



December 15, 2022

U.S. Forest Service
Attn: Supervisor Christopher Stubbs
1980 Old Mission Dr.
Solvang, CA 93463

Re: Porter, Pine Canyon, and South Fork La Brea Allotments Project – Draft EA

Dear Mr. Stubbs:

Thank you for this opportunity to provide comments for the draft Environmental Assessment (EA) for the Porter, Pine Canyon, and South Fork La Brea Allotments Project (“Project”) in the Los Padres National Forest (LPNF). This project has been in development since 2009, at which time we submitted scoping comments related to the initial proposal.

Aside from the significant delay in preparing the draft EA, several key aspects of the Project have changed since it was first proposed 13 years ago. For instance, the Proposed Action now includes greater allowable livestock numbers on all three allotments, and significant take of threatened California red-legged frogs has been documented in the Project area. We are concerned about these changes as well as the absence of a reasonable range of alternatives analyzed in the draft EA and the lack of transparency related to the draft EA and the Project in general. Based on this EA, the only viable alternative is for LPNF to adopt the no action alternative which would entirely remove livestock from these allotments.

The undersigned organizations support efforts to better manage livestock grazing in the LPNF, but we find the draft EA to be both inadequate and unable to meet the stated objectives of the Project. Below we outline our concerns along with evidence that the Project is inconsistent with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Forest Management Act (NFMA), and the 2001 Roadless Area Conservation Rule (“Roadless Rule”).

1. The Proposed Action Authorizes the Construction and/or Maintenance of Non-System Roads in an Inventoried Roadless Area, in Violation of the Roadless Rule

Approximately 45% of the Project Area is within an Inventoried Roadless Area (IRA). The Project Area includes over 99% of the Miranda Pine IRA and up to nearly 72% of other IRAs. The draft EA states in Table 21 that there are 16.36 miles of non-system roads within IRAs overlapped by the Project area. The draft EA also states that existing non-system roads within the Project Area in portions of these IRAs would be “maintained consistent with historic levels and would not result in the improvement or an increase in the use of the roads...” pp. 59-60. This, in essence, means that the U.S. Forest Service is attempting to formally approve motorized use and maintenance along these 16.36 miles of non-system and potentially unclassified roads in the IRAs. To our knowledge, these roads are all non-system roads that have never been managed as part of the forest’s transportation system, nor have they been subject to any planning, environmental review, or public input.

The Roadless Rule does not allow for the maintenance of unclassified, non-system roads in an IRA. See 36 CFR 294.12(c) ¹ (“Maintenance of *classified* roads is permissible in inventoried roadless areas,”) (emphasis added). Under the Roadless Rule, if the U.S. Forest Service wants to maintain an unclassified road in an IRA (as is the case here), then it can only do so after undertaking a science-based roads analysis. Specifically, the *Federal Register* notice for the proposed Roadless Rule states:

The responsible official is expected to apply a science-based roads analysis when determining whether an unclassified road is needed for long-term management of National Forest System lands and should be classified and maintained.

65 Fed. Reg. 30276, 30280 (May 10, 2000). This “science-based roads analysis” is a critical component of the U.S. Forest Service’s current travel management planning regulations outlined in 36 CFR 215. These regulations outline how the U.S. Forest Service administers the road system on each national forest:

The responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. In determining the minimum road system, the responsible official must incorporate a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse

¹ The Roadless Rule appears in the 2001-2004 editions of the Code of Federal Regulations, at 36 CFR 294.10-14. In 2005, it was replaced by the State Petitions Rule. 70 Fed. Reg. 25,654 (May 13, 2005). When that replacement was set aside the following year, the Roadless Rule was reinstated. *California ex rel. Lockyer v. USDA*, 459 F. Supp. 2d 874 (N.D. Cal. 2006), *aff’d*, 575 F.3d 999 (9th Cir. 2009). However, the General Printing Office has thus far not conformed the current published Code accordingly. This letter includes citations to 36 CFR part 294.

environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

36 CFR 212.5(b)(1). If the U.S. Forest Service wants to determine that non-system roads within the allotments are needed for the long-term management of this area, then it can do so only through the “science-based roads analysis” referenced in these companion regulations.

Furthermore, neither the draft EA nor any of the specialist reports state whether all or some portion of the 16.36 miles of non-system roads within the IRA portions of the Project Area are classified or unclassified. The Roadless Rule defines a classified road as “A road wholly or partially within or adjacent to National Forest System lands that is determined to be needed for long-term motor vehicle access, including State roads, county roads, privately owned roads, National Forest System roads, and other roads authorized by the U.S. Forest Service.” 36 CFR 294.11(1). Adequate evidence must be provided that any of the non-system roads within the IRA portions of the Project Area have been authorized by the U.S. Forest Service. Such evidence needs to go beyond simple mentions of repair or maintenance in previous grazing permit or allotment documents, which would not be the type of authorization envisioned by the Roadless Rule or U.S. Forest Service transportation planning regulations that would allow a non-system road in an IRA to be maintained indefinitely without being formally added to the forest’s transportation system through the science-based analysis described above.

The draft EA does cite the Travel Analysis Process and Report for the Cuyama, Colson, and La Brea Project Areas (TAP). The U.S. Forest Service cannot consider the TAP as fulfilling the requirements stated above, however. The TAP states:

In addition to the system roads and trails, there are approximately 62.62 miles of roads and wheel tracks that are **not part of the authorized** National Forest Transportation System, and 0.70 miles on non-system non-motorized trail. These roads and trails, **referred to as unauthorized or non-system roads**, originate in different ways.

p. 13 (emphasis added). The 16.36 miles of non-system roads within the IRA portion of the Project Area are thus being referred to in the TAP as “unauthorized.” Moreover, all of these roads are listed in the table in the TAP Appendix A, yet none of them are recommended for inclusion in the minimum road system. Because the TAP does not include maps depicting or data describing overlap between roads analyzed and IRAs, it is unclear whether the analysis even includes all 16.36 miles of non-system roads mentioned in the draft EA.

If all or some portion of the 16.36 miles of non-system roads within the IRA portion of the Project Area are indeed unclassified and the U.S. Forest Service is now proposing to change their status to classified roads, or temporary roads authorized under permit, that qualifies as “road construction” as defined under the Roadless Rule, which defines road construction as any “[a]ctivity that results in the addition of forest classified or temporary road miles.” 36 CFR 294.11. Road construction is prohibited in IRAs 36 CFR 294.12.

We ask that the U.S. Forest Service identify the classification status of these roads and apply a science-based roads analysis when determining whether roads in the allotments are needed for long-term

management, consistent with the Roadless Rule and the U.S. Forest Service's transportation management regulations.

