

November 14, 2005

Appeal Deciding Officer
U.S.D.A. Forest Service
1323 Club Drive
Vallejo, CA 94592

Re: The Decisions and Findings of No Significant Impact for the Gorda, Alder Creek, Salmon Creek, San Carpoforo, Kozy Kove, Sur Sur, and Sea Vista Grazing Allotments.

NOTICE OF APPEAL,
STATEMENT OF REASONS & REQUEST FOR RELIEF

Dear Appeal Deciding Officer,

On September 29, 2005, Los Padres National Forest Supervisor Gloria Brown issued a set of Decision Notices and associated Environmental Assessment (EA) and Findings of No Significant Impact (FONSI) to authorize continued livestock grazing on the Gorda, Alder Creek, Salmon Creek, and San Carpoforo grazing allotments; to authorize grazing on the Kozy Kove, Sur Sur, and Sea Vista Ranches; to close the Twitchell and Buckeye allotments; and to leave the Torre Canyon allotment vacant.

NOTICE OF APPEAL

Pursuant to 36 C.F.R. § 215.14, Ventana Wilderness Alliance, Center for Biological Diversity, Los Padres ForestWatch, and the Ventana Chapter of the Sierra Club appeal to the Regional Forester, Pacific Southwest Region, USDA Forest Service to overturn the Decisions and FONSI for the Gorda, Alder Creek, Salmon Creek, Kozy Kove, San Carpoforo, Sur Sur, Sea Vista, and Torre Canyon allotments. Appellants have no protest with the Decisions for the Twitchell and Buckeye grazing allotments; we support the agency's decision to close these allotments to livestock grazing.

This appeal is filed in a timely manner. Legal notice was published on September 30, 2005. This appeal is filed today, November 14, within the 45-day appeal period.

Appellants and standing

Lead Appellant Ventana Wilderness Alliance (VWA) is a non-profit conservation group whose mission is to protect, preserve, enhance and restore the wilderness qualities and biodiversity of the public lands within the northern Santa Lucia Mountains. Many VWA members regularly use these allotments for volunteer work, recreation, wildlife observation, scientific research, and other forest and

grassland related activities. VWA claims standing pursuant to 36 C.F.R. § 215.13(a) because it submitted timely scoping comments to the eight Big Sur coastal grazing proposals on August 23, 1999; submitted timely substantive comments on the eight EAs for these allotments on April 12, 2001 with an addendum sent on April 16, 2001; was a co-appellant in the appeal of the decision for these EAs on in December 2001 and January 2005, and submitted timely substantive comments in April 2004 and August 2005.

The Center for Biological Diversity (“the Center”) is a non-profit conservation advocacy group with 15,000 members throughout the United States. Many of the Center's members and staff regularly use these public lands for work, recreation, wildlife observation, scientific research, and other forest and grassland related activities. The Center claims standing pursuant to 36 C.F.R. § 215.13(a) because it submitted timely substantive comments on the EAs for these allotments in April 2001 and August 2005, and was appellant in the appeal of the decision for these allotments in December 2001 and January 2005. The Center submitted timely substantive comments in April 2004 and August 2005.

Appellant Los Padres ForestWatch (“ForestWatch”) is a non-profit conservation organization working to protect and restore the Los Padres National Forest and other public lands along California’s Central Coast through community involvement, scientific collaboration, and legal advocacy. Many ForestWatch members regularly use these allotments for volunteer work, recreation, wildlife observation, scientific research, and other forest and grassland related activities. ForestWatch claims standing pursuant to 36 C.F.R. § 215.13(a) because it submitted timely substantive comments on the EAs for these allotments in August 2005, and was an appellant in the appeal of the decision for these allotments in January 2005.

