



Sierra Nevada

Forest Protection Campaign



January 2, 2007

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DELIVERED VIA EMAIL TO: dmartin05@fs.fed.us

Re: Comments on the Cedar Valley Draft EA

Dear Mr. Martin:

These comments on the Cedar Valley Draft Environmental Assessment are submitted on behalf of the Sierra Nevada Forest Protection Campaign and the Sierra Club.

The Cedar Valley Project implements the 2004 Sierra Nevada Framework ROD (USDA Forest Service 2004a), and tiers to the accompanying FSEIS (USDA Forest Service 2004b). As demonstrated in our appeal of the 2004 ROD and FSEIS (SNFPC et al. 2004¹), the 2004 plan and the FSEIS fail to comply with the National Forest Management Act (NFMA), the National Environmental Policy Act (NEPA), and other environmental laws. Therefore, for the programmatic reasons set forth in our appeal of the 2004 ROD and FSEIS, the Cedar Valley Project is also contrary to law.

We have reviewed the draft EA and the underlying specialists' reports. Based on our review, we have concluded that the draft EA fails to include sufficient information and analysis to adequately disclose the project's likely environmental impacts and to allow a reasoned choice about whether or not to implement the project. As detailed below, some of the key deficiencies include failure to adequately disclose the current habitat conditions and the project's likely impacts on fisher and California spotted owl, failure to monitor management indicator species (MIS) or adequately to assess the project's impacts on these species, and failure to analyze an adequate range of alternatives or to develop alternatives that address the significant issues identified during project scoping and as a result of the environmental analysis. Lastly, an analysis of cumulative effects essentially is absent from the draft EA.

These deficiencies are important enough that they must be remedied in a revised environmental analysis so that the public has an opportunity to comment on the additional information and analysis, as required by NEPA. We therefore urge the Forest Service to prepare a revised environmental analysis, rather than proceeding directly to a final document and decision on this project.

¹ An electronic copy of the appeal is included on a compact disk (CD) submitted with these comments.

I. CHARACTERIZATION OF HABITAT CONDITIONS FOR SPECIES DEPENDENT ON LATE-SERAL FORESTS

Pacific fisher and California spotted owl, as well as other species dependent on late-seral forests, have differing habitat requirements depending on the activity in question. Fisher and owl both require high canopy forests dominated by large trees for denning/resting and nesting. Foraging habitat for both can include more open forest that includes medium and large sized trees. For owl, the CASPO report recommended the following:

Table 1. Recommendations on California spotted owl habitat characteristics from the CASPO Report (Verner et al. 1992, p. 96).

Stand Attribute	Nesting and Roosting	Foraging
Percent Canopy Cover ¹	70-95%	50-90%
Total live tree basal area ²	185-350	180-220
Total snag basal area ³	30-55	15-30
Basal area of large snags ⁴	20-30	7-17
Downed woody debris ⁵	10-15	10-15

¹ Mostly in canopy >30 feet high, including hardwoods

² Square feet per acre

³ Dead trees >15" dbh and feet tall

⁴ Tons per acre

The 2004 Framework FSEIS (USDA Forest Service 2004a, Volume 1, p. 267) identifies that generally CWHR types 5M, 5D, and 6 are considered to be suitable nesting habitat. The FSEIS, however, notes the canopy cover range of 5M is lower than suitable for nesting and that some amount of the 5M habitat would not be suitable.

A recent study of fisher home ranges in the southern Sierra found that fishers select for high canopy closure and that on average 66 percent of fisher home ranges in the southern Sierra are characterized by canopy closure of 60 percent or greater. (Zielinski et al. 2004a; USDA Forest Service 2001a, Vol. 3, Chap. 3, part 4.4, p. 11). Another recent study in the southern Sierra found that fisher "rest sites had greater canopy cover ... and canopy layering than random sites," as well as "higher large snag occurrence." (Mazzoni 2002, p. 24). With respect to rest sites, Zielinski et al. (2004b) found that average canopy closure was greater than 90 percent, and that "resting fishers place a premium on continuous overhead cover, as reported previously." Stands with large trees are also important to fisher. Mazzoni (2002) found that, on average, about 25% of the home ranges evaluated consisted of stands with trees larger than 24" DBH and 50% canopy cover.

The BE does not identify what CWHR or timber strata types it has associated with suitable nesting, denning or foraging for species dependent on late seral forests. Tables in the BE report out the CWHR types associated with high and moderate capability habitat, but do not distinguish between nesting/denning or foraging habitat. The BE also does not distinguish between the type of vegetation that is consider moderate versus high capability. The EA does include a map of "x4G" and "x3G" timber strata in the project. Unfortunately, the lack of difference in the coloration of these types on the map makes it impossible to locate where the different types occur on the landscape. At best one can see where forested areas with trees greater than 11" DBH and 70%

canopy cover occur. Without a detailed characterization of the existing habitat and an understanding of where this habitat occurs in the project area, the quality of the environment can not be known and the effect of the alternatives can not be determined.

Our investigation (Britting 2006b, Figure 1) of the project area indicates that it is, in fact, dominated by timber strata that is greater than 70% canopy cover with trees averaging 24" DBH and greater. For both fisher and owl this is the highest quality nesting and denning habitat. Further, an examination of the distribution of habitat outside of the project area indicates that the project area itself has some of the largest blocks of high quality habitat in the area. This information was not clearly presented and discussed in the BE.

