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October 30, 2003

*Via Facsimile*  
*Original by Federal Express*

East Bay Regional Park District  
Planning/Stewardship Department  
P.O. Box 5381  
2950 Peralta Oaks Court  
Oakland, CA 94605-0381

**RE: Comments of Alameda Creek Alliance regarding the Initial Study and Proposed Mitigated Negative Declaration for the Draft Land Use Plan for Sunol and Ohlone Regional Wilderness Preserves**

To Whom It May Concern:

This office represents the Alameda Creek Alliance (“Alliance”) regarding the East Bay Regional Park District’s (“EBRPD”) Initial Study (“IS”) and proposed Mitigated Negative Declaration (“MND”) for the draft Land Use Plan (“LUP”) for the Sunol and Ohlone Regional Wilderness Preserves (“preserves”). The Alliance is a community watershed group formed in 1997 with over 600 members, many of whom are flyfishers, fisheries biologists, and environmental educators. The focus of the Alliance is protecting and restoring the natural ecosystems of the Alameda Creek watershed, which includes all of Sunol and Ohlone Preserves. The Alliance has been involved in fisheries restoration, land management, wildlife protection, and livestock grazing issues in the Alameda Creek watershed since 1997. Jeff Miller, the Director of the Alliance, has extensive knowledge of the biology and habitat needs of anadromous fish and amphibians. Jeff has written federal Endangered Species Act listing petitions for two amphibian species (mountain yellow-legged frog and relict leopard frog) and two anadromous fish species (green sturgeon and Pacific lamprey), and a state Endangered Species Act listing petition for the California tiger salamander. Two of these species, the lamprey and the tiger salamander, occur within the Preserves.

The conclusion of Alameda Creek Alliance, after careful review of the IS, proposed MND and LUP is that there is substantial evidence and reasonable inferences therefrom to support a fair argument that the LUP’s cattle grazing program will cause significant adverse environmental impacts, including significant adverse cumulative impacts.

Alameda Creek Alliance thus urges EBRPD not to adopt the Mitigated Negative Declaration for its LUP for the preserves and instead prepare an Environmental Impact Report that fully analyzes the potential significant adverse impacts of EBRPD's cattle grazing program, as well as alternatives and mitigations thereto. Failure to do so will undoubtedly result in violations of the California Environmental Quality Act ("CEQA").

Please include this office and that of Alameda Creek Alliance, P.O. Box 192, Canyon, CA 94516, in any further communications to the public by your office on this proposed project. In particular, please provide us with a copy of your determination.

Sincerely,

Jeff Hoffman

Cc: Alameda Creek Alliance  
Sierra Club, S.F. Bay Chapter

**I. AN ENVIRONMENTAL IMPACT REPORT IS REQUIRED BECAUSE SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT SIGNIFICANT ADVERSE IMPACTS MAY OCCUR**

An environmental impact report (“EIR”) is required for a proposed project if substantial evidence supports a fair argument that the project *may* have a significant adverse impact on the environment. Pub. Res. Code § 21080(d); *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4<sup>th</sup> 1112, 1123. Substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Pub. Res. Code § 21080(e); Cal. Code Regs., tit. 14, § 15384 (CEQA Guidelines).

The California Supreme Court has held that even if other substantial evidence supports the opposite conclusion, the agency nevertheless must prepare an EIR where substantial evidence supports a fair argument that the project *may* have a significant adverse impact on the environment. *No Oil, Inc. v. City of Los Angeles* (1975) 13 Cal.3d 68, 75. EIRs are necessary “to substitute some degree of factual certainty for tentative opinion and speculation.” *Id.* at 85. A long line of cases has stated clearly and explicitly that where an agency is presented with substantial evidence that there may be a significant impact, “contrary evidence is not adequate to support a decision to dispense with an EIR.” *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1995) 29 Cal.App.4<sup>th</sup> 1597, 1607, (quoting *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4<sup>th</sup> 1307, 1316,) *Long Beach Sav. & Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249, 264, *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1071, *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002. Further, the CEQA Guidelines also provide that “[i]f there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.” Cal. Code Regs., tit. 14, § 15064(g).

Clearly, the cattle grazing that is proposed for the LUP is part of the project at issue here. The “project” is “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Pub. Res. Code § 21065; 14 Cal. Code Regs. § 15378 (a). The cattle grazing program must be considered the project because the LUP is an activity directly undertaken by EBRPD and because it involves the issuance of cattle grazing leases. Pub. Res. Code § 21065, subd. (a) & (c); 14 Cal. Code Regs. § 15378 (a)(1) & (a)(3). While the conditions created by 150 years of cattle grazing may be part of the environmental setting of the recent past, the cattle grazing itself is still part of the current project proposal. In addition, the past cattle grazing must be considered as part of the cumulative impact analysis.

As discussed below, EBRPD’s leases to ranchers for commercial cattle grazing in the preserves are likely to cause many significant adverse environmental impacts, any one of which *by itself* is a significant and direct physical change to the environment that defines EBRPD’s cattle grazing program as a project requiring an EIR. “‘Significant effect on the environment’ means a substantial, or potentially substantial, adverse change in the environment.” Pub. Res. Code § 21068. Substantial evidence is now before EBRPD that there will be significant adverse

environmental impacts from EBRPD's cattle grazing program, as well as significant adverse cumulative environmental impacts from EBRPD's cattle grazing program. This evidence includes EBRPD's own IS/MND and LUP, evidence submitted with this document, and evidence previously submitted to EBRPD that is referred to in this document, as well as letters and exhibits submitted by concerned members of the public.<sup>1</sup> Therefore, a Mitigated Negative Declaration should not be adopted; instead, an EIR must be prepared. Pub. Res. Code § 21080(d).

