

EXHIBIT 1

**PLAINTIFF-APPELLANTS' REPLY
TO DEPARTMENT OF THE INTERIOR'S OPPOSITION TO EMERGENCY
MOTION FOR INJUNCTION PENDING APPEAL**



Investigative Report of Drakes Bay Oyster Company Environmental Impact Statement

Report Date: February 7, 2013

This is a version of the report prepared for public release.

decisionmakers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the environment.¹²

Before NPS can issue a new special use permit (SUP) to the Company, which is viewed as a major Federal action by NEPA standards, NPS is required to comply with the NEPA process and conduct an EIS to assess environmental impacts of the Company's operations within Point Reyes.¹³

CEQ regulations address how NPS should collect information for the EIS. Specifically, the CEQ addresses issues of "Incomplete or Unavailable Information" in 40 C.F.R. § 1502.22, which states:

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

In addition, NEPA guidance for the EIS process (40 C.F.R. §1502.24), regarding "Methodology and Scientific Accuracy," states: "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement."

Consistent with NEPA, NPS Director's Order 12 mandates that every Federal agency prepare an in-depth study of the impacts of "major Federal actions having a significant effect on the environment" and propose alternatives to those actions. Order 12 further requires that each agency make the information an integral part of its decisions. In addition, Director's Order 12 defines purpose, need, and objectives to assist in the development of a range of alternatives, one of which becomes the "preferred" alternative or the environmentally preferred alternative at the conclusion of the analysis process. This "preferred alternative" is then identified in either an environmental assessment or EIS before it is released to the public for review and comment.¹⁴

In addition, NPS Director's Order 47 provides NPS with operational policies under NEPA that require the protection, maintenance, or restoration of the natural soundscape resource to a condition unimpaired by inappropriate or excessive noise sources. The order requires park planning efforts to—

¹² CEQ Regulations for Implementing NEPA for EISs.

¹³ NEPA EIS Guidance, 40 C.F.R. Part 1500.

¹⁴ NPS Director's Order No.12, Conservation Planning, Environmental Impact Analysis, and Decision-making.