The BE should be revised to reflect a clear description of the habitat quality in and surrounding the project area, to discuss its relationship to the habitat available outside of the planning area and the importance of these characteristics to species persistence.

II. PACIFIC FISHER

The Pacific fisher is a forest carnivore that is closely associated with older forests comprised of medium and large trees, dense canopy cover, and abundant large snags and down wood. The U.S. Fish and Wildlife Service concluded that the fisher warrants protection under the Endangered Species Act. The USFWS cited loss and fragmentation of habitat and further decline and isolation of populations as the primary threats to the fisher, and questioned the adequacy of the 2004 Sierra Nevada Forest Plan Amendment ("2004 Framework Amendment") to protect fisher habitat. (USDI Fish and Wildlife Service 2004, Federal Register April 8, 2004, p. 18788) The Service specifically mentioned "timber harvest, fuels reduction treatments, and road construction" on federal lands as threats to fisher "distribution, abundance, and recovery/recolonization potential." (*Ibid.*) Under these circumstances, the fisher's habitat in the Sierra Nevada requires protection and restoration, not further degradation.

The USFWS, in its recent finding that the west coast population of the fisher warrants listing under the Endangered Species Act confirmed the imperiled status of the Sierra Nevada population. "Preliminary analyses indicate West Coast fisher populations, particularly in the southern Sierra, may be at significant risk of extinction because of small population size and factors consequent to small population size such as isolation, low reproductive capacity, demographic and environmental stochasticity." (USDI Fish and Wildlife Service 2004, p. 18789). The USFWS stated that the southern Sierra fisher population "has a very high likelihood of extinction given reasonable assumptions with respect to demographic parameters." (USDI Fish and Wildlife Service 2004, pp. 18790-91, citing Lamberson et al. 2000).

A meeting of Forest Service and other forest carnivore experts convened by the Forest Service in 1999 concluded with respect to the southern Sierra fisher population: "Conservation biology tells us that the likelihood of this population being extirpated is high.... In a population this imperiled, loss of a few reproductive females may contribute toward a downward population spiral that culminates in extirpation." (Macfarlane and Frolli 1999). As the Forest Service recognized in the Framework FEIS: "Given the current low density of fishers in the Sierra Nevada, the loss of

even a small number of individuals ... could significantly impact the population." (USDA Forest Service 2001a, Vol. 3, Chap. 3, part 4.4, p. 9).

The Cedar Valley project has the potential for significant adverse effects on Pacific fisher, as discussed below. The project is located within the Southern Sierra Fisher Conservation Area ("SSFCA") and provides important habitat linkage to fisher occurrences to the north and south in the SSFCA. The adverse effects of the Cedar Valley Project in combination with the threatened population status of fisher threaten the viability of this species.

A. The Forest Service Does Not Present Sufficient Information to Assess Accurately the Impacts of the Project on the Fisher.

Beyond the general difficulty identified above regarding the characterization and mapping of habitat quality for species dependent on late seral forests, the BE also fails to address critical information in the analysis of fisher. As a result, the draft EA and BE do not provide adequate information regarding the environmental setting or proposed project to assess the impacts on Pacific fisher, as required by NEPA. These omissions are described below.

The BE fails to identify the significance of the low abundance of fisher on the Sierra National Forest, as compared to the more robust population on the Sequoia National Forest. Low abundance on the Sierra National Forest could well be related to a reduced habitat quality. As a result, additional degradation of habitat, as proposed in the Cedar Valley Project, could have a significant effect on fisher persistence.

The BE also fails to consider the project in relation to land use allocations specifically designed to provide or improve habitat conditions for late seral species. The Sierra Land and Resource Management Plan (Sierra National Forest 1992) adopted a carnivore network. This network was created to maintain "sufficient amounts of habitat and habitat characteristics that contribute to the viability of these species." (*Ibid.*, p. 4-16). As our analysis shows (Britting 2006b, Figure 2) the Cedar Valley Project occurs within of one of the areas defined in the network. Further, this area was identified as late-successional old growth and given a rank of 4 by the Sierra Nevada Ecosystem Project. (Centers for Water and Wildland Resources 1996). Areas ranked as 4 and 5 represent high quality old growth and form the basis for the old forest reserve system that was designed for the Sierra Nevada. (*Ibid.*) The Cedar Valley Project area is also included in an Old Forest Emphasis Area that was delineated in the 2004 Framework. Each of these designations emphasizes the importance of this area as high quality habitat for species dependent on late seral forests and for fisher in particular. These land use designations and what they reveal about habitat quality in the area were not addressed in the BE.

The BE also does not address the effects on fisher of eliminating understory vegetation as a result of the proposed treatments. The Cedar Valley Project proposes to reduce canopy coverage by eliminating understory vegetation through thinning, masticating prescribed fire, and clearing. In many areas of the Project area, however, this understory vegetation may form the protective canopy for fisher resting and foraging. Fishers may use understory or shrub as cover for habitat, but this habitat will be generally eliminated by the fuel treatments proposed in this Project.

