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September 23, 2019

GMP Amendment  
c/o Superintendent Cicely Muldoon  
Point Reyes National Seashore  
1 Bear Valley Road  
Point Reyes Station, CA 94956  
*Via Hand Delivery and Online Portal*

RE: General Management Plan Amendment Draft Environmental Impact Statement

Dear Superintendent Muldoon,

The Environmental Action Committee of West Marin (EAC) greatly appreciates the opportunity to provide comments on the National Park Service (NPS) Point Reyes National Seashore's General Management Plan Amendment (GMPA) Draft Environmental Impact Statement (DEIS).

Since 1971, EAC has worked to protect and sustain the unique lands, waters, and biodiversity of western Marin County, California. EAC's membership represents 1,000 individuals: 86 percent of our membership lives in the San Francisco Bay Area, 58 percent of our members are located in Marin County, with the remaining 10 percent in other counties in California, and 4 percent outside of California. Since 2014, EAC has been actively involved in the public processes concerning proposals for continued ranching within Point Reyes National Seashore (Seashore) and Golden Gate National Recreation Area and has actively participated in collaborative discussions with a variety of stakeholders.

## 1. Introduction – The Preeminent Mission of a National Park is to Conserve Natural Resources

The GMPA, developed through a public planning process, should protect, restore, and preserve park resources using ranch leases that ensure multi-generational, environmentally sustainable ranching that is complementary to the natural resources and visitor experiences in the park.

The DEIS for the GMPA for the Seashore is mandated under the National Environmental Policy Act (NEPA). Many additional laws also govern this process including, but not limited to, 54 U.S.C. § 100101 (a)<sup>1</sup>, the four statutory elements of 54 U.S.C. § 100502, 54 U.S.C. § 100101,<sup>2</sup> and the Seashore’s Enabling Legislation.<sup>3</sup> The GMPA and the DEIS must also align with the Seashore’s purpose statement that is the foundation for understanding what is most important about the park which states, “Established for the public benefit and inspiration, the Point Reyes National Seashore protects a rugged and wild coastal peninsula and surrounding waters, connecting native ecosystems, enduring human history, and recreational, scientific, and educational opportunities.”<sup>4</sup>

Overall, the DEIS achieves several important objectives in attempting to balance the multiple uses and at times conflicting priorities and management strategies of the Seashore’s resources in order to implement practices that mitigate some environmental impacts from the beef and dairy ranching operations located within the proposed Ranchland Zone (or planning area). Unfortunately, NPS appears to have abused its discretion and authority in the DEIS by moving far beyond the originally delegated authority to

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<sup>1</sup> 54 U.S. Code (U.S.C.) § 100101. (a) In General – “to promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

<sup>2</sup> 54 U.S.C. § 100502. *General management plans*. “General management plans for the preservation and use of each System unit, including areas within the national capital area, shall be prepared and revised in a timely manner by the Director. On January 1 of each year, the Secretary shall submit to Congress a list indicating the current status of completion or revision of general management plans for each System unit. General management plans for each System unit shall include — (1) measures for the preservation of the area’s resources; (2) indications of types and general intensities of development (including visitor circulation and transportation patterns, systems, and modes) associated with public enjoyment and use of the area, including general locations, timing of implementation, and anticipated costs; (3) identification of and implementation commitments for visitor carrying capacities for all areas of the System unit; and (4) indications of potential modifications to the external boundaries of the System unit, and the reasons for the modifications”

<sup>3</sup> 16 U.S.C. § 459c. *Point Reyes National Seashore; purposes; authorization for establishment*. “In order to save and preserve, for purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped...”

<sup>4</sup> United States Department of the Interior, National Park Service (NPS), *Point Reyes National Seashore Draft Foundation Document*, (July 2019), 3.

“recognize the role” of established families’ continued beef and dairy ranching to allow new uses in the Ranchland zone based on economic considerations for private businesses through diversification.

Specifically, the DEIS fails to consider the full scope of cumulative impacts to environmental resources (including direct and indirect effects) and connected actions. In addition, in certain instances the DEIS also fails to include all reasonably foreseeable impacts at the time of the DEIS. As discussed below, EAC finds inconsistencies with the proposed purpose of action through the allowance of new agricultural uses and erosion of multi-generational ranching, inconsistencies with regulatory requirements, and failure to consider impacts of diversification on park resources.

Oddly, the DEIS prioritizes the effects on commercial lease holders of foreseeable financial market fluctuations ahead of foreseeable environmental impacts to park resources. This priority is inconsistent with Congressional direction for the Seashore. Resource protection is the highest value for the Seashore as intended by the 16 U.S.C. Sec. 459c (6)(a) where Congress elaborated on this statement by requiring the Department of the Interior to administer its Point Reyes lands “*without impairment of its natural values, in a manner which provides for such recreational, educational, historic preservation, interpretation, and scientific research opportunities as are consistent with, based upon, and supportive of the maximum protection, restoration, and preservation of the natural environment within the area,...*” 16 U.S.C. Section (Sec.) 459c (6)(a) (*emphasis added*).

EAC’s comments below address inconsistencies in the actions proposed in the DEIS with the regulatory requirements as prescribed by NEPA, U.S. Code, supporting case law, and other references.

## **2. Inconsistencies with Direction to Enable Long Term Leases for Beef and Dairy Ranching, Consistent with Applicable Laws and Planning Processes**

NPS exceeded their delegated authority in two areas. First, NPS presents public alternatives that would allow for new agricultural uses outside of beef and dairy ranching. Second, the DEIS erodes multi-generational directives as it allows for a competitive open bidding process to grant leases through the proposed succession process.

### ***2.1. Direction to Issue Long-Term Leases for the Purpose of Cattle and Dairy Ranching***

In 2012, when NPS did not renew the lease for Drakes Bay Oyster Company, in order to fully designate Drakes Estero as Marine Wilderness, then Secretary of the Interior, Ken Salazar, issued a decision memorandum that stated,

...“I direct that the Superintendent work with the operators of the cattle and dairy ranches within the pastoral zone to reaffirm my intention that, consistent with applicable laws and planning processes, recognition of the role of ranching be maintained to pursue extending permits to 20-year terms for the dairy and cattle ranches within the pastoral zone<sup>5</sup>.”

In 2013, NPS Director Jonathan Jarvis in his Delegation of Authority authorized,

“...the issuance of lease/permits for the purpose of grazing cattle and operating beef and dairy ranches, along with associated residential uses by the lessees and their immediate families and their employees, and their employees' immediate families, within the pastoral zone of Point Reyes National Seashore and the northern District of Golden Gate National Recreation Area administered by Point Reyes National Seashore. Under this delegation, you may issue lease/permits with terms of up to twenty years. These long-term lease/permits will provide greater certainty for the ranches operating within the national park's pastoral zone and demonstrate the support of the National Park Service (NPS) and the Department of the Interior for the continued presence of dairy and beef ranching operations<sup>6</sup>.”

The DEIS exceeds NPS' discretionary authority by allowing for new agricultural uses to be developed. When the scoping process began under the 2014 Ranch Management Plan, and again in 2016 and 2017 when NPS initiated the GMPA process, EAC has repeatedly asked the NPS under what authority the NPS is able to consider diversification. EAC is unable to find any authority granted as such to NPS. EAC explores additional concerns with diversification later in this letter.