A. There is Substantial Evidence that the LUP's Proposed Cattle Grazing Program will Cause Significant Adverse Impacts to Soils, including Erosion

Cattle grazing has been shown to cause soil compaction and erosion that in turn degrades stream channel morphology, water tables, and creek function and ecology (Trimble and Mendel 1995; Roberson 1996; Belsky et al. 1999). The mitigated negative declaration ("MND") (p. 43) acknowledges the potentially substantial adverse impacts of livestock grazing on hydrology and water quality, such as soil erosion, increased runoff, stripping of vegetation, washing of sediment into creeks, and changes in stream channel morphology. The California Department of Parks and Recreation (CDPR 1989) noted that livestock grazing caused erosion on adjacent Mt. Diablo State Park, which has ecosystems, habitats, topography, soils, and stream characteristics similar to those of the preserves. The Friends of Sycamore Valley (FSV 2002, 2003) submitted reports to the EBRPD documenting severe overgrazing in nearby Sycamore Valley Open Space, which is also managed by EBRPD, that resulted in severe impacts to soils, including erosion, landslides, and impairment of hydrologic function. The FSV reports document that EBRPD routinely violates its own grazing policies and guidelines and allows overgrazing that results in severe environmental impacts (FSV 2002, 2003). Stream surveys and reports on Alameda Creek within the preserves (Moyle 1993; Bookman-Edmonston 1995, 1995C, 1995D; Murphy and Sidhom 1996, Buchan et al. 1999) have noted large areas of bank erosion and sediment deposition due to cattle grazing. Because there is substantial evidence that grazing allowed under the proposed LUP is likely to cause further significant adverse impacts to soil, erosion and changes in channel morphology, an EIR is required.

B. There is Substantial Evidence that the LUP's Proposed Cattle Grazing Program will Cause Significant Adverse Impacts to Creeks, Stream Banks, and Riparian Vegetation

Cattle grazing causes significant adverse impacts to stream banks due to cattle trampling and eating the stream side vegetation, causing stream banks to collapse (see Belsky et al. 1999), and damaging riparian vegetation structure (Schultz and Leninger 1990). There are significant hydrologic impacts caused by cattle grazing; livestock have damaged 80% of the streams and riparian ecosystems in the arid regions of the western U. S. (Kauffman et al. 1983; Trimble and Mendel 1995; Belsky et al. 1999). The California Department of Parks and Recreation (CDPR

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<sup>1</sup> Almost all of the evidence cited in this comment letter is currently before EBRPD as it was previously submitted to the EBRPD during the Grazing Review Task Force or with previous comment letters. All of this previously submitted evidence is incorporated by reference and should be included in the administrative record for this IS, MND and LUP. All other documents will be submitted either with this letter or separately before the comment deadline.

1989) noted that livestock grazing caused riparian damage on adjacent Mt. Diablo State Park. Stream surveys within the preserves (Moyle 1993; Bookman-Edmonston 1995, 1995C, 1995D; Murphy and Sidhom 1996, Buchan et al. 1999) have documented bank erosion and riparian vegetation damage in Alameda Creek due to cattle grazing.

The MND (p. 43) acknowledges the potentially substantial adverse impacts of livestock grazing on creek hydrology and water quality, through soil erosion, increased runoff, stripping of vegetation, washing of sediment into creeks, and changes in stream channel morphology. Because there is substantial evidence that grazing allowed under the proposed LUP is likely to cause further significant adverse impacts to creeks, stream banks and riparian vegetation, an EIR is required.

C. There is Substantial Evidence that the LUP's Proposed Cattle Grazing Program will Cause Significant Adverse Impacts to Native Salmonids

The negative impacts of cattle grazing on steelhead/rainbow trout and other salmonids are particularly severe and well documented (CDFG 1996; Knapp and Matthews 1996; NMFS 1997, 2000). EBRPD's own IS/MND states that overgrazing can negatively modify aquatic habitat by causing an unnaturally large amount of sedimentation. IS/MND 3.7(c), p. 43. Livestock grazing within stream riparian corridors can harm riparian ecosystems and stream channels (Platts 1991; Armour et al. 1994). Grazing may alter natural riparian and channel processes and cause upland and stream bank erosion, channel sedimentation and widening, increased stream temperatures, decreased water quality, and changes in the water table (Elmore and Beschta 1987; Platts 1991). Platts (1991) reviewed 19 scientific studies of grazing impacts on salmonids, of which 15 reported either decreased fish abundance with livestock grazing or an increase in fish abundance with cessation of grazing.

The increased sediment load in the creeks due to grazing eliminates spawning habitat by burying the larger size gravel needed for redd (nest) building, suffocating eggs, and filling spaces in the gravels. This reduces habitat for aquatic invertebrates, thereby reducing food for juvenile salmonids. Both sedimentation and actual trampling can damage spawning beds. Grazing impacts such as greater water turbidity, increased siltation, higher bacterial counts, lower summer flows, and low dissolved oxygen in the water column and intra-gravel environment reduce fish survival. Stream bank damage and filled-in pools due to sedimentation decreases the hiding cover for steelhead. Loss of riparian vegetation, expanded and accelerated flows, and loss of creek banks due to cattle grazing causes streams to become shallower and wider, raising water temperatures. Increasing stream temperatures can be lethal to salmonids. Higher water temperatures increase salmonid mortality (by breaking down physiological regulation of vital processes such as respiration and circulation), and negatively affect fish spawning, rearing, and passage. Loss of riparian vegetation has also reduced the amount of large woody debris that is deposited in streams, a key factor in creating pools for young fish and otherwise maintaining

suitable salmonid habitat. Removal or exclusion of cattle from riparian areas has been documented to improve salmonid habitat and salmonid populations.<sup>2</sup>