2. The Draft EA Does Not Analyze a Reasonable Range of Alternatives

In our initial scoping comments dated May 29, 2009, we requested that the U.S. Forest Service evaluate the following alternatives:

1. Not authorizing livestock grazing (the "No Action" Alternative)
2. Authorizing seasonal rotational grazing, deferred grazing, or rest-rotation grazing
3. Authorizing livestock grazing but reducing the numbers and/or season of use

However, the U.S. Forest Service only analyzed two alternatives in the draft EA:

1. The No Action Alternative, which would not allow any grazing in the three allotments.
2. The Proposed Action (which would increase livestock numbers compared to current use).

The only alternatives considered but eliminated from detailed study, according to the draft EA, was a single alternative that would essentially allow grazing and associated activities to occur in the three allotments as they currently do under the existing permit. Thus, other alternatives such as reduced livestock numbers and different types of grazing (e.g. seasonal rotational, deferred, rest-rotation) were not even considered by the U.S. Forest Service, nor was any justification for this lack of consideration given.

NEPA requires agencies to consider a reasonable range of alternatives whether they prepare an EA or an EIS. *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013). In considering which alternatives to analyze, agencies must provide a "detailed statement" regarding why they were eliminated or not considered and include a no action alternative. 40 CFR 1502.14(a). The alternatives analysis "is the heart of the environmental impact statement." *Ilio 'ulaokalani Coalition v. Rumsfeld*, 464 F.3d 1083 (9th Cir. 2006). Reasonable alternatives are those that are viable, feasible, meet the stated goals of the project, or are reasonably related to the purposes of the project. *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992); *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997); *Trout Unlimited v. Morton*, 509 F.2d 1276, 1286 (9th Cir. 1974). An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action, sufficient to permit a reasoned choice. *Idaho Conservation League*, 956 F.2d at 1520. It is important to note that "[t]he existence of a viable but unexamined alternative renders an [EIS] inadequate." *Natural Resources Defense Council v. U.S. Forest Service*, 421 F.3d 797, 813 (9th Cir. 2005).

After 13 years since the scoping notice and original proposal was released, the U.S. Forest Service has now released a draft EA that only analyzes in detail two alternatives: the Proposed Action (authorizing a maximum of 829 head of livestock and 5,383 head months across the three allotments, one of which will also be expanded), and a "no action" alternative where no grazing permit would be issued and the three

allotments would become vacant. This does not constitute a “reasonable range of alternatives.” National Environmental Policy Act (NEPA) regulations require the U.S. Forest Service to “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” 40 CFR 1502.14(a).

The draft EA should contain a detailed analysis of an alternative involving reduced livestock numbers in the Project area and or the implementation of seasonal rotational grazing, deferred grazing, or rest-rotation grazing. In fact, the Proposed Action as described in the draft EA would allow substantially more livestock in the Project area than both the existing permit and the original Proposed Action as described in the scoping notice issued over 13 years ago. The scoping notice states in Table 1 that the total number of livestock that would be allowed across the three allotments is 460 while Table 4 in the draft EA states that a total of 829 head of livestock would be allowed. Table 4 also states that the existing permit allows for 567 head of livestock currently. Therefore, the Proposed Action in the draft EA would allow for 46% more livestock than is currently permitted and 80% more livestock than were originally proposed during scoping. We understand that a small amount of pasture from a separate allotment is being added to the Porter allotment under the Proposed Action in the draft EA. However, that only results in a 1.4% increase in the total area of the three allotments combined. Such a small increase in area could not possibly account for the significant increase in total number of livestock allowed over both the existing permit and what was originally proposed during scoping.

It should also be noted that the original Project description that was scoped in 2009 stated that the U.S. Forest Service “would continue to require 1,000 lbs [per acre] [Residual Dry Matter (RDM)] in order to sustain range condition and other resource values.” However, Table 3 in the draft EA eliminates this commitment, instead requiring only 200 – 700 lbs/acre depending on vegetation type and annual precipitation. The draft EA contains no justification for this change other than citing the 2005 Land Management Plan (which itself preceded the 2009 Project scoping document). Lowering the RDM will harm other resource values and even more so during the ongoing drought in California. The failure to provide any rational basis for this change renders the EA inadequate.

3. The Draft EA Fails to Adequately Evaluate Potentially Significant Impacts to Special Status Wildlife and Plants

a) Species Protected Under the ESA

i) California Red-Legged Frog (CRLF)

In our scoping comments, we asked that the environmental document “evaluate the impacts of existing and proposed exclosures and determine whether existing exclosures adequately protect [CRLF] populations.” Indeed, the draft Biological Assessment (BA) for the Project states:

LPNF staff previously identified sensitive habitats along North Fork LaBrea Creek where exclusion fencing was constructed as a mitigation measure to protect habitat. However, the majority of this fencing has been damaged or destroyed during flooding events in 2010- 11 following the 2009 LaBrea Fire. Exclosure fencing will

need to be reconstructed to protect both historic and current CRLF breeding areas along NF and SF LaBrea Creeks. A CRLF sub-adult was previously observed dead at a pool near 6th crossing on NF LaBrea Creek during October 2018. The individual CRLF appeared to have been trampled by livestock which were utilizing a portion of the South Fork LaBrea allotment where they should not have been present during low-water periods as proposed under the grazing EA.

Draft BA at 35. This information was incorporated by reference into the draft EA, thus the public was unaware of it until three weeks into the public comment period for the draft EA after the BA was provided to LPFW in response to repeated requests. The fact that take has occurred in the Project Area and has been caused by direct impacts from livestock is deeply concerning. The programmatic Biological Opinion (BiOp) for ongoing activities under the 2005 LMP only allows for the take of four CRLF individuals annually for ongoing activities, including but not limited to livestock grazing, across the entire forest. At least 25% of this allowed take in 2018 occurred within the Project Area and was due to the direct impacts from livestock grazing (specifically, trampling). Additional take “likely occurs” at another location along North Fork La Brea Creek within the Project Area (South Fork La Brea Allotment) according to the draft BA (p. 38). This begs an important set of questions: is CRLF take being adequately monitored in not only the Project Area but across the entire LPNF as well, and is CRLF take exceeding four individuals annually forest-wide? Because the LPNF has known the fences intended to protect CRLF were damaged or destroyed and no longer serving their intended purpose for over a decade and has done nothing to ensure this mitigation measure was in place during that time, the LPNF therefore is and has been in violation of the BiOp by failing to fulfill the reasonable and prudent measures in the Incidental Take Statement for over a decade and is liable for take of CRLF from grazing in this area.