## ***2.2. Direction to Issue Leases for Purpose of Multi-Generational Ranching***

NPS proposes an accompanying “Succession Policy” document, that is not referenced directly within the DEIS under that title, that would allow for NPS determination whether it is “appropriate to maintain the lease/permit area in agriculture” and then states that “NPS would pursue issuance of a request for proposals (RFP) to identify a new operator. The RFP process would be conducted consistent with NPS policy and regulations, and the review criteria would be identified at that time.”<sup>7</sup>.

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<sup>5</sup> United States Department of Interior, Secretary of Interior, *Memorandum re: Point Reyes National Seashore – Drakes Bay Oyster Company*, (November 2012), 7.

<sup>6</sup> United States Department of the Interior, NPS, *Delegation of Authority for Point Reyes National Seashore Agricultural Leases and Directions to Implement the Secretary's Memorandum of November 29, 2012*, (January 31, 2013).

<sup>7</sup> United States Department of Interior, Point Reyes National Seashore, *Draft Succession Policy for Ranch Operations within the Ranchland Zone for Point Reyes National Seashore and the North District of Golden Gate National Recreation Area* (August 2019).

Recognition of the historic and cultural values of dairy and ranching operations located within the proposed Ranchland Zone (planning area) is highlighted by the 2018 designations of two historic districts -- the 22,237-acre Point Reyes Peninsula Dairy Ranches Historic District and the 14,127-acre Olema Valley Dairy Ranches Historic District -- that encompass more than a century of change and modernization in the industry, including the evolution from original wood frame milking barns to concrete Grade A sanitary barns of the 1940s.<sup>8</sup>

The proposed Succession Policy disregards NPS directives that emphasize the values of multi-generational beef and dairy ranching. As directed by the 2012 Secretary of the Interior's directive, "...recognition of the role of ranching be maintained to pursue extending permits to 20-year terms for the dairy and cattle ranches within the pastoral zone. In addition, the values of multi-generational ranching and farming at Point Reyes should be considered in future planning efforts<sup>9</sup>."

To remain consistent with the delegated authority and the park's purpose, NPS should focus continuation of ranching on cultural and historical significance of multi-generational beef and dairy ranching and should not open ranching operations (and the proposed newly expanded uses discussed below) to operators from the general public. Opening the Seashore to outside operators would have significant impacts on the park's cultural and historic values. The DEIS fails to analyze these impacts, and even fails to provide enough detail about the RFP process to say what the impacts may entail, or when they may occur.

### **3. Inconsistencies with NEPA Requirements**

In preparing an EIS, an agency must satisfy the NEPA requirements to consider all "(a) connected, cumulative, and similar actions; (b) a no-action alternative, other reasonable alternatives, and mitigation measures; and (c) direct, indirect, and cumulative impacts." *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1046 (9th Cir. 2013), (*citing* 40 C.F.R. §1508.25).

The DEIS conducts its environmental analysis entirely by weighing benefits to private commercial operations versus mitigation measures to lessen harm to resources. It does so by analyzing measurements for commercial ranching metrics to meet organic standards and forage production to ensure specific numbers of animal units.

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<sup>8</sup> United States Department of the Interior, Point Reyes National Seashore, Press Release, *National Register of Historic Places*, available at: [https://www.nps.gov/pore/learn/news/newsreleases\\_20181113\\_ranches\\_national\\_register\\_of\\_historic\\_places.htm](https://www.nps.gov/pore/learn/news/newsreleases_20181113_ranches_national_register_of_historic_places.htm) (2018).

<sup>9</sup> United States Department of Interior, Secretary of Interior, *Memorandum re: Point Reyes National Seashore – Drakes Bay Oyster Company*, (November 2012), 7.

While the DEIS does address some environmental impacts through this methodology, the analysis is incomplete. The DEIS fails to adequately meet the legal requirements to analyze connected actions, cumulative impacts, direct and indirect effects, and reasonably foreseeable consequences of decisions being authorized in the plan. We discuss below the specific concerns and required agency considerations that fail to meet NEPA requirements.

#### **4. Failure to Analyze Connected and Cumulative Impacts of Diversification on Environmental Resources**

Looking first at diversification as proposed in Alternatives B, C, and D, the DEIS fails to address several impacts under NEPA from the introduction of diversified agriculture into the Seashore planning area that includes row crops, livestock, farm stays, small-scale processing facilities, and farm stands that would result from new types of commercial agricultural production. In addition, the DEIS does not preclude ranchers who have businesses or property outside of the Seashore from importing those products into the Seashore for retail sales or small-scale processing. These actions could lead to processing facilities and farm-stand sales or tastings for wine and whiskey. In addition, the DEIS is unclear whether small-scale processing also includes animal slaughter.

The proposed changes would allow “*ranchers to react to fluctuations in the economic market*<sup>10</sup>” through a menu of diversification options and lead, foreseeably, to ranchers converging on the highest profit-margin options in the future.

NPS did not evaluate cumulative, direct or indirect impacts, connected actions, or reasonably foreseeable outcomes of diversification. Rather, the DEIS states,

The programmatic analysis in this EIS broadly addresses the general environmental issues, impacts, and benefits to establish overall management direction for the planning area. Implementation of some programmatic direction... would require additional project-level planning and compliance to develop and analyze site-specific proposals and cost estimates. Compliance for these projects would tier from the programmatic analysis in this EIS and be consistent with the general direction provided in this EIS.<sup>11</sup>

Broadly addressing an incomplete list of impacts to park resources by means of a general list of mitigation measures while also providing for wide-ranging interpretations of diversification activities fails to evaluate connected and cumulative actions that require an environmental review at the time of the DEIS.

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<sup>10</sup> United States Department of the Interior, *Draft EIS*, 20.

<sup>11</sup> United States Department of the Interior, *Draft EIS*, 20.

If the actions are reasonably foreseeable at the time of the EIS, then the impacts should be considered at that time.

“It is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now ....” *N. Plains Res. Council*, 668 F.3d at 1078. Rather, “NEPA requires that an EIS engage in reasonable forecasting. Because speculation is implicit in NEPA, [courts] reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as crystal ball inquiry.” *Id.* at 1078-79 (quotation, alterations omitted). Therefore, an agency must consider all “foreseeable” impacts at the time it issues the EIS. *League of Wilderness Defenders v. Forest Service*, 689 F.3d 1060, 1075-76 (9th Cir. 2012). Although “NEPA does not impose a requirement that the [agency] analyze impacts for any particular length of time,” the length of time analyzed must be reasonable given the facts of the case. *Selkirk Conservation All. v. Forsgren*, 336 F.3d 944, 962 (9th Cir. 2003).

If the DEIS cannot consider foreseeable impacts of diversification within the DEIS, all references to diversification should be removed before the Final EIS is filed.

#### ***4.1. Diversification – Individually Reviewed Ranch Operating Agreements***

The DEIS proposes a delayed, disconnected, and piecemeal review of diversification activities through individual Ranch Operating Agreements (ROAs)<sup>12</sup> that are negotiated with individual ranchers. This approach may cause interconnections of watersheds and species considerations to be overlooked as NPS range managers focus on individual ranch zones and fail to analyze cumulative and related environmental impacts within the planning area.

This methodology fails to incorporate the complete scope of impacts to park resources over time, as each ranch is not an island. Actions of one ranch may impact the neighboring ranch’s sensitive resources and also impact areas which may be outside of the planning area, including designated wilderness (Drakes Estero and Abbotts Lagoon) and popular public recreational areas like beaches (Drakes Beach, Kehoe Beach, North Beach, etc.) and trails (Muddy Hollow, Estero Trail, Bull Point, Abbotts Lagoon, etc.). If the Seashore managers undertake individual evaluations of ranching operations on different timelines, scales, and operational impacts, they are unable to fully consider cumulative and connected impacts. Thus, reasonably foreseeable adverse impacts to vegetation, air and water quality, water resources, visitor experience, and soils are not considered.

