

***Land Use Planning Protest Resolution  
Report***

for the

**Cotoni-Coast Dairies California  
Coastal National Monument  
Proposed Resource Management  
Plan Amendment and  
Environmental Assessment**

June 17, 2021

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## *Acronyms*

<b>BAER</b>	Burn Area Emergency Response
<b>BAR</b>	Burned Area Rehabilitation
<b>BLM</b>	Bureau of Land Management
<b>C-CD</b>	Cotoni-Coast Dairies
<b>CCNM RMP</b>	California Coastal National Monument Resource Management Plan
<b>CEQ</b>	Council on Environmental Quality
<b>CFR</b>	Code of Federal Regulations
<b>DNCA</b>	Davenport North Coast Association
<b>EA</b>	Environmental Assessment
<b>ES</b>	Emergency Stabilization
<b>FLPMA</b>	Federal Land Policy and Management Act of 1976
<b>FONC</b>	Friends of North Coast
<b>IMP</b>	Interim Management Plan
<b>NEPA</b>	National Environmental Policy Act
<b>NCLS</b>	National Landscape Conservation System
<b>OMPLA</b>	Omnibus Public Land Management Act
<b>PDF</b>	project design feature
<b>RMPA</b>	Resource Management Plan Amendment
<b>TPL</b>	Trust for Public Lands
<b>U.S.C.</b>	United States Code

## ***Introduction***

The Bureau of Land Management (BLM) Central Coast Field Office released the Cotoni-Coast Dairies Proposed Resource Management Plan Amendment and Environmental Assessment (RMPA/EA) for the California Coastal National Monument for public protest on September 25, 2020. The BLM received 24 protest letters during the 30-day protest period.

The planning regulations at 43 Code of Federal Regulations 1610.5-2 outline the requirements for filing a valid protest. All protest letters were evaluated to determine which protest letters were complete and timely, and which persons held standing to protest. Of the 24 letters received, 21 met these criteria. Nineteen letters had comments only, and three letters were dismissed from consideration due to lack of standing. While these letters are dismissed as they contain comments only or lacked standing, the concerns expressed in these letters are acknowledged. Two of the letters had valid protest issues. The responses to the valid protest issues raised were documented in this protest resolution report. The decision for each protest, regarding its validity and its approval or denial, was recorded in writing along with the reasons for the decision. The BLM-California Office appreciates the input through this and other processes and will engage in robust outreach and engagement with all stakeholders, including those who sent letters or protests through this process, through implementation of the plan and managing the Cotoni-Coast Dairies Coastal National Monument.

After careful review, of the report by the Secretary and her staff, the Secretary concluded that the BLM California State Director followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Secretary issued a Protest Resolution Report to protesting parties, a copy of which is posted on the BLM's website; no changes to the Proposed RMPA were necessary. The decision was sent to the protesting party by certified mail, return receipt requested. This decision is the final decision of the Department of the Interior.

The report is divided into sections each with a topic heading, excerpts from individual protest letters, a summary statement of the issues or concerns raised by the protesting parties, and the response to the protest issue summary statement.

## ***Protesting Party Index***

<b>Letter ID<sup>1</sup></b>	<b>Protester</b>	<b>Organization</b>	<b>Determination</b>
PP-CA-Cotoni-21-001	Teri Yazdi		<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-003	Pacia Dewald		<i>Dismissed – No Standing</i>
PP-CA-Cotoni-21-004	Freda Hofland		<i>Dismissed – No Standing</i>
PP-CA-Cotoni-21-007	Debbie Boscoe	Santa Cruz County Horseman's Association	<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-008	Sam Butler		<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-009	Heather Woods		<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-010	Brian McElroy		<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-011	Courtney Scruggs		<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-012	Jennifer Parks		<i>Dismissed - Comments</i>

<sup>1</sup> Letter IDs are not consecutive due to the Comment Analysis and Response Application skipping letter numbers, some numbers being attachments to other submissions, and duplicate submissions. All submissions received by the BLM are accounted for in the table.

<b>Letter ID<sup>1</sup></b>	<b>Protester</b>	<b>Organization</b>	<b>Determination</b>
PP-CA-Cotoni-21-016*	Ryan Coonerty	Board of Supervisors, County of Santa Cruz	<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-017	Noel Bock	Davenport North Coast Association	<i>Denied</i>
PP-CA-Cotoni-21-018	Michael Lozeu	Friends of the North Coast	<i>Denied</i>
PP-CA-Cotoni-21-020	David Rubin	Rural Bonny Doon Association	<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-021	Sarah Wolfsen		<i>Dismissed – No Standing</i>
PP-CA-Cotoni-21-023	Catherine Bayer	Friends of the North Coast	<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-024	Alison Edwards		<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-025	Colin Hannon		<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-026	Walter Moore	Peninsula Open Space Trust	<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-027	Michael Schallop		<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-029	David Kossack	San Andreas Land Conservancy	<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-030	Noel Bock	Davenport North Coast Association	<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-031	Pamela Koch	Redwood Meadow Ranch Homeowners Association	<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-032	Sara Barth	Sempervirens Fund	<i>Dismissed - Comments</i>
PP-CA-Cotoni-21-033**	Jennifer Parks		<i>Dismissed - Comments</i>

\* Letter PP-CA-Cotoni-21-013 resubmitted as letter PP-CA-Cotoni-21-016.

