



Sierra Forest Legacy

Protecting Sierra Nevada Forests and Communities



March 19, 2007

Forest Plan Revision Team
USDA Forest Service, LTBMU
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South Lake Tahoe, CA 96150

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Re: Comments on the LTBMU Land and Resource Management Plan Comprehensive Evaluation Report

To the Forest Plan Revision Team:

These comments are submitted on behalf of Sierra Forest Legacy¹, a coalition of 98 local, regional, and national environmental organizations concerned about the conservation and protection of natural resources in the Sierra Nevada, Sierra Club, The Wilderness Society, Friends of the River, California Wilderness Coalition, and Defenders of Wildlife. We have reviewed the comprehensive evaluation report (CER) for the forest plan revision process and raise the following issues.

ISSUES

I. The Purpose of Public Comment on the CER Is Not Clearly Defined

The CER has been issued as a final document. This final document includes the adoption by the Responsible Official of the specific areas that will be changed in the revised forest plan and the rationale for her decision. The Forest Service has invited comment from the public on this final document, but has not described the process they intend to use to evaluate and respond to the public's comments. In fact, during a meeting with LTBMU staff on March 15, 2007, Sierra Forest Legacy staff were told that the USFS is not planning to respond to public comments received. One premise of the 2005 planning regulations is to involve the public early in the planning process and improve accountability in the planning process. Inviting public comment without disclosing the process that will be applied to the evaluation and response to those comments, and more recently, deciding that there will be no response to public comments, is inconsistent with the concepts of transparency and accountability promoted in the 2005 planning regulations.

The Forest Service should adopt a process to evaluate and respond to public comments on the CER. The process should include a written statement of the conclusions made by the Forest

¹ On March 1, 2007, the Sierra Nevada Forest Protection Campaign changed its name to Sierra Forest Legacy to better reflect its ongoing program of forest conservation and community involvement.

Service from the public comment. A description of this process and the results should be circulated to all commenters and posted on the LTBMU website. When the Forest Service invites comments in the future, the process that will be used to evaluate and respond to the comments submitted should be disclosed at least simultaneously with the invitation to submit comments. Absent this information, the public is taking on faith that the “substantive” comments that are invited from the public will be considered. Further, without an established process there is no mechanism for the public to ensure that the Forest Service considers such comments.

II. Compliance with the 2005 Planning Regulations

The 2005 planning regulations (36 CFR 219) establish the requirements for completing forest plan revisions. Among these requirements are a comprehensive evaluation report (CER) (36 CFR 219.6(a)(1)) that addresses the area of analysis and conditions and trends in that area. For the reasons stated below, the CER for the Lake Tahoe Basin Management Unit fails to meet the requirements of a CER that are stated in the planning regulations.

A. Translating the Existing Forest Plan in the 2005 Planning Format

Integral to understanding the need to revise the forest plan is a basic understanding of how the present forest plan will change in its intent and direction when “converted” to the style of the 2005 planning regulations. In the Forest Service’s guidebook “Building a Forest Plan Volume 2 (version 2.0), the first step in revising a plan is to “reformat the current plan.” (Guidebook, p. 10) The evaluation of the need for change follows several steps after that. This makes sense since it can not be known until this conversion occurs what protective measures embodied by the current forest plan may be lost in the new format. These “losses” or changes could well trigger the need for change. This, however, can not be known until the “reformatting” is completed.

We also identify that it is important for the public to evaluate this “converted” forest plan to assess the degree to which it is still capable of delivering the conservation measures that have been historically included in the forest plan. Without such a conversion, it is not possible for us to fully identify the issues that are important to address in the forest plan revision. We ask that the existing forest plan be immediately converted into the “new format” and made public as part of the scoping process required under the National Environmental Policy Act (NEPA). This can serve as an early draft of the revised forest plan and will enable us (and the Forest Service specialist) to clearly understand the effect of the 2005 planning regulations on conservation measures that are currently practiced on the LTBMU.

B. The Analysis Area Is Not Clearly Identified

The Forest Service Handbook states that “[t]he area of analysis should be at least as large as the forest..., but may be larger as appropriate” (FSH 1909.12, section 24.2). The LTBMU CER, however, does not clearly delineate an analysis area.