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<sup>12</sup> United States Department of the Interior, *Draft EIS*, 35.

We have included two reasonably foreseeable examples below:

A) Development of an individual ROA “Ranch 1” for the sake of illustration may include a ranch that plans for restoration activities near riparian corridors to positively mitigate environmental impacts of its cattle and other diversified grazing activities, while also requesting development of row crops and/or conversion of a barn to a processing facility with a farm stand. This ranch would improve water quality with riparian mitigations but increase impacts on scenic resources including the historic character of the dairy or ranch district, and create traffic and parking issues with the new processing and visitor serving facilities. The DEIS provides a framework for NPS to evaluate these requests in the ROA under the Ranchland Zoning (programmatic resource management planning).

However, if “Ranch 2” negotiates a separate ROA at a later time, that ROA may be in alignment with the Ranchland Zone framework and would not trigger further environmental review outside of the programmatic EIS. The decisions made for operation on Ranch 2 under this framework could include continued grazing downstream of the neighboring Ranch 1’s riparian corridor restoration project.

Thus, while an individualized approach to analyze individual ROAs may be appropriate for ranching plans for private property, applying this tiered methodology to public lands may be more complicated as each ROA is interconnected with other resources in the Seashore.

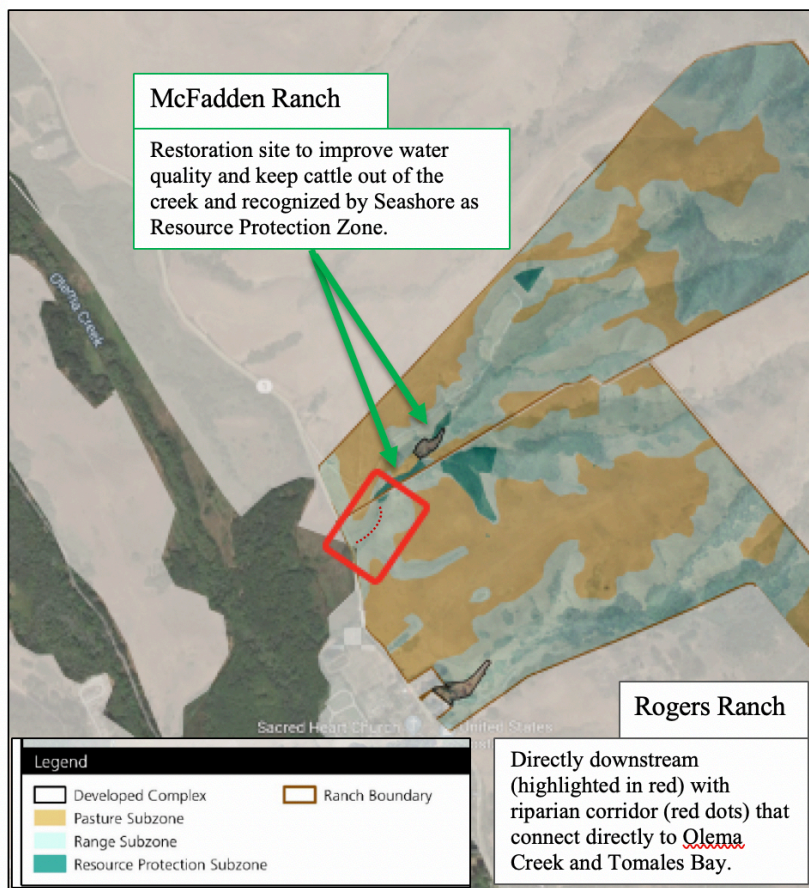


Figure 1: McFadden and Rogers Ranch Zones  
This map was created by merging the NPS DEIS Appendix A – Zoning Maps Figures 24 and 25 (pages 25 and 26) with an overlay of google maps that highlights the location of Olema Creek that is defined as Steelhead Critical Habitat. The DEIS Appendix A, Figure 46: Habitat in the Planning Area identifies this area as Critical Habitat for Watersheds Containing Central California Coho Salmon.



B) Further complicating this, the DEIS does not provide any maps to past, present or planned restoration activities within the planning area, which prevents the public from understanding the restoration work that occurs within the park and how those activities are connected or disconnected from current beef and dairy ranching operations.

A specific application of examples A and B include the McFadden Ranch (Figure 24, p. A-25) that has past and present watershed restoration projects that have taken place over the last two years. The McFadden Ranch watershed restoration project has been mapped as a new Resource Protection Subzone<sup>13</sup> and removed from active grazing in the DEIS. However, directly downstream on the neighboring Rogers Ranch (Figure 25, p. A-26) continues to be mapped as Range Subzone<sup>14</sup> and continues to allow seasonal grazing activities. The mapped creek flows directly into wetlands, Olema Creek, and eventually to §303(d) impaired Tomales Bay. This watershed is also defined as Critical Habitat for Watersheds Containing Central California Coho Salmon.<sup>15</sup> *While this specific example is limited, the DEIS fails to include any maps or references to other past, present, or future restoration planning activities for the public to evaluate eco-system connections for the Seashore.*

This planning approach allows for negative environmental impacts to occur just downstream of a successful restoration project that diminishes much of the upstream rancher's beneficial work to improve water quality. Downstream livestock should be fenced away from the creek to support proactive conservation standards. ROAs must be evaluated against restoration projects and sensitive resources and remove recently restored areas from grazing unless required for prescribed invasive species controls. This should be a practice throughout the Ranchland Zone to promote beneficial uses for freshwater streams, wetlands, and connected hydrology throughout the entire Seashore.

These two examples, A and B, are illustrative of the connected and cumulative impacts that are reasonably foreseeable for diversification actions that will occur under this DEIS framework. However, the DEIS fails to analyze them in any detail, and it is not clear how NPS will analyze disconnected and individual ROAs for commercial operations in project-level programmatic planning through application of cumulative impacts, connected actions and indirect effects.

“An agency may not avoid an obligation to analyze in an EIS environmental consequences that foreseeably arise from an [Resource Management Plan (RMP)] merely by saying that the consequences are unclear or will be analyzed later when an EA is prepared for a site specific program proposed pursuant to an RMP. “[T]he purpose of an [EIS] is to evaluate the possibilities

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<sup>13</sup> United States Department of the Interior, Point Reyes National Seashore, *General Management Plan Amendment Draft Environmental Impact Statement Appendices* (August 2019), A-26.

<sup>14</sup> United States Department of the Interior, *Draft EIS Appendices*, A-27

<sup>15</sup> United States Department of the Interior, *Draft EIS Appendices*, A-47

in light of current and contemplated plans and to produce an informed estimate of the environmental consequences.... Drafting an [EIS] necessarily involves some degree of forecasting.” *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975) (*emphasis added*).”<sup>16</sup>

It is impossible for the public to understand the complexity of NPS’ decision-making process and NPS’ responsibility to properly evaluate the cumulative impacts and connected actions of the ROAs and how the outcomes of mitigation measures on one property may be denigrated on another without updating the DEIS to include mapping and other information, as well as an appropriate evaluation of cumulative environmental impacts of all of these ROAs at this time in the EIS process.

ROAs should be developed for current operations (*not* including newly proposed diversification) and included in the DEIS, so that all connected and cumulative impacts may be properly evaluated in the planning area.

