

December 20, 2019

Director (210)
Attn: Protest Coordinator, WO-210
P.O. Box 71383
Washington, DC 20024-1383

Re: Protest of the Proposed Resource Management Plan and Final Environmental Impact Statement for San Juan Islands National Monument

Dear Ms. deChadenedes and planning team:

Please accept this timely protest of the Bureau of Land Management's (BLM's) Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (FEIS) for San Juan Islands National Monument (SJINM). This protest is submitted by The Wilderness Society and Conservation Lands Foundation.

This protest is filed in accordance with 43 C.F.R. § 1610.5-2 and contains: (1) a description of the interests of the protesting parties; (2) a statement of the issues being protested; (3) a statement of the parts of the Proposed RMP being protested; (4) a copy of documents addressing the issues that were submitted during the planning process by the protesting parties; and (5) a concise statement explaining the various ways that the Bureau of Land Management (BLM) acted unlawfully or in error. We also mailed a copy of our previous comments relevant to this planning process, which you should receive by mail and is supplemental to our protest.

INTERESTS OF THE PARTIES

The interests of the undersigned groups to the SJINM Proposed RMP and FEIS relates to proper compliance by Bureau of Land Management (BLM) with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 *et seq.*, Public Law No. 100-696, § 101(a), 102 Stat. 4571 (Nov. 18, 1988), Secretarial Order 3308, Omnibus Public Land Management Act of 2009, 16 U.S.C. § 7202(c), BLM's 15-Year Strategy for the National Landscape Conservation System, BLM Manual 6320 and other federal law and policy, as well as the impacts to public lands and resources in the planning area that will be negatively affected by BLM's Proposed RMP. The parties and members of their related conservation organizations use public lands within the planning area for outdoor recreation and enjoyment.

The Protesting Parties advocated for the designation of the San Juan Islands National Monument and have been involved in management of the SJINM for many years. TWS submitted scoping comments on April 1, 2015 and both groups submitted comments on the draft Resource Management Plan on January 3, 2019.

The Wilderness Society (TWS) is a non-profit national organization founded in 1935, with members who reside throughout the nation. TWS works to protect America's wilderness lands through public education, scientific analysis, and advocacy. TWS's mission is to protect

wilderness and inspire Americans to care about our wild places, so that future generations will enjoy the clean air, water, wildlife, beauty, and opportunities for recreation and renewal that pristine deserts, mountains, forests, and rivers provide. Protecting wilderness quality and other sensitive lands managed by BLM is vital to achieving The Wilderness Society's mission.

The **Conservation Lands Foundation** (CLF) is a non-profit organization that promotes environmental conservancy through support of the National Landscape Conservation System (National Conservation Lands) and preservation of the outstanding historic, cultural, and natural resources of those public lands. CLF works to protect, restore, and expand the National Conservation Lands through education, advocacy, and partnerships. CLF achieves its mission by working with and supporting the Friends Grassroots Network (FGN). The FGN consists of over 60 organizations located in 13 states.

Concise statement explaining the various ways the Bureau of Land Management acted unlawfully or in the error (including issues and parts of plan being protested)

This protest focuses on the Proposed RMP's failure to comply with BLM's legal mandates, policies, and overall responsibilities to manage our public lands. Specific inadequacies in the proposed RMP and the action required to remedy them are outlined below.

I. BLM Failed to Comply with the Antiquities Act of 1906's Mandate to Prioritize the Protection of Monument Objects and Values.

Pursuant to the legal authority granted by Congress in the Antiquities Act of 1906 (54 U.S.C. § 320301), President Obama issued Proclamation 8947, designating San Juan Islands National Monument ("monument") for the explicit purpose of protecting and preserving the monument's resources and values. Specifically, the agencies must manage the monument for the protection and preservation of its natural, cultural, historic and scientific values, and only allow uses other than those needed for protection of monument objects when those uses do not conflict with the directives of the proclamation. Accordingly, the standard approach of multiple-use management does not apply to this monument, and any effort to adopt such a management approach to the detriment of the monument's resources, objects, and values violates the proclamation.