The draft BA and draft EA suggest that new or repaired exclosures around known CRLF occupied areas (e.g. pools along North Fork La Brea Creek) would be the primary mitigation measure to reduce the impacts of livestock activity. However, even the draft BA notes:

While RPMs incorporated into the proposed action should help limit potential impacts to CRLF, it is not considered realistic that all impacts to the species could be avoided.

Draft BA at 35. As noted above, exclosure fencing had previously been damaged or destroyed, which led to livestock being able to access a stream area with CRLF during a low water period. It is reasonable to assume that exclosure fencing installed as part of the Project may, in the future, become damaged or destroyed and allow livestock access to critical CRLF refugia. This is an inherent issue with installing fencing in naturally dynamic areas such as riparian zones, where flooding has and will continue to occur regardless of fire history (the draft BA and draft EA imply that flooding events are only problematic immediately following a fire, such as the 2009-2010 flooding that occurred after the 2009 La Brea Fire). Because the draft BA states explicitly that the Proposed Action may affect and is likely to adversely affect both CRLF populations and designated critical habitat but does not explain that due to concerns with the adequacy of mitigation measures, the BA does not accurately assess the impacts to CRLF which are likely to be far higher than stated.

The draft BA also inadequately evaluates direct and indirect effects of the Proposed Action on CRLF in the Project Area. First, it is unclear how robust CRLF surveys in the Project Area were prior to the drafting of the BA. There is no mention of survey methodology, including whether the surveys were performed according to formal protocol issued by the U.S. Fish & Wildlife Service (USFWS) titled *Revised Guidance on Site Assessments and Field Surveys for the California Red-Legged Frog*, August 2005. The USFWS does not consider surveys to be valid unless they conform to this survey protocol, and protocol surveys are required under the LMP. The above-cited field survey guide was not cited in the draft BA nor was the word “protocol” mentioned. Rather, the draft BA mentions only that there were “repeated inspections conducted from 2012-19” (p. 36), though these appear to relate primarily to assessing the severity of livestock impacts to CRLF habitat. Aside from the fact that surveys may have been inadequate (and at the very least, inadequately described in the draft BA or draft EA), the draft BA does not explain how severity of impacts from livestock grazing to CRLF habitat were assessed. This is illustrated by Table 6.4-10 in the draft BA, which states that essentially all areas where CRLF are known to occur have had only low to moderate impacts from livestock grazing. This includes the site where livestock trampled CRLF, resulting in incidental take in 2018, which is wrongly assessed as “moderately impacted.” Take of a listed species resulting in death is not a moderate impact.

It should also be noted that by the time the draft EA was released, the U.S. Forest Service had not completed consultation with the USFWS as required under the ESA. The agency is required to initiate project-level consultation under the ESA. The Programmatic BiOp for the Los Padres National Forest states: “Although the Plans set important parameters for authorization of specific projects, the Plans do not themselves authorize the projects. Actual authorization of projects depends on analysis of site-specific effects, project-level section 7 consultation under the Act, and consistency with appropriate management direction and applicable legal requirements.” BiOp at 4. Moreover, “Specific avoidance and minimization measures will be developed through project-level section 7 consultation and conference and analysis.... All project activities under the Plans that may affect listed species or critical habitats, including dispersed recreation, are subject to project-level analysis and section 7 consultation under the Act.” BiOp at 12. Finally, “This incidental take statement does not remove the need for project-level section 7 consultation and project-level exemptions from the prohibitions against incidental take under the Act.” BiOp at 292.

Considering the evidence provided above, the U.S. Forest Service has failed to comply with NEPA because the draft EA does not acknowledge or disclose that the Project will have significant effects on CRLF and its critical habitat.

ii) Vernal Pool Fairy Shrimp

The draft EA acknowledges that “[o]ccupied suitable habitat is known to occur within the Project Area in at least 1 vernal pool. Project activities could potentially impact the species.” Draft EA at 47. Then, without any supporting analysis or evidence, the draft EA concludes that the Project “May affect and are unlikely to adversely affect.” Draft EA at 47. The draft Wildlife BA states that vernal pool fairy shrimp may occur within two other areas of potential habitat that have not been surveyed but are assumed to be occupied. Draft Wildlife BA at 42. The draft Wildlife BA concludes that the Project is unlikely to adversely affect vernal pool fairy shrimp because mitigation measures will keep livestock out of known

occupied suitable habitat and prevent adverse impacts to the species, without any additional supporting analysis. The draft EA and the draft Wildlife BE do not disclose the location of the occupied vernal pools or the name of the pastures in which they are located, which season of use restrictions apply to the vernal pool areas, whether they are located in capable and suitable rangelands, whether they would be fenced off from livestock, and how the mitigation measures specifically reduce or eliminate impacts to them. If livestock have access to vernal pools, then significant impacts to vernal pool fairy shrimp are likely to occur via trampling, wading, wallowing, and degrading the quality of vernal pool habitat through the introduction of fecal matter, pathogens, and invasive plants.

b) U.S. Forest Service Sensitive Species

i) Sensitive Plants

The Project Area likely contains the southernmost populations of the San Luis Obispo mariposa lily (*Calochortus simulans*). The draft Botany Biological Evaluation (BE) mentions that there are two potential occurrences of the species in the Porter Allotment but that no specimens were found during field surveys. However, the draft Botany BE does not describe in any detail the field surveys that were conducted, including when and where the surveys took place. Mariposa lilies are easy to miss during field surveys that are conducted outside of the flowering period. Flowers also tend to contain the characteristics key to identifying species. The draft Botany BE notes that livestock grazing is one of the primary threats to *C. simulans*. U.S. Forest Service staff were unable to locate the two populations of this species within a portion of the Project Area where it has historically been known to occur. This is potentially due to survey methodology. The draft Botany BE goes on to state:

Both populations occur in an area with a mosaic of primary and secondary capable range mixed with non-capable chaparral. Grazing will happen when the plants are present since grazing periods overlap with growing and flowering seasons of the species. However, the number of head months is much lower than the existing number of head months and these populations have survived for many years in the presence of grazing at a level more intense than that proposed by this project.