Appellant Ventana Chapter of the Sierra Club (VCSC) is the oldest non-profit environmental organization in the nation. Its mission is to protect the wild places of the earth and to practice and promote the responsible use of the earth's ecosystems and resources. Many of the Ventana Chapter's members regularly use these allotments for work, recreation, wildlife observation, scientific research, and other forest and grassland related activities. The Ventana Chapter claims standing to participate in the Forest Service decision-making process based on its ongoing involvement with Los Padres forest management, and based on its involvement as an "interested public" in the NEPA process on these allotments. The Ventana Chapter also claims standing to participate under 36 C.F.R. § 215.13(a) because it submitted substantive comments on the EAs for these grazing allotments in April 2001 and August 2005.

INTRODUCTION

The public lands that are the subject of this appeal are on the Monterey Ranger District of Los Padres National Forest, in Monterey County, California. The seven allotments are all located on the Pacific coast, in the well known area of Big Sur. This area has almost nationwide recognition for its outstanding scenic beauty and has been the muse of many an artist and photographer.



Figure 1. View of the coast on the Sur Sur property, which is proposed to be included in the San Carpoforo allotment on Los Padres National Forest.

The unique features of the area include remarkable recreational values, from providing whale-watching vistas for whale migrations between December and April to monarch butterfly migration viewing, which also occurs during the winter months. The Cooper's hawk, the golden eagle, prairie falcon, and California condor—a famous symbol of Endangered Species Act success—roost and hunt in the area and may be seen soaring overhead. Smith's blue butterfly, a listed Endangered species, uses the seac cliff buckwheat found on these allotments as its host plant. Three species of fairy shrimp and the vernal pool tadpole shrimp may also occur on these allotments, all of which are federally listed species.

In addition to the fabulous wildlife opportunities, this area hosts an extremely rich and varied flora. Special plants on the allotments include the Santa Lucia fir, the world's southernmost stands of redwood trees, Hickman's onion, San Simeon baccharis, dwarf goldenstar, late-flowering mariposa lily, and additional showy wildflower species that make this area a hotspot for professional and amateur botanists alike.

The Decisions for these allotments will most certainly have a significant effect on all of these biological resources. Already, grazing developments on these allotments have been acknowledged to detract from the wilderness experience. Reauthorizing and initiating grazing on these allotments will certainly affect the scenic and wild beauty that this area is known for.

The Gorda allotment is characterized by frequent violations of permit terms and conditions. In fact, in the last seven years, the Forest Service has suspended the grazing permit four times, and has documented "numerous" other permit infractions. Most recently, the agency suspended the permit

because of a "continued pattern of non-compliance with permit and Forest officer instructions." The permit has been suspended for the "willful use" of corrals containing high-risk heritage resources. In 2001, the permit was suspended for two years because of herding cattle across steelhead habitat in Prewitt Creek despite instructions not to, stocking twice as many cattle as allowed, and vandalizing Forest Service chains and locks. In 2000, the permit was suspended for failure to maintain water developments two years in a row, and in 1999 for failing to follow utilization guidelines. Allowing grazing to continue on this allotment only serves to reward this unlawful behavior.



Figure 2. The Pacific Valley unit of the Gorda allotment.

The Decisions that are the subject of this appeal are based on an EA that does not differ substantially from EAs and Decisions previously issued and withdrawn by the Forest Service. Again, the EA fails to consider a wide range of alternatives, approves increased AUMs in spite of numerous public protests, fails to mitigate and monitor soils and vegetation resources, permits repeat-offender ranchers to use these public lands in spite of willful and continued non-compliance, authorizes increased grazing in Wilderness areas, offers no preventative measures for ongoing problems, neglects the analysis of vernal pools, and largely ignores the needs of imperiled species. We question the Forest's rationale for repeatedly issuing essentially the same EAs and Decisions, which have been shown to be lacking legally and scientifically, and we object to the general unwillingness to improve these projects.

We sincerely wish that this project had been refined and improved between 1999 and present, but unfortunately, the Forest's strategy seems to be to re-issue the same weak and illegal documents and continue business-as-usual in the meantime. It is disappointing that the intense levels of public participation have been effectively ignored, and our suggestions and comments largely unheeded. The

only change in this most recent EA is to continue grazing on the Torre allotment, indicating that the only public entities with the ear of the decision-makers are the grazing permittees themselves.