The Antiquities Act mandates prioritizing the protection of monument objects and values over discretionary uses, such as dispersed camping, vegetation management, and target shooting. Monument proclamations have the force of law and the relevant agencies must manage these lands for the protection of monument objects. In regard to the Upper Missouri River Breaks National Monument in Montana, the Ninth Circuit found "[t]he national monument designation changed the status quo for the Upper Missouri River Breaks area, elevating protection of the "biological geological, and historical objects of interest." *Montana Wilderness Association v. Connell*, 725 F.3d 988, 1011 (9th Cir. 2013). In another case involving the Upper Missouri River Breaks National Monument, the Ninth Circuit Court of Appeals held that "[t]he Proclamation changed the legal landscape [for the Monument] and BLM must consider this change in determining the reasonable range of alternatives that should be carefully analyzed . . . BLM must consider both the terms of the Proclamation and the objects of the Proclamation to be preserved before taking actions that can affect Monument objects." *Western Watersheds Project*

v. Abbey, 719 F.3d 1035, 1053 (9th Cir. 2013). Proclamation 8947 provides that all management prescriptions are to be “consistent with the care and management of the objects identified.”

- a. BLM arbitrarily allows for uses that conflict with the directives of the Proclamation.

BLM has failed to manage for the protection and preservation of its natural, cultural, historic, and scientific values and instead allows for other uses that conflict with the directives of the proclamation.

The Proposed RMP allows for management uses that are likely to negatively impact monument resources, objects, and values, including public access to sensitive sites, widespread dispersed camping, and use of firearms within the monument. The Proposed RMP lacks meaningful analysis and reasoning as to how this management might impact monument resources, objects, and values and as to why the agency overlooks this harm and chooses its preferred management direction.

A federal agency’s actions that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” will not withstand judicial review. 5 U.S.C. § 706(2)(A). “An agency action is arbitrary and capricious if the agency ... entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or [if the decision] is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Utah Env’tl. Cong. v. Richmond*, 483 F.3d 1127, 1134 (10th Cir. 2007 (internal citations omitted)).

Here, the agencies failed to meet their obligations under the Antiquities Act and the monument proclamation, Proclamation 8947, as described in further detail throughout the protest. In certain instances, the Proposed RMP fails to recognize that the monument has special status and to analyze the impacts of authorized activities under the standard of prioritizing the protection of monument objects. As such, the agency’s actions are arbitrary and capricious and must be revisited.

- b. BLM has failed to meaningfully engage the Monument Advisory Committee throughout the planning process.

Proclamation 8947, establishing San Juan Islands National Monument, requires BLM to “establish an advisory committee under the Federal Advisory Committee Act to provide information and advice” in developing a management plan. Additionally, 43 C.F.R. § 1610.3-1 states BLM “will inform that council, seek its views, and consider them throughout the planning process.” The Federal Land Policy and Management Act, Section 309, further requires “each advisory council established by the Secretary under this section shall meet at least once a year.”

As mentioned in our draft comments, we remain concerned about the lack of Monument Advisory Committee (MAC) participation. The MAC has been blocked since 2017, by the Department of the Interior’s moratoriums on resource advisory committee meetings and the failure to make appointments to new positions as existing terms ended, leaving the level below

quorum. During this time period, BLM moved forward with land use planning and developed alternatives without MAC consideration. The MAC did not have any ability to meet formally or make formal recommendations, and as such was not involved in the development of the draft alternatives released in late 2018. The MAC met in September 2019 but was informed that the Proposed RMP was already developed and in the process of being sent to Washington, D.C. for approval. Within a week after the MAC meeting in September 2019, additional MAC members' terms expired, and the MAC is again below quorum requirements and unable to officially meet as the protest is ongoing. In general, including local knowledge, expertise, and input is essential in the planning process, which the Proclamation acknowledges. The lack of involvement and input from the MAC throughout this planning process is against the intent of the Proclamation, 43 C.F.R. § 1610.3-1, and FLPMA Section 309's direction for the committee to meet at least once per year.

II. The BLM Failed to Manage the Lands Appropriately under the Federal Land Policy and Management Act and the National Conservation Lands Act.

The Federal Land Policy and Management Act (FLPMA) requires BLM to manage public lands under multiple-use principles unless an area has been designated by law for specific uses, in which case BLM must manage the land for those specific uses. 43 U.S.C. § 1732(a). In other words, BLM manages national monuments not under the FLPMA multiple use mandate, but rather under the language of the proclamation establishing the monument. This is expressly provided for in FLPMA itself:

The Secretary shall manage the public lands under the principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, *except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.*" FLPMA, 43 U.S.C. § 1732(a) (emphasis added).

As mentioned above, the monument was designated with the explicit purpose of protecting and preserving the natural and cultural resources present throughout the landscape. Accordingly, the standard approach to multiple-use management does not apply to the monument, and any effort to adopt such a management approach to the detriment of its cultural and natural values would be in violation of the proclamation and the mandates of FLPMA and the Omnibus Public Lands Management Act of 2009.

