

Point Reyes Seashore Ranchers Association
15020 Sir Francis Drake Blvd.
Inverness, CA 94937

June 2, 2014

Cicely A. Muldoon, Superintendent
Point Reyes National Seashore
One Bear Valley Road
Point Reyes Station, CA 94956

Re: Ranch Comprehensive Management Plan Environmental Assessment (EA)

Dear Superintendent Muldoon,

The Point Reyes Seashore Ranchers Association appreciates this opportunity to provide the following comments on the initial public scoping process for the Ranch Comprehensive Management Plan.

Please Identify The Proposal

A scoping process is normally undertaken only after an agency publishes a notice of intent to prepare an EIS. Where, as here, a scoping process is begun earlier, before the environmental assessment, the agency should provide enough information “on the *proposal* so that the public and relevant agencies can participate effectively”. (Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, Question no. 13, 46 Fed. Reg. 18026 (23 March 1981) (emphasis added).) The Park Service’s 21 April 2014 “letter to interested parties” identified a broad project purpose, but did not identify the proposal. Please identify the proposal.

The Ranchers Association believes that the proposal should be to extend long-term permits to the ranchers to allow them to continue ranching, and to remove the tule elk from the pastoral zone. If that is the Park Service’s proposal, then, as the following sections explain, no new NEPA process should be undertaken. If the Park Service’s

proposal is something else, then that should be disclosed and the scoping process should be reinitiated so that the Ranchers Association and the public can participate most effectively.

A New NEPA Process Should Not Be Undertaken To Renew Ranching Permits

A new NEPA process should not be undertaken to renew permits to continue existing ranching operations in Point Reyes. If the Park Service wants to issue the ranchers long-term permits to continue existing ranching operations, it could do so now, without the time and expense of further NEPA review, for three reasons.

First, issuing new permits to continue existing ranching operations would be categorically excluded from NEPA. "Issuances, extensions, [or] renewals ... [of] permits that do not entail new construction or any potential for new environmental impact" are categorically excluded from NEPA. (NPS Director's Order 12, Section 3.4(A)(5).) Issuing permits to continue existing ranching operations is not authorization for new construction. Nor would issuing those permits result in any environmental impacts that are "new" in the sense intended by this categorical exclusion, i.e., impacts that are different in degree or kind from any "impacts" ranching has had over its 150-year history in Point Reyes. Because this categorical exclusion applies, no new NEPA process is required.

Second, the courts have recognized that NEPA does not apply to "action that does not alter the status quo". (*National Wildlife Fed'n v. Espy*, 45 F.3d 1337, 1344 (9th Cir. 1995).) The *Espy* case is directly on point. In *Espy*, the agency had acquired land that had historically been grazed by cattle. (*Id.* at 1340.) The agency then transferred the property into private ownership where it continued to be grazed by cattle. (*Id.*) An organization brought suit under NEPA alleging that continued grazing would harm "fragile riparian wetlands" and that an environmental review should have been undertaken before the transfer. (*Id.* at 1341.) The Ninth Circuit held that NEPA did not apply to the agency's decision to allow "continued" grazing:

[The agency] alleges that because the wetlands were used for grazing before it acquired the ranch and are now used for that purpose by the [private party], [the agency's] transfer of the title

did not alter the status quo and therefore was not subject to requirements on NEPA. We agree.

[...]

Discretionary agency action that does not alter the status quo does not require an EIS. [Citation.] The complaint alleges [the agency's] disposal of the Ranch will result in but one injury – continued degradation of the wetlands from grazing. It is not alleged that the disposal will add to that harm.

(*Id.* at 1343-1344.)

So it would be here. Because issuing permits to continue existing ranching operations will simply preserve the status quo, and not add any new harms, NEPA would not apply.

Third, the Park Service has long understood that no NEPA review was necessary to issue permits to continue ranching in the Seashore, because it has not conducted NEPA review of those permits in the past. If the Park Service's policy that NEPA does not apply to ranching permit renewals in the Seashore has recently changed, the Ranchers Association would appreciate an explanation why. (*See FCC v. Fox TV Stations, Inc.* (2009) 556 U.S. 502, 515 (“[a]n agency may not ... depart from a prior policy sub silentio ... [a]nd of course the agency must show that there are good reasons for the new policy”).)

A New NEPA Process Should Not Be Undertaken To Remove Tule Elk From The Pastoral Zone

A new NEPA process should not be undertaken to move tule elk from the Point Reyes pastoral zone back to the wilderness areas because the Park Service has already conducted a NEPA process sufficient for that action. The 1998 Tule Elk Management Plan authorized the relocation of elk to a “proposed” elk range in Limantour and rejected an alternative that would have allowed elk in the pastoral zone. In finding that the management plan would cause no significant impact to the environment, the Park Service approved mitigating the “[p]otential for harm to park resources by elk” by “[m]aintain[ing] capability to take corrective actions as necessary including ... capture ... of elk”. The Park Service has recognized, in the 1980 General Management Plan and

elsewhere, that ranching provides cultural and natural resources to the Seashore. The continued presence of the elk in the pastoral zone poses an urgent threat to those resources.

By rejecting a proposal that would have allowed elk to range into the pastoral zone, and approving mitigation measures that contemplate the capture of elk that cause damage to Park resources (which includes the ranches), the 1998 Tule Elk Management Plan gives the Park Service all the authority it needs to move the elk from the pastoral zone now – without further NEPA review.

Any Doubt About The Park's Authority To Move The Elk Can Easily Be Addressed

The Ranchers Association understands that the Park Service may have received a legal opinion that the 1998 Tule Elk Management Plan does not authorize moving the elk out of the pastoral zone. Please make that opinion publicly available.

Even if that legal opinion is correct, any gaps in the 1998 Tule Elk Management Plan could easily be fixed by a short addendum to that plan that makes clear that it authorizes the removal of elk from the pastoral zone. A proposed addendum is attached to this letter. Signing that addendum would remove all doubt that the Park has the authority it needs to begin moving the elk off the pastoral zone immediately.

The Park Should Make Issuing New Permits And Moving The Elk Its Priority

Ranching and protection of the environment are complementary, not conflicting. The ranchers' exemplary stewardship of the lands and waters of Point Reyes is what has allowed these families to successfully ranch this area for the past 150 years.

In the years since Congress authorized the Seashore, these ranching families have worked in partnership with the Park Service to prove that sustainable agriculture can co-exist in harmony with the environment. Congress endorsed the continuation of this partnership when it passed legislation (Pub. L. 95-625, § 318) allowing Point Reyes to be leased for ranching in perpetuity, encouraging "to the fullest extent" that the Park Service "maintain this compatible activity" (H.R. Rep. No. 95-1165, at 71 (1978)). And in his 29 November 2012 memorandum, Secretary Salazar directed you "to pursue

extending permits to 20-year terms for the dairy and cattle ranches within [the] pastoral zone”.

Please help fulfill Congress’s vision, and Secretary Salazar’s direction, that ranching be allowed to continue by promptly issuing the ranchers new long-term permits, and ensuring that the elk are removed from the pastoral zone.

With your help, the Ranchers Association looks forward to the next 150 years of ranching in Point Reyes.

Sincerely yours,

POINT REYES SEASHORE RANCHERS ASSOCIATION

Attachment

cc: US Senator, Dianne Feinstein
US Senator, Barbara Boxer
US Congressman, Jared Huffman
State Assembly Member, Marc Levine
Marin County Supervisor, Steve Kinsey