Appellants are frankly weary of repeatedly reminding the Forest of its legal duties to the public and the natural resources the agency has been entrusted to protect and preserve, and we hereby incorporate all previously-raised points and issues from our two previous appeals and appendices for this same project, which should be easily accessed in the Project Record and/or which we would be willing to resend upon request. We offer the following additional appeal points for the current Decisions.

STATEMENT OF REASONS

1. The Decisions violate the National Environmental Policy Act because the Forest Service failed to prepare an Environmental Impact Statement for this project.

The Forest Service must prepare an Environmental Impact Statement (EIS) for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C). NEPA requires an EIS for actions that “significantly” effect the environment, and for actions that affect “Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.” 40 C.F.R. § 1508.27(b)(3). The preparation of an EIS is required for actions which are “highly controversial.” 40 C.F.R. § 1508.27(b)(4).

In this case, the EA was an insufficient analysis of the action, given the evidence that this assessment took 6 years and was highly controversial throughout the planning process. The first scoping letter for this action was issued in 1999, and since then, two sets of Decisions have been issued and withdrawn, and the supporting EAs were revised and rewritten three times. The Decisions that are the subject of this appeal were issued in September 2005, after six years of planning. During this time, the Forest Service reviewed and prepared voluminous supporting documents. “Normally, the preparation of an EA “should take no more than 3 months, and in many cases substantially less.” CEQ, *NEPA’s Forty Most Asked Questions*, § 35. Moreover, an EA is supposed to be a “concise” document of 10-15 pages, not a 134-page encyclopedia. A project that requires such a large amount of documentation clearly warrants preparation of an EIS, not an EA. (See CEQ, *NEPA’s Forty Most Asked Questions*, § 36: “In most cases, however, a lengthy EA indicates that an EIS is needed.”).

The Forest Service opted to merely prepare less-rigorous EAs for the Decisions, concluding that “the action described herein is not a major federal action, individually or cumulatively.” To the contrary, the decisions will result in numerous significant effects on the environment, including impacts to endangered and other sensitive species and habitats, water quality, soils, and wilderness recreation, and individually and collectively constitute a major federal action.

An EIS is required to analyze “the degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.” 40 C.F.R. § 1508.27(b)(9). The project area contains habitat for numerous endangered and other sensitive species, including the Smith’s Blue Butterfly (Federally Endangered), the South-

Central Coast Steelhead (Federally Threatened), and the California Red-Legged Frog (Federally Endangered).

The geographic area in consideration contains numerous unique characteristics that, individually and cumulatively, require the preparation of an EIS. For example, the Monterey Bay National Marine Sanctuary (the largest marine sanctuary in the U.S.) is adjacent to the project area. The Pacific Coast Highway, an All-American Highway, bisects the project area. The project area contains several rare vernal pools. The Congressionally-designated Silver Peak Wilderness Area is located adjacent to, and partially within, the project area. The project area is bordered by the recently-designated California Coastal National Monument. Moreover, the Southern California Mountains and Foothills Assessment declared San Carpofo Creek an “area of particularly high ecological significance.”

The NEPA process should analyze “The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.” 40 C.F.R. § 1508.27(b)(6). These Decisions authorize initiation of and increased grazing on allotments in Wilderness, which is illegal. If allowed to stand, this illegal action undermines the letter and intent of the Wilderness Act, and would establish a precedent for future actions.

NEPA requires EAs to evaluate the loss or destruction of significant scientific, cultural, or historical resources. The EA admits on page 35 that the Gorda allotment “contains resource sites where livestock use may contribute to cumulative damage or be in conflict with cultural values.” Because these Decisions may result in significant effects to cultural resources, as stated in the EA, an EIS must be prepared.

The Decisions are highly controversial. Overwhelming scientific evidence and numerous public comments suggest that the EA is insufficient and inaccurate. No recent project on the Monterey Ranger District has been as highly controversial as these. The Forest Service proposed almost the exact same action in 1999, and again in 2004 and 2005, but withdrew the Decisions on appeal. The Forest Service is well aware of the degree of controversy surrounding this action. The Forest Service has received at least 65 comments opposing the project from members of the public.