Established by Congress in the Omnibus Public Land Management Act of 2009 (Pub. L. 111-11), the National Landscape Conservation System (NLCS) – or National Conservation Lands – is a permanent system of public lands conservation with the stated purpose to “conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.” 16 U.S.C. § 7202(a). As a national monument, San Juan Islands is part of the NLCS.

Secretarial Order 3308 speaks to the management of National Conservation Lands. The Order states in pertinent part that “the BLM shall ensure that the components of the NLCS are managed

to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values.” Secretarial Order 3308. The Order also requires the incorporation of science into the decision-making process for National Conservation Lands, stating, “[s]cience shall be integrated into management decisions concerning NLCS components in order to enhance land and resource stewardship and promote greater understanding of lands and resources through research and education.” *Id.* § 4(d); *see also* BLM Manual 6100, § 1.6(A)(9) & (F) (BLM must “use the best available science in managing NLCS units”); BLM Manual 6200, § 1.6(A)(7) & (M) (same).

As highlighted further throughout this section, the Proposed RMP continues to prioritize multiple uses. Because this approach fails to properly care for the monument’s objects and cultural, ecological, and scientific values and fails to fulfill BLM’s obligation to administer the NLCS as part of an integral landscape, it is not a valid management scheme.

BLM has not compiled or developed the necessary information to ensure monument objects will not be harmed by the Proposed RMP. Instead, the Proposed RMP is overly vague and relies too much on future actions to solve problems without any evidence of the efficacy of those actions. The Proposed RMP fails to meet the requirements of NLCS and various NEPA requirements (explained further in Section III below). As such, the BLM must revise its analysis and management decisions to incorporate relevant scientific evidence, prioritize protection of monument objects and values, and implement science-based strategies immediately to conserve, protect, and restore the monument as part of the NLCS.

- a. The BLM’s decision to allow for dispersed camping throughout the monument fails to protect the resources, objects, and values that the national monument was designed to protect.

BLM’s decision to allow dispersed camping throughout 70 percent of the monument is flawed. We understand that there is significant demand for camping in the islands. However, many of the islands include areas with steep, rocky shorelines, as well as sensitive wildlife habitat or areas with cultural sites, which are not appropriate for camping and are especially at risk from dispersed camping. In general, camping must be managed so it is sustainable, meaning it is limited to designated sites so the impacts from human use (e.g., human waste, trash, campfires) only exists in certain locations that are able to handle the designated use.

We remain concerned that the Proposed RMP allows for dispersed camping by permit on all sites that allow for public access, with the exception of the four former ACEC sites on South Lopez and the three State Parks-managed campsites. *See* Proposed RMP p. 20 and Appendix R. As stated in our draft comments, camping is not feasible and should not be allowed on Category A and Category B rock groups because they are sensitive to damage and impacts. This extends to marine mammal haulouts and locations with recorded cultural sites. Table 1, below, outlines some specific sites of concern where dispersed camping is proposed to be allowed. We are concerned that Cattle Point was not previously included in the agency’s range of alternatives as being open to dispersed camping but is open to dispersed camping in the Proposed RMP. BLM acknowledges that “dispersed camping would have a substantial negative long-term effect to areas that are highly desirable camping locations” and “inevitably campers will spend time on

the rocky balds and bluffs viewing scenery during their stay, which will result in more impacts to this resource than day hiking.” See Proposed RMP p. 82. Additionally, BLM monitoring and permitting “is not a guarantee that impacts from dispersed camping will be minimized.” See Proposed RMP p. 122.

For these reasons, the Proposed RMP fails to advance the goals and protections required by the monument’s proclamation, including the protection of wildlife habitat and cultural sites. BLM’s reasoning for allowing dispersed camping on these sensitive sites is lacking and the protection of monument resources, objects, and values must be more prevalent in the agency’s proposed management.

Table 1: Specific areas of concern within the monument.