The Forest Service has previously recognized the particular impacts on the fisher of clearing understory vegetation.

Concern...is raised for stands to be reduced in complexity at ground and mid-canopy layers in certain vegetative strata type which are typically associated with higher degrees of fisher and marten use. Where goshawk and California spotted owl may benefit from a slightly more open understory which improves habitat for flight and prey capture, fisher and marten are more ground based and could be negatively influenced through increases in predation if stands become significantly simplified at these levels.

(Sequoia National Forest 2005, pp.23-24.)

Further, the USFWS, in its recent finding that listing the fisher is warranted, concluded that logging and fuels reduction, including thinning, can adversely affect fisher habitat. "Fuels reduction treatments, including thinning and the removal of down woody debris, dense understory, snags, and low overstory tree crowns may significantly affect fishers in the immediate area." (USDI Fish and Wildlife Service 2004, p. 18779). "Clearcutting, selective logging, and thinning change the suitability of fisher habitat by removing overhead cover and insulating canopy, exposing the site to the drying effects of sun and wind or to increased snow deposition, removing prime resting and denning trees, and increasing exposure of the fisher to predators." (*Ibid.*)

The BE, however, does not assess the direct impact of intensive understory treatments on the fisher, nor indirect impacts such as the substantial reduction of the fisher prey base. Rather, the BE (p. 47) only notes that "many of the prey species found in the diet of fishers occur primarily in large tree and dense canopy coniferous forests and oak woodland habitats, while others prefer chaparral and deciduous riparian areas (Zielinski et al. 1999)."

B. The Analysis of Cumulative Impacts to Fisher in Inadequate

The Cedar Project BE (p. 79-81) relies almost entirely on the cumulative impacts assessment provided for the Kings River Project to address the cumulative impacts to fisher for the Cedar Valley Project. For this reason, our comments on the Kings River Project DEIS and FEIS are relevant and are incorporated herein by reference.² In summary, we found the cumulative effects analysis for the Kings River DEIS and FEIS inadequate for a number of reasons including, 1) failure to assess the amount and spatial distribution of dense (>60%) canopy cover habitat across the landscape; 2) failure to assess the need for unfragmented higher quality fisher resting and denning habitat across the landscape; 3) failure to analyze the effects of the proposed logging on fishers that rely for part of their habitat needs on habitat scheduled for treatment; and 4) reliance on the false choice between no treatment – with accompanying fire risk – and intensive logging as proposed in the Kings River alternatives, although the project documents concede that less intensive harvesting can achieve the project purposes for fuel reduction. Since the Cedar Valley cumulative effects analysis relies on the Kings River analysis, it is also inadequate.

² Our comments on the DEIS and DEIS are included on the CD-ROM mailed with these comments.

At least one of the general comments provided in the BE on the cumulative effects to fisher also is problematic. The BE refers to the Progeny Sale Area to the south of the project that was “thinned several years ago” and indicates that “much of this sale area is shown as 70% or more canopy cover.” (BE, p. 78). This evidence is then used to argue that suitable denning and foraging habitat should be available when treatments are undertaken in the Cedar Valley Project. It is not clear what vegetation data was used to evaluate the canopy cover in the adjacent sale. However, previous references to remote sensing data suggest that the forest vegetation data (eveg) developed by the Remote sensing Lab was the likely source. If this is the case, that data is based on remotely sense photographs from 1997. That data would not have taken in to account the harvest that occurred in the Progeny Sale Area several years ago. The data source for this statement should be disclosed and corrections made to the analysis if necessary.

C. The Cedar Valley Project Will Contribute To Adverse Cumulative Effects.

For fisher, the Forest Service’s current approach to habitat management on the Sierra National Forest will lead to a loss of viability. In this sense, the Kings River and Cedar Valley projects simply further this process, which by definition ignores significant near term impacts to critical habitat for this species on the brink of extinction, in favor of promised habitat benefits down the road in some uncertain future. As noted by Dr. Barrett in comments on the Kings River DEIS:

Both the 2004 Framework and the Kings River Project rely on the identification of long term desired conditions to establish old forest ecosystems to justify the elimination of quality habitat in the "short term," ostensibly in favor of a higher quality habitat in the future. The problem with this approach is that such a future may not exist for the fisher in the Southern Sierra. For the fisher to survive, I believe the Forest Service needs to avoid any actions that appreciably reduce habitat quality in the short term as well as the long term.

(Barrett 2006, p. 13).

Significant effects to habitat in the short term are expected from implementing the Cedar Valley and Kings River projects. Such effects have been noted in the environmental documents. Given this disclosure, it is not possible to make a “finding of no significant impacts” as is required under NEPA for decisions supported by an EA. Given this degree of impact, mitigation measures that reduce the impacts to less than significant should be incorporated into the Cedar Valley Project or an environmental impact statement should be prepared.