If an action “normally requires” an EIS, the Forest Service must prepare an EIS for similar actions. Actions similar to these Decisions include the Decisions for the Salt Pass Grazing Allotments, Bridger-Teton National Forest (NF), Wyoming (NOI 11/30/04, 69 Fed. Reg. 69582); Re-issuance of 10-Year Term Grazing Permits and Authorization to Graze Cattle in the Tushar Mountain Range, Fishlake NF (NOI 3/11/04, 69 Fed. Reg. 11589); Authorization of Livestock Grazing Activities on the Sacramento Grazing Allotment, Lincoln NF, New Mexico (NOI 3/17/04, 69 Fed. Reg. 12637); Ashley-Dry Fork Grazing Allotments, Ashley NF, Utah (NOI 2/3/04, 69 Fed. Reg. 5122); North Fork Eel Grazing Allotments, Six Rivers NF, California (NOI 8/11/03, 68 Fed. Reg. 46162); Upper Green River Area Rangeland Project, Bridger-Teton NF, Wyoming (NOI 7/23/03, 68 Fed. Reg. 43487); West Fork Blacks Fork Allotment Management Plan, Wasatch-Cache NF, Utah (NOI 3/26/03, 68 Fed. Reg. 14575); and Livestock Grazing Permit Re-issuance on the Horse Butte Allotment, Gallatin NF, Montana (NOI 12/12/01, 66 Fed. Reg. 64211).

The complexity of the supporting documents and the length of time required to prepare this EA should be a clear indication that an EIS is necessary under NEPA. Because the authorization of

grazing on such a large scale normally requires the preparation of an EIS, because the action was highly controversial, because historical and biological resources are affected and because the cumulative effects are significant, and because the analysis was highly complex and the preparation process lengthy, an EIS should have been prepared. The failure to prepare an EIS violates NEPA.

2. The Decisions for the Kozy Kove, San Carpoforo, and Gorda Allotments violate the Wilderness Act and Forest Service policies restricting grazing in Wilderness areas.

The Wilderness Act is quite clear on the issue of livestock grazing: grazing in wilderness areas, *if established prior to designation of the area as wilderness*, 'shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture'. Section 4(d)(4)(2) (emphasis ours). "It is anticipated that the numbers of livestock permitted to graze in wilderness would remain at the approximate levels existing at the time an area enters the wilderness system," and "To clarify any lingering doubts, the committee wishes to stress that this language means that there shall be no curtailment of grazing permits or privileges in an area simply because it is designated wilderness" (FSM 2323.22, Congressional Guidelines).

The Forest Service Manual is very clear that the agency can only issue a grazing permit for those allotments "where a grazing permit was in existence at the time of designation and where there is recent history of grazing use immediately prior to wilderness designation." (2323.24)

The Forest Service Manual also states that "[g]razing may be authorized on an allotment which, although vacant on date of wilderness designation, previously included grazing that was only temporarily discontinued and that was clearly documented for such purposes as range restoration." FSM 2323.24(2).

The Los Padres National Forest Land and Resource Management Plan of 1988 declares that "Grazing, by law, may continue in designated Wilderness at current levels as identified in *current* range management allotment plans." Chapter 2, Issue 8-6.

There have never been any permits issued for the Kozy Kove property, nor have any grazing privileges ever been granted on it by the Forest Service. (See Table 1) To create and stock an allotment there now would be a clear violation of the Wilderness Act. The Forest Service fails to provide evidence of historically permitted use: Appendix "F" of the EA lists all of the Coastal Rangeland units and their historical stocking numbers, with the conspicuous exception of the Kozy Kove, which doesn't appear on the list since grazing has never been authorized there. In fact, nowhere in the EA or any of the supporting documentation in the project record is historical stocking rate information for the Kozy Kove made available to the decision maker.