<p>Dispersed camping on sites w/wilderness characteristics of concern:</p>	<p>Carter Point Rocks Davis Bay Island and Rocks* East Sound Blind Island South Freeman Island* John’s Island Rocks MacKaye Harbor Rocks, Patos Island* Reads Bay Island Reid Harbor Rock* Satellite Island Rocks* Skull Island Unnamed Rocks (Cone Island) Unnamed Rocks (Iceberg Point Rocks) Unnamed Rocks (Shaw Island) Unnamed Rocks (South Lopez) Victim Island</p> <p><i>*indicates sites of concern containing both LWC & Marine Mammal Haulouts</i></p>
<p>Dispersed camping on sites that are Marine Mammal Haulouts of concern:</p>	<p>Barnes Rocks Blind Island Chuckanut Rocks Leo Reef Posey Island Unnamed Rocks (Grandma’s Cove) Unnamed Rocks (Peak Point and Danger Rocks)</p>

- b. The BLM’s decision to allow public access in sensitive areas including Category A and B rocks fails to protect the resources, objects, and values that the national monument was designated to protect.

We are also concerned that the Proposed RMP allows public access on 55 of the Monument’s 65 sites, including many small rocks and reefs and 10 state-designated marine mammal haulouts.

See Proposed RMP, Appendix R, p. 16-20. All of the small rocks and reefs in the monument are proposed to be open to public use, regardless of the sensitivity of their sites, their habitat value, the visual impact of public visitation, protection of cultural sites, etc. *See Proposed RMP p. 683-688.* As previously stated in draft comments, sites identified as Category A and Category B rocks should not be open to recreational access. In fragile areas where existing visitation is significant, such as Trinka Rock, efforts should be made to funnel visitors to a more appropriate and less fragile destination. Other areas that should be closed to recreational access include Fauntleroy Rock, McConnel Rocks, Richardson Rocks, and Twin Rocks. Where possible, the sites closed to recreation should be managed consistently with the islands in the San Juan Islands National Wildlife Refuge. This will help with visitor confusion and create a known standard that for the most part, small rocks and islands should not be visited. BLM's vast public access to sensitive sites is in violation of its mandate to manage the planning area for the reason it was designated as a national monument – for the protection of the monument's resources, objects, and values.

- c. The BLM's decision to allow for harmful vegetation management techniques fails to protect the resources, objects, and values that the national monument was designated to protect.

As stated in the Proposed RMP, Proclamation 8947 identifies the diverse habitats and plant communities as objects for which the monument was designated to protect. *See Proposed RMP p. 9.* BLM Manual 6100 provides direction for the management of the National Conservation Lands. “[T]he BLM will manage weeds and other invasive species through an integrated pest and vegetation management approach using methods that minimize disturbance to NLCS units.” BLM Manual 6100 at 1.6(N)(4).

This direction requires the BLM to analyze and determine the minimum disturbance possible to the monument resources and objects when undertaking management of invasive species. It should be made clear in this plan and in all future consideration of projects with vegetation management actions that BLM will fulfill this duty in Manual 6100 by making a showing that the proposed treatment is the minimal disturbance to the monument resources and objects for the goals of the project. The goals of the project must be in line with Proclamation 8947 and BLM regulations and policies in the first place.

As highlighted in our draft comments, providing a full mixture of tools for vegetation management is only acceptable if there are clear safeguards for ensuring that the BLM is minimizing disturbance to the monument. For example, in the Monument Management Plan (MMP) for the Grand Staircase-Escalante National Monument (GSENM), BLM sets out instances where each of these tools are appropriate or inappropriate and in what zones they may be permitted or prohibited. GSENM MMP at 26-28. In that plan, for example, the use of machinery is allowed in all zones in the monument except the “Primitive Zone,” which is primarily composed of Wilderness Study Areas and chemical methods may only be used in limited circumstances set out in the MMP and after approval through consultation with the GSENM Advisory Committee. Chemical applications, for example, should be limited to specific situations and areas as a last resort. These safeguards should be built into the RMP to provide direction and more efficient processes for future projects on the ground.

- d. The BLM's decision to not managed inventoried lands with wilderness characteristics for protection of those values fails to protect the resources, objects, and values that the national monument was designed to protect.

As acknowledge in the Proposed RMP, FLPMA requires BLM to inventory and consider LWCs during the land use planning process. *See* Proposed RMP p.23; *referring to* 43 U.S.C. § 1711(a); see also *Ore. Natural Desert Ass'n v. BLM*, 531 F.3d 1114, 1119 (9th Cir. 2008). Manual 6310 provides detailed guidance on identifying lands with wilderness characteristics. Throughout the inventory process, BLM has acknowledged 23 rocks and islands, totaling 232 acres, with wilderness characteristics in the monument. *See* Proposed RMP p. 23 (Appendix F, p. 447 of the Proposed RMP cites the inventory finding 25 units as containing wilderness characteristics). Manual 6320 requires BLM to consider lands with wilderness characteristics (LWCs) in land use planning, both in evaluating the impacts of management alternatives on lands with wilderness characteristics and in evaluating alternatives that would protect those values. *See* Manual 6320; *see also* Proposed RMP, Appendix F, p. 447.