Chapter 1 (p. 14-16) of the CER displays analysis areas at three different scales – the LTBMU administrative unit (Figure 3), ecological subsections (Figure 4) and visitor origins (Figure 5). There is no specific discussion that links these three different analysis areas to either the thirty topic areas reviewed in Chapter 3 or the four revision themes identified in Chapter 2. We agree that the evaluation should be conducted at multiple scales. The linkage between the specific issue under evaluation and the appropriate scale of analysis, however, should be more clearly stated in the assessment.

C. Conditions and Trends Are Not Adequately Disclosed

The 2005 planning regulations require the CER to evaluate conditions and trends that contribute to sustainability. *See* 36 CFR 219.(a)(1). The Forest Service Handbook further defines the requirements of a CER (FSH 1909.12, section 24.2). This section identifies appropriate information sources, required documentation and trend analysis, and specifies the completion of a management review. In general, the CER provides limited and often superficial information to support the evaluation and presents little to no trend analysis for the affected resources. These deficiencies are described below in detail.

1. The Information Provided Is Insufficient to Assess the Need for Change

The Forest Service Manual (FSM 1921.2) directs the Responsible Official to base “the need to change on evaluations, public input, environmental management system (EMS) information, and changes in conditions.” Further the “Overview of the Final 2004 Rule” identifies that the “overview of current conditions and trends relevant to the plan area ... will provide a better context that had been provided in plan EISs for project cumulative effects. Thus, an expected benefit of the CER is that it would serve as the basis for the cumulative effects analysis required for the project specific analysis required under NEPA. The detail of information presented in the CER must also be adequate to assess the need to change the forest plan.” (Federal Register, volume 70, number 3, p. 1041) Unfortunately, the level of detail and analysis in the LTBMU CER fails to provide “a better context than had been provided in plan EISs” and fails to disclose sufficient information to assess the need for change.

The CER presents information on thirty topics areas ranging from “Air Quality” to “Wildlife and Fish.” In most cases, only two or three pages of information are provided and in many cases tabular data or maps characterizing the issue are not provided. For example, the Fire and Fuels Management section reports simply the number of fires by size for the period 1973 to 2005 without displaying how this might have varied over time. (CER, p. 65). There is also a reference made to the proportion of the land base that departs from historic structure and condition.² Beyond this, there is no other data presented about environmental setting with respect to fire and fuels management. We are not informed about where the landscape departs from the historic condition (let alone being informed about what the “historic condition” actually was) and how this departure relates to the risks to other resource values. The CER also fails to

² It should be noted that the statement in the CER (p. 67) about departure from historic condition merely indicates that “current data” suggest this departure. No studies are cited to support this assertion. This is a common problem throughout the CER.

report on the progress of fuels treatments conducted since the establishment of the forest plan or to assess their efficacy. This example is not unique – many of the topic areas simply do not provide much information on the state of the resource.

Information, however, is available on many for these resource areas. The Lake Tahoe Watershed Assessment (Murphy and Knopp 2000³) was a comprehensive evaluation of the Lake Tahoe area initiated in 1997 and completed in 2000. This report was designed to address specific questions related to the decline in the environmental quality of the Lake Tahoe region. A brief review of the table of contents of this two volume report indicates that there is significant overlap between this assessment and the issues facing the LTBMU forest plan revision. This is the primary reference document on the Lake Tahoe region, yet the CER references it in only a couple of instances. Information from the Lake Tahoe Watershed Assessment should be incorporated into the CER and cited to specific page number when used.

In some cases, the CER refers to information developed in the Pathway 2007 process or intended to be developed in this process. These references are vague and not cited to specific page numbers or reports. The Pathway 2007 process has been ongoing for several years. The draft report issued in 2005 and posted on the Pathway 2007 website is currently undergoing major revision. (Susie Belser, pers. com.).⁴ Beyond this, the report itself is a tiered document with many subsections providing greater and greater detail on a specific topic. Results from the Pathway 2007 are largely not reported in the CER. As such, the extent to which the CER relies on this data to support the evaluation has not been established. It is clear, however, from the numerous references to the Pathway 2007 process that it is viewed as integral to the Forest Service planning process. The CER should clearly state those portions of the Pathway 2007 process on which it relied for analysis and provide citations to specific pages numbers of the relevant Pathway 2007 reports. Absent this degree of detail, there is no legitimate summary of the connection between the information developed in the Pathway 2007 process and the CER.