Armour et al. (1994) conservatively estimated that livestock grazing has degraded 50% of all riparian ecosystems on federal rangelands in the western U. S. Habitat for the federally threatened steelhead trout has been severely degraded by cattle grazing at the accepted stocking levels. Degradation of steelhead/rainbow trout habitat, on EBRPD and SFPUC land in the Sunol allotment, within the preserves in Alameda Creek is well documented in stream surveys (Moyle 1993; Bookman-Edmonston 1995, 1995C, 1995D; Murphy and Sidhom 1996). This allotment has large areas of bank erosion, riparian vegetation damage, and sediment deposition, as well as abundance of organic nutrients leading to algal blooms and lowered oxygen levels.

Excluding cattle from the riparian corridor in upper Alameda Creek would benefit instream habitat through “improved spawning and rearing habitat for anadromous salmonids by reducing sediment, pathogen, and nutrient loads; improved conditions for riparian growth, which would decrease (improve) stream temperature. Decreased stocking levels would reduce potential for overgrazing and subsequent stream bank erosion and streambed sedimentation.” (Buchan et al. 1999).

The MND (p. 43) acknowledges the potentially substantial adverse impacts of livestock grazing on aquatic habitat, due to impacts to hydrology and water quality, such as soil erosion, increased runoff, stripping of vegetation, washing of sediment into creeks, and changes in stream channel morphology. EBRPD’s own IS/MND states that overgrazing can negatively modify aquatic habitat by causing an unnaturally large amount of sedimentation. Because there is substantial evidence that grazing allowed under the proposed LUP is likely to cause further impacts to Alameda Creek, its tributaries, and their trout populations, an EIR is required.

D. There is Substantial Evidence that the LUP’s Proposed Cattle Grazing Program will Cause Significant Adverse Impacts to Amphibians and Reptiles

Cattle grazing negatively affects a number of state and federally listed and special status amphibian and reptile species that occur in the preserves. There are significant negative impacts from cattle grazing to habitat for the California red-legged frog (CDFG 1994b; USFWS 1996a, 2000b, 2002b; Jennings et al. 1992), California tiger salamander (CDFG 1994b; USFWS 2000a), foothill yellow-legged frog (R. Knapp, pers. comm., 2002; V. Vredenberg, pers. comm., 2002; Masters 1997b), and Alameda whipsnake (McGinnis 1992; USFWS 1997c), all of which the IS/MND and LUP acknowledge are present in the preserves, and which are likely to be further harmed by continued cattle grazing.

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<sup>2</sup> Each of the statements in this paragraph are supported by the following published reports - Elmore and Bescheta 1987; Platts 1991; NMFS 1998- which were submitted to EBRPD under separate cover on October 28, 2003.

Habitat alteration by livestock grazing (due to trampling, water quality impacts, and impacts to riparian vegetation) is documented to be an important factor in the decline of red-legged frogs (*Rana aurora draytonii*) in California (Jennings et al. 1992; Jennings and Hayes 1994; USFWS 1996, 2000). Livestock grazing is known to decrease the suitability of riparian and aquatic habitat in general (Behnke and Raleigh 1978; Buckhouse et al. 1981; Kauffman et al. 1983; Kauffman and Krueger 1984; Bryant 1985; Marlow and Pogacnik 1985; Siekert et al. 1985) and negatively impacts habitat for herpetofauna (Jones 1979, 1988; Szaro et al. 1985; Jennings and Hayes 1994; USFWS 2000), and there is no evidence that the riparian or aquatic habitats in the preserves are immune from this harm.

Sedimentation of creeks due to the erosional impacts of grazing mentioned above and trampling of undercut stream banks eliminates the deep pools and other cover habitat needed by frogs. Frog eggs can be smothered by sedimentation, and deep pools necessary for frog escape cover are reduced or eliminated by such sedimentation. For red-legged frogs, the loss of undercut banks and reduced water levels is particularly critical because refuge plunge pool habitat is reduced or eliminated (USFWS 1996a, 2000b). Cattle grazing reduces the structural richness of the vegetative community, with a loss of thermal cover and protection from predators (USFWS 1996a, 2000b). Vegetation is a crucial component of the frog's habitat. Emergent vegetation, upon which the frogs deposit their egg masses can be trampled and eaten (USFWS 1996a, 2000b). Loss of stream side vegetation due to cattle grazing can reduce habitat for insects and small mammals (USFWS 2000), which are important dietary components for aquatic species (Cordone and Kelley 1961), including the red-legged frog.

Grazing increases aridity and can raise water temperatures to levels lethal to early life stages of the red-legged frog (USFWS 1996a, 2000b). Livestock grazing can also cause nutrient loading problems due to urination and defecation in areas where cattle are concentrated near the water (Doran et al. 1981). Cattle can crush and disturb egg masses, larvae, and metamorphosing frogs and also can draw down water levels when drinking from small water bodies, leaving amphibian egg masses desiccated or subject to disease such as fungal infections (USFWS 2000). Frogs require rodent burrows for estivation, which are often trampled by cattle (USFWS 1996a, 2000b). Overgrazing exacerbates the threat of bullfrog expansion (a major introduced predator decimating red-legged frog populations) by creating dramatic changes in riparian and wetland habitat conducive to the spread of bullfrogs (USFWS 1996).

This type of bank damage, erosion, sedimentation, damage to vegetation, and nutrient loading due to cattle grazing has been documented in Alameda Creek in areas with known red-legged frog populations within the preserves (Bookman-Edmonston 1995, 1995C, 1995D; Murphy and Sidhom 1996).

