's Comment Letters and formal Protest as to why this violates NEPA, as well as why an EIS is required.

Peer Review of Tardy BLM Traffic Study. BLM very tardily prepared a Traffic Study. FONC contracted for a Peer Review of that Traffic Study and worked with DNCA to develop a Scope of Work for the Peer Review and got it filed very quickly. The fact that it was apparently ignored by BLM could be another basis for a NEPA court action.

Conferring with Caltrans. In October of 2020 FONC was able to arrange a one hour WebEx conference with Caltrans about the BLM's Southgate Access Point and FONC's Yellow Bank Alternative. Aspects of the Peer Review were also discussed.