\*\* Duplicate of letter PP-CA-Cotoni-21-012

## ***NEPA - Range of Alternatives***

### ***Davenport North Coast Association***

#### ***Noel Bock***

**Issue Excerpt Text:** The State Director failed to comply with NEPA requirements because the Draft RMPA and Draft EA released to the public on February 14, 2020 contained three alternatives and failed to identify a single proposed action or preferred alternative. As The DNCA pointed out in its Comment Letter: “The lack of specificity in the RMP/EA is greatly compounded by the vagueness of the actual proposed project, as it may be one of three alternatives, or a to-be-determined combination of alternatives.” Without identifying a single preferred alternative among those presented in the Draft RMPA/EA, BLM then went forward with this Proposed RMPA/EA proposing an Alternative D that was a hybrid and had not been revealed to the public during the draft review period. Thus, BLM’s final Proposed Action (Preferred Alternative D) was made known to the public for the first time on September 25, 2020 without an opportunity for public comment.

### ***Friends of North Coast***

#### ***Michael Lozeau***

**Issue Excerpt Text:** When originally released to the public, the EA/RMPA did not include a proposed action. Instead, BLM indicated that it would prepare a preferred alternative and proposed action after the close of the comment period on the three exemplar alternatives set forth in the draft EA/RMPA. Draft EA, pdf p. 17. NEPA mandates the identification of a proposed action. NEPA is entirely focused on the presence of a proposed action: all agencies of the Federal Government shall -- (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on-- (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. 42 U.S.C. § 4332(C) (emphasis added). EAs, in particular, “[s]hall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives.” 40 C.F.R. § 1508.9(b) (emphasis added).

### ***Friends of North Coast***

#### ***Michael Lozeau***

**Issue Excerpt Text:** The EA is inadequate as a matter of law because it fails to analyze a no project alternative.

### ***Friends of North Coast***

#### ***Michael Lozeau***

**Issue Excerpt Text:** The State Director failed to comply with NEPA because the Draft RMPA and Draft EA released to the public on February 14, 2020 failed to identify BLM’s proposed action or preferred alternative and then failed to recirculate the final EA in order for the public to review and comment on BLM’s Proposed Action (Preferred Alternative D) made known to the public for the first time on September 25, 2020.

### ***Friends of North Coast***

#### ***Michael Lozeau***

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

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

***Friends of North Coast***  
***Michael Lozeau***

**Issue Excerpt Text:** In the EA, BLM claims that Alternative A is a no action alternative. This is not the case. Under NEPA, no action is determined by the status quo. See, e.g. *Akiak Native Cmty. v. U.S. Postal Serv.*, 213 F.3d 1140, 1148 (9th Cir. 2000). Alternative A would change the status quo in a number of obvious ways. First, this alternative describes constructing 1.74 miles of new trails, which amounts to 36,744 square feet of land disturbance for these trails. The BLM dramatically tips the scales against “no action” by placing almost the entire length of those new trails within 25 to 50 meters of the creeks and coho critical habitat. EA, § 4.5.3. Alternative A would construct two Day Use Site and parking facilities. One would be adjacent to Swanton Road at the Molino Creek crossing and the other would be adjacent to Bonny Doon Road at Liddell Creek. *Id.*, Chapter 2, p. 30-31. In addition, Alternative A would open these new trails and portions of the existing road system to day hikers. Currently, as is dictated by the Proclamation, public access must await the completion of the RMPA. No hikers currently are lawfully accessing these nonexistent trails. The EA acknowledges that Alternative A will increase the number of hikers as well as dogs using the Monument over the current status quo. See *id.*, § 4.4.2 (“Given that recreational use of C-CD has been minimal to date, all three alternatives would increase visitor use of the site through the development and use of trails”); *Id.*, § 4.4.3 (“The current influence of dogs on wildlife at C-CD is minimal since no one has been authorized to bring dogs to C-CD during the periods of BLM and previous management”). Given these affirmative changes to the status quo, Alternative A is not a no action alternative and does not reflect the current ongoing management of the Monument. By failing to include a true no-action alternative, BLM has denied the public the ability to properly weigh the true impacts of each affirmative alternative presented by BLM.

