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September 25, 2023

Re: Tomales Point Area Plan Comment

Dear Mr. Kenkel,

We are writing on behalf of our clients Jack Gescheidt, Laura Chariton, and the Animal Legal Defense Fund in response to your letter dated August 25, 2023, requesting comments to inform the planning effort for the Tomales Point Area.

Introduction.

We strongly encourage the National Park Service (NPS) to implement its proposed action plan, the Tomales Point Area Plan (TPAP) public scoping newsletter Alternative “B,” with certain modifications. NPS must remove the Tomales Point elk fence, which prevents the Tule elk from gaining access to water and forage south of Tomales Point and has led to the suffering and death of hundreds of elk in recent years. Taking no action or culling the elk (identified by NPS as “Alternative A” and “Alternative C,” respectively) are both unacceptable alternatives that would utterly fail to conserve this invaluable native Tule elk population.

At the outset, we wish to lodge a complaint about the timing and manner in which NPS is receiving comments. This is a matter of great public significance; however, the process has been fashioned to prevent the public from submitting evidentiary support, including supportive documents and images. Future public comment processes, including the process by which the public will be asked to comment on the EA, must be modified to allow for submission of pdf documents and images. Furthermore, the comment period opened at the end of summer, just before Labor Day, which is one of the most heavily vacated times of the year. NPS then refused to extend the comment period to allow more time for comments.

NPS has stated in the public scoping newsletter that “this planning is separate from the recent General Management Plan Amendment, which addressed leased lands for ranching in the Seashore and the management of elk on those lands.” We are writing, in part, to clarify that the scope of issues for this proposal must include the impact of cows on the Tule elk once the Tomales Point population of elk migrates south of the elk fence. As a legal matter, under the requirements of the National Environmental Policy Act, the scope of issues for this proposed action plan cannot be

limited solely to Tomales Point and the area north of the fence.¹ NPS must recognize that, without the fence, the Tomales Point Tule elk will move about the Point Reyes National Seashore, including the area south of the fence, and thus the scope of issues should not be limited to their area of confinement before the fence removal.

Per the proposed Alternative B, NPS will “[c]onsider adding a fence to exclude cattle from Tomales Point.” To be effective, the TPAP must include a definitive plan for removing cattle operations. Non-native cows harm native species, including Tule elk, through pollution, disease, and resource competition. Ranches pollute the land, streams, lagoons, bays and ocean with cow manure and urine and manure-borne diseases, including Johne’s disease. Such agricultural operations limit the public’s access to the National Park. Ranches fence off 28,000 acres—one third of the entire park—from the public and indigenous wildlife.

Additionally, per the proposed Alternative B, NPS will “[d]iscontinue provision of supplemental water and minerals for tule elk” and “[r]emove all existing, non-historic supplementary water systems.” We encourage NPS to reconsider, as the supplemental water program should remain in place for at least the next two summer-autumn seasons of 2023 and 2024. The Tomales Point elk have formed four sub-herds of fenced-in elk—the North herd, the Plateau herd, the White Gulch herd, and the South herd. It will take time for the northern-most sub-herds to migrate out of the previously fenced area, and supplemental water is still necessary for elk during this transition. Per consultation with wildlife ecologist Dr. Judd Howell, the elk will need time to relocate to alternative habitats.² Climate change will also continue to affect the region. Water tank removal may cause elk to experience dehydration in the short- and long-term, as California continues to face drought and other extreme weather conditions.

Since 2015, NPS has recognized the need for supplemental water.³ In 2015, NPS acknowledged that “observations by park staff have confirmed that all but one of the remaining functional water basins . . . have gone completely dry for extended periods over the last two years” and there was a need to develop “a contingency plan for the delivery of supplemental water to the Tomales Point Elk in the event that drought conditions persist or become worse in the future.”⁴ Despite this, NPS did not actually provide supplemental water until 2021.⁵ Thus, the TPAP must include the provision of supplemental water at least through autumn 2024.

Finally, we encourage NPS to establish a plan to prevent illegal poaching and hazing of Tule elk, implement non-invasive methods to monitor the elk, and make corresponding amendments to the General Management Plan for Point Reyes National Seashore.

¹ See 40 CFR § 1509.1, “[a]gencies shall use an early and open process to determine the scope of issues” (NEPA implementing regulations).

² E-mail from Judd Howell, PhD., to Animal L. and Pol’y Clinic, Harvard L. Sch. (Sept. 20, 2023, 12:32 EST) (Attachment A, <https://perma.cc/Y8GX-KSBC>).