III. THE FOREST SERVICE FAILED ADEQUATELY TO CONSIDER THE PROJECT’S IMPACTS TO THE CALIFORNIA SPOTTED OWL AND ITS HABITAT

The 2004 ROD will result in substantial loss and degradation of habitat for the California spotted owl by allowing harvest of medium and large trees, reduction in canopy cover, and removal of large snags and down logs. The leading owl biologists who have reviewed the 2004 Framework have uniformly concluded that the new plan threatens the owl’s viability throughout the Sierra

Nevada and contributes to a trend towards federal listing.³ (Verner 2003; Blakesley and Noon 2003; Noon 2004; Peery 2004; Bond 2003; Franklin et al. 2003). The Campaign has filed suit in federal district court challenging the 2004 ROD. *Sierra Nevada Forest Protection Campaign v. Rey*, Civ. S-05-0205 MCE/GGH (E.D. Cal.). Because the Cedar Valley Project implements the 2004 ROD, it contributes to the risk to the owl's viability.

A. The Impacts To Suitable Habitat Are Underestimated.

The definition of suitable habitat in the Cedar Valley BE focuses on 40% canopy cover for both foraging and nesting habitat as the threshold below which habitat becomes unsuitable. However, this 40% threshold is not supported by owl scientists. Verner et al. (1992, p. 96) recommended canopy closure in the range to 50% to 90% for foraging habitat and 70-95% for roosting habitat. Blakesley et al. (2005, p. 1554) found that "site occupancy was positively associated with the amount of the nest area dominated by large trees and high canopy cover within the nest area." In this study, large trees were greater than 24" in diameter and high canopy cover was that exceeding 70%. (*Ibid.*, p. 1556). Recent studies on the Eldorado National Forest also support the importance of higher canopy cover to owl occupancy and persistence. Chatfield (2005) examined habitat within circular territories of about 1,135 acres around each nest stand. She found that the relative probability of spotted owl territory occupancy increased with increasing amounts of mid- to late-seral forests having high canopy cover [i.e., 70 percent or greater]." (*Ibid.*, p. 40). Seamans (2005) also examined habitat condition around nest stands. He found that "forests comprised of medium and large trees and having high canopy cover [i.e., CWHR 5D and 4D] were correlated with higher territory occupancy and higher individual survival rates." (*Ibid.*, p. 91). From this study, Seamans concluded that "intensive thinning of forest patches within owl territories that result in a lowering of canopy cover," such as allowed by the 2004 ROD, "may have negative impacts on [owl] survival, and may impact occupancy of territories." (*Ibid.*, p. 118). In combination, these studies support the use of 50% as the minimum threshold for foraging habitat and 70% as the minimum threshold for nesting habitat. Further, these studies emphasize the importance of high canopy cover within owl territories to owl occupancy and persistence.

The Proposed Action expects to reduce canopy to as little as 40% cover on 1,425 acres of "suitable" habitat. The expected canopy cover following timber harvest is below the levels identified in the studies cited above as important to owl occupancy and reproductive success. The failure of the BE to recognize these canopy thresholds results in the underestimation of impacts from the Cedar Valley Project.

B. Impacts To Home Range Core Areas And Nest Areas Are Not Evaluated.

Recent findings by Blakesley et al. (2005) emphasize the importance of evaluating the effects of habitat quality on spotted owl persistence. This study examined habitat quality around nest stands at several scales including what was termed "nest area" (500 acres) and "core area" (about 2,010 acres). At both scales, "site occupancy was positively associated with the amount of nest area dominated by large trees with high canopy cover within the nest area." (*Ibid.*, p. 1554).

³ These reviews are included as part of the Campaign's appeal of the 2004 ROD. (SNFPC et al. 2004). A copy of the appeal and attachments are included on the CD mailed with these comments.

The BE (p. 74) mentions that the home range core area (HRCA) for one owl site occurs within the project area and that a portion of it will be commercially thinned. The BE does not indicate how much of the HRCA will be harvested or the type of habitat to be harvested. The BE also fails to disclose the existing quality of the owl site or its occupancy status. All of these attributes are necessary to evaluate the impact of the project on owl persistence in the project area. This information should be included in a revised analysis for the BE and EA.

IV. FOREST PLAN MONITORING FOR WILDLIFE

Management to achieve well distributed populations of desired native and non-native species across the planning area is a fundamental goal of the National Forest Management Act (NFMA). This goal is intended to be achieved through planning and monitoring. The Sierra Land and Resource Management Plan (SLRMP) (as amended in 2004), the NFMA, and other federal laws and regulations provide a framework to direct the achievement of this goal. The SLRMP (amended 2004) provides specific direction on the required monitoring for selected species in connection with the Cedar Valley Project.

As described the Cedar Valley draft EA, the Project fails to meet the monitoring requirements in the SLRMP in a number of ways including failure to collect and report the required monitoring data. Disclosure of the monitoring data and the assessment of population trend are essential for two reasons. First, it is required by the forest plan and therefore required by law. Second, this information is necessary in order to evaluate fully the effects of the Cedar Valley Project on the environment as required by law. The failure to collect and disclose this information is significant. We ask that this deficiency be rectified prior to making a decision to implement the project.

A. The Breeding Bird Surveys Cited In The MIS Report Are Not Adequate To Assess Population Trend On The Sierra National Forest.