**Summary:**

The Bureau of Land Management (BLM) failed to comply with the National Environmental Policy Act (NEPA) by not identifying a preferred and/or proposed alternative in the Cotoni-Coast Dairies Draft Resource Management Plan Amendment (RMPA) (BLM 2020a) and Environmental Assessment (EA) and proposed the Preferred Alternative (Alternative D) in the Proposed RMPA/EA (BLM 2020b) without an opportunity for public comment. Additionally, the BLM failed to comply with NEPA by not analyzing a true No Action Alternative in the EA.

**Response:**

NEPA Section 102(2)(E) requires that EAs include a brief discussion of alternatives as required by 40 Code of Federal Regulations (CFR) § 1508.9(b).<sup>2</sup> NEPA regulations only require identification of the agency’s preferred alternative or alternatives, if one or more exists, but does not require the

<sup>2</sup> References to the CEQ regulations throughout this protest resolution report and within the underlying environmental impact statement refer to the regulations in effect prior to September 14, 2020. The revised CEQ regulations effective September 14, 2020 are not referred to in this protest resolution report or in the underlying EA because the NEPA process associated with the proposed action began prior to this date (see 40 CFR § 1506.13).



selection of a preferred alternative in a draft NEPA document (40 CFR 1502.14(e); 43 CFR 46.425(a); Question 4b. Forty Most Asked Questions Concerning the Council on Environmental Quality's [CEQ] National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (Mar. 23, 1981)). The BLM regulations at 43 CFR 1610.5-5 allow the agency to evaluate the environmental effects of an RMP amendment through an EA and reference selection of a preferred alternative only when the agency prepares an EIS. Specifically, 43 CFR 1610.4-7 states, "The Field Manager... will evaluate the alternatives, estimate their effects according to the planning criteria, and identify a preferred alternative that best meets Director and State Director guidance. Nonetheless, the decision to select a preferred alternative remains the exclusive responsibility of the BLM. The resulting draft resource management plan and draft environmental impact statement shall be forwarded to the State Director for approval, publication, and filing with the Environmental Protection Agency." Similarly, the BLM Planning Handbook references the identification of a preferred alternative only for planning decisions supported by an EIS (BLM Handbook H-1601-1, pp. 17, 22,) and not planning decisions supported by an EA (BLM Handbook H-1601-1, pp. 27). In fact, the BLM Planning Handbook describes how it is optional for the BLM to issue a draft RMP amendment when supporting that action with an EA/FONSI (BLM Handbook H-1601-1, pp. 28).

Chapter 2 of the Cotoni-Coast Dairies Draft RMPA/EA described the three alternatives that were evaluated, which included the No Action Alternative (Alternative A) and two action alternatives (Alternatives B and C). The BLM did not identify a preferred alternative in the draft EA, but rather developed a preferred alternative (Alternative D) based, in part, on public review and feedback on the draft EA. This process is described in Chapter 2 of the Proposed RMPA/EA (Chapter 2, p. 1). The BLM's preferred alternative consists of a combination of potential planning decisions contained within the reasonable range of alternatives analyzed in the Draft RMPA/EA, including elements of Alternatives A, B, and C (Chapter 2.4, p. 7).

As discussed in Section 8.3.4.2 of the BLM NEPA Handbook, the regulations at 40 CFR § 1508.9(b) make no specific mention of the no action alternative with respect to EAs; CEQ has interpreted the regulations to generally require some consideration of a no action alternative in the EA. At a minimum, the EA must include documentation of the current and future state of the environment in the absence of a proposed action (BLM Handbook H-1790-1, p. 79). For land use plans and amendments, the No Action Alternative generally represents the continuation of management direction under existing land use plans, which in this case is represented by the 2005 California Coastal National Monument Resource Management Plan and the Cotoni-Coast Dairies Interim Management Plan (IMP), approved by the BLM on June 4, 2014, following the transfer of the Cotoni-Coast Dairies property into public ownership.