Two additional concerns exist regarding the CER's reliance of the Pathway 2007 process and information. First, the CER fails to adequately describe the Pathway 2007 process and how it relates to the Forest Service process for the forest plan revision. This information should include the basis for the Pathway 2007 process, how information was gathered and used to develop Pathway 2007 products, including technical as well as public input, and the timeline for the process to be completed. A discussion of why the Forest Service is proceeding with a plan revision, in many cases based on Pathway 2007 information, when the Pathway 2007 process has yet to be completed and certified or adopted should also be included in the CER. This information is needed so that the public can sufficiently understand these references to Pathway

³ Murphy, D. D. and Knopp, C. M. (eds.) 2000. Lake Tahoe Watershed Assessment. PSW GTR-175 Albany, CA: Pacific Southwest Research Station, Forest Service, U. S. Department of Agriculture. Volumes I and II.

⁴ For example, some of the technical summaries available on the Pathway 2007 web site for the current draft have already been modified since 2005 and no one can answer how extensive the final changes will be. The process and timeline for the Pathway 2007 Draft Evaluation Report Version 1.1, according to Susie Belser at TRPA is as follows: the revisions will go to the respective Program Managers in March, Managers will then make sure any changes in their area of specialty are incorporated into other sections of the document (Executive Summary, Introduction, Background, Management System, Summary Chapters). After the revised document is judged to be "cohesive", TRPA estimates the revised evaluation report should be available to the public sometime in April 2007, which is obviously after the March 19th deadline for CER comments.

2007 and be able to evaluate the specific information referenced in the CER. Second, there is concern that the CER refers to information and conclusions in the Pathway 2007 process as the support for decisions in the CER when the Pathway 2007 process, including the draft technical supplements and proposed Visions, Desired Conditions, standards and indicators, etc., remain in draft form and are at least 18 months away from any approvals.⁵ The draft Pathway 2007 documents have not yet gone through all necessary public review processes, have not been reviewed and agreed to by all scientific staff involved, past and present, and have not been agreed to by the four Pathway 2007 agencies, which include the Tahoe Regional Planning Agency, Lahontan Regional Water Quality Control Board, Nevada Department of Environmental Protection and the USFS-Lake Tahoe Basin Management Unit. After proper review, the Pathway 2007 products could change significantly from their existing forms; therefore, it is premature for the Forest Service to refer to Pathway 2007 information (existing and future) as the support for the forest plan revision. Additionally, we question how the Forest Service can make “conclusions” in the CER regarding the need for change based on information that has yet to be developed in the Pathway 2007 process.

Finally, although the Pathway 2007 technical supplements have been removed from the website during the public comment period, there are still known instances of CER references to items that will be “addressed by Pathway 2007” yet those items have been removed from further review in the Pathway 2007 process. In these cases, the Forest Service first should remove the reference to Pathway 2007 and second, should perform their own analyses before any conclusions are made. Specific examples are discussed in the detailed comments attached to this letter. (See Appendix 1)

In general, the level of information and analysis provided in the CER falls far short of that necessary to complete a cumulative effects analysis for a specific project. The courts have been clear on the detail of information required for project level cumulative effects analyses. The Ninth Circuit has recently clarified NEPA's cumulative effects analysis requirement as applied to timber sales proposed by the Forest Service. *The Lands Council v. Powell*, 379 F.3d 738 (9th Cir. 2004). As the Ninth Circuit held in overturning a timber sale EIS, "for the public and agency personnel to adequately evaluate the cumulative effects of past timber harvests, the Final Environmental Impact Statement should have provided adequate data of the time, type, place, and scale of past timber harvests and should have explained in sufficient detail how different project plans and harvest methods affected the environment." The CER provides little to no site specific detail and falls far short of discussing the location of the natural resources. Thus, the expectation established in the 2005 planning rule that “an expected benefit of the CER is that it would serve as the basis for the cumulative effects analysis required for the project specific analysis required under NEPA” can not be satisfied with the LTBMU CER.