³ Exhibit 11, *Gescheidt v. Haaland*, No. 4:21-cv-04734-HSG (N.D. Cal. June 24, 2021).

⁴ *Id.*

⁵ *Unprecedented Drought Prompts Point Reyes National Seashore to Provide Supplemental Water for Tule Elk at Tomales Point, National Park Service* (June 11, 2021), <https://www.nps.gov/pore/learn/news/newsreleases-20210611-water-for-tomales-point-tule-elk.htm>.

The Tule elk have suffered due to their confinement. Removing the elk fence is an important first step towards alleviating their suffering and returning them to a natural environment.

In 1978, NPS erected an eight-foot-tall fence around the Tomales Point peninsula to isolate the reintroduced elk from nearby ranches. The fence traverses the entire width of Tomales Point, preventing the elk from accessing any food or water south of the fence. In 1998, NPS issued its Tule Elk Management Plan, which was intended to govern the management of the elk for no more than ten years—*i.e.*, until 2008. This plan remains in place today, 23 years later.

Since 1986, NPS has been on notice that the elk were likely to experience “die-offs or nutritionally related problems” during “periods of drought.”⁶ In 1993, the Park Service’s own Scientific Advisory Panel noted that a passive management plan for the Tule elk population would harm the Tule elk due to decreased forage, stating, “[w]e can reliably predict that if such a strategy is employed the Tule elk will seasonably be malnourished and appear less ‘healthy,’ and that dead and dying animals will become more evident.”⁷

Foreseeably, the Scientific Advisory Panel’s prediction came to fruition: the inability of elk to access food or water outside of the fenced area has had dire consequences. Starvation and dehydration are killing the Tomales Point Tule elk in large numbers. Between 2012 and 2015, the Tule elk population crashed from 540 elk to 283, a loss of 257 elk.⁸

By 2019, the herd’s population had grown to 445, but in 2020, 152 elk died, and the population crashed to 293 elk.⁹ During the summer of 2020, visitors to the seashore witnessed emaciated, dying, and dead elk who lacked access to water.¹⁰ Subsequent necropsies confirmed that these elk had died of starvation or dehydration.¹¹ In contrast, the population of free-ranging herds remained relatively stable during 2020, showing that these declines were avoidable consequences of unnatural confinement. Once again, in 2021, 25% of the remaining elk (72 elk) died due to a lack of food and water. It is “wasteful, unethical, and inhumane” to starve the Tule elk to death.¹² Removing the fence will allow the herd to stabilize and reduce unnecessary elk suffering.

Genetic diversity within the elk herds was already a concern when the 1998 Elk Management Plan was published, and the problem has only gotten worse. Genetic isolation is a predictor of population extinction, as “[t]he survival of small, isolated populations depends on incorporating active genetic management into conservation strategies.”¹³ This is a major concern, since all Point Reyes Tule elk are descendants of the ten original elk brought to the Reserve in 1978.

⁶ Peter John Patrick Gogan, *Ecology of the Tule Elk Range, Point Reyes National Seashore* 321 (1986) (Ph.D. dissertation, University of California, Berkeley).

⁷ Dale R. McCullough, et al., *Report of the Scientific Advisory Panel on Control of Tule Elk on Point Reyes National Seashore* 5–6 (1993).

⁸ *Tule Elk at Tomales Point FAQ*, National Park Service, (Aug. 14, 2023), https://www.nps.gov/pore/learn/nature/tule_elk_tomales_point_faq.htm.

⁹ *Id.*

¹⁰ Gescheidt Decl. Ex. C, at ¶¶ 4, 6, *Gescheidt v. Haaland*, No. 4:21-cv-04734-HSG (N.D. Cal. June 24, 2021); Chariton Decl. Ex. D, at ¶¶ 5–6, *Gescheidt v. Haaland*, No. 4:21-cv-04734-HSG (N.D. Cal. June 24, 2021).

¹¹ Howell Decl. Ex. G, at ¶ 5, *Gescheidt v. Haaland*, No. 4:21-cv-04734-HSG (N.D. Cal. June 24, 2021); Allen Decl. Ex. F, at ¶ 5, *Gescheidt v. Haaland*, No. 4:21-cv-04734-HSG (N.D. Cal. June 24, 2021).