In the East Bay, red-legged frog habitat at the state Corral Hollow Ecological Preserve has been severely degraded by abusive grazing practices (Jennings et al. 1992), as has frog habitat at EBRPD's Sycamore Valley Regional Park in Danville (CBD 1999, 2000). Conversely, exclusion of cattle grazing on EBMUD lands in Contra Costa County was documented to have

resulted in reestablishment of suitable habitat and expansion of red-legged frog populations (Dunne 1995).

Cattle grazing is known to destroy or degrade habitat for several other sensitive amphibians and reptiles that occur in the preserves, including the threatened Alameda whipsnake, and candidate species or species of special concern such as the foothill yellow-legged frog, California tiger salamander, and the California horned and legless lizards, and the western pond turtle (Hayes and Jennings 1988; Jennings and Hayes 1994; USFWS 1997).

Livestock grazing that significantly reduces or eliminates shrubs and grass cover (overgrazing) can be detrimental to the Alameda whipsnake (*Masticophis lateralis euryxanthus*). The species avoids such open areas because of the increased danger from predators and the lack of prey (McGinnis 1992). Soil disturbance from grazing may replace native vegetation with non-native plants, potentially degrading the habitat and reducing the prey base for the whipsnake. Inappropriate grazing practices were cited as a specific threat to the Sunol-Cedar Mountain sub-population of the snake (which includes some EBRPD lands within Sunol and Ohlone Parks) by the U. S. Fish and Wildlife Service (“USFWS”) (USFWS 1997) when they listed the species, showing that overgrazing occurs within the preserves, despite EBRPD’s claims to the contrary in the LUP and IS/MND. Overgrazing is thus likely to continue after implementation of the LUP, and the effects of overgrazing are thus likely to occur.

The California horned lizard (*Phrynosoma coronatum frontale*) utilizes small mammal burrows, or burrows into loose soils under surface objects during extended periods of inactivity or hibernation (Zeiner et al. 1988). Soil compaction and trampling of rodent burrows by cattle can degrade habitat for this species (Jennings and Hayes 1994). Because this species occurs within the preserves, as acknowledged in the LUP and IS/MND, there is a strong potential that this adverse environmental effect will occur if cattle grazing within the preserves continues.

Intensive livestock grazing can destroy the structure and impact the hydrology of the natural vernal pool habitat of the California tiger salamander (USFWS 1994). California tiger salamanders have been found to be either absent or occur in low numbers in portions of pools that were heavily trampled by cattle (USFWS 2000a), and cattle can trample rodent burrows required for estivation (USFWS 2000). Because this species occurs within the preserves, as acknowledged in the LUP, appendix, C1 and IS/MND, p. 29, there is a strong potential that this adverse environmental effect will occur if cattle grazing within the preserves continues.

Because the continued cattle grazing that would be allowed under the proposed LUP is likely to cause further significant adverse impacts to habitat for sensitive reptiles and amphibians, an EIR is required.

E. There is Substantial Evidence that the LUP's Proposed Cattle Grazing Program will Cause Significant Adverse Impacts to Oaks

Oaks in the preserves currently exhibit poor regeneration or are not regenerating at all on many grazed areas (Freemire 2002). Cattle grazing is a factor in the failure of oak regeneration for several species of California oaks, due to trampling and eating of young trees by cows (CDPR 1989; Keator 1998; COF 2001). Oak trees at adjacent Mt. Diablo State Park experienced a low rate of oak regeneration in part due to cattle grazing (CDPR 1989). Also, soil compaction under oak trees caused by cattle, particularly compaction under valley oaks, increases susceptibility of the trees to oak root fungus (CDPR 1989). Loss of oaks translates into loss of biodiversity (over 300 species of vertebrates and 5000 invertebrates directly or indirectly require oaks), which is another likely significant adverse environmental effect that continued grazing will have in the preserves.

The Friends of Sycamore Valley documented extensive damage to oak seedlings and young oaks at EBRPD's nearby Sycamore Valley Park from cattle trampling and browsing, while documenting rapid recruitment of healthy oak seedlings in areas excluded to cattle (FSV 2002). The CDPR cautioned the EBRPD in a letter in 1979 that if grazing is continued over long periods, oaks are eliminated from oak woodlands as old specimens fall out without viable reproduction (CDPR 1979). Because there is substantial evidence that grazing allowed under the proposed LUP is likely to result in further loss of oaks in the preserves, an EIR is required.

F. There is Substantial Evidence that the LUP's Proposed Cattle Grazing Program will Cause Significant Adverse Impacts to Water Quality

The MND (p. 43) acknowledges the potentially substantial adverse impacts of livestock grazing on hydrology and water quality, such as soil erosion, increased runoff, stripping of vegetation, washing of sediment into creeks, and changes in stream channel morphology. Cattle decrease water quality by causing soil erosion, as discussed above, and by urinating and defecating in streams and creeks. The California Department of Parks and Recreation found that cattle grazing caused bacterial contamination of surface waters in Mt. Diablo State Park (CDPR 1989). Stream surveys in Alameda Creek in the preserves (Bookman-Edmonston 1995, 1995C, 1995D; Murphy and Sidhom 1996) found that cattle have caused an abundance of organic nutrients leading to algal blooms and lowered oxygen levels. Because there is substantial evidence that grazing allowed under the proposed LUP is likely to result in further decreases in water quality, an EIR is required.