The forest plan for the Sierra National Forest requires annual population and trend to be determined for avian species in the two habitats identified in the Cedar Valley MIS report: meadow edge/riparian and mature mixed-conifer. (MIS report, p. 3; Sierra National Forest 1992, p. 5-6 to 5-9). For six of the bird species associated with these two habitat types, population trend for California and the Sierra Nevada was estimated using information provided in the Breeding Bird Survey (BBS) Program (Sauer et al. 2006). There were no estimates of population trend reported specifically for the Sierra National Forest as required by the LRMP.

The use of Sierra-wide breeding bird surveys is unacceptable to meet population monitoring requirements in a forest plan for a number of reasons. First, there are few routes that occur on Sierra National Forest lands. (See Britting 2006a, p. 2 for an evaluation of BBS routes.) For the routes that intersect Sierra National Forest land, less than 25% of the total length of the routes surveyed occurred on land managed by the Sierra National Forest. (*Ibid.*) A stated purpose of the monitoring required by the forest plan is to “assess effectiveness of S&Gs.” (Sierra National Forest 1992, pp. 5-6 to 5-9). Since most of the survey routes do not occur on the Sierra National Forest, it is not possible for this data to evaluate the management actions guided by the forest plan standards and guidelines.

Second, the BBS Program itself identifies that there are limitations to the dataset related to the geographic area covered. The BBS Program notes that:

“Trends are always specific to the areas surveyed.

Roadside biases-The BBS is a roadside survey, and a major criticism of the survey has been that habitat changes along roadsides may not be representative of regional habitat changes. Trends from the BBS may therefore reflect only populations along roads rather than regional bird population changes.

Habitat biases-Within the range of the BBS, many habitats are not well covered, and species that specialize in those habitats are poorly sampled. Wetland birds and species occupying alpine tundra habitats are examples of groups thought to be poorly represented in the survey.”

(Sauer et al. 2005). Even if the routes occurred entirely on the Sierra National Forest, they would still be limited to assessing trend near to the road and not across the forest.

Lastly, the courts have also found fault with the use of BBS data to estimate population trend. In *Earth Island Inst. v. U.S. Forest Service*, the 9th Circuit Court of Appeal found that “the BBS alone cannot satisfy the population monitoring requirement, and the USFS has acted arbitrarily and capriciously under the NFMA in relying upon it.”

For the reasons stated above, the breeding bird survey data as applied in the MIS analysis for the Cedar Valley Project can not satisfy the requirement to monitor avian populations and their trends on the Sierra National Forest. The MIS analysis should be revised to reflect this circumstance.

B. Monitoring Required By The Forest Plan Has Not Been Completed.

The SLRMP was first approved in 1992. This plan was subsequently amended in 1993, 2001 and 2004. The amendment in 2004 adopted an adaptive management and monitoring program that is described in Appendix E of the FEIS issued in 2001. (USDA Forest Service 2001a). The SLRMP as amended in 2004 includes the monitoring originally specified in the SLRMP as well as the additional monitoring identified in Appendix E. For seven of the species analyzed in the Cedar Valley Project, the monitoring required by the original SLRMP or the plan as amended in 2004 has not been completed. (Table 2). As can be seen from a review of Table 2, the type of monitoring required or the frequency specified in the original SLRMP has not been achieved for these seven species. Also, the population monitoring specified in the amended SLRMP (i.e. Appendix E) has not been reported for six of the species. Beyond this, there are 25 species that may be affected by the Cedar Valley Project and are listed in Appendix E as requiring annual population monitoring. (Table 3). These species and their monitoring results were not discussed in the Cedar Valley Project analysis.

Table 2. Species considered in the Cedar Valley Project for which the monitoring requirements in the Sierra Land Management Plan (SLRMP) (amended 2004) have not been addressed in the environmental analysis.

Species	Forest Plan Monitoring Requirement	Frequency	Monitoring Reported in Cedar Valley Documents
Northern goshawk	“Evaluate habitat utilization”, “Nest site surveys of suitable habitat” (SLRMP 1992)	“Annually for 5 years then every two years” (SLRMP 1992)	No monitoring data provided.
	Population monitoring required. (Amended SLRMP 2004)	Annually	No monitoring data provided.
Warbling vireo	“Monitor population trends”, “Field counts of avian species” (SLRMP 1992)	“Annually for 5 years then every two years” (SLRMP 1992)	Breeding bird survey data inadequate.
White-crowned sparrow	“Monitor population trends”, “Field counts of avian species” (SLRMP 1992)	“Annually for 5 years then every two years” (SLRMP 1992)	Breeding bird survey data inadequate.
	Population monitoring required. (Amended SLRMP 2004)	Annually	Breeding bird survey data inadequate.
Wilson’s warbler	“Monitor population trends”, “Field counts of avian species” (SLRMP 1992)	“Annually for 5 years then every two years” (SLRMP 1992)	Breeding bird survey data inadequate.
Yellow warbler	“Monitor population trends”, “Field counts of avian species” (SLRMP 1992)	“Annually for 5 years then every two years” (SLRMP 1992)	Breeding bird survey data inadequate.
	Population monitoring required. (Amended SLRMP 2004)	Annually	Breeding bird survey data inadequate.
Olive-sided flycatcher	“Monitor population trends”, “Field counts of avian species” (SLRMP 1992)	“Annually for 5 years then every two years” (SLRMP 1992)	Breeding bird survey data inadequate.
	Population monitoring required. (Amended SLRMP 2004)	Annually	Breeding bird survey data inadequate.
Western tanager	“Monitor population trends”, “Field counts of avian species” (SLRMP 1992)	“Annually for 5 years then every two years” (SLRMP 1992)	Breeding bird survey data inadequate.
Townsend's big-eared bat	Population monitoring required. (Amended SLRMP 2004)	Annually	No monitoring data provided.
Pallid bat	Population monitoring required. (Amended SLRMP 2004)	Annually	No monitoring data provided.