¹² Reginald H. Barrett et al., *Re: Science and Management of Tule Elk at Point Reyes National Seashore* 1 (2021).

¹³ Katherine Ralls et al., *Call for a Paradigm Shift in the Genetic Management of Fragmented Populations*, 11 *Conservation Letters* 1, 2 (2018).

As early as 1998, NPS has acknowledged that reductions in population size result in “genetic bottlenecks” that threaten the diversity of the herds and the herds’ long-term survival.¹⁴ The 1998 plan “recommended periodically introducing a few Tule elk from elsewhere to the herd at the Reserve to enhance its genetic diversity.”¹⁵ However, this has never happened. Removing the fence would free the Tule elk and allow them to interact with free-ranging elk herds, encouraging genetic diversity.

The TPAP must definitively phase out cows from commercial agricultural operations, which have a negative environmental impact and do not belong in a national park. Pollution and poor management result in the risk of disease transmission, destruction of wildlife, and harm to historical sites and culture.

Cattle ranches are a major threat to the Tule elk. The Tule elk are a native species, and the cows are non-native: protecting the elk must be a priority for the NPS. In 2010, a dissertation produced in cooperation with the Park Service explained that “[g]iven the predicted future abundances of elk and the close proximity of current elk range with ranches, conflicts between elk and local ranchers are likely to occur within the next ten years at [Point] Reyes.”¹⁶ It therefore “strongly encouraged” Park Service managers at Point Reyes “to develop a proactive plan to address this issue.”¹⁷ Thirteen years later, it is more vital than ever that NPS address this issue in the TPAP.

The proactive plan should be to remove destructive commercial ranches from the park. Commercial ranches are environmentally destructive for-profit operations that place egregious costs on the Tule elk, Southern Pomo, and the public. Environmental groups and the California Coastal Commission have each criticized the ranches for violating the Clean Water Act, allowing “raw sewage leaks,” elevating human and bovine fecal matter in water samples, and allowing cows to trample native plants, among other issues.¹⁸ Cow manure has severely impaired surface water quality in the Drakes Estero Watershed and Drakes Bay Watershed.¹⁹

In considering the need to remove cows from the Point Reyes National Seashore, NPS should respect the view expressed by the Coast Miwok Tribal Council of Marin opposing the “systematic killing of Tule elk,” and opposing ranching leases as causing “continued desecration of native sites” that prioritizes commercial agriculture over “the original Native people, lands, and wildlife of Point Reyes National Seashore.”²⁰

So long as cows are allowed in Point Reyes National Seashore, ranchers must be responsible for fencing in their own cows and controlling the spread of Johne’s disease. Johne’s disease is a

¹⁴ Point Reyes National Seashore Tule Elk Management Plan and Assessment, 1998, at 39.

¹⁵ *Id.*

¹⁶ McCrear Andrew Cobb, *Spatial Ecology and Population Dynamics of Tule Elk (Cervus elaphus nannodes) at Point Reyes National Seashore, California* (2010) (Ph.D. dissertation, University of California, Berkeley).

¹⁷ *Id.*

¹⁸ Rita Beamish, *Can Cattle and Tule Elk Co-Exist at Point Reyes National Seashore?*, National Parks Traveler (June 2022), <https://www.nationalparkstraveler.org/2022/06/can-cattle-and-tule-elk-co-exist-point-reyes-national-seashore>.

¹⁹ Douglas W. Lovell, *Report: Surface Water Monitoring Conducted October 2021 through January 2022: Investigation of Cattle Waste Impacts on Surface Water Quality*, ii (2022).

²⁰ Letter from Coast Miwok Tribal Council of Marin to Deb Haaland, Secretary, U.S. Department of the Interior (June 3, 2021). NPS should also respect its 2021 GMP agreement with the Federated Indians of Graton Rancheria which recognizes the Tule elk’s “cultural significance to the Tribe” and commits to collaborative management “to include tribal views and traditional ecological knowledge.”

gastrointestinal bacterial infection that spreads through fecal matter and is “chronic, contagious, and usually fatal.”²¹ Typically, symptoms will not appear until months or years after infection, making it difficult to identify infected animals and stop the spread of the disease. “For every obvious case of Johne’s disease (Stage IV) among dairy cattle on the farm, 15 to 25 other animals are likely infected.”²²