Under NEPA,

“Connected actions” are “closely related and therefore should be discussed in the same impact statement.” Actions are connected if they: “[a]utomatically trigger other actions which may require environmental impact statements” or “[c]annot or will not proceed unless other actions are taken previously or simultaneously,” or “[are interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. §1508.25. “Cumulative actions” are actions which, “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” *Id.* Similar actions are actions which, “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.” *Id.*

Connected actions and indirect effects to park resources must be analyzed at the time of the DEIS. “NEPA requires that an EIS analyze environmental consequences of a proposed plan as soon as it is reasonably possible to do so.” *Native Vill. of Point Hope v. Jewell*, 740 F.3d 489, 497 (9th Cir. 2014).

In summary, a comprehensive analysis of connected and cumulative actions is required at this stage of the DEIS. If NPS is unable to satisfy this requirement, then considerations for diversified operations should be removed before the Final EIS is issued.

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<sup>16</sup> *Pacific Rivers Council v. U.S. Forest Service*, 689 F.3d 1012 (9th Cir. 2012), Daily Journal D.A.R. 8308 12.

#### ***4.2. Impacts of Diversification – Conflicts with Wildlife***

The introduction of sheep, goats, and chickens into a proposed Pastoral Zone and pigs into the Ranch Core Zone will create conflicts with wildlife that are not analyzed in the DEIS. The DEIS refers loosely to potential wildlife conflicts through predation of newly introduced sheep, goats, and chickens in the Ranchland Zone by advising on the use of animal husbandry, structural measures, and repellants and frightening devices to reduce potential for conflict.<sup>17</sup>

The DEIS fails to analyze the potential for increased conflict with Seashore wildlife including coyotes, badgers, bobcats, foxes, and raptors such as hawks and owls.

For example, the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service 2018 Program Data Report for the United States summarized the numbers of killed or euthanized wild animals that included: 303 American Badgers, 2,002 Bobcats, 68,186 Coyotes, 375 Mountain Lions, and 1,784 Gray Foxes in order to protect agricultural livestock or agricultural property from predators.<sup>18</sup>

The USDA National Agricultural Statistics Services published a 2010 report on Sheep and Goat Death Losses that states, “animal predator losses totaled 247,000 head. This represents 39.0 percent losses from all causes.”<sup>19</sup>

The DEIS does not address the foreseeable conflicts with sheep, goats, chickens, and pigs in the Ranchland Zone that could result in high losses for ranchers. This information is available to NPS and potential loss rates and conflicts with predators should be estimated within the DEIS to evaluate if the potential conflict will eventually require NPS actions to manage predators, similar to the current management issue the DEIS is tasked with to evaluate non-predatory tule elk.

In addition, the DEIS fails to analyze impacts of diversification on native wildlife, including fragmentation of habitat, potentially detrimental changes to movement patterns, loss of forage areas, and reductions in available range. Cattle, sheep, goats, chickens, and pigs require different confinement and

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<sup>17</sup> United States Department of the Interior, *Draft EIS Appendices*, D-39

<sup>18</sup> United States Department of Agricultural, *Animal and Plant Health Inspection Service 2018 Program Data Report*, (2018), available at: [https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/sa\\_reports/sa\\_pdrs/PDR-Home-2018](https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/sa_reports/sa_pdrs/PDR-Home-2018). (filtered by killed/euthanized for the entire United States).

<sup>19</sup> United States Department of Agriculture, National Agricultural Statistics Service, Agricultural Statistics Board, (May 2010), available at: <https://downloads.usda.library.cornell.edu/usda-esmis/files/gx41mh844/zg64tp41m/tm70mx84h/SheeGoatPr-05-27-2010.pdf>

management methods that create impacts to resources. A field used to graze cattle is still available to coyotes, bobcats and raptors as territory to hunt gophers and voles; the same is not true of an area used for row crops or raising chickens. Eliminating territory for predators and raptors will have a negative consequence on those populations – populations NPS managers are tasked with protecting.

Finally, as mentioned in comments above concerning visitor conflicts with diversification, the DEIS allows for the introduction of guard dogs and fencing to confine and protect sheep, goats, chickens, and pigs from predation. Foreseeable conflicts between park visitors and guard animals will occur as the DEIS does not require that guard animals be trained in specific methodologies to reduce potential harm to visitors. As discussed above, the DEIS fails to address reasonably foreseeable wildlife conflicts.

#### ***4.3. Diversification – Vehicles, Public Safety, and Traffic Congestion***

Diversification also presents conflicts with visitor experiences and Seashore infrastructure that are not analyzed in the DEIS. Diversification will foreseeably lead to both increased commercial trucking and visitor road usage in the Seashore.

The DEIS fails to clearly outline impacts from increased types of commercial traffic on the Seashore's infrastructure and visitor serving uses. In particular, an increase in truck traffic is reasonably foreseeable for commercial operators to distribute and conduct on-site sales. Diversified activities will add commercial trucking to export crops and livestock (sheep, goats, pigs, and chickens) for processing outside of the planning area. In addition, the DEIS allows for ranchers to import crops and livestock into the planning area for small-scale processing or retail sales at farm-stands that will also increase commercial trucking.

Ranches that engage in direct sales to the public -- retail and product sales and tastings, farm-stays, and event experiences -- will further impact roads, degrade air quality, congest parking, and impact driveways and ranch core areas, as visitors will increase traffic congestion and park vehicles in areas that are not developed currently as parking sites.

Impacts to public safety have not been analyzed for vehicles and biking along the main routes from the introduction of direct retail sales to the public from individual ranches. Pursuant to the Point Reyes National Seashore and North District Golden Gate Recreation Area Agricultural Lease/Permit, Exhibit B Ranch Operating Agreement<sup>20</sup>, does not include terms and conditions for local retail or farm stands;

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<sup>20</sup> United States Department of the Interior, *Draft EIS, Draft Point Reyes National Seashore and North District Golden Gate Recreation Area Agricultural Lease/Permit* (2019), Exhibit B Section 3.

however, the DEIS lists diversification activities to include “sale of local agricultural products.”<sup>21</sup> Retail sales to the public could include tastings of alcoholic products that could impair individuals operating motor vehicles, or in the foreseeable future other products like cannabis (which could become federally legal within the foreseeable future as a row crop or cultivated in greenhouses).

The DEIS does not analyze the impacts of commercial truck traffic increases. A previous programmatic planning document (2018 Proposed Mitigated Negative Declaration for the Sir Francis Drake Boulevard Improvement Project) calls out the frequency and intensity of impacts from large, heavy commercial trucks and impacts to roadways.

The report states,

“Sir Francis Drake Boulevard [SFDB] provides primary access to the various beef and dairy ranches still in operation on the Point Reyes peninsula. With the exception of specific visitor use destinations, much of the land on either side of SFDB is a historic working ranch ... Ranchers rely on SFDB for conducting ranch operations and transportation of goods. Bulk milk hauler trucks use SFDB on a daily basis to pick up milk from dairy ranches along the road. *Sections of SFDB in the vicinity of the ranches exhibit some of the highest pavement distress, as well as highest frequency of patching and pavement overlays. The large, heavy commercial trucks that transport goods to and from the ranches likely contribute to pavement degradation...* SFDB provides primary access to both ranching facilities and PRNS destinations, and is therefore used by a variety of travelers. Typical SFDB users include park visitors in personal vehicles, park shuttle buses, tourist buses, school buses, milk trucks, hay trucks, recreational vehicles, and bicyclists. Based on NPS standards, SFDB is classified as a public use park road and a Class I Principal Park Road/Rural Parkway, a designation for primary access roads or tour routes through parks. In addition, current American Association of State Highway and Transportation Officials standards classify SFDB as a Minor Collector Road. There are no designated bike lanes along SFDB, although the route is classified by Marin County as a Class III bike shared route.”<sup>22</sup> (*emphasis added*).