2. An Analysis of Conditions and Trends Is Often Absent From the CER

The CER presents relatively little quantitative data for some of the topic areas presented in Chapter 3. For example, there is no analysis for condition or trend of stream environments in the LTBMU presented in the section on Stream Environment Zone (SEZ). (CER pp. 142-147). In the section labeled “Current Conditions and Trends” there is merely a discussion about

⁵ According to current estimates by TRPA, the expected adoption date for Pathway 2007 is December 2008.

perceived barriers to restoration projects that the Forest Service wishes to implement. There is no discussion, however, of the actual condition of the stream environment or the extent to which restoration projects completed since adoption of the forest plan were successful in achieving the desired conditions. From the information provided, it is not possible to access the degree to which the existing forest plan meets the goals to “reverse the downward trend in the quality of water flowing into Lake Tahoe from tributary streams on national forest lands, enhance and protect riparian function, and maintain and protect soil productivity and character.” (CER, p. 144).

In some cases, data is presented in summary form, but the source of the data is not cited. This is the case in several sections. For instance, research results specific to Lake Tahoe Basin are mentioned in the Fire and Fuels section (CER, p. 67), however, the source of these findings is not mentioned. The omission of a citation to the specific study makes it impossible to evaluate the original assessment from which the condition or trend might have been drawn.

In yet other cases, scientific information that is relevant to the present evaluation has not been included. For instance, the Lake Tahoe Watershed Assessment (Murphy and Knopp 2000⁶) is cited and some conclusions are summarized. However, the specific page numbers in the assessment from which this information has been drawn are not provided making it very difficult to find the source of these conclusions. Also, fairly limited aspects of the Lake Tahoe Watershed Assessment were actually used in the CER even though this assessment has been recognized as the most comprehensive evaluation of conditions in the basin and its creation was intended to “to collect in a single document information that can be used by land and resource managers to develop a comprehensive conservation plan for the lake and its watershed.”(*Ibid.*, p. 1). For instance, Murphy and Knopp (2000, Appendix M) evaluated 229 terrestrial species in the Basin and found that the populations of 85 species or 37% were either known or believed to be declining. This assessment determined that a substantial number of terrestrial vertebrate species are believed to be declining, yet this trend was not mentioned in the CER. The status of terrestrial species is relevant to the forest planning process since the national forests are charged with providing for species diversity. There are thirteen species that are Management Indicator Species (MIS) and/or Forest Sensitive. The population trends for nine of these were determined by the assessment to be “suspected to be decreasing.” (Compare LTBMU LRMP 1988⁷, p. III-23 and III-22 to Appendix M of Murphy and Knopp 2000) Thus, specific species of concern listed in the LTBMU forest plan that are known to be in decline are not even mentioned in the CER.

In the absence of thorough analyses of conditions and trends, the list of items needing change in the land management plan is potentially incomplete. Further, without the required analysis the items listed as needing change are unsupported.

⁶ Murphy, D. D. and Knopp, C. M. (eds.) 2000. Lake Tahoe Watershed Assessment. PSW GTR-175 Albany, CA: Pacific Southwest Research Station, Forest Service, U. S. Department of Agriculture. Volumes I and II.

⁷ USDA Forest Service 1988. Lake Tahoe Basin Land and Resource Management Plan.

D. Public Involvement in the Preparation of the CER Is Overstated

The initial pages of the CER in the Management Review section (p. i) state: “The public and other interested parties have provided significant input to this report through the Pathway 2007 collaborative process (December 2004 to present). This public process included open public workshops, surveys and focus group meetings, community-based placed based workshops and the Pathway Forum stakeholders group meeting.” This claim of significant public support of the CER is not valid for a number of reasons.

First, “this report” in the previous paragraph refers to the CER. The public and other interested parties at the time that statement was written had not even had a chance to see the CER document, never mind provide input on it. Laurel Ames, Forum member, reports that the Forest Service gave only broad overview updates on the forest plan revision process during the Pathway 2007 meetings held between November, 2004 and November, 2006. The CER was distributed at the November 2006 forum meeting with only a short introduction and a cursory set of questions and answers. Therefore, it cannot be claimed that the public “provided significant input” on the document.

Second, none of these meetings, public workshops or the survey in the Pathway 2007 process (where public participation did occur) were geared towards or specifically addressing the LTBMU plan revision process, nor did they address the science, technical data or methods that are at the core of developing the CER and forest plan. For example, Laurel Ames, Forum member, reports that national forest issues were touched on only twice during the two years – in presentations of the Vegetation Vision and desired conditions.