Because the Cotoni-Coast Dairies lands had not been privately owned and not specifically considered in the Cotoni-Coast Dairies Proposed RMPA/EA, the IMP established interim management direction for the property as described in Section 1.2.1, *Relevant Plans and Amendments*, of the Proposed RMPA/EA (Chapter 1, p. 2). In particular, the IMP provided an interim strategy to protect natural, cultural, and social resource attributes while allowing limited access and other land uses, including decisions to authorize two access points and two day-use hiking trails on the property. The property proposed for hiking trails consists of existing fire roads that are already being used for hiking. The IMP does not quantify the length of the proposed hiking trails under Alternative 1 (preferred alternative) but rather describes the trails and associated parking areas/trailheads and includes them on a figure (IMP, Figure 2, pp. 10–11) that is identical to the proposed hiking trails shown in the Proposed RMPA/EA for Alternative A (No Action) (Appendix A, Figure 6A). The IMP also analyzed impacts from the trails on recreation resources in the *Environmental Consequences* section for Alternative 1 (IMP, p. 31). The BLM delayed implementation of the IMP until a more comprehensive land use plan could be completed; however, the decisions made in the IMP are properly incorporated into Alternative A of the RMPA because they represent a continuation of current management under

the Proposed RMPA/EA and the IMP. The BLM quantified the length of new trails for each alternative analyzed in the Proposed RMPA/EA to assist the public in comparing the action alternatives to the No Action Alternative (Chapter 2, p. 40). Because constructing two day-use sites and parking facilities is a continuation of decisions to be made under Alternative A (No Action) of the IMP, it does not qualify as a new action and is therefore properly analyzed as the No Action Alternative under NEPA.

The BLM is not required by NEPA to identify a preferred alternative at the time of publishing the draft and the BLM properly included management direction from the IMP into Alternative A (No Action). Accordingly, this protest is denied.

## ***NEPA – Fire Management Analysis***

### ***Friends of North Coast***

#### ***Michael Lozeau***

**Issue Excerpt Text:** The CZU Lightning Complex Fire is a significant new circumstance relevant to some of the most important potential impacts of the RMPA, including water quality and habitat impacts for listed red-legged frogs and salmonids. According to Section 1.3.1 of the RMPA, the burned areas include 1,052 acres in the Molino, Agua Puerca, and San Vicente watersheds. The CZU Lightning Complex Fire “tore through” “roughly 1,000 acres on the Cotoni-Coast Dairies.” (BLM 9/25/2020 Press Release). See Various Maps attached hereto as Exhibit H. As a result, the baseline conditions for an extensive portion of the monument are now entirely altered. Much of that area is now much more sensitive to disturbance and potential debris flows. The BLM must reset the baseline identified in the EA in order to assess the potential direct and cumulative impacts associated with the proposed RMPA and these now deteriorated conditions in the monument.

### ***Friends of North Coast***

#### ***Michael Lozeau***

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

### ***Friends of North Coast***

#### ***Michael Lozeau***

**Issue Excerpt Text:** mere authorization of use of a wider range of tools is inadequate Wildfire Prevention Planning without identification of those tools and a commitment to use those tools pursuant to specific prevention plans. At section 2.5.1 of the Proposed RMPA Goal #4 states:

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

**Summary:**

The BLM failed to propose adequate fire management planning as part of the alternatives in the Proposed RMPA/EA (BLM 2020b). The BLM failed to adequately analyze the impacts from the recent wildfires within the planning area. The BLM needs to reset the NEPA baseline data due to the significant changes to the planning area as a result of the recent wildfires.

**Response:**

The effects analysis must demonstrate that the BLM took a “hard look” at the impacts of the action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, *Analyzing Effects*). The CEQ regulations specify that the environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)). A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information (BLM NEPA Handbook, H-1790-1, 6.8.1.2, *Analyzing Effects*). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of public involvement (40 CFR 1500.1(b) and 1502.24). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)). NEPA directs that data and analyses in an environmental impact statement must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Cotoni-Coast Dairies Proposed RMPA/EA.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

As the land use planning decisions under consideration by the BLM in the EA are programmatic in nature, the scope of the analysis was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse. Implementation actions considered in the EA are analyzed at the site-specific level and not subject to the protest resolution process.

It is the BLM’s policy to identify how wildfires will be managed (i.e., full suppression, limited suppression, or where prescribed fire would/would not be allowed) and to include the analysis of these management decisions in the BLM land use plan process (BLM Handbook H-9211-1, pp. 2-1–2-5). Subsequent NEPA analysis may be required at the activity plan level, depending on the nature of the decisions and the level of NEPA analysis conducted in conjunction with the land use plan. While management response decisions are usually covered by NEPA analysis at the land use plan or fire management plan level, implementation plans, such as prescribed fire plans, non-fire fuels treatments, or Burned Area Rehabilitation plans, are done at a project level because they require a more project- and site-specific NEPA analysis.

The Proposed RMPA/EA contains management objectives and actions that include the use of prescribed controlled burns and mechanical treatments to reduce the available fuels that feed wildland

fire, as well as treatment of emergent nonnative plant infestations and long-term grazing that will prevent encroachment of woody vegetation into the wildland-urban interface. Goals, objectives, and management actions for site-specific fuel treatments are described under *Terrestrial Vegetation* (Chapter 2, pp. 8–11).