In addition, the Proposed Mitigated Negative Declaration for the Sir Francis Drake Boulevard Improvement Project pointed to an average daily traffic rate (calculated in 2014) along SFDB was calculated at 1,369 average vehicles per day accessing SFDB.<sup>23</sup> Extrapolating from the daily numbers,

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<sup>21</sup> United States Department of the Interior, *Draft EIS*, 37.

<sup>22</sup> United States Department of the Interior, *Point Reyes National Seashore: Sir Francis Drake Boulevard Improvement Project Environmental Assessment/Subsequent Initial Study* (July 2015), In

<sup>23</sup> United States Department of the Interior, *Point Reyes National Seashore: Sir Francis Drake Boulevard Improvement Project Environmental Assessment/Subsequent Initial Study* (July 2015), 21

this study indicates, on average, the Seashore should expect nearly 500,000 vehicles each year traveling on SFDB.

The DEIS portrays a very different calculation of only 400,000 vehicles per year along Sir Francis Drake.<sup>24</sup> The impacts of traffic and vehicles in general appear to be underestimated in the DEIS; moreover, they do not include analysis of additional impacts from diversification activities in the foreseeable future. Therefore, impacts to traffic and visitor experiences require additional analysis and comparison with proposed increases for diversification and the impacts that will have on infrastructure, visitor experiences, and air quality as the maximum emission thresholds may require an update.

NEPA requires,

“indirect effects are those effects ‘caused by the [agency] action [that] are later in time or farther removed in distance, but are still reasonably foreseeable.’” *Ctr. For Env'tl. Law & Policy v. U.S. Bureau of Reclamation*, 655 F.3d 1000, 1011 (9<sup>th</sup> Cir. 2011) (quoting 40 C.F.R. § 1508.8(b)). “Such effects ‘include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.’” *Id.* (quoting 40 C.F.R. § 1508.8(b)); *see also*, e.g., *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 867-70 (9<sup>th</sup> Cir. 2005) (holding that an agency violated NEPA by failing to account for the environmental effects of the additional tanker traffic that would be caused by a proposed dock expansion).

The DEIS fails to analyze potential impacts due to changes of intensity, patterns of use, and design of the roadways and ranching cores due to diversification including local agricultural sales. The DEIS also fails to evaluate potential impacts to air and water quality through the increases in truck and visitor traffic.

#### ***4.4. Impacts of Diversification – Visitor Experiences***

The DEIS outlines several areas where the planning area could accommodate additional trails and public access areas to improve public access in the Ranchland zone through the development of new trails, parking facilities, and third-party partnerships for interpretation. However, whereas the DEIS identifies specific subzones in which rancher diversification can occur, it does not indicate specific areas where potential new public access locations and routes could be placed or designed. As a result, diversification is prioritized over public access in the DEIS.

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<sup>24</sup> United States Department of the Interior, *Draft Environmental Impact Statement* (August 2019), 186.

The DEIS highlights visitor-caused issues that include impacts from crowding and congestion, parking, ranches, trails, and trash and waste without acknowledging how these conflicts will be exacerbated by diversification.<sup>25</sup> The DEIS specifically notes, “visitor use will frequently conflict with ranch operations and that both visitors and ranchers understand what constitutes appropriate access. Increased use of ranchlands may also pose safety concerns related to both visitors’ interaction with livestock and to ranch operations such as silage and manure spreading.”<sup>26</sup>

The concerns discussed in the DEIS present realistic concerns of potential conflicts that will arise as cumulative impacts of diversification; yet, the DEIS also continues to recommend increasing ranching operations through diversification that will only intensify these conflicts in the foreseeable future.

Once the Record of Decision has been filed, ranchers would be able to sign leases with the Seashore and develop ROAs almost immediately and initiate diversification activities and planning. While new visitor experiences, such as new trails and new educational facilities in historic buildings, could in theory also begin immediately, they likely will take much longer to come to fruition. The public engagement process, design, and review stages would take years to implement. By that time, diversified ROAs will be in place through a piecemeal approach that could prevent a network of trails or other interpretative uses in specific areas.

The DEIS prioritizes ranching activities over public use and enjoyment which is in direct contradiction to the Seashore’s purpose and Fundamental Resources and Values (FRV) as established in the Seashore’s Draft Foundation Document.<sup>27</sup>

FRVs include features, systems, processes, experiences, stories, scenes, sounds, smells, or other attributes that require primary consideration during planning and management processes as they are essential for achieving the purpose of the park and maintaining its significance.

NPS managers are tasked with ensuring the conservation and public enjoyment of FRV qualities to prevent deterioration that would jeopardize the park’s purpose and future role. The Seashore’s FRVs include: Wilderness, Scenic and Coastal Landscapes, Marine, Estuarine, and Freshwater Environments, Diversity of Habitats and Native Species, Maritime Cultural Landscapes, Continuum of Human Use (“landscape representing more than 5,000 years of American Indian history...early cultural contacts between Coast Miwok and European explorers...two districts [Olema Valley Dairy Ranches Historic

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<sup>25</sup> United States Department of the Interior, *Draft EIS Appendix*, G-2.

<sup>26</sup> United States Department of the Interior, *Draft EIS Appendix*, G-2.

<sup>27</sup> United States Department of the Interior, *Draft Foundation Document*, 2.

District and Point Reyes Peninsula Dairy Ranches Historic District] that recognize more than 150 years of ranching...”<sup>28</sup>), and Opportunities for Inspiration and Recreation<sup>29</sup>.

Diversification operations in the Seashore are in direct conflict with the FRVs of Wilderness, Scenic Landscapes, Freshwater Environments and Opportunities for Inspiration and Recreation. The continuum of human use includes recreation (hiking, fishing, photography, plein air painting, picnicking, and visiting preserved or recreated historic structures like Kule Loklo and Pierce Point Ranch). Allowing diversification as set forth in the Preferred Alternative will likely have a detrimental impact on these activities, as well as on the other FRVs.

The inclusion of diversified activities in the planning area complicates other higher priority aspects of the GMPA and makes it impossible to determine other uses and development for other FRVs until ROAs are completed.

Diversified commercial ranching activities are not a primary planning consideration of the GMPA, impacts to these activities have not been sufficiently analyzed, and these activities must not be prioritized ahead of other Seashore values and priority resources within the GMPA.

## **5. Failure to Analyze Connected and Cumulative Impacts to Wilderness Areas**

The DEIS states, “[t]he planning area for the GMP[A] includes all lands currently leased for ranching in the park as well as adjacent lands in Point Reyes where the Drakes Beach tule elk herd currently occurs. Resources outside the planning area may be described if any of the proposed alternatives could potentially affect them.”<sup>30</sup>

The DEIS is deficient in considering the impacts of ranching activities that occur within the planning area to connected resources and cumulative impacts to areas ecologically connected to the planning area, including, for example, designated wilderness areas, beaches, and wetlands. NPS Management policy 4.1 states,

” Natural resources will be managed to preserve fundamental physical and biological processes, as well as individual species, features, and plant and animal communities. The Service will not attempt to solely preserve individual species (except threatened or endangered species) or individual natural processes; rather, it will try to maintain all the components and processes of naturally evolving park ecosystems, including the natural abundance, diversity, and genetic and

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<sup>28</sup> United States Department of the Interior, *Draft Foundation Document*, 6.