Table 3. Species from Appendix E (USDA Forest Service 2001a) that require population monitoring and that may be affected by the Cedar Valley Project. These species were not addressed in the environmental analysis.

CWHR #	Common Name	Habitat Type
A016	Pacific slender salamander	Streams, wooded canyons, washes
B126	Golden eagle	Cliffs; early successional, grasslands
B131	Prairie falcon	Cliffs; perennial grasslands, savannahs
B134	Blue grouse	Open, medium to mature-aged stands of conifers
B138	Turkey	Riparian, oak and oak-conifer forests
B141	Mountain quail	Open, brushy stands of conifer and deciduous forest and woodland, and chaparral
B251	Band-tailed pigeon	Hardwood, hardwood-conifer and conifer
B272	Long-eared owl	Riparian, dense tree
B299	Red-breasted sapsucker	Montane riparian, montane hardwood-hardwood, mixed-conifer, aspen red fir; near meadows, lakes and slow streams
B300	Williamson's sapsucker	Conifer, lodgepole, aspen
B304	Hairy woodpecker	Mixed conifer and riparian
B308	Pileated woodpecker	Mature, montane conifer
B385	Swainson's thrush	Riparian and dense shrub
M025	Long-eared myotis	Brush, woodland, forest; crevices, bark, snags
M026	Fringed myotis	Hardwood-conifer; crevices, mines
M027	Long-legged myotis	Woodland , forests, chaparral; rock tree bark, snags
M029	Small-footed myotis	Arid wooded and brushy uplands near water
M030	Silver-haired bat	Conifer, montane riparian
M034	Hoary bat	Dense foliage of medium to large trees
M036	Spotted bat	Rock, cliffs
M037S1	Pacific western big-eared bat	Caves
M049S1	Sierra Nevada snowshoe hare	Montane riparian with thickets of alder/willow; young conifer with chaparral
M050	White-tailed hare	Early successional stages of various conifer
M077	Western gray squirrel	Mature stands conifer, hardwood, conifer-hardwood
M151	Black bear	Dense mature forest of many types

¹ Extracted from "California's Wildlife" edited by Zeiner, D.C. et al 1988-1990.

The failure to conduct and report monitoring for the species referenced above should be remedied for the Cedar Valley Project.

V. ANALYSIS OF EFFECTS ON MANAGEMENT INDICATOR SPECIES

The previous section in these comments identifies a number of species for which the population monitoring was not completed or the data or analysis was inadequate. Among these species are numerous management indicator species (MIS) species for the Sierra National Forest. As identified in the Regional direction on the analysis of management indicator species and documentation in project level NEPA (USDA Forest Service 2006), “when the governing LRMP requires population monitoring or population surveys, the MIS effects analysis for the project must be informed by population monitoring data.” Since the population monitoring data are

absent or inadequate for many of the MIS species the effects analysis for these species is also inadequate.

The failure to collect and disclose this information is significant. This information should be included in a revised environmental analysis.

VI. INADEQUATE RANGE OF ALTERNATIVES

The Forest Service is required to “rigorously explore and objectively evaluate all reasonable alternatives.” 40 CFR 1502.14(a). The purpose of these requirements is to “provid[e] a clear basis for choice among options for the decisionmaker and the public.” 40 CFR 1502.14. The Cedar Valley draft EA, however, considers only the proposed action and no action alternatives. The reasons offered in the DEIS for eliminating alternatives from detailed review are neither persuasive nor legally sufficient.

A. The EA Incorrectly Dismisses the Need to Evaluate an Alternative Based on the 2001 Framework.

The EA should have included an alternative that implements the 2001 Framework. In our scoping comments on the EA, we explained why an alternative based on the 2001 Framework is a reasonable alternative that must be included in the EIS. In response, the Draft EA (p. 3) states that the 2004 ROD replaced the 2001 ROD in its entirety. Since this document is tiered to the 2004 FEIS and ROD, reanalyzing for the 2001 standards and guidelines for tree removal is outside of the scope of this analysis.” The EA does not explain how or why an alternative based on the 2001 ROD would be inconsistent with the 2004 ROD, so we cannot respond to this claim in detail.

The rejection of the 2001 Framework standard as an alternative, however, is contrary on its face to the most recent Eastern District Court decision addressing this issue, which stated:

To the extent that defendants assert that the 2004 Framework supersedes the 2001 Framework such that implementation of a plan in accordance with the 2001 Framework would be inconsistent with the 2004 Framework, they are mistaken. The 2004 Framework amended the 2001 Framework to provide the Forest Service with increased flexibility, but did not mandate more intensive logging measures. CR 00119-20 (setting more flexible maximum guidelines for logging, but not mandating minimum requirements).As such, an alternative applying the 2001 Framework would not necessarily be inconsistent with the 2004 Framework.