The Forest Service asserts that since this land was once grazed under private ownership, it is lawful to create and stock an allotment now. To the contrary, when it was designated as wilderness in December 2002, there were no permits and no livestock authorized to use the allotment. No grazing had occurred on the property for the previous seven years, hardly considered "immediately prior" to Wilderness designation. No documented range restoration projects have been conducted on the property.

Table 1. Timeline of Kozy Kove acquisition and designation as Wilderness.

YEAR	MONTH	ACTION
1992	-	Silver Peak Wilderness is created
1995	-	Forest Service acquires part of the Kozy Kove property, adjacent to the Silver Peak Wilderness, and private livestock grazing ceases .
1997	-	Forest Service acquires remaining area of the Kozy Kove property.
1999	April	Forest Service opens public scoping on proposal to create Kozy Kove grazing allotment. Appellants submit extensive comments.
2001	November	Forest Service issues a Decision to create and stock the Kozy Kove allotment.
	December	VWA and CBD appeal Decision
2002	February	Forest Service withdraws Decision
	December	Majority of Kozy Kove property is designated as part of the Silver Peak Wilderness in the Big Sur Wilderness and Conservation Act. (Note: No grazing permits or privileges had ever been authorized for that land by the Forest Service, nor any cattle grazed there under FS ownership.)
2004	April	FS again opens public scoping regarding creating a new Kozy Kove grazing allotment, now in designated Wilderness.
	December	FS releases second decision notice to create and stock the Kozy Kove allotment.
2005	January	Decision is appealed by VWA, CBD, Los Padres Forest Watch (LPFW) and Ventana Chapter Sierra Club (VCSC).
	March	FS again withdraws decision
	July	Forest Service reissues EAs for public comment
	August	Appellants comment and raise Wilderness Act compliance issues.
	September	Forest Service issues a Decision initiating grazing on Kozy Kove, and increased grazing on San Carpoforo and Gorda allotments.
	November	Decision is appealed by VWA, CBD, Los Padres Forest Watch (LPFW) and Ventana Chapter Sierra Club (VCSC).

Any lingering doubts about the application of the Wilderness Act are quite clearly resolved through the congressional language: The actual stocking levels at the time the lands of the Kozy Kove entered the wilderness system was zero, and had been at that level for at least 7 years (EA page 7). There have never been permit waivers issued for this property. The Kozy Kove property has never been grazed under Forest Service ownership, with or without permits or privileges. The Kozy Kove ranch is not an allotment, and has never been an allotment under Forest Service ownership. There shall be no legal grazing on this Wilderness property.

The Decisions further ignore and degrade the Wilderness Act by allowing the expansion of grazing in Wilderness areas, by authorizing increased levels of livestock grazing on the San Carpoforo and Gorda allotments within the Congressionally-designated Silver Peaks Wilderness Area. The Wilderness Act allows for grazing to continue where it was established and permitted prior to Wilderness designation; it does not allow for substantial increases in grazing activity within designated Wilderness.

The Decision for the San Carpoforo allotment allows 975 AUMs, nearly double the permitted numbers that were authorized when the allotment was designated as part of the Silver Peak Wilderness area. At present, the entire allotment (with the exception of 80 acres) is within designated Wilderness. The two previous permits for this allotment allow 496 AUMs.

The Decision for the Gorda allotment also significantly increases the permitted numbers in a Wilderness Area, in violation of the Wilderness Act. On the Plaskett unit of this allotment, which is within the Silver Peak Wilderness, the Decision authorizes a 23 percent increase in the number of AUMs, raising the permit from the Wilderness designation level of 257.4 AUMs to 316 AUMs.

Further, there are no “current” range management allotment plans for any of the subject allotments. The most recent allotment management plan for Gorda allotment was approved in 1962; for the San Carpofo, 1963. In no way does a 40-year-old plan qualify as a “current” range management allotment plan. There has never has been a range management allotment plan in place for the Kozy Kove ranch.

Appellants therefore contend that these three Decisions are in clear violation of the Wilderness Act, Forest Service policies, the Los Padres Forest Land and Resource Management Plan of 1988, The National Forest Management Act, and the Administrative Procedures Act, and should be withdrawn and grazing suspended until a legal analysis is completed.