<sup>29</sup> United States Department of the Interior, *Draft Foundation Document*, 5-6.

<sup>30</sup> United States Department of the Interior, *Draft EIS*, (2019), 1



ecological integrity of the plant and animal species native to those ecosystems. Just as all components of a natural system will be recognized as important, natural change will also be recognized as an integral part of the functioning of natural systems. By preserving these components and processes in their natural condition, the Service will prevent resource degradation and therefore avoid any subsequent need for resource restoration<sup>31</sup>.”

The DEIS incompletely identifies Resource Protection areas as they must also include wilderness protection buffers throughout the planning areas of the Seashore. Although the DEIS<sup>32</sup> provides for a new exclusion area in the Drakes Estero watershed to exclude some cattle grazing, the entire boundary of Drakes Estero is not protected from cattle encroachment. Moreover, the DEIS proposes increased uses in and near Marine Wilderness and sensitive wetland areas.

### ***5.1. Boat-In Camping, Drakes Estero Marine Wilderness***

The DEIS loosely proposes boat-in camping along Schooner Bay along the shores of Drakes Estero Marine Wilderness as potential day use and overnight opportunities for “drive-in, hike-in, boat-in camping sites with limited services and amenities (several locations offer possibilities for expanding overnight camping, such as Schooner Bay near Drakes Estero or Home Ranch).”<sup>33</sup>

The DEIS fails to analyze or propose any mitigation of impacts for boat-in camping along the shores of Drakes Estero. Proposals for camping and visitor development in areas that could impact wilderness areas must consider cumulative impacts of visitor overnight camping near marine wilderness. High visitation and overnight camping means increases in frequency and number of visitors accessing Drakes Estero, the need for installation of toilets or a program that educates and enforces appropriate human waste disposal, education and enforcement of camp fires, and establishment of trash facilities or education and enforcement for visitors to pack trash out.

The Seashore has had to close other remote boat-in camp facilities in the past along Tomales Bay, like Jack’s Beach, due to negative cumulative impacts resulting from human waste and excessive trash that littered the Tomales Bay shoreline and impaired water quality and created public health issues. In addition, the lack of enforcement at remote sites also contributed to the damage of significant cultural resources of the Coast Miwok, federally recognized as the Federated Indians of Graton Rancheria.

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<sup>31</sup> United States Department of the Interior, National Park Service, *Management Policies* (2006), 36.

<sup>32</sup> United States Department of Interior, *Draft EIS Appendix*, Appendix L, 47-48.

<sup>33</sup> United States Department of Interior, *Draft EIS*, (2019), 32.

Additionally, the introduction of boat-in camping in Drakes Estero will likely have significant negative impacts to waterfowl and shorebirds that migrate through or spend the winter in this location. NPS analyzed these impacts through an EIS, finding that impacts from human uses in Drakes Estero to estuarine birds were negative. In their submitted comments, Jules Evans, Principal at Avocet Research Associates, and John P. Kelly, PhD, Director of Conservation Science at Audubon Canyon Ranch wrote,

“Published evidence strongly suggests that estuarine birds may be seriously affected by even occasional disturbance during key parts of the feeding cycle. Fox et al. (1993) showed that American Wigeon (an abundant species in Drakes Estero) flushed from eelgrass feeding areas will abandon the area until the next tidal cycle unless the disturbance occurs early in the feeding cycle. Brant, which also feed tidally in eelgrass in Tomales Bay, display similar distributional responses (Henry 1984, Stock 1993).

...

Human disturbance of various types may reduce waterbird species diversity and abundance throughout the surrounding landscape of Drakes Estero and also at a broader regional scale (Boyle and Samson 1985, Rodgers and Smith 1997). Locally, increasing human use of natural areas increases incidence of disturbance and tends to disrupt foraging and social behavior of wildlife (Burger 1981, 1986, Klein 1993, Werschkul et al. 1976). Mori et al. (2001) found that distances between the position of a flush response and the disturbance source correlated positively with flock size and species diversity, and these distances were longer for waterfowl species that used open water for foraging than those that used it primarily for resting. The waters of Drakes Estero are used year-round by waterbirds for both for foraging and loafing (Shuford et al. 1989, pers. obs.).”<sup>34</sup>

Based on the level of cross-over impacts that may occur with the introduction of boat-in camping near a marine wilderness, water resources, increase in trash and pollution (including human waste), and disturbance to shorebirds; the DEIS should address these as “cumulative actions” that “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” 40 C.F.R. §1508.25. Similar actions are actions which, “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.” *Id.*

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<sup>34</sup> Evans and Kelly, *Comments on Drakes Estero DEIS* (2012), Pages 4-5 of 14, available at: <http://dels.nas.edu/resources/static-assets/osb/miscellaneous/drakes-deis-review-letter-evens-and-kelly-impacts-to-waterbirds-20120706.pdf>

The shorelines of Drakes Estero should not be used to facilitate any camping development as part of this DEIS because the impacts to the Estero have not been analyzed.

## ***5.2. Wetlands/Watershed Protection for Wilderness***

The Central Coast Wetlands Group published a highly detailed study of coastal estuaries, which concludes that nearly 750,000 acres of historic tidal wetlands along the West Coast, including enormous swaths of Bay Area habitat, have disappeared largely as a result of development. The study highlights the most pristine estuary in the Bay Area is Drakes Estero, which has only lost 2.7 percent of historic tidal habitat while other Bay Area estuaries have lost 60 – 80 percent of historic areas.<sup>35</sup> In light of this study and the significance of Drakes Estero as a functional interconnected ecosystem, negative impacts to its beneficial uses of water should be fully mitigated or removed.

The DEIS notes,

“NPS programs and other sampling efforts have observed high concentrations of total suspended solids and nutrients in Drakes Bay and Drakes Estero watersheds...Surrounding land uses such as ranches and pastures for dairies and other livestock operations contribute nutrients and sediment to Drakes Bay and Drakes Estero... Occasionally high potentially pathogenic bacteria counts have been observed in some drainages (Pawley and Lay 2013). Potentially pathogenic bacteria pollutant sources in these watersheds include storm water runoff from pasture and grazing land, sewage systems, wildlife, boat discharges in the tidal and marine environment (outside the Planning Area).”<sup>36</sup>

The DEIS also notes, “Drakes Estero provides critical habitat for Chinook salmon<sup>37</sup> and steelhead.”<sup>38</sup>

The DEIS excludes analysis of federally listed wildlife that utilize the unique habitat of Drakes Estero stating,

“Listed marine mammals (e.g. whales, seals, sea lions, sea turtles, and abalones) may use beaches adjacent to the planning area but *are not included in this analysis because ranch activities would not affect these species in the planning area...elephant seals are found immediately adjacent to ranch lands...however, ranch operations do not affect them.(emphasis added)*”<sup>39</sup>

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<sup>35</sup> Fimrite, Peter, San Francisco Chronicle, *New Maps Show How Little is Left of West Coast Estuaries*. (August 17, 2019).

<sup>36</sup> United States Department of Interior, *Draft EIS*, (2019), 69.

<sup>37</sup> United States Department of Interior, *Draft EIS*, (2019), 79.

<sup>38</sup> United States Department of Interior, *Draft EIS*, (2019), 144.

<sup>39</sup> United States Department of Interior, *Draft EIS*, (2019), 77.