While Johne’s occurs most frequently in domestic agricultural herds, the disease has been documented in Tule elk at Tomales Point Elk Reserve. Beginning in 2015, elk were collected from the Drakes Beach and Limantour herds and taken to the California Animal Health and Food Safety (CAHFS) Laboratory at UC Davis for full necropsy and higher sensitivity Johne’s testing. A small number of bull elk from the Drakes Beach herd tested positive for the bacterium that causes Johne’s disease.²³ Johne’s disease poses a serious danger to Tule elk if the ranchers do not fence their cattle and humanely take the steps necessary to control and prevent the spread of the disease.²⁴

The ranches at the park are for-profit commercial operations.²⁵ Given the costs that the ranches impose upon the environment, local wildlife, Coast Miwok people, and national park visitors, the ranchers should account for the externalities and pay the costs of fencing their cows, as necessary, after the removal of the elk fence.

To protect elk from disease, the TPAP must definitively and specifically address the separation of cows and elk populations. Such modifications prioritize the welfare of the Tule elk and prevent further harm to wildlife while also safeguarding the public’s enjoyment of public lands and individuals’ aesthetic interests therein.²⁶

The TPAP must establish a plan to avoid conflict and the killing of elk.

Illegal poaching and hunting of adult males can have devastating consequences for Tule elk herds.²⁷ NPS must monitor illegal poaching and harassment. As elk will have greater access to ranch lands, NPS must impose severe financial penalties for rancher elk hazing, attacks, and shooting, both lethal and non-lethal. NPS should monitor ranches with the use of radio, satellites, and/or cameras. We discourage the use of invasive monitoring techniques on the elk; frequent population counts are both non-invasive and produce useful information about herd health. Moreover, when violations of

²¹ Animal and Plant Health Inspection Service, *Johne’s Disease*, United States Department of Agriculture (May 30, 2023), <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/nvap/NVAP-Reference-Guide/Control-and-Eradication/Johne-Disease#:~:text=Johne's%20disease%20is%20a%20contagious,avium%20subsp>.

²² *Id.*

²³ *Johne’s Disease FAQs*, National Park Service, (May 28, 2020)

https://www.nps.gov/pore/getinvolved/planning_tule_elk_johne_disease_faq.htm#:~:text=Johne's%20disease%20or%20paratuberculosis%20is,many%20months%20to%20years%20later.

²⁴ Animal and Plant Health Inspection Service, *Johne’s Disease*, United States Department of Agriculture (May 30, 2023), <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/nvap/NVAP-Reference-Guide/Control-and-Eradication/Johne-Disease#:~:text=Johne's%20disease%20is%20a%20contagious,avium%20subsp>.

²⁵ Curtis Seufert et al., *Cleaning up the Mess: The Problem of Point Reyes National Seashore*, The University of British Columbia: Open Case Studies (last visited Sept. 15, 2023), <https://cases.open.ubc.ca/cleaning-up-the-mess-the-problem-of-point-reyes-national-seashore/>.

²⁶ See, e.g., Thomas Decl. Ex. E, at ¶ 8, *Gescheidt v. Haaland*, No. 4:21-cv-04734-HSG (N.D. Cal. Nov. 24, 2021)

(“Witnessing these scenes of death and unimaginable torturous last hours for the Tule elk have had a profound and sad impact on me. I no longer even like visiting Tomales Point.”).

²⁷ Robert Gammon, *The Tule Elk Hunt of 2010*, East Bay Express (Nov. 3, 2010), <https://eastbayexpress.com/the-tule-elk-hunt-of-2010-1/>.

law are detected, NPS must ensure that penalties for illegal poaching, harassment, and hazing of elk are adequate to deter conduct such as by terminating leases and pursuing law enforcement actions.

NPS should build protections for Tule elk directly into the General Management Plan.

“Tule Elk are a symbol for conservation efforts in California over the last century. Tule Elk are also considered an important Focal or Umbrella Species as Tule Elk range and ecological niche covers such a large area of California’s landscape. Protecting the landscape for large, free roaming species (like Tule Elk) enhances the conservation and protection efforts of so many other species of California.”²⁸ NPS must consider this when amending the General Management Plan (GMP).

In 1980, the Park Service issued a GMP for the Seashore that established general management objectives for the park. The GMP provides that “[r]estoration of historical natural conditions (such as reestablishment of Tule elk) will continue to be implemented when such actions will not seriously diminish scenic and recreational values.”²⁹ In September 2021, the Park Service issued an amendment to the 1980 GMP that expressly excluded the fenced elk population at Tomales Point.