Third, the public input in the Pathway 2007 process primarily involved public “visioning” workshops, discussions about general community values, and a public opinion phone survey. General topics were identified including; wildfire danger, transportation congestion and public transit, water clarity and visual resources -- all key issues for recreation and tourism but not necessarily the public input required for the forest plan revision process.

Fourth, not all meetings of the Pathway 2007 process were made known to the public.⁸ The Pathway 2007 process relied upon numerous technical working groups (TWG) to develop detailed information such as desired conditions, thresholds and other measures. Although interested publics were allowed to attend TWG meetings⁹, the ability for the public to do so was hampered by the lack of noticing provided for such meetings. For example, TWGs are referenced on the “public participation” section of the Pathway 2007 website but there is no statement about how the public can participate in TWG meetings or when such meetings are scheduled.¹⁰ The experience of some following the Pathway 2007 process was that although there was a verbal commitment to post meeting times on the Pathway 2007 website, there was no

⁸ We also raise the concern that the Pathway 2007 process violated the Federal Advisory Committee Act by essentially creating a group that was advisory to a federal decision maker in the absence of a FACA charter.

⁹ See http://www.pathway2007.org/assets/TWG_PUB_MEMO.pdf for the memo outlining public participation at TWG meetings.

¹⁰ See the following website for the public participation aspects of the Pathway 2007 process <http://www.pathway2007.org/public.aspx>

follow through on this commitment. For example, the Pathway 2007 calendar is completely empty right now. Further, there is no mention of a Recreation TWG meeting for 2006, although it is known that such meetings were held and no meetings appear on the calendar for 2007. Similarly, a Noise TWG meeting that was held in February, 2007 was not on the calendar.

Thus, the first open public involvement in the CER comes at the issuance of this report. As stated above, the Forest Service must describe the project being considered for public input to be meaningful, yet here the Pathway 2007 process did not ask for input on the forest plan revision process. Further, the exact purpose or interest in soliciting public comment has not been made clear by the CER, nor has the mechanism for evaluating and incorporating comments received from the public. The claims in the CER should be modified to reflect the relatively low level of public involvement in the creation of the CER.

E. Creating the Environmental Management System (EMS)

The 2005 planning regulations require the creation of an environmental management system (EMS) and directs that “plan revision must be completed in accordance with the EMS” (36 CFR 219.5(a)) and NEPA. As noted in the CER, an EMS has not yet been established for the LTBMU. Thus, the plan can not completed in “accordance with an EMS” if no EMS exists.

Surprisingly, there is not even a mention in the CER of the framework or any pre-planning that may have been undertaken to develop the EMS. There are some vague references to the need to develop the EMS and a few items promised for inclusion in the EMS, but nothing more. We ask that the Forest Service provide for the public a plan that outlines the creation of the EMS and identify how the forest plan revision will “be in accordance” with the EMS.

F. Conclusions in the Management Review Do Not Clearly Track to Information Presented In the CER

The “management review” section for the CER (p. i-ii) refers to the compilation of “a detailed list of proposed changes for the forest plan from the individual resource and program area evaluations in Chapter 3.” The changes that the Responsible Official has decided to pursue are identified in Chapter 2 of the CER. These changes are reflected in four plan revision themes that appear to have been developed from the thirty subject areas covered in Chapter 3. The management review then indicates that “some of the suggested changes will not be included in our revised plan” because they are “premature”, redundant to existing policy or law, or were “infeasible.” There is, however, no organized tracking or accounting of the proposals for change proposed in Chapter 3 that were rejected in Chapter 2. Further, some of the proposals presented in Chapter 3 may have been combined in Chapter 2. As a result, it is difficult or impossible to understand the justification for combining or deleting from the scope of the revision the changes that were proposed in Chapter 3.