G. There is Substantial Evidence that the LUP's Proposed Cattle Grazing Program will Cause Significant Adverse Visual and Aesthetic Impacts

According to the California Department of Parks and Recreation (CDPR 1989) livestock grazing resulted in the loss of aesthetic value on adjacent Mt. Diablo State Park - due to erosional features from concentrated livestock activity, range "improvements" such as fencing and development of water sources, and cattle droppings. CDPR noted that 1) livestock activities alter

the natural landscape, 2) fencing and the presence of livestock can inhibit recreational use by providing a deterrent to park visitors' entry into and use of a grazed area, 3) waste products and attendant insects can provide an unpleasant environment for recreationists, and 4) cattle, especially in the wet season, damage hiking trails and create their own trails (CDPR 1989).

The LUP provides for construction of an exclusionary fence along 7½ miles of Alameda Creek and in other riparian areas to be "determined on a case-by-case basis." LUP Appendix D, 5. This proposed barbed wire fencing will greatly detract from the natural setting and beauty of the preserves wherever it is erected. The LUP also proposes development of off-stream water sources, which will be unsightly and will damage or alter natural springs and seeps. Because there is substantial evidence that grazing allowed under the proposed LUP is likely to result in continued degradation of aesthetic values in the preserves, an EIR is required.

H. There is Substantial Evidence that the LUP's Proposed Cattle Grazing Program will Cause Significant Adverse Impacts to Many Native Species, Including those Listed as Threatened or Endangered

The California Department of Parks and Recreation found that livestock grazing was partially responsible for the loss of native fauna on adjacent Mt. Diablo State Park (CDPR 1989). As the preserves are adjacent to Mt. Diablo State Park and there are many similar native species and habitats, continued cattle grazing is likely to cause the significant adverse impact of loss of native fauna. Cattle grazing has significant, documented, detrimental impacts on songbird habitat and raptor nesting habitat (CDFG 2000).

According to the California Department of Fish and Game and the U. S. Fish and Wildlife Service (CDFG 2000 and USFWS 2003 as compiled in Miller 2003), livestock grazing is a causal factor in the imperilment of over two-thirds of California's 138 listed terrestrial or fresh water animal species (91 species or 66%); and one-half of California's 276 listed plant species (138 species or 50%). Livestock grazing adversely impacts at least 17 of California's 30 listed birds (57%); at least 7 of California's 14 listed amphibians (50%); at least 5 of California's 9 listed terrestrial reptiles (56%); and at least 20 of California's 32 listed terrestrial invertebrates (62%). Livestock grazing is particularly detrimental to California's listed terrestrial mammals and fresh water fish; at least 16 of California's 21 listed terrestrial mammals (76%) are adversely impacted, as are at least 26 of California's 32 listed fresh water fish (81%).

This assessment includes listed species known to occur in the preserves, including the Alameda whipsnake, California red-legged frog, California tiger salamander, and San Joaquin kit fox. Overgrazing by livestock that destroys shrub cover and reduces prey abundance may be detrimental to the San Joaquin kit fox, which the LUP and IS/MND acknowledge may occur in the preserves, and grazing can reduce available denning habitat (USFWS 1998e).

There are potentially substantial adverse impacts from cattle grazing in the preserves on the San Antonio tule elk herd in the Sunol Valley. Elk are negatively affected by cattle grazing due to competition with cattle for preferred forage and browse, the possibility of disease spread

by livestock, and the effects of fences on their mobility. Numerous studies have documented that elk will leave an area where cattle are introduced and prefer those areas ungrazed by cattle (Wagner 1978). A study by Jon Skovlin (1968) found that elk use was significantly lower on ranges cohabited by cattle than in those where cattle use was restricted. Cattle serve as a vector to spread disease and parasites, both native and exotic, to wild animals. Cattle have been documented to pass numerous diseases to wildlife, such as brucellosis, circling disease, encephalitis, tuberculosis, pneumonia, and bluetongue. Wyoming Game and Fish Department officials believe that widespread ranching which forces elk to concentrate in localized areas is the main reason the number of elk calves born in that state has declined in recent years (Jacobs 1991). A study by Harvey and Stanley Associates (1987) of the San Antonio tule elk herd adjacent to the preserves in the Sunol Valley found that their population is likely being limited by livestock grazing and that elk are competing with cattle for forage.

Because there is substantial evidence that grazing allowed under the proposed LUP is likely to result in continued impacts to native species, including threatened, endangered, and special-status species, an EIR is required.

I. There is Substantial Evidence that the LUP's Proposed Cattle Grazing Program will Cause Significant Adverse Impacts to Native Plant Species

Cattle spread invasive, non-native plant species on their hooves and hides - species that compete with, and often reduce or eliminate, native species. Overgrazing by cattle results in disturbed soil surfaces that provide the preferable habitat for continued non-native annual weed growth. The role of cattle grazing in spreading weeds is thoroughly documented in *Livestock Grazing and Weed Invasions in the Arid West* (Belsky and Gelbard 2000), a summary of 189 peer-reviewed studies on livestock grazing's contribution to weed introductions. Invasive exotic weeds have eliminated numerous sensitive plant species in California and the East Bay. Citizen monitoring of EBRPD parkland at Sycamore Valley Park in nearby Danville in the East Bay showed that invasive star thistle densities are significantly greater in grazed EBRPD grasslands than in adjacent ungrazed public lands (FSV 2002). CDPR (1989) found that livestock grazing on Mt. Diablo State Park (substantially similar to that proposed in this LUP) contributed to the elimination of large stands of native perennial grasses and the conversion of native grasslands to non-native species. CDPR found that of the 92 species of exotic plants found at Mt. Diablo State Park, many of them were associated with grazed areas (CDPR 1989).