This analysis fails to consider the cumulative impacts of ranching activities that includes trampling, erosion, and nutrient deposits from storage and distribution of manure that flows into the creeks that drain to beaches, wetlands, and wilderness areas that are not in the planning area but are adjacent and connected by ecological functions or species movement to new areas.

The DEIS should address the

“cumulative impacts on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions *regardless of what agency (Federal or non-Federal) or person undertakes such other actions*. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1076 (9th Cir. 2011) (*emphasis added*) (quoting 40 C.F.R. §1508.7). “A cumulative impact analysis ‘must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects.’” *Id.* (quoting *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1075 (9th Cir. 2002)). “To be useful to decision makers and the public, the cumulative impact analysis must include ‘some quantified or detailed information; ... general statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.’” *Id.* (quoting *Ocean Advocates*, 402 F.3d at 868).

The shoreline of Drakes Estero should have a 100-foot buffer from development and grazing activities, to protect sensitive resources and preserve wilderness values. The impacts of boat-in camping sites along the shores of Drakes Estero are not analyzed in the DEIS. Based on the 2012 Wilderness Designation of the Estero marine system, camping site designations should be removed.

## **6. Arbitrary Selection of Reduced Ranching Areas**

Alternative D proposes new programmatic guidance and a Ranchland zone that would amend the 1980 General Management Plan and reduce grazing while also actively managing a natural resource (tule elk) through culling away from leased pastures. Alternative D would reduce grazing on approximately 7,500 acres, based on ranches with grazing-only leases and ranches with minimal infrastructure. However, the selected reduction area location is arbitrary.

The standard of review of an agency’s EIS decision making is governed by the Administrative Procedure Act (APA),

“Under the APA, we may set aside an agency decision if it is ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’” *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1238 (9th Cir. 2005) (quoting 5 U.S.C. § 706(2)(A)). “Review under the arbitrary and capricious standard is narrow, and we do not substitute our judgment for that of the agency.” *Lands Council v. McNair* (Lands Council II), 537 F.3d 981, 987 (9th Cir. 2008) (*en banc*) (alterations and internal quotation marks omitted). However, an agency's decision can be set aside if: the agency relied on factors Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Id.* (internal quotation marks omitted). Such actions would be “clear error[s] of judgment that would render [the agency's] action arbitrary and capricious.” *Id.* at 993 (internal quotation marks omitted).

The selection criteria for reduced ranching fails entirely to consider cumulative and connected impacts with native species and foreseeable ongoing adverse impacts of changing conditions due to climate change. The Seashore’s previous environmental assessments for other projects have included references to changing climate conditions as a cumulative impact, based on the potential to impact several resources.<sup>40</sup> Thus, NPS’ selection of reduced ranching areas appears to be arbitrary as it fails to look at sea level rise, water quality concerns under the Clean Water Act, Endangered Species Act (ESA) protections, etc.

As noted in the 2018 Point Reyes National Seashore Sir Francis Drake Boulevard Improvement Project Supplemental Environmental Assessment/Subsequent Initial Study,

the Seashore is expected to “receive increased rainfall, more intense and frequent El Niño events, and a rise in sea surface temperature” as a result of climate change.<sup>41</sup> Climate change and sea level rise may “significantly alter coastal processes and nearshore ecosystem function.”<sup>42</sup> Rising sea level is expected to cause “inundation of wetlands and estuaries...reduced nesting opportunities for birds[, and] detrimental effects on species that depend on the intertidal zone.” Species currently inhabiting the park could be forced to relocate. “Changes in sea temperature could also result in... the collapse of food webs....”<sup>43</sup>

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<sup>40</sup> United States Department of the Interior, *Sir Francis Drake Boulevard Improvement Project Environmental Assessment/Subsequent Initial Study* (July 2015), 20.

<sup>41</sup> National Parks Conservation Association, *State of the Parks, Point Reyes National Seashore* (2009), available at: <https://www.npca.org/resources/1679-center-for-state-of-the-parks-point-reyes-national-seashore-reassessment>, 6.

<sup>42</sup> United States Department of the Interior, *National Seashore News: Protecting our Ocean Heritage, Point Reyes National Seashore Newsletter*. (Summer/Fall 2007), available at: [http://www.nps.gov/pore/parknews/upload/newspaper\\_newsletter\\_200707.pdf](http://www.nps.gov/pore/parknews/upload/newspaper_newsletter_200707.pdf),

<sup>43</sup> National Parks Conservation Association, *State of the Parks, Point Reyes National Seashore* (2009), 6.

Reduced ranching activities should be selected in order to reduce conflicts with and preserve and enhance habitat for natural resources. Instead, the reduced ranching criteria in the DEIS focuses on reducing impacts to financial commercial ranching operations.

The ESA defines critical habitat as,

(1) the specific areas within the geographical area occupied by the species, at the time it is listed...on which are found those physical or biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by the species at the time it is listed...that...are essential for the conservation of the species. (16 U.S.C. 1532(5)(A)).

The selection criteria to remove areas from active ranching should be based on the best available science and legal authority and protections offered by laws such as the ESA and the Clean Water Act. Specifically, mapping of sensitive resources and habitats that support species listed as Endangered or Threatened species including Steelhead Trout, Red Legged Frog, Western Snowy Plover, Ridgeway's Rail, and California Least Tern which are present in areas within and adjacent to the planning area should be conducted as part of the analysis of which locations ranching should be reduced in, so that NPS can be the most protective of the Seashore's protected and park resources. Decisions on management of habitats need to include connected actions that will cause impacts to resources outside the planning area.

## **7. Failure to Provide Financial Planning Analysis Necessary to Evaluate Alternative Actions**

The DEIS proposes a significant change in programmatic resources management in the planning area. The total costs to implement this plan are not available in the DEIS, thus making it difficult for the public to understand how NPS will implement this programmatic planning. The cost of implementing any of the alternatives will be substantial, and unless new funds can be identified, existing Seashore programs to protect the environment will be negatively impacted.

Pursuant to NPS Management Policies 2.3.1. specifies,

“The Park Service will maintain a general management plan for each unit of the national park system. The purpose of each general management plan, which will begin with the development of a foundation statement for the park unit, will be to ensure that the park has a clearly defined direction for resource preservation and visitor use. *This basic foundation for decision-making will*

*be developed by an interdisciplinary team, in consultation with relevant NPS offices, other federal and state agencies, local and tribal governments, other interested parties, and the general public. The management plans will be based on full and proper use of scientific and scholarly information related to existing and potential resource conditions, visitor experiences, environmental impacts, and **relative costs** of alternative courses of action.”<sup>44</sup> (emphasis added)*

Courts have held that agencies are not required to look the economic effects of a plan. *Ass'n of Pub. Agency Customers, Inc. v. Bonneville Power Admin.*, 126 F.3d 1158, 1186 (9th Cir. 1997); *see also City of Sausalito v. O'Neill*, 386 F.3d 1186, 1214 (9th Cir. 2004) (agency's cost-benefit analysis need not be monetary). That said, NEPA does require consideration of all of the direct and indirect effects of a plan, *see* 40 C.F.R. §1508.25, and the regulations expressly define the “effects” to be considered to include “ecological, aesthetic, historic, cultural, economic, social, or health” effects, 40 C.F.R. §1508.8 (emphasis added). In addition, when “economic ... and natural or physical environmental effects are interrelated,” then an EIS must “discuss all of these effects on the human environment.” 40 C.F.R. §1508.14.