The BLM accounted for the effects of recent wildfires on resources relative to the Proposed RMPA/EA (Chapter 3, p. 8–11). The BLM specifically analyzed effects from the CZU Lightning Complex Fire on breeding salmonoids, the California red-legged frog, and other special status species in Section 4.5 (Chapter 4, p. 31). The BLM also discussed the effects of the CZU Lightning Complex Fire on the affected environment for fire and fuels (Chapter 3, pp. 8–11) and discussed the potential for impacts on biological resources (Chapter 4, p. 6 and p. 18), special-status species (Chapter 4, p. 31), water resources (Chapter 4, pp. 4–47), and cumulative impacts (Chapter 4, pp. 77–83).

Finally, the Proposed RMPA/EA took into consideration public comments received on the Draft RMPA/EA that identified fire management as a major concern (Chapter 1, p. 12 and Appendix J, 2.5.3 Fire and Fuels, p. 15). Numerous environmental organizations also expressed strong support for the proposed prescribed burning program on Cotoni-Coast Dairies to promote ecological health and reduce the risk of catastrophic wildfire. Therefore, the BLM expanded shaded fuel break projects along Warrenella Road and Bonny Doon Road to mitigate the risks of wildfire and help keep surrounding communities safe under all alternatives for fire management in Section 2.5 (Chapter 2, pp. 8–11).

The BLM properly identified how wildfires will be managed and included an analysis of these management decisions on resources in the Proposed RMPA/EA. Accordingly, this protest is denied.

## ***Grant Deed Requirements***

### ***Friends of North Coast***

#### ***Michael Lozeau***

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

### ***Friends of North Coast***

#### ***Michael Lozeau***

**Issue Excerpt Text:** Alternative D is inconsistent with law and may not be feasible because it includes a management practice asserting that BLM will be able to withdraw water from streams within the Monument for construction and dust abatement despite the fact that the Grant Deed reserves all of the water rights on the site to the Trust for Public Land. The State Director’s approval includes a presumption by BLM that the agency will withdraw water from streams. Although not mentioned in the main body of the RMPA/EA, Appendix D states: Water withdraw from streams (for use in construction and dust abatement, as necessary) will employ necessary screening and reduction of pumping rates to prevent entrainment of aquatic species. Access to streams for purposes of water withdraw will minimize disturbance to streambanks and riparian vegetation. RMPA/EA, App. D, p. 4. There is no discussion of how much water might be needed for these purposes or what impacts those withdrawals might have on the Monument’s aquatic Objects, including listed salmonids and red-legged frogs. In addition, the provision for water withdrawals by BLM violates Grant Deed in which all water rights were reserved to TPL. Grant Deed, p. 2 (“RESERVING unto Grantor any and all water rights owned by Grantor, and the right to all proceeds from the sale of such rights”). Given the uncertainty of BLM’s access to water, the EA

must further assess the potential significant dust and air quality impacts that may result from implementing the RMPA.

**Summary:**

The BLM's proposed alternative (Alternative D) in the Proposed RMPA/EA (BLM 2020b) is inconsistent with the Grant Deed terms as it proposes withdrawing water from streams for use on dust abatement and construction. The Grant Deed terms reserve all water rights on the site to the Trust for Public Land.

**Response:**

The BLM's policy related to water rights is to acquire and perfect Federal reserved water rights necessary to carry out public land management purposes. If a Federal reserved water right is not available, then the BLM will acquire and perfect water rights through state law (BLM Manual Section 7250.1.2.A). The BLM has no specific regulatory authority related to use of water or enforcement of water quality laws.

Section 3.9 of the Proposed RMPA/EA (Chapter 3, p. 32) acknowledges that the Coast Dairies Land Company retained the existing water rights on Cotoni-Coast Dairies. Additionally, the City of Santa Cruz owns the parcel adjacent to Cotoni-Coast Dairies where Liddell Spring is located and procured the water rights surrounding Liddell Spring, Liddell Creek, and associated water rights, including downstream riparian rights in 1913. The City of Santa Cruz maintains bypass flows sufficient for all salmonid life-stages in Liddell Creek to comply with California Department of Fish and Wildlife regulations.

An exhaustive study of existing and potential water uses and restrictions, diversions, and water rights from Liddell Creek, Laguna Creek, and associated springs and tributaries can be found in the Coast Dairies Long-Term Resource Protection and Access Plan on pages III-30 through III-33 (ESA 2004).