Livestock grazing impacts more acres of wild native plant communities in California than any other activity (CNPS 2003). Overgrazing by cattle has directly or indirectly led to the decline of sensitive plant species in the East Bay, and has been a factor in listing many plants as threatened, endangered, or sensitive species. For example, the Mt. Diablo fairy lantern (*Calochortus pulchellus*) and Oakland star-tulip (*C. umbellatus*) are rare perennial lilies threatened by cattle grazing (CNPS 2003; Dunne 2000). These species are known to persist only in lands that are ungrazed, infrequently grazed, or otherwise undisturbed by management activities (Dunne 2000). Many of these traits are also common to other special status species habitats, particularly the Diablo sunflower and the bent-flowered fiddleneck - these native

species are not present in most watershed areas that are grazed by cattle (Dunne 2000). Cattle grazing is partially responsible for extirpation of some populations of large-flowered fiddleneck (*Amsinckia grandiflora*). The introduction of cattle into the Livermore area near the preserves is thought to have degraded the native grasslands that once existed there which supported this species (USFWS 1985). Intensive livestock grazing has reduced the range and population numbers of the soft bird's-beak and palmate-bracted bird's-beak (USFWS 1986, 1997b).

At least 6 of the 15 (40%) of the known locally rare or unusual plant species identified in the LUP as occurring in Sunol and Ohlone Preserves are known or suspected to be threatened by cattle grazing according to the California Native Plant Society ("CNPS") and USFWS. These species include the Santa Clara thorn-mint (*Acanthomintha lanceolata*), Oakland star-tulip (*Calochortus pulchellus*), Sulfur-flower, or bay buckwheat (*Eriogonum umbellatum var. bahiiforme*), Mt. Diablo helianthella (*Helianthella castanea*), Legenere (*Legenere limosa*), and Most beautiful jewelflower (*Streptanthus albidus ssp. peramoenus*). The Most beautiful jewelflower (*Streptanthus albidus ssp. peramoenus*) is threatened by grazing according to USFWS (1998). Overgrazing is known to have resulted in substantial adverse impacts to at least one other listed *Eriogonum* species in the East Bay, the Mt. Diablo buckwheat, according to USFWS (2002).

Because there is substantial evidence that EBRPD's cattle grazing program will likely cause further reduction and elimination of native plant species within the grazed areas of the preserves, an EIR is required.

J. There is Substantial Evidence that the LUP's Proposed Cattle Grazing Program will Cause Significant Adverse Impacts to Human Safety

The California Department of Parks and Recreation found that cattle grazing caused bacterial contamination of surface waters, which poses a serious threat to human health (CDPR 1989). Cattle in the preserves have attacked people. Two women testified at EBRPD's public hearing on the LUP in Sunol on Wednesday, October 8, 2003, that they were personally attacked by cattle while hiking in the preserves. Because these women were attacked for no apparent reason, more people are likely to be attacked by cattle if the cattle are allowed to roam where people hike. The Friends of Sycamore Valley ("FSV") has submitted – and will submit further – substantive evidence to EBRPD on the threat to public safety posed by cows and bulls in EBRPD parklands and the preserves. Bulls are present in public areas of the EBRPD parks, including Sunol preserve (see FSV 2002). All FSV comments are incorporated by reference. Because there is substantial evidence that EBRPD's cattle grazing program will likely cause substantial adverse impacts to human safety in the preserves, an EIR is required.

K. There is Substantial Evidence that the LUP's Proposed Cattle Grazing Program will Cause Significant Adverse Impacts to Cultural Resources

Where a lead agency determines that a site is "historically significant," that site is considered a historical resource. Cal .Code Regs., tit. 14, §15064.5(a)(3). The LUP states that

several historic sites within the preserves have been designated “Special Protection Features” (LUP at 62), showing that that EBRPD considers these sites to be historically significant. “A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” Cal. Code Regs., tit. 14, §15064.5(b).

Steven Shackley, Ph.D. Professor of Anthropology at U. C. Berkeley, sent a letter to EBRPD on September 16, 2003, detailing the potentially significant impacts of livestock grazing in damaging archaeological sites on EBRPD lands at Briones and Wildcat Canyon Parks. The EBRPD has not performed archeological surveys to determine whether cattle grazing in the preserves is damaging archeological sites. Mr. Shackley sent further comments to the EBRPD on October 22, 2003 – all of these comments are incorporated by reference.

In both comment letters, Mr. Shackley has presented substantial evidence that cattle grazing on soft, wet ground “will likely create permanent damage to known and encountered archaeological sites by moving cultural materials vertically and horizontally out of context.” Because there is substantial evidence that EBRPD’s cattle grazing program has a high likelihood of causing significant adverse impacts to historical resources in the preserves, an EIR is required.

## **II. THE INITIAL STUDY DOES NOT PERFORM THE ANALYSIS OF CUMULATIVE IMPACTS REQUIRED BY CEQA**

The initial study fails to analyze reasonably cumulative impacts of cattle grazing. “Cumulative impacts” are defined by the CEQA Guidelines as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” Cal. Code Regs., tit. 14, § 15355. Cumulative impacts include impacts from “a number of separate projects” (Cal. Code Regs., tit. 14, § 15355(a)), such as separate leases, or “the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.” Cal. Code Regs., tit. 14, § 15355(b). While the IS/MND (p.3) states that cattle grazing has been occurring in the preserves for over 150 years, the study offers no analysis of the potential significant cumulative impacts of the reasonably foreseeable use of the preserves for continued cattle grazing added to the significant impacts from past cattle grazing. As discussed above, there is substantial evidence that continued implementation of EBRPD’s cattle grazing program has a great potential to cause significant adverse environmental effects in addition to those already caused by past cattle grazing. An EIR must be prepared where the cumulative impact of several projects is significant. Cal. Code Regs., tit. 14, § 15063(b)(1).