3. The EA failed to analyze a reasonable range of alternatives, and relied on an overly-narrow purpose and need.

NEPA requires that the agency consider a reasonable array of alternatives “to the fullest extent possible.” 40 C.F.R. § 1500.2(e); see also NEPA § 102(E), 42 U.S.C. § 4332(E). The agency shall “[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 C.F.R. § 1502.14(a). A consideration of alternatives which lead to similar results is not sufficient to meet the intent of NEPA. *Citizens for Environmental Quality v. United States*, 731 F. Supp. 970, 989 (D.Colo. 1989); *State of California v. Block*, 690 F.2d 753 (9th Cir. 1982).

The Forest Service Handbook, chapter 20, section 23.2 states that the purpose and intent of alternatives are to "ensure that the, range of alternatives does not foreclose prematurely any option that might protect, restore and enhance the environment."

Rigorous exploration is an investigation into various means of achieving desired results. It is needed in order to ensure that all possible scenarios for public land management are considered, and all reasonable management options are evaluated. Alternatives which lead to similar results do not therefore qualify as rigorous exploration of all reasonable alternatives.

Despite these clear requirements, the EA fails to consider a reasonable range of alternatives. The EA considers only two alternatives to the proposed action – a “No Change” alternative wherein grazing would continue under current management levels, and a “No Grazing” alternative wherein the Forest Service would not authorize any livestock grazing. These two alternatives do not represent a “reasonable” range of alternatives because they are both grazing-based. The agency failed to consider other non-grazing alternatives that would also achieve all of the Desired Conditions, such as prescribed fire and other restoration projects that would protect and encourage recovery of the Desired Conditions.

Moreover, the agency arbitrarily eliminated from detailed study a reasonable alternative proposed by VWA during scoping that would have allowed for continued grazing in three out of every four years. The EA provides an inadequate explanation for rejecting this reasonable alternative. Clearly the agency failed to rigorously explore and objectively evaluate the VWA alternative, and the agency’s arbitrary elimination of this alternative from detailed study violates NEPA.

Finally, because the newly-acquired Kozy Kove, Sea Vista, and Sur Sur ranches lack management direction under the current Forest Plan, one of the stated purposes of the Decisions is to provide “management direction on the recently acquired ranches.” However, the Forest Service devised only one alternative that would meet this purpose – the preferred alternative. Because no other alternatives included management direction, this arrangement automatically precluded the Forest Service from selecting any other alternative. This certainly did not allow for a rigorous exploration and an objective evaluation of alternatives, in violation of NEPA.

The EA sets forth several purposes and needs for the proposal, including “to provide available forage through continued livestock grazing,” “to provide supplemental forage,” “to authorize continued livestock grazing,” and “to adjust season of use,” among others. These purposes are overly narrow, and the agency relied on these overly-narrow needs to eliminate alternatives that do not allow grazing to continue on these allotments, in violation of NEPA.

4. The Forest Service failed to use the best available science, to use authorities to assist in the recovery of species and to properly consult with the U.S. Fish and Wildlife Service, in direct violation of the Endangered Species Act.

The ESA requires consultation with NOAA and the USFWS for the recovery of species listed as threatened or endangered, and prevents “take” of any threatened or endangered species. Federal projects that may affect these species require consultation that is conducted with the best available science and a finding of “no jeopardy” by the consulted agencies.

In this case, the proposed action as defined in the Biological Opinion (BO) of the U.S. Fish & Wildlife Service for the Smith’s blue butterfly differs markedly from the action approved in the Decisions for the Alder, San Carpofo, and Sea Vista/Sur Sur allotments. Specifically, the BO limits authorized livestock on the Alder allotment to “mature or yearling horses or mules,” while the Decision for the Alder allotment states “Authorized livestock may include mature or yearling horses or mules; cow/calf pairs; other mature cattle including bulls; yearling cattle.”