Although Appendix D of the Proposed RMPA/EA does contemplate withdrawing water from streams for use in construction and dust abatement (Appendix D, p. 4), it makes no decisions regarding water rights. It is BLM policy to cooperate with other entities, including state, local, and tribal governments, to establish water rights held in the name of other parties to support BLM missions and programs (BLM Water Rights Manual 7250, pp. 1-7). To the extent the BLM needs water or a water right for construction and dust abatement (or any other purpose), it will acquire such rights in accordance with applicable state or federal law.

The Proposed RMPA/EA does not violate existing water rights, nor does it grant, establish, or claim water rights. Accordingly, this protest is denied.

## ***Impact Analysis - Wildlife***

### ***Friends of North Coast***

#### ***Michael Lozeau***

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

***Friends of North Coast******Michael Lozeau***

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

***Friends of North Coast******Michael Lozeau***

**Issue Excerpt Text:** The EA also fails to conduct any surveys of wildlife within the Monument in order to establish a reasonable baseline of which species are present and where, their abundance and densities. Dr. Pollock points out this flaw and its compounding effect of setting up for failure any adaptive management efforts: Initial species-specific monitoring of wildlife species presence, abundance and densities prior to the initiation of human use is necessary both to determine the starting conditions for adaptive management as well as to understand the impacts of trail use (including loss of buffer habitat as explained above) and whether they may be significantly negative. Soulard et al 2017, state that “the effect of recreational trails and trail use on wildlife should not be deemed insignificant or non-existent without first conducting species specific monitoring in the field.” Pollock Comments, p. 3 (FONC April 1, 2020 Comment, Ex. A).

**Summary:**

By not conducting field surveys, the BLM failed to include a reasonable baseline analysis on which to base the impacts on wildlife and vegetation in the Proposed RMPA/EA (BLM 2020b). The BLM failed to comply with NEPA by failing to reassess impacts on wildlife and vegetation caused by the recent wildfires.

**Response:**

The effects analysis must demonstrate that the BLM took a “hard look” at the impacts of the action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, *Analyzing Effects*). The CEQ regulations specify that the environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)). A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information (BLM NEPA Handbook, H-1790-1, 6.8.1.2, *Analyzing Effects*). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of public involvement (40 CFR 1500.1(b) and 1502.24). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)). NEPA directs that data and analyses must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Proposed RMPA/EA.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions. As the land use planning decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground implementation decision or actions, the scope of the

analysis was conducted at a programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Proposed RMPA/EA includes a bibliography (Appendix H) that lists information considered by the BLM in preparation of the Proposed RMPA/EA. The BLM relied on high-quality information, professional knowledge, and the best available data in preparation of the Proposed RMPA/EA. The BLM also gave careful consideration to comments submitted by other government agencies, public organizations, state and tribal entities, and interested individuals during the comment period for the Draft RMPA/EA.

The BLM accounted for the effects of recent wildfires on resources relative to the Proposed RMPA/EA (Chapter 3, pp. 8–11). The BLM specifically analyzed effects from the CZU Lightning Complex Fire on breeding salmonoids, the California red-legged frog, and other special status species in Section 4.5 (Chapter 4, p. 31). The BLM discussed the effects of the CZU Lightning Complex Fire on the affected environment for fire and fuels (Chapter 3, pp. 8–11), and discussed the potential for impacts on biological resources (Chapter 4, p. 6 and p. 18), special-status species (Chapter 4, p. 31), water resources (Chapter 4, pp. 4–47), and cumulative impacts (Chapter 4, pp. 77–83).

Because the Proposed RMPA/EA is a planning level document, species-specific surveys would be conducted at the time of implementation in order to best eliminate or minimize the impact of the management action. For actions implemented consistent with the RMPA, BLM decision-makers will consult with BLM biological resource specialists and select appropriate and applicable project design features (PDFs) described in Appendix D, *Project Design Features*. Utilization of PDFs would benefit native populations and habitats at the local and landscape scales by eliminating or reducing negative impacts stemming from development under implementation decisions. 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 (Appendix D, pp. 2–3). The BLM will select PDFs based upon site-specific conditions, presence of listed species or their critical habitat, technical feasibility, resource availability, and the resources potentially affected.

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts on wildlife and vegetation in the Proposed RMPA/EA. Accordingly, this protest is denied.