Draft Botany BE at 30. Another potential reason why U.S. Forest Service staff were unable to locate these populations is because, contrary to the last sentence in the excerpt above, grazing over the past decade has led to significant decline of the populations in this area. How can the agency know that the populations “have survived for many years in the presence of grazing” if inadequate surveys were conducted and populations were unable to be located?

ii) Sensitive Animals

The draft Wildlife BE also generally finds that the Proposed Action will have relatively minor effects to sensitive animal species. For example, the draft wildlife BE states that the Proposed Action may affect the California legless lizard (*Anniella pulchra*), two-striped garter snake (*Thamnophis hammondi*), and western (southwestern) pond turtle (*Actinemys pallida*) but is unlikely to result in a population trend that would require the species to be federally listed, in part because “resource protection measures

intended to keep livestock out of sensitive riparian habitats during critical periods should help minimize these impacts.” p. 37. However, the primary mitigation measures cited as reducing likely direct and indirect effects involve exclosure fencing. We again point to the fact that previous exclosures have failed, resulting in documented take of CRLF in 2018 (and likely more take than has been mentioned in the Project documents). Exclosure fencing in riparian areas subject to regular flooding may fail repeatedly, but this possibility is not discussed in the draft Wildlife BE. Other reasonable alternatives to the Proposed Action such seasonal rotational grazing, deferred grazing, or rest-rotation grazing—none of which were analyzed in detail or even considered by the U.S. Forest Service—may have far fewer direct and indirect effects.

The California Department of Fish & Wildlife has long recognized several impacts to *T. hammondi* from livestock grazing:

During the past decade, however, *T. hammondi* has also disappeared from numerous localities in Ventura, Santa Barbara, and San Luis Obispo counties where habitat was once considered to be relatively secure from development. The reasons for the rapid decline in the northern part of the range of *T. hammondi* are probably due to a combination of factors, which include: habitat modification resulting from livestock grazing; predation by introduced fishes, bullfrogs, and feral pigs; and loss of the prey food base, particularly amphibians [] and fishes, recently exacerbated by the severe drought that occurred over much of southern California between 1986 and 1990. A significant portion of the riparian habitat that still harbors *T. hammondi* is degraded, and could rapidly become unsuitable if present trends towards drier climatic conditions for southern California continue; those conditions are exacerbated by current levels of livestock grazing.

See Jennings and Hayes (1994), p.173. That report goes on to recommend that “[d]etailed field surveys to determine the presence of extant populations of *T. hammondi* in southern California are urgently needed to assess the quality of habitat and the numbers of garter snakes remaining in this region. *Id.* at 174.

The draft EA does not provide any data to assess the quality of habitat or the numbers of two- striped garter snakes, even though the agency has previously underscored the importance of monitoring specific drainages. For example, the U.S. Forest Service has stated in its species account for *T. hammondi*:

Because much of the extant population in California occurs on or adjacent to the Angeles, Cleveland, San Bernardino, and Los Padres National Forests, management of aquatic habitats and associated riparian vegetation and upland aestivation sites on those forests is important to the continued survival of this species. Surveys are needed to determine the locations of drainages supporting two-striped garter snake on National Forest System lands. Once inventoried, periodic monitoring of its presence or absence in specific drainages over time would be a simple task because

two-striped garter snakes are relatively easy to detect (Stephenson and Calcarone 1999).

Given the relative ease of conducting two-striped garter snake surveys, and the importance of protecting drainages and estivation sites from impacts, the failure of the EA to thoroughly analyze impacts is a violation of NEPA.

c) U.S. Forest Service Management Indicator Species

Inexplicably, the U.S. Forest Service did not prepare a project-specific Management Indicator Species (MIS) report, instead tiering off of the MIS reports prepared for the La Brea Restoration Project (which covers some of the same area as the Project) and the Happy Canyon Grazing Allotment (located entirely outside of the Project Area). The La Brea Restoration Project did not involve grazing and was instead focused on road, trail, and campground repair and decommissioning. It may have some relevance to the Project, but only insofar as it involves road use in part of the Project Area. The Happy Canyon Grazing Allotment Project was similar to the Project, but the MIS report and other environmental analysis documents for that project were inadequate as demonstrated in numerous letters submitted by ForestWatch and other conservation organizations over the many years that project was in development. Many of the concerns below are the same as those we raised with the Happy Canyon Grazing Allotment Project in 2015. It should be noted that, as a result of our objection to that project, the U.S. Forest Service agreed to conduct a multi-year study of oak recruitment in and around the Happy Canyon Grazing Allotment.

One of the primary concerns with both the Project and the Happy Canyon MIS Report is livestock grazing impacts on blue oak (*Quercus douglasii*) recruitment. Blue oak is a common MIS found throughout much of the Project Area. Blue oaks are generally showing very limited seedling or sapling recruitment throughout their range (Tyler et al 2006). The Happy Canyon MIS Report even states (p. 19):

The central issue on Los Padres National Forest is whether management, especially livestock grazing, contributes significantly to the low numbers of sapling oaks and if over time the extent and density of blue oaks will decrease on the Forest.

Blue oaks have been repeatedly identified as species that have inadequate regeneration to maintain current stand densities. Inadequate regeneration could adversely affect woodlands, resulting in conversions to shrub fields or bare pastures. According to the University of California Oak Woodland Conservation Workgroup and the Integrated Hardwood Range Management Program, cattle damage to oak trees varies by season, with less damage during the winter when deciduous oaks don't have leaves. Damage is also influenced by stocking density (the number of cattle per unit area) and cattle distribution patterns.

Despite the U.S. Forest Service denying our request for access to the Project Area via roads currently closed to the public but open to the grazing permittee, we were able to access a small portion of one of the allotments by hiking nine miles in late November 2022. During our visit, we examined a heavily used blue oak woodland within the South Fork La Brea Allotment (along Colson Canyon Road). In addition to the many fences in this area being damaged and ineffective, we noted the nearly complete absence of blue oak seedlings and saplings around mature blue oaks. There were also several mature

oaks that had died, with no visible recruitment happening nearby. The only oak recruitment we observed was closer to North Fork La Brea Creek, where we found some small coast live oak (*Q. agrifolia*) saplings under a mature coast live oak.

Unprotected oak saplings appear relatively resistant to cattle damage in low- to moderately grazed pastures if they are at least 6.5-ft tall and smaller seedlings can be protected with fencing or individual protectors. These and other steps (such as resting pastures during the spring and summer, and using tree shelters on native seedlings) can greatly enhance the chances for regeneration success. During our November 2022 visit to a portion of the South Fork La Brea Allotment, we observed two valley oak (*Q. lobata*) saplings that did not have protectors and had evidence of browsing.

Blue oaks and other oak species are important indicators of rangeland health because livestock have been implicated in limited success in or the failure of many oak species to successfully regenerate (Bolsinger 1988, Duncan and Clawson 1980, Muick and Bartolome 1987, Pavlik et al. 1992, Rossi 1980, Swiecki and Barnhardt 1998). Livestock directly impact oaks by eating acorns, leaves, and young shoots. Livestock browsing is thought to suppress or kill many seedlings and saplings, as well as sometimes stressing older trees. In warm temperatures (such as the ones characteristic of the Happy Canyon Allotment), livestock tend to congregate under trees and in other shaded areas, compacting soils, trampling seedlings, and damaging mature trees through repeated contact, making them more susceptible to disease and environmental stresses.