## **III. THERE IS SUBSTANTIAL EVIDENCE THAT EBRPD’S “MITIGATIONS” ARE INSUFFICIENT TO REDUCE OR ELIMINATE THE SIGNIFICANT ADVERSE IMPACTS OF THE LUP’S CATTLE GRAZING PROGRAM**

A Mitigated Negative Declaration is proper only when: “(a) the initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project

may have a significant effect on the environment, or (b) The initial study identifies potentially significant effects, but: (1) revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and (2) there is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.” Cal. Code Regs., tit. 14, §15070.

Neither the LUP, the IS nor the MND acknowledge that there are potential significant adverse environmental effects from the LUP’s cattle grazing program. Therefore, the MND includes no proposed mitigations to avoid or mitigate the significant adverse effects from the LUP’s cattle grazing. EBRPD acknowledges potential significant adverse environmental effects from “overgrazing” (IS/PMND pp. 27, 39, 43), but totally fails to acknowledge any harm from cattle grazing. In fact, EBRPD never defines what constitutes “overgrazing” or the method of determining its presence. The substantial evidence presented above demonstrates that cattle grazing will cause further significant adverse environmental effects whether or not EBRPD determines it should be labeled “overgrazing.” Given the substantial evidence now before the EBRPD and discussed above, the agency can not proceed pursuant to CEQA Guideline 15070.

In addition, monitoring alone will be insufficient as 1) EBRPD’s monitoring to date has failed to comply with its own policies and guidelines (see FSV 2003)<sup>3</sup>; 2) the monitoring is not tied to any specific performance standard or criteria for any of the numerous impact areas identified above (*Sacramento Old City Assn. V. City of Sacramento* (1991) 229 Cal. App.3d 1011, 1028); 3) monitoring will not address cumulative impacts, and 4) there is substantial evidence that monitoring of damage to cultural resources will not reduce impacts below the level of significance.

The promised 7.5 miles of fencing of Alameda Creek will also be inadequate as 1) it will not address impacts in tributary streams such as Welch Creek, Indian Joe Creek, and W-Tree Creek, all of which have riparian vegetation, stream banks, water quality, and potential habitat for rainbow trout; 2) it will not mitigate in any way impacts outside of the immediate Alameda Creek riparian corridor to cultural resources, oaks, native plants, and sensitive and listed species including amphibians, reptiles and fish; 3) it will potentially increase substantial adverse impacts to human safety, tule elk migration and visual/aesthetics; and 4) the “case-by-case basis” determination is neither tied to a specific performance criteria nor based on a reasonable basis for expected effectiveness.

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<sup>3</sup> EBRPD was unable to produce any monitoring reports that are specified by its *Wildlands Management Policies and Guidelines* (1992) when they were requested by Friends of Sycamore Valley. An Assault on Biodiversity in the Name of Wildlands & Habitat Preservation, pp. 2-4, 2-5, Greg Schneider, February 25, 2002. Without the monitoring that EBRPD claims will prevent the potential adverse environmental effects, there is no way for EBRPD to know if those effects are taking place or to manage cattle grazing so that those adverse effects do not occur.

#### **IV. EBRPD FAILED TO CONSULT WITH RESPONSIBLE AGENCIES AS REQUIRED BY CEQA**

“As soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared.” Cal. Code Regs., tit. 14, § 15063(g).

The LUP lists several species that are either “Species of Special Concern,” “Fully Protected Species,” or threatened, and endangered under California law. Yet, there is nothing in the LUP, IS or MND showing that EBRPD has consulted with the California Department of Fish and Game, which is the responsible agency for these species. Similarly, the LUP lists several species as threatened or endangered under federal law (LUP, p. 29), but neither the LUP, the IS nor the MND shows that EBRPD ever consulted with the U.S. Fish and Wildlife Service, which has responsibility for federally listed species.

The IS/MND also states that “livestock grazing, when not properly managed, has the potential to increase runoff and to contribute to soil erosion.” IS/MND p. 43. The California Department of Parks and Recreation found that cattle grazing caused bacterial contamination of surface waters, which poses a serious threat to human health (CDPR 1989). Yet, there is no evidence that EBRPD consulted with the Regional Water Quality Control Board, the State Water Quality Control Board or the U.S. EPA about the impacts, mitigations and alternatives to water quality. The IS/MND is thus in violation of CEQA.

#### **V. AN EIR WILL ALLOW EBRPD TO PROPERLY EXAMINE ALTERNATIVES TO – AND MITIGATIONS FOR – THE PROPOSED PROJECT**

The proposed project includes a continuation of EBRPD’s cattle grazing program for the purported purpose of vegetation management. An EIR would provide EBRPD the opportunity to consider alternatives to the program which would successfully accomplish the goals of vegetation management without the significant adverse impacts of cattle grazing, such as: reintroduction of native tule elk or expansion of the current range of the adjacent San Antonio tule elk herd; browsing by other native herbivores; seasonal and site-specific managed use of alternative grazing animals such as horses or goats in specific instances where ecological benefit can be demonstrated; use of some controlled burning and hand or mechanical vegetation removal; or some combination of the above. An EIR would also allow EBRPD the opportunity to consider mitigations to the significant adverse impacts of cattle grazing, such as large reductions in the number of cattle and restrictions as to which areas are open to cattle grazing.