## ***National Monument – Consistency with Presidential Proclamation 9563, FLPMA and Omnibus Public Land Management Act***

### ***Friends of North Coast***

#### ***Michael Lozeau***

**Issue Excerpt Text:** The EA continues to omit discussion of sensitive plant species located in the monument. At a minimum, the EA should disclose detailed survey results for the areas in which trails, use areas, and other proposed facilities may be located. Without knowing what is in these areas, BLM cannot be sure of the proposed routes or the relative impacts of the various trail and use area proposals. For example, Dr. Hayes points out that the Point Reyes Horkelia (*Horkelia marinensis*) has a very small population within the Monument “that is threatened by invasive species, changing disturbance regimes, and trampling from proposed trails.” Hayes Comments, p. 3 (FONC April 1, 2020 Comment, Exhibit B). Although the EA acknowledges that the rare Santa Cruz clover has been identified in the monument in the past, it dismisses any need to determine the baseline for this species, simply referring to “surveys in 2017 and 2018” without any reference or description of those survey efforts. EA/RMPA, § 3. Dr. Hayes further notes that limited mention is made in the EA of biotic communities and species specifically identified in Proclamation No. 9563. These include limited mention of woodlands, forests, riparian areas, and wetlands. Hayes

Comments, p. 2. He also explains that, despite their sensitivity to introduced pathogens, vulnerability to invasions and conversion by native and non-native species, all of which could be introduced by users of the Monument, coastal prairies, naïve grasslands, maritime chaparral, coast live oak woodlands, and Monterey pine forest “are inadequately described in the document and the document does not include information about specific fine- scale surveys to locate these habitats along proposed trail routes.” Id., p. 4. Without this information, substantial questions are present that the alternatives may significantly disturb these habitats.

### ***Friends of North Coast***

***Michael Lozeau***

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

#### **Summary:**

The C-CDNM Proposed RMPA/EA does not identify or adequately analyze impacts to individual plant species identified in the proclamation to assure there will be no impacts to the C-CDNM objects and values.

#### **Response:**

The FLPMA, as amended, governs the BLM’s management of public lands. The FLPMA provides that the BLM “shall manage the public lands under principles of multiple use and sustained yield ... except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” 43 U.S.C. 1732(a). Presidential Proclamation No. 9563 designated C-CDNM as part of an expansion to the California Coastal National Monument (CCNM), which was originally designated by Proclamation 7264, and later expanded by Proclamations 9089. The lands within the monument are reserved to provide for the proper care and management of the objects and values through compliance with applicable legal authority, such as the FLPMA and Section 2002 of OPLMA Pub. L. 111-11).

In an RMP, the effects analysis must demonstrate that the BLM took a “hard look” at the impacts of the action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The CEQ regulations specify that the environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)). A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of public involvement (40 CFR 1500.1(b) and 1502.24). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)). NEPA directs that data and analyses in an environmental impact statement must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)).

In order to satisfy the hard look standard described above, the BLM’s analysis is required to rely on the best available science. The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)) and to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24). Similarly, the BLM NEPA Handbook directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed



science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). However, neither the CEQ regulations, nor the BLM NEPA handbook require the agency to undertake new scientific and technical research to inform their analyses (40 CFR 1502.23).

Land use planning-level decisions, like those identified in the C-CNM PRMPA/EA, are typically broad in scope. For this reason, analysis of land use plan actions is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Proclamation 9563 provides the basic framework for management of the C-CDNM including the identifying objects of historic and scientific interest that require protection, including natural, cultural, and biological resources, while directing the BLM to provide public access upon completion of a management plan. The purpose and need for the C-CDNM RMP is consistent with this direction to provide opportunities for public access and recreation within the monument, while ensuring care for the objects and values identified in Presidential Proclamation 9563 (EA, Chapter 3, pages 1-2). Because Proclamation 9563 lists more than a dozen plant species that are commonly associated with specific habitats and mentions general varieties of plants such as “wildflowers”, “sedges”, and “other understory species” to characterize the larger vegetative communities of which they are a part, the BLM purpose and need explains that “these objects include a wide array of habitats and the diversity of wildlife that they support, including forests, shrublands, grasslands, riparian/wetlands, and aquatic systems” (C-CDNM PRMPA/EA, Chapter 1, pp. 1-2). For the C-CDNM PRMPA/EA, the BLM determined that the analysis of impacts would focus on the care and protection of these broader habitats within the C-CDNM to ensure the diversity of species found within those habitats would be similarly cared for and protected. The BLM reasoned that analyzing based on habitat type would be more effective for a land use plan level document than an analysis of impacts to individual plant species, which could be largely redundant for species that exist in the same habitat.

Chapter 3 of the C-CDNM PRMPA/EA provides information about the plant species listed in Proclamation 9563 that occur within each of the “wide array of habitats” identified in the purpose and need. The total acres of (upland) native plant communities, including communities dominated by introduced non-native plant species, are listed in Table 3.2-1 and illustrated in Appendix A (Figure 3 - Vegetation). Tables 3.2.1-1 to 3.2.1-3 include detailed information on plant communities and their components and cross-references this information to vegetation types described in references (ESA 2004, Sawyer et al 2009; Barbour et al. 2007). Riparian area and wetland vegetation types at C-CD are listed in Table 3.3-1, compiled from vegetation types listed in ESA 2001 and 2004 and cross-walked to vegetation types described in Sawyer et al. 2009 and Barbour et al. 2007.