However, according to Swiecki and Barnhardt (1998) livestock grazing is the top factor (p. 24):

Long-term livestock grazing has more potential to adversely affect blue oak regeneration than any other factor. Cattle eat acorns, reduce or eliminate the litter layer beneath trees, and compact the soil, thereby reducing the potential for initial seedling establishment. Surviving seedlings are repeatedly browsed and trampled, which shortens the life of individual seedlings and can deplete or eliminate the persistent seedling bank over time. Under even moderate stocking rates, livestock browsing severely inhibits sapling growth. Repeated cattle browsing reduces blue oak saplings to small shrubs sometimes survive as long as 80 to 100 years without growing above browse line. Thus livestock impact the establishment, survival, and release of blue oak advance regeneration.... Grazing impacts will be most pronounced in stands with less than about 25% canopy cover, in xeric sites, especially those at the edges of the current blue oak range, and in locations with gentle topography which are grazed very uniformly. Consistent grazing on an annual basis may inhibit regeneration more than rest rotations that periodically take parcels out of grazing for one or more years.

The draft EA does not cite to this study or any of the others referenced above, does not include a thorough evaluation of potential impacts to blue oak regeneration, and does not provide any mitigation measures to reduce or avoid these potentially significant impacts, in violation of NEPA. The failure to adequately monitor this MIS is a violation of NFMA.

d) Migratory Birds

The draft EA does not contain any disclosure or analysis of impacts to migratory bird species. While the draft EA does incorporate by reference a 2020 migratory birds programmatic analysis, the draft EA fails to summarize the analysis and conclusions in the draft EA and fails to evaluate the significance of impacts to migratory birds.

The programmatic migratory birds analysis identifies 26 species of migratory birds that may be adversely affected by the Project. That analysis states: “The primary risks to migratory birds resulting from grazing activities occur to incubating/brooding adults, eggs, and nestlings during the breeding season, which generally occurs March 15- July 31 on LPNF.” However, the proposed season of use for nearly all pastures overlaps partially or fully with the bird breeding season where impacts are most pronounced. In fact, the only pasture to not overlap with the migratory bird breeding season is the La Brea Pasture. Draft EA at 23.

The migratory bird programmatic analysis states that overland off-highway vehicle travel presents potentially significant impacts to migratory birds. However, the draft EA does not disclose this impact and does not consider any mitigation measures to reduce or avoid those impacts. To avoid potentially significant impacts, the draft EA should include a resource protection measure prohibiting cross-country vehicle travel during the migratory bird breeding season.

4. The Draft EA Must Adequately Analyze and Mitigate Recreation and Wilderness Impacts

The draft EA contains a two-page analysis of impacts to recreation, including trails and campsites. We appreciate the reduction in season of use to partially mitigate impacts to recreation. However, we are concerned that the enclosure fencing around campsites is too small, confining campers in a way that is not consistent with the outdoor experience they are seeking.

The draft EA states: “Livestock may only enter the Brookshire Campground from the Porter and Pine Canyon Allotments during a 14 consecutive day period (November-December) to accommodate moving livestock between the Sheep Camp pasture and the Kerry Canyon Pastures” and that this would be a “short-term effect compared to the exclusion of livestock the remainder of the year.” Draft EA at 26, 58. This would constitute a significant impact to campers in the area if they are present during the window during which potentially hundreds of cattle move through the area, particularly since there doesn’t seem to be a set schedule for when such movement would occur so that campers can plan to avoid the area accordingly. We suggest that the U.S. Forest Service place a notice on the agency’s website when such activity is expected to occur, with enough advance warning so that recreationists can make alternative plans if needed. We also suggest that the permittee place signage at the campground indicating the dates of cattle movement.

To mitigate against impacts to livestock in campgrounds, the draft EA proposes campground enclosures for Wagon Flat, Brookshire, Horseshoe and Miranda Pines Campgrounds. The size of these enclosures is not specified. Excessively small enclosures tend to confine campers and degrade the outdoor experience. The draft EA should specify the location of fencing at each campground and require that fencing be placed far enough away to reduce significant impacts to the camping experience and sense of solitude.

The draft EA states that “several fences are proposed in wilderness to mitigate impacts to resources.” Draft EA at 58. The U.S. Forest Service must prepare a minimum requirements analysis to determine whether this fencing is necessary and, if so, the design and extent of the fencing needed for consistency with wilderness character; whether motorized vehicles and/or mechanized equipment must be used to transport materials or construct the fencing; and whether there are additional, less intrusive methods or tools, and the rationale for the decision. A summary of that analysis should be included in the EA, and the full minimum requirements analysis should be included in the project record.

The draft EA should include a map showing the location of all recreation facilities (trailheads, trails, campsites) in relation to range infrastructure and suitable and capable grazing areas. The analysis would also benefit from a specialist report focused on recreational impacts.

5. The U.S. Forest Service Must Prepare an EIS Due to Impacts to IRAs and Protected Species

The U.S. Forest Service regulations at 36 CFR 220.5(a) specifically identify two classes of actions that “require environmental impact statements” (EIS). Of these two classes of actions, Class 2 actions include those “that would substantially alter the undeveloped character of an IRA or a potential wilderness area.” *Id.* The Project qualifies as a Class 2 action due to Project activities that will substantially impact and alter the undeveloped character of the La Brea IRA due to road construction. As stated in section 1 of this letter, the U.S. Forest Service may be authorizing road construction in an IRA by changing the status of unclassified non-system roads to classified roads, or temporary roads authorized under permit (see 36 CFR 294.11 and 36 CFR 294.12). Table 21 in the draft EA shows that 11.1 miles of non-system roads within the La Brea IRA are included in the Project.

NEPA provides that “all agencies of the Federal Government shall ... include in every recommendation or report on ... major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official.” 42 USC 4332(2)(C). In determining the appropriate level of NEPA review for a Project, an agency must first assess whether the Project:

- (1) Normally does not have significant effects and is categorically excluded (§ 1501.4);
- (2) Is not likely to have significant effects or the significance of the effects is unknown and is therefore appropriate for an environmental assessment (§ 1501.5); or
- (3) Is likely to have significant effects and is therefore appropriate for an environmental impact statement (part 1502 of this chapter).