The 2021 GMP Amendment indicates that “aggressive hazing” with beanbag shots and “lethal removal” are a part of the Park’s plan for elk management and protection of ranchers’ interests outside of Tomales Point.³⁰ Natural wildlife in a National Park should not be harassed, harmed, or killed, especially not to promote commercial agriculture. Thus, when NPS removes the fence, the Tomales Point elk and broader Tule elk populations should not be subject to this amendment or to any hazing or culling, and these management policies should be revised to prioritize environmental stewardship over ranching interests.

The National Parks and Recreation Act requires the Park Service to revise GMPs for all park units, including the Seashore, “in a timely manner.”³¹ NPS has unreasonably delayed revising the GMP for Tomales Point for over forty years. NPS must now comply with its legal duty to revise the GMP by issuing a TPAP that amends the GMP as it relates to the Tomales Point population of Tule elk. Such a revision should provide protections for the elk population as they inevitably migrate South of the former fence location – including by prohibiting the use of any hazing or culling of the migrating elk.

The TPAP must further address how NPS plans to monitor the Tomales Point elk as they migrate South of their former locations. Will the Tomales Point elk continue to be monitored as a separate herd with the South, North, Plateau, and White Gulch sub-herds even when they potentially intermix with the two currently free-ranging Drakes Beach and Limantour herds? How will the offspring of the Tomales Point herd and non-Tomales Point herds be classified? The Tomales Point herd should not be assimilated into the other herds’ population thresholds/carrying capacities as a thinly veiled excuse to cull elk and prioritize the interests of ranchers. NPS should describe how it will accommodate the influx of Tomales Point elk into the rest of Point Reyes National Seashore, protecting and preserving this native species, which necessarily involves amendment to the GMP.

²⁸ Julie Philips, *A Citizen’s Guide to the Tule Elk of California*, California Nature Center (2013), https://www.biologicaldiversity.org/campaigns/protecting_Point_Reyes_elk/pdfs/TuleElkBrochure.pdf.

²⁹ NPS, General Management Plan Point Reyes National Seashore/California 13 (1980).

³⁰ Record of Decision, 09/13/2021 at 36-37.

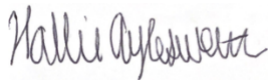
³¹ 54 USC § 100502.

Conclusion

The plans identified by NPS as “Alternative A” and “Alternative C” are both unacceptable options; Alternative “B” is the most appropriate, with further modifications indicated herein. Fencing in the Tomales Point Tule elk has resulted in numerous problems for the elk and has ultimately caused the inhumane suffering and death of confined wild animals. Continued fencing will only allow these problems to persist, due to recurring droughts and climate change. Removing the fence would address unstable population drops, starvation, genetic isolation, disease, and unnecessary suffering, while restoring some of the historical and cultural identity of the area as it existed before the commercial ranching operations took over. While NPS has attempted to manage potential conflicts between elk and ranches, the ultimate solution is to remove the ranches and remove cows from Point Reyes National Seashore. Commercial industry that harms wildlife and the environment, damages historical sites, and promotes disease has no place in a national park. Finally, NPS must take affirmative measures to provide supplemental water and protect the elk from dehydration at least through August 2024.

In considering the public comments on this scoping newsletter, NPS should also reference previous comments submitted by the Harvard Law School Animal Law & Policy Clinic to NPS on May 9, 2022, as well as plaintiffs’ briefing, declarations, and exhibits associated with *Gescheidt et al v. Haaland* et al, Docket No. 4:21-cv-04734 (N.D. Cal.) (case for which NPS is a party), including those cited within the above comments. NPS should also reference the countless comments submitted as part of the Draft Environmental Impact Statement (EIS) for the General Management Plan amendment process in 2019, which reference the negative impact that cows from ranches have upon the Tule elk.³² Because NPS has prevented submission of attachments, we expect these documents to form part of the administrative record for this proceeding and such documents, including the declarations and exhibits cited herein, and a representative sample of comments from the Draft EIS, can be found at <https://perma.cc/Y8GX-KSBC>. Should NPS require submission of copies of these documents in a different manner, please contact Rebecca Garverman at rgarverman@law.harvard.edu with the preferred manner of submission.

Sincerely,



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³² *General Management Plan Amendment: Draft Environmental Impact Statement: Public Comments*, National Park Service (July 18, 2021), https://www.nps.gov/pore/getinvolved/planning_gmp_amendment_deis_public_comments.htm.

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