BLM maintains discretion to set management actions for LWCs that it is managing for the protection of those wilderness characteristics as a priority over other multiple uses. However, despite including appropriate language in its management objectives to acknowledge the agency's obligation, the Proposed RMP arbitrarily determines that none of the lands with wilderness quality within the monument should be managed for protection of their wilderness characteristics. In short, the Proposed RMP fails to adequately consider the importance of managing these areas for their wilderness values. A determination that "these characteristics are likely to persist for the life of the plan without specific management direction" is arbitrary and in violation of agency law and policy. *See* Proposed RMP p. 23.

Additionally, BLM is required to incorporate science into its decision-making processes for NLCS lands: "[s]cience shall be integrated into management decisions concerning NLCS components in order to enhance land and resource stewardship and promote greater understanding of lands and resources through research and education." *Id.* § 4(d); *see also* BLM Manual 6100, § 1.6(A)(9) & (F) (BLM must "use the best available science in managing NLCS units"); BLM Manual 6200, § 1.6(A)(7) & (M) (same).

The Proposed RMP acknowledges that vegetation management techniques would "temporarily disrupt apparent naturalness" of lands with wilderness characteristics. *See* Proposed RMP p. 235. The Proposed RMP also concedes that "the high repetition rate [of vegetation treatments] . . . would frequently disrupt [lands with wilderness] characteristic[s] during the life of the plan . . ." *See* Proposed RMP p. 236. In general, in areas where heavy equipment and herbicides are used for vegetation management, it is likely to result in great harm to lands that are LWC-qualified areas and the monument at large. These actions would directly harm these LWC areas. To best fulfill the overarching directive of the Monument's proclamation to conserve and protect, these 23 areas identified as having wilderness quality lands should be managed for protection of those characteristics.

BLM's decision to allow for widespread dispersed camping, vegetation treatment, target shooting, and other harmful management actions on lands with wilderness quality will harm these sensitive lands and does not fulfill the BLM's obligation to minimize manage the area for protection of its resources, objects, and values.

- e. BLM's decision to allow hunting and target shooting through the monument fails to protect the resources, objects, and values that the monument was designated to protect.

As covered in our comments submitted to the Draft RMP, BLM should not allow for widespread discharge of firearms throughout the monument due to safety concerns and impacts to monument resources, objects, and values. Hunting must be limited to specific locations and times so that BLM is consistent with local laws and policies, as well as so that user conflicts / threats to public safety are minimized and the agency is able to monitor and enforce proper management prescriptions. Target shooting should not be permitted anywhere within the monument.

BLM points to Secretarial Order 3356, calling for national monument management plans to "include or expand hunting, recreational shooting, and fishing opportunities to the extent practicable under the law." See Proposed RMP p. 148. The Proposed RMP specifies that BLM is not aware of target shooting on monument lands – and seemingly assumes that as such, leaving the area available for such a use is not a problem. However, not being aware of a specific use within an area is not sufficient reasoning for the agency to disregard the risks associated with target shooting when developing a management plan. The Proposed RMP does nothing to consider impacts to monument resources, objects, and values from target shooting. Unless and until the agency prepares a comprehensive and accurate target shooting analysis demonstrating why target shooting will not negatively impact monument resources, objects, and values, allowing target shooting within the monument is an arbitrary agency decision that is in violation of FLPMA and the monument proclamation.

This reasoning is consistent with current case law impacting other national monuments. For example, in 2015, the U.S. District Court for the District of Arizona held that BLM was in violation of FLPMA and the monument's proclamation for allowing recreational target shooting throughout Sonoran Desert National Monument and failing to protect the Monument objects. See *National Trust for Historic Preservation v. Raymond Suazo*, 2015 U.S. Dist. LEXIS 39380 (D. Ariz. Mar. 27, 2015). In that case, BLM's inadequate analysis resulted in the management plan being vacated and remanded back to the agency. As such, the agency was required to undergo additional NEPA and complete a resource management plan amendment specific to target shooting. The completed resource management plan amendment was finalized in March 2019 and is currently the subject of additional litigation because its analysis remains inadequate.