40 CFR 1501.3(a). Accordingly, when a Project is likely to have significant effects, as is the case here, an EA does not provide the appropriate level of NEPA review and an EIS is required. *Id.*

“[A]n EIS must be prepared if ‘substantial questions are raised as to whether a project ... may cause significant degradation of some human environmental factor.’” *Ocean Advocates v. U.S. Army Corps of*

Engineers, 401 F.3d 846, 864 (9th Cir. 2005) (emphasis in original); citing *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149 (9th Cir.1998) (quoting *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1332 (9th Cir.1992). “To trigger this requirement a ‘plaintiff need not show that significant effects will in fact occur,’ [but] raising ‘substantial questions whether a project may have a significant effect’ is sufficient.” *Idaho Sporting Cong.* 137 F.3d at 1150 (quoting *Greenpeace*, 14 F.3d at 1332); see also *Environmental Defense Center v. Bureau of Ocean Energy Management*, 36 F.4th 850, 878-89 (9th Cir. 2022).

These impacts cannot be summarily dismissed in an EA with a cursory analysis. NEPA requires agencies to take a “hard look” at the potential environmental consequences of a proposed action, not allowing conclusory assertions that an activity will have only an insignificant impact on the environment. *Ocean Advocates* at 864. “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.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir. 1998).

Moreover, when considering whether a project’s effects are potentially significant, agencies must consider “the affected area . . . and its resources, such as listed species and designated critical habitat under the Endangered Species Act.” 40 CFR 1501.3(b)(1). The ESA requires the U.S. Forest Service to consult with the USFWS to ensure that the Project “is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat.” 16 USC 1531 et seq.

As detailed in section 3(a)(i) of this letter, the Project is likely to have significant impacts on CRLF, a species listed as threatened under the ESA. Livestock grazing-related take of CRLF is already occurring in the Project Area, and the mitigation measures that U.S. Forest Service is including as part of the Project are unlikely to fully mitigate both take and adverse modification of designated critical habitat. Specific evidence of significant impacts includes:

- “Incidental take likely occurs” at the “34th Crossing” Draft Wildlife BA at 38.
- “Incidental take is known to occur” at the 7th Crossing. Draft Wildlife BA at 38
- “Grazing activities likely still have some impacts on recovery” on the South Fork La Brea Allotment. Draft Wildlife BA at 39-40.
- “A CRLF sub-adult was previously observed dead at a pool near 6th crossing on NF LaBrea Creek during October 2018. The individual CRLF appeared to have been trampled by livestock which were utilizing a portion of the South Fork LaBrea allotment where they should not have been present during low-water periods as proposed under the grazing EA,” evidencing the ineffectiveness of livestock exclusion and pasture management. Draft EA at 25.
- “Previous management history has indicated that a delayed response in implementing and maintaining exclosures along NF LaBrea Creek has resulted in known take on the species and adverse modification of PCEs associated with critical habitat in this same area,” again suggesting the inefficacy of the proposed mitigation measures. Draft EA at 35.
- The EA proposes only to require construction the exclosure fencing as part of an adaptive management strategy, not as a mandatory mitigation measure. Draft EA at 40.

6. The Draft EA Fails to Adequately Evaluate Cumulative Effects

While the draft EA does contain cumulative effects analyses for both the Proposed Action and the No Action alternative, the analyses have a major omission that renders them entirely inadequate: there is no mention of the U.S. Forest Service's recently proposed "Ecological Restoration Project" (ERP) anywhere in the draft EA or the specialist reports incorporated by reference.

The ERP was proposed in July 2022 and covers approximately 235,000 acres across the LPNF. It will involve large scale fuel break construction and timber harvest in chaparral, oak woodlands, and conifer forests through use of heavy equipment. The ERP covers approximately 11,700 acres of the Project Area, including 8,370 acres of fuel breaks and 2,702 acres of "forest health treatment units." These numbers are calculated from the current boundaries of the three allotments, though the Proposed Action would expand the Porter Allotment. We would have made these calculations based on the Proposed Action, the U.S. Forest Service was unwilling to share the GIS data used to create the maps in the draft EA despite repeated requests for these data (issues with U.S. Forest Service transparency during the draft EA comment period are described in more detail below).

In contrast, the cumulative effects analyses in the draft EA and associated specialist reports discuss potential effects from the La Brea Restoration Project as well as other ongoing uses in the Project Area. That the cumulative effects analyses within the draft EA do not mention the ERP is surprising considering that the ERP has apparently been in development since 2020, when the U.S. Forest Service was awarded a large grant from private energy company, PG&E. At the very least, the draft EA was released only two months after the scoping comment period for the ERP closed. After 13 years of development, the draft EA should have included information on the potential cumulative effects from the landscape-scale activities being proposed as part of the ERP in accordance with 36 CFR 220.4(f), which states:

The final analysis documents an agency assessment of the cumulative effects of the actions considered (including past, present, and **reasonable foreseeable future actions**) on the affected environment.

(emphasis added). There is no doubt that proposed activities in the ERP represent "reasonable foreseeable future actions." Thus, the cumulative effects analyses in the final NEPA documents for the Project must include the ERP, specifically since the ERP and activities associated with it, including vegetation clearing and livestock grazing, may open up additional areas accessible to livestock.

7. The U.S. Forest Service Did Not Make Project-related Documents Reasonably or Readily Available to the Public

The draft EA was released on November 15, 2022, which set off a 30-day public comment period. This comment period was the first opportunity for the public to weigh in on the Project over its 13-year development period. The draft EA incorporated several documents by reference, including all specialist reports (e.g. the BAs and BEs) and cited studies. Incorporation by reference is allowed under the current NEPA regulations, but with a stipulation about those materials being made available to the public:

Material may be incorporated by reference into any environmental or decision document. This material must be reasonably available to the public and its contents briefly described in the environmental or decision document.

36 CFR 220.4(h) (emphasis added). And 40 CFR 1501.12 is even more specific as to what “reasonably available to the public” means in the context of comment periods:

Agencies may not incorporate material by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Agencies shall not incorporate by reference material based on proprietary data that is not available for review and comment.

On November 18, 2022 (less than 72 hours into the comment period), we asked the U.S. Forest Service for “GIS data used to make the draft EA map” and “[a]ny specialist reports related to the project.” In this same communication, we also asked whether there was a new BiOp issued by the USFWS for this project and whether there was a consultation document from National Oceanic and Atmospheric Administration (NOAA) Fisheries. The same day, we also clarified that we would like access to additional GIS data that was referenced in the draft EA but not included in any of the publicly available maps produced by the U.S. Forest Service. We received a response from the agency the same day stating that the project lead would provide more information when they returned on November 22 or 23 and that consultations (with USFWS, NOAA Fisheries, or both) had not been completed and were “pending the completion of the draft EA” the agency had just published.