In addition, an agency EIS cannot provide inaccurate or misleading economic information about a plan. *Nat. Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 811-12 (9th Cir. 2005). This is because “[i]naccurate economic information may defeat the purpose of an EIS by impairing the agency's consideration of the adverse environmental effects and by skewing the public's evaluation of the proposed agency action.” *Id.* (finding agency's overestimation of revenue from plan “subverted NEPA's purpose of providing decision makers and the public with an accurate assessment of the information relevant to evaluate the ... Plan”).

The DEIS fails to provide *any* information about the costs of the programmatic planning. This omission fails to satisfy NEPA's requirement that an EIS “ensure that agency action is fully informed and well considered.” *Id.* (quotation omitted). In general, an EIS must be revised “[w]here the information in the initial EIS was so incomplete or misleading that the decisionmaker and the public could not make an informed comparison of the alternatives.” *Id.* (emphasis added). Significant costs of enforcement and mitigation have been completely ignored in the DEIS, which makes it difficult for the decisionmakers and public to make an informed decision.

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<sup>44</sup> United States Department of the Interior, NPS, *Management Policies* (2006), 23-24.

## **8. Management of Tule Elk**

The Seashore is the only national park with a native population of tule elk. The elk have been prevalent in the Bay Area and Marin for thousands of years, long before their extirpation in the 19th century. Tule elk are considered natural resources and constitute an important part of the Seashore's ecosystem. Although tule elk are not a listed species, they are an important economic and natural resource for the Seashore that should be considered in addition to the lease/permit obligations that the Seashore holds. Removal of the Drakes Beach herd will have negative impacts to visitor experiences within the Seashore.

**Any strategies to manage the elk populations should be in the context of managing resources like other natural resources within the Seashore and not for the benefit of commercial lease holders.**

The GMPA should protect and manage natural resources, including tule elk, with conservation of these resources as the highest priority, as mandated by the Seashore's mission and current NPS management policies. Long-term leases and overall management strategies should strive to reduce conflicts and find non-lethal management strategies to balance and accommodate the presence of elk and cattle.

## **9. EAC is supportive of Alternative B, with Modification**

EAC is supportive of Alternative B with modifications, as discussed in this letter, that strike proposed actions that are outside of the scope of the NEPA process and eliminate programs and actions from the DEIS where there was a failure to address significant impacts. This section of our letter indicates some specifics as to what should be included in a future alternative and what considerations need to be removed from a future alternative.

### ***9.1. Modifications needed for Alternative B***

- 1) Remove all types of diversification from DEIS consideration and programmatic planning as the DEIS does not evaluate cumulative, direct or indirect impacts, connected actions, or reasonably foreseeable outcomes of diversification.
- 2) Remove the proposed boat-in camping on the shorelines of Drakes Estero Marine Wilderness, because the DEIS fails to analyze the impacts to the Estero.
- 3) Revise development of Ranchland Zoning so that it prioritizes holistic planning areas and resource protection buffers that are connected to sensitive resources, watersheds, and wilderness areas that are within and outside of the planning area. The Ranchland Zoning also needs to consider future impacts from climate change including rising sea levels. To protect park resources these



protections should be prioritized over ranching activities. Additional maps for the public should be developed that identify current restoration projects and sensitive water resources that are outside the planning area but are impacted by development within the planning area.

- 4) Impacts of climate change should be addressed as a cumulative impact as it has been analyzed in past environmental impact statements issued by the Point Reyes National Seashore. The Point Reyes National Seashore was identified in the 2018 *Sea Level Rise and Storm Surge Projections for the National Park Service*, as a park with potential future inundation and storm surge under four greenhouse gas emissions scenarios<sup>45</sup>. The DEIS fails to address the topic and foreseeable impacts of climate change.
- 5) Require development of ROAs to be evaluated as Resource Management Plans that consider all the foreseeable impacts on park resources before the issuance of the Final EIS. This may be accomplished with a supplemental update of the DEIS so that the current impacts of specific operations of beef and dairy ranching are analyzed and to the extent that current ranching operations impair park resources, those impairments should be cured.
- 6) To keep within the delegated authority and be consistent with the park's purpose, NPS must focus continuation of ranching on cultural and historical significance of multi-generational beef and dairy ranching in the Seashore and should not open ranching operations through competitive bidding process to the general public. Opening the Seashore to outside operators would have significant impacts on the park's cultural and historic values. The DEIS fails to analyze these impacts, and even fails to provide enough detail about the RFP process to say what the impacts may entail, or when they may occur.
- 7) Update maps to include locations of NPS and rancher restoration plans for water quality, special status species, and other important plant and animal communities. These maps need to be generated for the Seashore and should inform the development of the individual maps for Ranchland zones to inform placement of Resource Protection Zones and Pasture Zones.
- 8) Revise the reduce ranching alternative to be based on the best available science and applicable legal authority.
- 9) Provide the financial budget for implementation of the GMPA so that public can understand how the Seashore will implement the GMPA and ensure the plan is fully informed and well considered.

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<sup>45</sup> United States Department of Interior, National Park Service, Natural Resources Stewardship and Science office, *Sea Level Rise and Storm Surge Projections for the National Park Service*, (2018).

- 10) Eliminate culling of tule elk: Consistent with the park’s management goals and directives, NPS management of tule elk would occur only to support other resource protection needs and management goals. New herds would be allowed to continue, regardless of geographic location if they do not move outside Point Reyes. Authorized animal units for each ranch would be adjusted as needed to meet residual dry matter goals. Resource protection is the highest value for the Seashore as intended by Congress in requiring the Department of the Interior to administer its Point Reyes lands “*without impairment of its natural values*, in a manner which provides for such recreational, educational, historic preservation, interpretation, and scientific research opportunities as are consistent with, based upon, and supportive of *the maximum protection, restoration, and preservation of the natural environment within the area,...*” 16 U.S.C. Sec. 459c (6)(a) (*emphasis added*).
  
- 11) Add a requirement for numeric water quality testing of surface waters (including the wilderness area and all recreational bodies of water). The best available science on water quality in, and hydrologically connected to, many parts of the planning area are outdated by as much as 20 years. While NEPA does not require the Seashore to collect data prior to issuing a DEIS, the Seashore cannot adequately monitor mitigation measures and enforce ROA terms with extremely outdated data. Consequently, the NPS must test water quality both now, and on an ongoing basis in the future. Otherwise, the DEIS mitigation terms regarding water quality are empty promises to protect public resources.

## 10. Conclusion

In sum, EAC urges NPS to adopt alternative B with modifications, as discussed in this letter, including the complete removal of all diversification. The Seashore’s highest values are the protection of Wilderness, Scenic and Coastal Landscapes, Marine, Estuarine, and Freshwater Environments, Diversity of Habitats and Native Species, Maritime Cultural Landscapes, Continuum of Human Use, and Opportunities for Inspiration and Recreation. Resource protection is the highest value for the Seashore as intended by the 16 U.S.C. Sec. 459c (6)(a) where Congress elaborated on this statement by requiring the Department of the Interior to administer its Point Reyes lands “*without impairment of its natural values*, in a manner which provides for such recreational, educational, historic preservation, interpretation, and scientific research opportunities as are consistent with, based upon, and supportive of *the maximum protection, restoration, and preservation of the natural environment within the area,...*” 16 U.S.C. Sec. 459c (6)(a) (*emphasis added*).

The DEIS should reflect these values and consider the cumulative and connected actions of the proposed plan within the planning area and to sensitive habitats adjacent to the planning area.

Thank you for your consideration of our comments.



Morgan Patton  
Executive Director



Bridger Mitchell  
Board President