The 2003 BA on these allotments for Smith’s blue butterfly states that ten year grazing permits issued for these allotments will contain management and mitigation measures which include the removal of cattle from pastures during the flowering period of seaciff buckwheat whenever possible. The 2004 BO exempts the Alder Creek allotment and the Mill Creek unit of the Gorda allotment from this requirement, but mandates that distribution of cattle be managed so as to minimize impacts. However, the Decisions approve a proposed action which overlaps with this June to September flowering period time frame on all but the San Carpofo and Kozy Kove allotments, which have minimal buckwheat acreage anyway, and fails to describe management plans to remove or redistribute livestock during this period. The BO describes the action on Salmon Creek to authorize not more than 65 AUMs, but the Decision authorizes up to 115 AUMs.

5. The Decisions downplay the occurrence and spread of sudden oak death and thereby compromises the ecological health of the Forest, in violation of NEPA and the National Forest Management Act.

NEPA requires that the agencies take “a hard look” at all relevant scientific information pertinent to a proposal, and to seriously consider issues raised by the public during the comment period. (*Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380: 9th Cir.1998).

Further, an agency’s hypothesis and prediction of effects must be verified with observation, and should be demonstrated with on-the-ground analysis (*The Lands Council, et al v. US Forest Service Region 1*. 395 F.3d 1019; 9th Circuit 2004).

Sudden Oak Death (SOD) has been documented on Gorda and Torre Canyon allotments and potentially occurs on the other allotments as well. The EA should have considered the management issues of permitting livestock grazing in these areas. The only existing management direction (“best management practices”) for dealing with SOD indicates that equestrian users should stay on established trails and out of contaminated forest areas. The Oak Mortality Task Force recommends “cleaning out plant material and mud from the horse and its hooves with towels and brushes before leaving the site” Humans are also known vectors of SOD.

This EA downplays the risk of SOD within the coastal rangelands, and similarly downplays the likelihood that livestock will exacerbate the problem. A brief, general discussion of SOA was included in the EA, as a response to our comments.

While we support the Forest’s collaborative effort to study SOD in the Big Sur area, we are concerned that this highly scenic area that is frequently used for recreational activities will be a test case. It seems instead that the Forest should be acting proactively to eliminate all risks of spreading SOD. Permits should be suspended until it is definitively proven that livestock do not spread this pathogen. To arbitrarily and capriciously dismiss this threat and instead authorize the transport of hundreds of potential vectors into and out of a SOD hotspot like Big Sur is reckless at best.

6. The EA fails to consider the impacts of this proposed action on *Calycadenia micrantha*, a species proposed for List 1B status that should be added to the Los Padres Sensitive Species List.

NEPA requirement that the agencies take “a hard look” at all relevant scientific information pertinent to a proposal extends in this case to *Calycadenia micrantha*, a newly described taxon that is only known from two populations in Monterey County. It should be added to the Los Padres Sensitive Species List and the impacts of this action should be analyzed. This species is at risk from road maintenance, dust, and other activities.

The complete neglect of this species in the EA and in the Decisions constitutes a violation of NEPA, and demonstrates the need for a new EIS that assesses grazing and grazing management impacts to this species.

REQUEST FOR RELIEF

Appellants respectfully request that the Decisions for the Gorda, Alder Creek, Salmon Creek, San Carpofero, Sur Sur, Sea Vista, and Kozy Kove and Torre Canyon allotments be withdrawn until an appropriate and legal analysis and EIS is completed. Appellants have demonstrated the agency's failure to comply with the National Environmental Policy Act, the National Forest Management Act, the Endangered Species Act, the Administrative Procedures Act, the Wilderness Act, and the Coastal Zone Management Act. We reiterate the incorporation by reference of all of our previously submitted appeals, which we will provide to the agency again upon request, though we believe these should be available in the Project Record.

As stated above, appellants have no protest with the Decisions for the Twitchell and Buckeye grazing allotments that were included in the same EA; we support the agency's Decisions to close these allotments to livestock grazing.

We thank you for your consideration of this appeal and we look forward to moving towards a resolution.

Sincerely,



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