We did not receive any communication from the project lead by November 22 and on November 23 submitted a follow-up response to the email we received on November 18. In this new email addressed to the project lead, we asked for additional information related to the Project:

- All references listed on pages 70-72 of the draft EA, particularly those references listed as USDA Forest Service (e.g. the specialist reports—I'm hoping those are available considering that the draft EA is now published and the final comment period is ongoing)
- GIS data for roads (system and non-system), allotment boundaries, and capable and suitable rangelands associated with the project
- All GIS data used to create the stand-alone map dated April 5, 2021 (which accompanied the draft EA)
- GPS coordinates for the “key areas” as defined on page 6 of the draft EA
- The most current grazing permit for all three allotments

In this email, we also cited 36 CFR 220.4(h) in explaining why the requested documents should be “reasonably available.” We did not receive a response from the U.S. Forest Service until five days later on November 28, 2022 (nearly halfway through the comment period) stating that our requests had been

forwarded to the Deputy Forest Supervisor. This was in contradiction to the original response we received stating that the project lead would supply information to us upon their return to the office.

On the same day we received this response, we sent an email to the Deputy Forest Supervisor outlining all the documents we had asked for up to that point (none of which we had received) as well as a request a site visit “which may require special accommodations given that many parts of the allotments are inaccessible due to gates and private property.” We received acknowledgement that our request had been received that day.

On November 29, 2022, the U.S. Forest posted many of the documents incorporated by reference to the project website. However, none of the specialist reports, consultation documents, or GIS data were provided (i.e. the documents we first asked for at the start of the comment period). The following day, we received a full response from the Deputy Forest Supervisor stating that some of the references in the draft EA had been posted to the project website and:

The GIS data will be provided as soon as it is available so please monitor the project website. Final consultation documents will be provided with the final EA. We are unable to release draft specialist reports prior to the publication of the final EA document, as draft documents are by definition not final or complete of their analysis. I understand you’ve requested information previously in a 2016 FOIA request on all Los Padres NF grazing allotments, including a copy of the term grazing permits for the 3 subject allotments of this EA, so I am considering that information request to be met.... Regarding your request for access to the project area, the US Forest Service will not provide any additional accommodations including access via gates beyond what is currently open to the public under motorized and nonmotorized methods. Should you feel you need to obtain access across private property, for which we have no jurisdiction, to complete your review, you may reach out to the private landowners directly to negotiate your access.

Thus, by November 30, 2022—exactly halfway through the 30-day comment period—we had not received the GIS data, copies of the specialist reports, or any consultation documents nor were we given access to portions of the Project Area that were relatively inaccessible due to gates and private property (but which were open to the permittee at the time).

On December 2, 2022, we submitted a response to the U.S. Forest Service about the lack of transparency surrounding the Project and documents referenced in the draft EA. We noted that nine specialist reports incorporated by reference in the draft EA had not been reasonably made available to the public during the comment period. Regarding these reports, we stated in that response:

The Forest Service cannot legally withhold these public records by labeling them as “draft.” By doing so, the agency is depriving the public of an opportunity to review these documents in full as we all attempt to understand and comment on the draft EA. This is the public’s only opportunity to comment on the draft EA—which again has been in the works for 13 years—and we and other interested parties may not be

able to present issues at the objection stage if we have not reviewed and commented on them during the draft EA public review period. The References section indicates that all specialist reports have specific 2020 dates, further evidence that the documents are releasable to the public.

We find it particularly concerning that you are not providing us with the Biological Assessment of Southern California Steelhead (indicated in the References section as USDA Forest Service 2020d). This final document was submitted to an external agency (NOAA Fisheries) in 2020, and NOAA Fisheries issued a concurrence letter, also in 2020. The Forest Service cannot claim that this document is still in draft form, especially after other agencies have reviewed and issued a formal determination upon it.

On December 8, 2022, the U.S. Forest Service finally made the following specialist reports available:

- Draft Wildlife BE
- Draft Wildlife BA
- Draft Botany BE
- Draft IRA Worksheet
- Final Steelhead BA
- Final Migratory Birds Report

All the reports still in draft form had been prepared in 2020 and appeared essentially complete. In fact, they even included analyses of a third alternative that would have allowed for grazing to continue on the allotments under the terms of the current permit (this alternative was not included in the draft EA). Though as stated above, they lacked any mention or analysis of cumulative effects from the ERP. Two of the reports were complete and had been signed in 2020 (Steelhead BA and Migratory Birds Report). Despite these two reports being finalized and signed well before the release of the draft EA *and our requests for any specialist reports related to the Project*, the U.S. Forest Service attempted to withhold them from the public by incorrectly stating that they were still in draft form. Regardless, the release of these reports came 23 days into the comment period, giving the public only seven days to analyze them to better prepare comments on the Project before the December 15 deadline. Notably, the Range Report and the Heritage Report (referenced in the draft EA as USDA Forest Service 2020g and 2020h, respectively) were not made available at the same time as the other reports and were not made available to the public during the entirety of the draft EA comment period, and we have still not received the GIS data.

ForestWatch has engaged in the environmental review process for projects in the LPNF for nearly two decades. We consistently request for specialist reports to be made available during the public comment periods for projects, but for the past few years, the agency has denied our requests by claiming that the reports are in draft form. Unfortunately, this pattern has continued during the draft EA comment period, and it violates 40 CFR 1501.12. Furthermore, the Ninth Circuit Court of Appeals has ruled on this issue:

Section 1502.21 plainly prohibits an agency from relying on information in the preparation of an EIS while refusing to make that information available to the public....When the Ninth Circuit has approved an agency's incorporation of documents by reference into an EIS, it has made clear that the incorporated documents were available to the public....Plaintiffs argue that the Forest Service violated NEPA by incorporating by reference a Fisheries and Aquatic Species Biological Evaluation and Specialist Reports related to "Wildlife," "Forested Vegetation," and "Fisheries"; instead of including them in the appendices of the draft EIS. ...Plaintiffs also argue that the Forest Service further violated NEPA by failing to include the Specialist Reports in the appendices to the final EIS. Defendants counter that they are permitted to incorporate the Specialist Reports by reference in both the draft EIS and the final EIS, and assert that they were permitted to withhold the Specialist Reports as privileged documents....The Forest Service should have placed the Specialist Reports in an appendix which it either **"circulated with the environmental impact statement or [made] readily available on request"** because the reports were "prepared in connection with," and pertained "directly to the preparation of the EIS."....Further, regardless of whether the Specialist Reports should have been included in an appendix or were permissibly incorporated by reference...the Forest Service violated NEPA by failing to make them available.