Specifically, the BLM analyzed the potential impacts on riparian areas and wetlands, which typically support California buttercup, brown-headed rush, Madrone, redwood sorrel, elk clover, and other species identified in the proclamation, in Section 4.3.1 (pp. 10–15). The BLM also analyzed the effects of herbicide application on water resources and quality and wetland and riparian areas in the *Weed Management Plan* (Appendix F). Although the RMPA/EA does indicate that public access will have environmental impacts, however the RMPA/EA makes clear that any ground disturbing activity would only be authorized if such activity could be completed in a manner consistent with the care and management of the C-CD resource objects and values to be protected (See e.g., RMPA/EA Section 2.16.1). Under all of the action alternatives the BLM would incorporate Project Design Features (RMPA/EA Appendix D) to minimize adverse impacts on resource objects and values while providing for a level of resource use and development consistent with current laws, regulations, and BLM policies (RMPA/EA Section 2.3). Once species-specific surveys are completed, the BLM will implement species avoidance and habitat protection designed specifically to minimize impacts on special status species, and threatened and endangered species, subject to consultation under Section 7 of the ESA (RMPA/EA Section 2.3). Additionally, the BLM would implement specific restoration

actions to protect and restore spawning and rearing habitat for steelhead and coho salmon, to protect and restore California red-legged frog breeding habitat, and to protect habitat for other sensitive, rare, threatened, and endangered species within the monument (RMPA/EA 2.8.2). The BLM would also and implement a number of restrictions within 100 feet of the ordinary high-water mark of area waterways, specifically designed to protect riparian and wetland habit (RMPA/EA Section 2.6.2, MA-RIP-2). Specifically under the Preferred Alternative, the BLM would also manage RMZ 2 and 4 as core fish and wildlife protection areas and only allow construction of new facilities if they are necessary to support emergency ingress/egress, valid existing rights, ongoing quarry remediation, traditional cultural practices, or scientific research (Section 2.7.2, MA-WLD-6). Finally, Sections 2.2.1 Deed Restrictions, 2.2.2 Presidential Proclamation Management Directives, and 2.2.3 CCNM Goals describe the legal sideboards that guide the BLM's management of the lands to prioritize the protection of the CCNM objects and values. As a result, the agency determined that all action alternatives presented in the C-CDNM PRMPA/EA provide for the protection and restoration of Monument objects and values as required by Proclamation 9563.

In conclusion, the Proposed RMPA/EA adequately identifies objects and values of the national monument and analyzes potential impacts to those objects and values in the range of alternatives in the proposed plan amendment. The plan alternatives – including the proposed plan - provide protection consistent with requirements of FLPMA, OPLMA, and the Antiquities Act. Accordingly, this protest is denied.

## References

- Bureau of Land Management (BLM). 2014. *Interim Management Plan for the Cotoni-Coast Dairies*.
- Bureau of Land Management (BLM). 2020a. *Cotoni-Coast Dairies California Coastal Monument Draft Resource Management Plan Amendment and Environmental Assessment*. Available: [https://eplanning.blm.gov/public\\_projects/lup/120855/20012842/250017635/BLM\\_Cotoni-Coast\\_Dairies\\_Draft\\_RMPA\\_and\\_EA\\_Chapters\\_combined.pdf](https://eplanning.blm.gov/public_projects/lup/120855/20012842/250017635/BLM_Cotoni-Coast_Dairies_Draft_RMPA_and_EA_Chapters_combined.pdf). Accessed: November 2020.
- Bureau of Land Management (BLM). 2020b. *Cotoni-Coast Dairies California Coastal Monument Proposed Resource Management Plan Amendment and Environmental Assessment*. Available: [https://eplanning.blm.gov/public\\_projects/120855/200302280/20026727/250032929/Cotoni-Coast%20Dairies%20Proposed%20RMPA-EA\\_chapters.pdf](https://eplanning.blm.gov/public_projects/120855/200302280/20026727/250032929/Cotoni-Coast%20Dairies%20Proposed%20RMPA-EA_chapters.pdf). Accessed: November 2020.
- Environmental Science Associates (ESA). 2004. *Coast Dairies Long-Term Resource Protection and Access Plan*. Available: [https://eplanning.blm.gov/public\\_projects/lup/120855/175508/213823/Coast\\_Dairies\\_Recommendation\\_TPL\\_2006\\_508.pdf](https://eplanning.blm.gov/public_projects/lup/120855/175508/213823/Coast_Dairies_Recommendation_TPL_2006_508.pdf). Accessed: November 2020.

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