## **VI. THE LUP MUST COMPLY WITH FISH & GAME CODE SECTION 1601 AND SECTION 1603**

If cattle grazing pursuant to the LUP and alteration of natural springs, seeps, and waterways for livestock watering projects has the potential to (1) divert, obstruct, or change the natural flow or the bed, channel, or bank of rivers, streams, or lakes designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit, (2) use material from the streambeds designated by the department, or (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake designated by the department, then EBRPD must submit the LUP to the Department of Fish and Game for compliance with Fish & Game Code section 1601.

In addition, any person, including a rancher with a grazing lease, who substantially diverts or obstructs the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or who uses any material from the streambeds, must comply with Fish & Game Code section 1603.

### **CONCLUSION**

If EBRPD approves its Mitigated Negative Declaration, no further environmental evaluation will be undertaken. Because CEQA creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review, the substantial evidence now before EBRPD necessitates preparation of an EIR. There is no validity in EBRPD's simplistic claim that because there will be no change in grazing levels, there will be no physical change in the environment. The substantial evidence now before the agency is overwhelming that grazing – even at current levels – will cause significant adverse impacts to the environment. Under CEQA, deference to EBRPD's conclusion that cattle grazing has no significant adverse environmental effect – or that where such an effect is possible, EBRPD's mitigations will cause the effect to become less-than-significant – is not appropriate; its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal. App. 4<sup>th</sup> 896, 904-905. “[I]f the trial court perceives substantial evidence that the project might have [a significant environmental] impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed ‘in a manner required by law.’” *Friends of 'B' Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002. EBRPD should thus prepare an EIR in order to be in compliance with CEQA and the CEQA Guidelines.

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#### PERSONAL COMMUNICATIONS

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#### **LITERATURE SUBMITTED TO THE EBRPD GRAZING REVIEW TASK FORCE BY THE CENTER FOR BIOLOGICAL DIVERSITY, OCTOBER 2000**

A. Grazing studies

1. Comment letter from Kassie Siegel, Center For Biological Diversity, Oct. 24, 2000.
2. Grazing's Direct Impacts; summary of grazing soil, stream, wildlife, and ecosystem impacts from peer-reviewed, scientific studies, with references, 13 pages.
3. Survey of Livestock Influences on Stream and Riparian Ecosystems in the Western United States. Belsky et al. 1999. Survey of over 140 peer-reviewed studies on biological and physical effects of livestock on western rivers, streams, and riparian areas.
4. Livestock Grazing and Weed Invasions in the Arid West. Belsky and Gelbard 2000. Summary of 189 peer-reviewed studies on grazing's contribution to weed introductions.
5. The Cow as a Geomorphic Agent - A Critical Review. Trimble et al. 1995. Cows and soil compaction, erosion, and sedimentation.
6. Differences in Riparian Vegetation Structure Between Grazed Areas and Exclosures. Schulz and Leininger 1990.
7. Livestock Grazing, Golden Trout, and Streams in the Golden Trout Wilderness, California: Impacts and Management Implications. Knapp and Matthews 1996. Grazing impacts on salmonids.
8. Grazing Impacts. Aaron Holmes, Point Reyes Bird Observatory Biologist, 2000. Grazing reduces songbird diversity.
9. Reference list of over 150 research papers and articles detailing the detrimental environmental impacts of livestock grazing.

B. Grazing impacts on endangered, threatened, and sensitive plants

1. Final Rule listing the large-flowered fiddleneck as an endangered species. U. S. Fish and Wildlife Service, 1985.
2. Final Rule listing the palmate-bracted bird's-beak as an endangered species. U. S. Fish and Wildlife Service, 1986.
3. Final Rule listing the soft bird's-beak as an endangered species. U. S. Fish and Wildlife Service, 1997.
4. Most beautiful jewelflower. In Draft Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area. U. S. Fish and Wildlife Service, 1998.

5. Final Rule listing the Presidio clarkia as an endangered species. U. S. Fish and Wildlife Service, 1995.
  6. Presidio clarkia. In Annual Report on the Status of California State Listed Threatened and Endangered Animals and Plants. California Department of Fish and Game, 1992.
  7. Final Rule listing the pallid manzanita as a threatened species. U. S. Fish and Wildlife Service, 1998.
  8. Final Rule listing the Contra Costa goldfields as an endangered species. U. S. Fish and Wildlife Service, 1997.
  9. Status of the Mt. Diablo Fairy Lantern and Oakland Star-tulip On or Adjacent to the EBMUD East Bay Watershed. Jim Dunne, EBMUD Fisheries and Wildlife Division, 2000.
- C. Grazing impacts on endangered, threatened, and sensitive amphibians
1. Final Rule listing the Alameda whipsnake as a threatened species. U. S. Fish and Wildlife Service, 1997.
  2. Petition to list the California red-legged frog. Jennings, Hayes, and Holland, 1992.
  3. California red-legged frog. In Amphibian and Reptile Species of Special Concern in California. Jennings and Hayes, 1994.
  4. Final Rule listing the California red-legged frog as a threatened species. U. S. Fish and Wildlife Service, 1996.
  5. Draft Recovery Plan for the California red-legged frog. U. S. Fish and Wildlife Service, 2000.
  6. Foothill yellow-legged frog. In Amphibian and Reptile Species of Special Concern in California. Jennings and Hayes, 1994.
  7. California tiger salamander. In Amphibian and Reptile Species of Special Concern in California. Jennings and Hayes, 1994.
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**INFORMATION SUBMITTED TO THE EBRPD BY THE ALAMEDA CREEK ALLIANCE WITH COMMENT LETTER OF OCTOBER 20, 2003**

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Comment letter from Harry Batlin, former California State Parks Superintendent, Central Coast Region, sent via e-mail to ACA.