League of Wilderness Defs./Blue Mts. Biodiversity Project v. Connaughton, No. 3:12-cv-02271-HZ, 2014 U.S. Dist. LEXIS 170072, at *41-52 (D. Or. Dec. 9, 2014) (emphasis added). The above excerpt was in reference to 40 CFR 1502.21, which formerly dealt with "incorporation by reference." In the Trump administration-era NEPA rulemaking, the Council on Environmental Quality (CEQ) proposed to move this section to a new section (1501.12) and change EIS to "environmental documents" because the provision is applicable generally, not just to EISs (see 85 FR 43304, 43327). Thus, the Ninth Circuit case above still pertains to incorporation by reference and applies to EAs. As only *some* of the specialist reports were made available—and they were made available 23 days into a 30-day public comment period—the U.S. Forest Service clearly has not made them reasonably or readily available to the public as required by law.

Some specialist reports were never provided to us. For example, the draft EA states: "A hydrological analysis was completed for the project which included erosion modeling, wetland assessment, cumulative watershed effects modeling, and Clean Water Act review." However, no such hydrological report is included in the references, nor was any provided to us in response to our request. Draft EA at 39.

In addition, the draft EA runs afoul of the requirement in the CEQ's NEPA regulations pertaining to incorporation by reference. Specifically, 40 CFR 1501.12 requires the agency to "briefly describe" the content of any material incorporated by reference. The draft EA fails to satisfy this requirement. For example, the draft EA's discussion on impacts to CRLF does not briefly describe the most extensive information found in the biological assessment and biological evaluation pertaining to specific impacts caused by the Project, and the prior and ongoing take of red-legged frogs. Similarly, the draft EA does

not evaluate impacts to threatened vernal pool fairy shrimp beyond disclosing that occupied suitable habitat occurs in the Project area and a “unlikely to adversely affect” determination without any description of potential impacts, where the vernal pool is located in relation to grazing areas and infrastructure, and to what extent any mitigation measures will reduce or avoid these impacts. There is no discussion of impacts to Native American cultural resources in the draft EA, even though a document titled “Heritage Report - Porter, Pine Canyon, and La Brea Project EA - Environmental Consequences” is listed in the reference section and the draft EA mentions the need to mitigate impacts to “heritage resources” as part of the Purpose and Need section, and “cultural resources” are mentioned in the sections that list LMP standards and mitigation measures. However, there is no description of what the cultural resources are, nor any analysis of what those impacts might be.

8. The Project is Inconsistent with the LMP

a) The Draft EA Fails to Analyze Rangeland Suitability and Capability

LMP standard S51 states: “Allotment specific review of rangeland capability and suitability guidelines (Appendix J - Livestock Capability and Suitability Guidelines) shall occur as part of a site-specific allotment or livestock grazing area level National Environmental Policy Act (NEPA) analysis.” However, the draft EA does not include a map showing the location of capable and suitable rangelands; GIS data for suitable or capable rangelands was not provided to us for independent review and analysis, despite several requests; and the rangeland specialist report was not provided to us despite requests. Instead, the draft EA merely states that certain acres are capable and suitable for each allotment (see Table 5 at page 23). Without this analysis, the public is unable to evaluate or comment upon the U.S. Forest Service’s application of the two-step criteria outlined in LMP Appendix J (Livestock Capability and Suitability Guidelines).

LMP standard S54 states: “S54: Burned Areas: After a wildland fire, prior to initiating grazing, a site-specific analysis will be performed for designated livestock areas to determine the level and location(s) of livestock use, if any.” It is unclear whether such an analysis was conducted for the affected allotments. Allotment records indicate that grazing was authorized shortly after the fire on both allotments affected by the 2009 La Brea Fire.

9. The Project May Increase Fire Risk

There is ample evidence that non-native invasive grasses (e.g. cheatgrass, *Bromus tectorum*) and weeds (e.g. mustard, *Brassica* spp.) are more ignitable/flammable during more of the year than native shrubs and other vegetation (Fusco et al. 2019, Brooks et al. 2004, D’Antonio and Vitousek 1992). Brooks et al. (2004) state (p. 679):

For example, grass invasions of shrublands, such as the *B. tectorum* [cheatgrass] invasion described earlier, increase fire frequency by increasing the fuel surface-to-volume ratio, increasing horizontal fuel continuity, and creating a fuel packing ratio that facilitates ignition.

It should be noted that studies have found that anthropogenic fire ignitions are more likely to occur close to roads than other areas in southern California (Syphard and Keeley 2015) and human-caused fires represent the vast majority of fires in and around the LPNF due to the lack of lightning ignitions (Keeley and Syphard 2018).

The draft EA acknowledges that the Project will likely increase risk of invasive species introduction and spread:

The Proposed Action contains specific measures and operating requirements aimed at controlling and preventing the spread of non-native invasive plants. However, due to the presence of vectors for introduction along roads and trails and continuous disturbance caused by cattle stomping and congregating under shade trees within the Project Area, the developing condition within the project boundary consists of **moderate short-term risk for non-native invasive species introduction and spread which is sustained through the long-term.**

Draft EA at 50 (emphasis added). This coupled with the use of motorized vehicles along remote roads indicates that fire risk could increase within the Project Area. However, the draft EA's short analysis of the Proposed Action's direct and indirect effects on fires and fuels does not mention the potential fire risk from invasive plant spread nor does it mention the risk of human-caused ignitions along roads.

Furthermore, the use of mechanical equipment for range infrastructure construction and maintenance itself can pose an ignition risk. Consider that the 2007 Zaca Fire, which burned 240,000 acres in the LPNF, was started by sparks from a grinding machine being used to repair a water pipe on a private ranch within the boundary of the LPNF. Such a risk is not mentioned or examined in the draft EA.

The draft EA also refers to the 2009 La Brea Fire repeatedly. However, there is no discussion about the fact that the fire burned over 56,000 acres of land (both public and private) within the Project Area despite decades of livestock grazing in the area prior to the fire. The draft EA suggests that continued grazing will reduce wildfire risk yet does not provide an analysis of how grazing prior to 2009 did or did not affect the La Brea Fire.

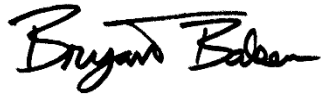
Conclusion

For the reasons above, we ask that the U.S. Forest Service take the following actions:

1. Address the deficiencies in environmental analysis documents described in detail above and re-release them for public review (making all material incorporate by reference available for the entire comment period).
2. Analyze an alternative that includes a significant reduction in motorized use on non-system roads (especially within IRAs), a reduction in livestock numbers allowed, and additional mitigation measures to address ongoing impacts.
3. Consult with USFWS regarding impacts to CRLF and vernal pool fairy shrimp.
4. In the absence of sufficient analysis of environmental impacts, adopt the No Action alternative.

Thank you for this opportunity to provide comments. Please provide us with all future public notices, environmental documents, and decision documents related to the Project.

Sincerely,



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Lisa T. Belenky
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