In sum, BLM's decision to open the monument to target shooting without adequate analysis is arbitrary, and in violation of FLPMA, the Administrative Procedure Act, Proclamation 8947, Secretarial Order 3308, IM 2009-215, and the BLM 15-Year Strategy for the National Landscape Conservation System. Perhaps more importantly, if BLM decides to disregard its laws, policies and science, the agency will be moving toward a troubling precedent that prioritizes potentially harmful uses above conservation and protection.

III. The Agency must comply with all relevant obligations under the National Environmental Policy Act (NEPA)

- a. BLM fails to take a hard look at the environmental consequences of its proposed action.

NEPA dictates that BLM take a “hard look” at the environmental consequences of a proposed action and the requisite environmental analysis “must be appropriate to the action in question.” *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In order to take the “hard look” required by NEPA, BLM is required to assess impacts and effects that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, *whether direct, indirect, or cumulative.*” 40 C.F.R. § 1508.8. (emphasis added). NEPA regulations define “cumulative impact” as:

the impact on the environment which results from the *incremental impact of the action when added to other past, present, and reasonably foreseeable future actions* regardless of what agency (Federal or non-Federal) or person undertakes such other actions. *Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.* 40 C.F.R. § 1508.7 (emphasis added).

To satisfy NEPA’s hard look requirement, the cumulative impacts assessment must do two things. First, BLM must catalogue the past, present, and reasonably foreseeable projects in the area that might impact the environment. *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809–10 (9th Cir. 1999). Second, BLM must analyze these impacts in light of the proposed action. *Id.* If BLM determines that certain actions are not relevant to the cumulative impacts analysis, it must “demonstrat[e] the scientific basis for this assertion.” *Sierra Club v. Bosworth*, 199 F.Supp.2d 971, 983 (N.D. Ca. 2002). A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient. *See, e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9th Cir. 2002) (analysis of root fungus on cedar timber sales was necessary for an entire area).

Additionally, NEPA’s hard look at environmental consequences must be based on “accurate scientific information” of “high quality.” 40 C.F.R. § 1500.1(b). Essentially, NEPA “ensures that the agency, in reaching its decision, will have available and will carefully consider detailed information concerning significant environmental impacts.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349. The Data Quality Act and BLM’s interpreting guidance expand on this obligation, requiring that influential scientific information use “best available science and supporting studies conducted in accordance with sound and objective scientific practices.” Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub.L. No. 106-554, § 515. *See also* Bureau of Land Management, Information Quality Guidelines, available at <https://www.blm.gov/download/file/fid/8938>.

Further, both data and analyses must be disclosed to the public, in order to permit the “public scrutiny” that is considered “essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). BLM’s

guidelines for implementing the Data Quality Act also reiterate that making data and methods available to the public permits independent reanalysis by qualified member of the public. In this regard, NEPA “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349. NEPA not only requires that BLM have detailed information on significant environmental impacts, but also requires that the agency make this information available to the public for comment. *Inland Empire Public Lands Council v. U.S. Forest Service*, 88 F.3d 754, 757 (9th Cir. 1996).

i. Dispersed camping and public access

In the Proposed RMP, the BLM fails to take a hard look at the impacts to monument resources, objects, and values from the decision to allow for widespread dispersed camping and public access to sensitive sites throughout the monument. Per our comments above and submitted throughout the ongoing planning effort, there must be additional analysis about the direct, indirect, and cumulative impacts of allowing dispersed camping and public access throughout the monument, particularly on specific areas of concern, including: identified lands with wilderness characteristics, marine mammal haulouts, and Category A & B rocks (see Table 1, above, for more information). The agency must also take a hard look at impacts resulting from dispersed camping and public access to small islands and rocks to cultural resources, wildlife, scenic values, and other resources acknowledged by the monument proclamation, as well as issues like wildfire risk throughout the planning area.

ii. Target shooting

As highlighted earlier in our protest, BLM fails to adequately consider impacts to allowing for target shooting throughout the monument. Prior to opening the monument to target shooting, BLM must conduct a thorough analysis using the best available science to analyze impacts to monument resources, objects, and values. This includes but is not limited to taking a hard look at impacts to public safety, noise, disturbance of wildlife, contamination of soil, destruction of cultural and ecological values, and wildfire risks.