See Sierra Nevada Forest Protection Campaign v. Tippen, 2006 U.S. Dist. LEXIS 57832. Thus, the reasoning provided in the draft EA does not support the dismissal of the 2001 Framework as an alternative.

B. The EIS Should Have Included an Alternative Based Upon the 2001 Framework.

An alternative based on the 2001 ROD is a “reasonable alternative” as that term is used in NEPA, for several reasons. First, there is strong support for the 2001 ROD within the scientific

community, federal and state agencies, and the public. As demonstrated in the Campaign's administrative appeal of the 2004 ROD, leading researchers on the California spotted owl, Pacific fisher, and American marten have criticized the 2004 ROD and urged the Forest Service to implement the 2001 ROD instead. *See, e.g.*, Verner 2003; Blakesley and Noon 2004; Noon 2004; Peery 2004; Bond 2003; Franklin et al. 2003; Barrett 2004; Kucera 2004; Lewis 2003a, 2003b; Buskirk 2003). The overwhelming opinion of leading wildlife experts in support of the 2001 ROD demonstrates that an alternative consistent with the 2001 ROD requires consideration in the EA for this project.

Second, the U.S. Environmental Protection Agency has urged consideration of an alternative consistent with the 2001 ROD. The EPA requested in scoping comments on the DSEIS of the Sierra Nevada Framework that the Forest Service evaluate an alternative that would implement the 2001 ROD and "include a description of the various environmental, social and economic issues, and the pros and cons of each management approach." (U.S. EPA 2003). As noted by the EPA, "public debate continues regarding the scientific basis for; the fuel management, environmental and social benefits of; and the adverse effect associated with, the 2004 SNFPA ROD versus the Sierra Nevada Framework." Therefore, EPA urged the Forest Service to "reconsider whether to evaluate an alternative which would implement the 2001 ROD."

Third, there is enormous public support for the 2001 ROD, including over 6,000 administrative appeals of the 2004 ROD.

Fourth, an alternative based on the 2001 ROD would satisfy the project's stated purpose and need to improve fire resiliency in the area. Recent fire science has demonstrated that it is not necessary to reduce tree canopy and remove large trees to the extent allowed in the 2004 ROD in order to meet the desired fuel objectives. Fire ecologist Carol Rice provides a detailed review of relevant scientific literature and case studies demonstrating that the goal of reducing catastrophic wildfire and promoting fire resilient forests can be met without logging trees up to 30" diameter or reducing canopy cover to 40 percent or below.⁴ (Rice 2005). Thus, for example, Stephens and Moghaddas (2005a) studied a range of treatments on the Blodgett Forest in the central Sierra Nevada as part of the Forest Service's national Fire and Fire Surrogate study. They found that all studied treatments effectively reduced surface fire behavior and crown and torching indices while maintaining canopy cover in excess of 50 percent. Similarly, in a different study in the same area, Stephens and Moghaddas (2005b) concluded that thinning from below was more effective at reducing predicted mortality in trees up to 51 cm diameter when compared with any type of silvicultural treatment resulting in plantations and individual tree selection, despite the fact that canopy cover in the thinning from below treatment was 57 percent. Finally, Agee and Skinner (2005), in their review of recent fires in the western United States, found that, in the Megram fire, "some effective fuelbreaks had only surface fuels and ladder fuels treated, with residual canopy cover exceeding 60-70%." According to the authors, these results suggest that "reductions in canopy bulk density are not always needed to reduce wildfire severity." An alternative consistent with the 2001 ROD would reduce surface fuel loading, reduce tree

⁴ Although Rice's statement was prepared as part of a review of the Creeks project on the Almanor Ranger District of the Lassen National Forest, the statement is generally applicable to the Cedar Valley project as well. Her comments are attached hereto and incorporated by reference.

stocking, maintain areas with higher canopy closure for late-successional species, and achieve the other purposes and needs set forth in the project description.

Although the 2001 ROD may not achieve the identical goals and objectives as the 2004 ROD, NEPA prohibits the Forest Service from establishing a purpose and need so narrowly as to preclude consideration of reasonable alternatives. *See e.g., Muckleshoot Indian Tribe v. United States Forest Serv.*, 177 F.3d 800, 812-14 (9th Cir. 1999.)

Fifth, the need for consideration of alternative management approaches is particularly apt given the Forest Service's acknowledged uncertainty regarding implementation of different strategies. (USDA Forest Service 2004b). The Forest Service's uncertainty regarding the proper course of action makes its review of alternatives that propose different approaches to meeting Forest Service goals all the more important. *Cf.* 40 CFR § 1508.27 (b) (5) ("degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks' should be a factor in determining whether the potential effects of a project are significant).

Finally, the conclusions about risk to sensitive species in the EA largely rely upon the assumption that if no action is taken habitat will be lost to wildfire. However, this simple dichotomy ignores the opportunity to implement a less intensive project that results in less habitat degradation while still achieving fuel objectives. An alternative based on the 2001 Framework decision can achieve this.

In sum, NEPA requires that the EA for the project consider an alternative consistent with the 2001 ROD.