With target shooting, the underlying assumption is that users can go off-trail. This has the potential to negatively impact fragile habitat and cultural resources, similar to impacts from dispersed camping, and may cause user confusion resulting in others going off trail, increasing the harmful impacts and leading to the development of social trails. Cultural resources and longstanding natural resources are often illegally used as targets by recreational shooters. This has certainly been the case in Sonoran Desert National Monument in Arizona, where the monument has seen irreparable harm to saguaro cacti and numerous cultural resources. Target shooting can also cause wildfires, especially when practiced in areas with easily ignitable vegetation such as San Juan County. See “A study of ignition by rifle bullets,” published by the U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station in 2013, available online at: <https://www.fs.usda.gov/treesearch/pubs/43918>; see also San Juan Community Wildfire Protection Plan available at: <http://www.sanjuandem.net/About/PDFs/2012%20SJC%20CWPP.pdf>, which acknowledges dry

climate, with risk of potentially catastrophic fire due to fuel loads, recognizing high ignition potential and high risk fire behavior, low suppression capability (p. 30, 41).

BLM's current analysis in the Proposed RMP fails to consider the potential negative impacts from opening portions of the monument to target shooting.

iii. Group limits and special recreation permits

In general, the Proposed RMP fails to establish a general limit on group size, and instead removes the existing group size limitation of 10 people on specific sites. BLM should maintain group size of 10 people for former ACEC lands on Lopez Island, including Iceberg Point, Point Colville, Watmough Bay, and Chadwick Hill. This group size limitation should extend monument-wide, except in situations where user impacts are noticeable, in which case the group sizes should be smaller. BLM must thoroughly analyze and consider potential impacts from increased public use of the monument, including social use trails and increased waste.

At minimum, BLM must set specific standards in the ongoing planning process, including unambiguous criteria for issuance of Special Recreation Permits (SRPs). Currently, the Proposed RMP does not include criteria or information as to how SRPs or large group events will be managed. Establishing clear criteria for the issuance of SRPs is a realistic way for BLM to manage for increased visitation and to avoid unnecessary damage to monument resources, objects, and values. The agency failed to analyze the direct and indirect impacts of imposing no group size limitations on the various public use sites and removing existing group size limitations on specific sites.

b. The baseline assessment of the monument is insufficient.

The agencies fail to meet the baseline assessment requirement provided by NEPA in 40 C.F.R. § 1502.15, which requires agencies to “describe the environment of the areas to be affected or created by the alternatives under consideration.” As stated in *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit determined “without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA.”

To date, BLM has inventoried about 1/3 of the monument and has documented 25 cultural sites. See Proposed RMP p. 35. As such, BLM has potentially violated NEPA through a failure to collect an accurate baseline assessment of cultural resources. Without an accurate inventory of cultural resources within the monument, it is impossible to thoroughly analyze and articulate the potential impacts of agency actions, specifically target shooting. More information on the agency's failure to adequately identify and survey for cultural resources in the monument is covered in Section VII below.

IV. BLM is in violation of Secretarial Order 3366 by contradicting regulations on the surrounding lands and waters.

Secretarial Order 3366, focused on recreation, calls for the managing agency to “work cooperatively with State, Tribal, and Territorial wildlife agencies to ensure that regulations for

recreation on lands and waters managed by the Department complement, or at minimum do not contradict, the regulations on the surrounding lands and waters to the extent legally practicable.” In the current management planning effort, BLM fails to comply with Secretarial Order 3366 in a variety of instances.

First, with regard to widespread dispersed camping. San Juan County, the National Historic Park, and nearby state parks do not allow dispersed camping. The Proposed RMP’s widespread approval of dispersed camping is also in conflict with San Juan County Code 18.30.040, which prohibits camping in Natural and Conservancy land classifications, which covers the majority, if not all, of the proposed dispersed camping sites in the monument. *See* San Juan County Code 18.30.040, available online at: <https://www.codepublishing.com/WA/SanJuanCounty/#!/SanJuanCounty18/SanJuanCounty1830.html#18.30.040>.

Second, with regard to target shooting. BLM has followed the guidelines of San Juan County and Washington State Department of Fish and Wildlife in its management of hunting but fails to do the same for target shooting. For example, regulations for San Juan County limit the types of firearms used for hunting (e.g., use of modern rimfire and centerfire rifles for hunting is prohibited) and the Washington State Department of Fish and Wildlife regulates the hunting season and number of permits. BLM’s Proposed RMP allows for target shooting during hunting season but does not place the same restrictions on the two uses. *See* Proposed RMP p. 172.

The Proposed RMP does not restrict the types of firearms used for target shooting and the Proposed RMP does not restrict discharge of firearms for target shooting during bow hunting season. Outside of the monument lands, there are no public lands in San Juan County that are open to target shooting. *See* Proposed RMP p. 173. This puts BLM’s proposal in conflict with surrounding regulations and land management, potentially in violation of Secretarial Order 3366.