VII. CUMULATIVE IMPACTS

EAs are required to consider cumulative impacts, which are the impacts on the environment from the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. The Ninth Circuit has recently clarified NEPA's cumulative impacts requirement in two decisions, both of which overturned Forest Service timber sales for failing adequately to consider cumulative impacts. *See Klamath-Siskiyou Wildlands Center v. BLM*, 387 F.3d 989 (9th Cir. 2004); *The Lands Council v. Powell*, 379 F.3d 738 (9th Cir. 2004). The Cedar Valley EA fails to meet the standards articulated by the Ninth Circuit in these cases and therefore is not consistent with NEPA.

To comply with NEPA, an EA must discuss the environmental impacts of past, present, and proposed logging; a mere listing of projects and acreage, in the absence of specific analysis of the environmental impacts of the projects, is inadequate. "[T]he general rule under NEPA is that, in assessing cumulative effects, the EIS must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment." *The Lands Council*, 379 F.3d at 745. In particular, the EIS must include "discussion of the connection between individual harvests and the prior environmental harms from those harvests." *Id.* at 744.

The EIS also needs to provide “adequate data of the time, type, place, and scale of past timber harvests.” *Id.* at 745.

It is essential that the cumulative effects analysis provide “quantified or detailed information; ... [g]eneral statements about possible effects and some risk do not constitute a hard look.” *Klamath-Siskiyou*, 387 F.3d at 993. Thus, for example, EISs need to include “quantified assessment” of the “combined environmental impacts” of the various projects considered, *id.* At 994. Not only does the cumulative effects analysis need to provide quantified data with respect to factors such as the amount of spotted owl habitat that will be affected, *id.* at 994 n.1, but “the effect of this loss on the spotted owl” throughout the planning area also needs to be analyzed. *Id.* at 997.

The Cedar Valley EA falls short of these standards. First, the EA (p. 20) reports that “since no habitat or occurrences of TEP species occur within or near the project area, no cumulative effects related to this project area expected.” The Pacific fisher has been proposed for listing under the Federal Endangered Species Act. Habitat for this species occurs in the project area and fisher individuals have been sighted within less than 6 miles of the project area. This statement must be corrected to reflect the presence of fisher and its habitat.

Second, the BE mentions a few projects that have been undertaken in the past few years and the quoted sections from the Kings River Project mention some projects as well. Neither of these sections discloses how these projects have altered the habitat for affected species and none of the projects listed include activities on private land. This discussion fails to meet NEPA’s standards that the particular environmental impacts of present and future projects, with emphasis on how different logging approaches affected the environment, be analyzed.

Third, in the one case where the specific effects of a past project are disclosed it appears that the analysis and conclusions were based on data from 1997 and did not reflect the current conditions.⁵

Lastly, the actions of the Forest Service confirm that an adequate cumulative effects analysis for fisher does not presently exist. In mid-2006, the Forest Service retained a consulting firm to complete a cumulative effects analysis for fisher in the southern Sierra Nevada. The background and purpose of this project are described generally in the following:

The complex and probabilistic interplay between such habitat threats, as well as incomplete information on fisher biology, creates great uncertainty about the current health of the southern Sierran fisher population and how it is likely to change in the future. The Conservation Biology Institute (CBI) has therefore been commissioned by Region 5 of the U.S. Forest Service to compile all available data on fisher populations and habitat in the southern Sierra Nevada, assess their current status, and predict how they are likely to respond to various alternative forest management actions, as well as unmanaged events such as wildfires, drought, or bark beetle outbreaks. The project is designed to create a scientifically credible set of habitat maps and estimates of fisher population size and distribution in the southern Sierra Nevada based on current

⁵ See discussion in previous section on the cumulative effects analysis for fisher.

conditions. Then, using spatial modeling methods, we will assess how fisher habitat and populations are likely to change in the future under a range of alternative scenarios.

(Conservation Biology Institute 2006). This assessment is ongoing and not expected to be completed until sometime in 2007. The tools to develop an adequate cumulative effects analysis that appropriately incorporates the high level of uncertainty regarding fisher have not yet been completed. Thus, the cumulative effects analysis for projects like Cedar Valley is not sufficient to estimate effects based on the Forest Service's recent efforts to develop adequate analysis tools.

VIII. INCONSISTENCIES AMONG THE EA AND SPECIALIST'S REPORTS

The EA (p. 2) reports that 1,030 acres will be commercially thinned. The BE and CWE report claim that 1,425 acres will be commercially thinned. The reports and EA should be corrected evaluate the same number of acres to be treated.

IX. CONCLUSION

For the foregoing reasons, the Cedar Valley EA fails to comply with the National Forest Management Act, the National Environmental Policy Act, and other federal laws. The EA should be revised to comply with NEPA, and the revised EA should be circulated for additional public comment.

Thank you for considering our comments. Please contact us if you would like to discuss our concerns.

Respectfully submitted,



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ATTACHMENTS

All attachments have been provided on compact disk and US mailed to:

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List of Attached Files

Barrett, R.H., 2006 Comments on the Kings River Project, USDA Forest Service, Sierra National Forest, High Sierra Ranger District, March 28, 2006

Britting, S. 2006a. Analysis of Breeding Bird Survey Routes on the Sierra National Forest. November 19, 2006.

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