V. The Agency failed to comply with requirements of the National Historic Preservation Act.

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to “take into account the effect of [an] undertaking on any historic property. 54 U.S.C. § 306108. To carry out this broad purpose, the NHPA’s implementing regulations generally require four steps.

First, the agency must define the area of potential effects. 36 C.F.R. § 800.4(a). The area of potential effects is “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties.” *Id.* § 800.16(d).

Second, after defining the area of potential effects, the agency must make a “reasonable and good faith effort” to identify historic properties within that area. 36 C.F.R. § 800.4(b). As the Advisory Council emphasized in its preamble to the Section 106 regulations, knowing the historic properties at risk from an undertaking is essential: “It is simply impossible for an agency to take into account the effects of its undertakings on historic properties if it does not even know what those historic properties are in the first place.” 65 Fed. Reg. 77698, 77,715 (Dec. 12, 2000).

Third, if historic properties are present within the area of potential effects, the agency must determine whether the proposed undertaking will adversely affect those properties. *Id.* § 800.5. An adverse effect exists “when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the [NRHP] in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.” *Id.* § 800.5(a)(1). Adverse effects include “reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” *Id.* They also include the “[i]ntroduction of visual, atmospheric[,] or audible elements that diminish the integrity of the property's significant historic features.” *Id.* § 800.5(a)(2)(v).

Finally, if the agency determines that the undertaking may cause an adverse effect on the historic properties within the area of potential effects, it must “develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.” *Id.* § 800.6(a); *Dine Citizens Against Ruining Our Env't v. Bernhardt*, 923 F.3d 831, 846 (10th Cir. 2019).

BLM has failed to make a “reasonable and good faith effort” to identify historic properties within the monument. 36 C.F.R. § 800.4(b). To date, BLM has inventoried about 1/3 of the monument and has documented 25 cultural sites. *See Proposed RMP* p. 35. Even from this small amount of inventory, 96% of the documented sites occur within 164 feet of the shoreline. We are concerned that despite this rich density of cultural resources and potential listings under the NHPA, the agency authorizes a variety of uses that are likely to permanently affect cultural resources. These uses include: designated camping in 13 cultural sites (approximately half of the recorded sites in the monument) and dispersed camping within 8 cultural sites in the monument (approximately one third of sites in the monument), harmful vegetation management, new trail development, target shooting, and public access to vulnerable locations. The agency’s proposed action would place 24 recorded cultural sites within designated recreation management areas. *See Proposed RMP* p. 39. The Proposed RMP acknowledges:

“[c]amping could permanently affect cultural resources through direct disturbance of site structure, artifact breakage and displacement, vandalism, soil compaction, altered surface water drainage contributing to increased erosion, creating of new routes contributing to increased disturbance, erosion and compaction, and visual and aural intrusions to the setting. . . Restricting camping to designated sites would concentrate impacts to these locations and reduce the risk of disturbing cultural resources outside of sites. . .” *See Proposed RMP* p. 38.

In short, the Proposed RMP authorizes several immediate uses that pose significant threats to cultural resources. *See Montana Wilderness Ass’n*, 725 F.3d at 1009 (holding that agency’s failure to conduct more detailed cultural resource inventory violated the NHPA where resource management plan at issue addressed a national monument designated to preserve and protect historic and cultural objects, where only 8 to 16 percent of the monument area was surveyed for cultural resources, and the Proposed MMP authorized existing uses that could damage cultural resources); *see also* USFS Manual 2300, Chapter 2360 – Heritage Program Management, 44,45

(noting that at least some level of field survey is required for projects or actions subject to NEPA review).

The agencies must immediately prioritize and have a clear source of funding for Class III inventories throughout the monument to adequately inform management actions as well as future implementation level decisions. Through this process, BLM must prioritize particularly vulnerable areas including heavily visited areas and sites along the shoreline.

Conclusion and relief sought

The management decisions and analysis of impacts in the San Juan Islands Proposed RMP are in error for the reasons stated in this protest, generally because the decisions would be based on failures to comply with Proclamation 8947, FLPMA, NEPA, NHPA, and other legal and policy requirements identified above. Because of these flaws, the protested portions of the Proposed RMP are contrary to applicable law as well as agency policy and guidance.

To correct these problems, the protesting parties request that BLM supplement the Proposed RMP and/or issue a notice of significant change to provide the specific remedies requested above.

Sincerely,

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