The following examples illustrate this point. Listed under the heading “Need for Change” in the Species Diversity section of Chapter 3 (p. 56) is a task to “quantitatively characterize the natural range of vegetation conditions (i.e. reference conditions) in terms of composition, distribution, and structure to the extent feasible.” However, the items listed as need

for change in Chapter 2 do not explicitly refer to the need to characterize reference conditions. Possibly this task has been incorporated into another, but that has not been made clear. Another example is the “Need for Change” listed in the Wildlife and Fish section of Chapter 3 (p. 186). This section identifies the need to “improve protection of sensitive terrestrial and aquatic habitats from over utilization of recreation use.” This item does not appear to be included in Chapter 2.

In the absence of a clear explanation, the move to eliminate from the scope of the revision items that Forest Service specialists determined to be important to managing specific resources is of great concern. We request a table be provided that accounts for how the detailed list of proposed changes that was compiled by the Forest Plan Revision Team from the individual resource and program area evaluations described in Chapter Three of the CER, was addressed (included, combined, eliminated) by the Forest Leadership Team and Responsible Official for inclusion in the Plan Revision (Chapter Two of the CER), and an explanation of their rationale for those decisions.

III. Additional Issues That Should Be Addressed in the CER

There are several issues that the CER fails to address. These are identified below. In addition, detailed comments on air quality, recreation, and fire and fuels are contained in Appendix 1.

A. The LTBMU Forest Plan Revision and the Proposed Changes to the Management Indicator Species (MIS) Program in Region 5

On February 21, 2007, the Regional Office of the Forest Service issued a notice announcing their plans to amend the management indicator species lists and monitoring strategies for 10 national forests. The Lake Tahoe Basin Management Unit is listed as one of the 10 national forests undergoing this amendment. The CER makes no reference to this ongoing planning effort. The issues identified in the Region’s scoping notice are not raised in the CER and there is no specific discussion of MIS in the CER. The CER (p. 56) refers to the need to update the list of special status species using criteria provided in the 2005 planning regulations. There is no discussion in the CER that indicates how this forest plan revision will be consistent with the amendment process now being undertaken by the Regional Office.

B. Roadless Areas Should Be Evaluated for Wilderness Designation

According to the *Roadless Area Conservation FEIS* (USDA Forest Service 2000, Volume 2, , page 30), the LTBMU contains roughly 46,000 acres of roadless areas identified by the 1979 Second Roadless Area Review and Evaluation process.

While the CER (p. 6) acknowledges the existence of the 46,000 acres of roadless lands, these ecologically critical and socially important areas are not discussed to any significant degree in the remainder of the document. This is unacceptable given that, as is stated at FSM 1923, “Consideration of wilderness suitability is inherent in land management planning.” FSM 1923.03, section 2 is even more explicit:

Unless otherwise provided by law, all roadless, undeveloped areas that satisfy the definition of wilderness found in section 2(c) of the Wilderness Act of 1964 should be evaluated and considered for recommendation as potential wilderness areas during plan development or revision.

Despite this clear directive and the fact that roadless area management has been the subject of tremendous controversy since the 1970s, a controversy that reached its peak in the recent court battles over the Roadless Area Conservation Rule, the CER fails to identify wilderness evaluations of roadless areas in the Need For Change chapter as an issue that will be analyzed during the forest planning process.

Failure to evaluate opportunities for wilderness designation is unfortunate given that:

- The LTBMU's 1988 LRMP recommended a mere 2,625 acres of roadless lands for wilderness designation (USDA USFS, LTBMU *LRMP FEIS Appendix Volume*, 1988, page C-2).
- The CER (p. 112) states that the USFS expects a 50% increase in the number of people visiting the LTBMU by 2025.
- The CER (p. 174) also states that the existing wilderness areas "...are currently serving near capacity."

We therefore request that, consistent with existing policy, the LTBMU LRMP contain a full and fair wilderness evaluation of all roadless lands. As is stated at FSM 1923.03 and FSH 1909.12, chapter 70, the following areas may be evaluated:

3. (a). Newly identified roadless, undeveloped areas and areas (1) previously identified in the Forest Service Roadless Area Conservation Final Environmental Impact Statement (Volume 2, November 2000), (2) in a unit plan, or (3) in a land management plan, which remain roadless and undeveloped and have not yet been designated as wilderness or for non-wilderness uses by law.
- b. Areas contiguous to existing wilderness, primitive areas, or administratively proposed wildernesses, regardless of agency jurisdiction for the wilderness or proposed wilderness.
- c. Areas that are contiguous to roadless and undeveloped areas in other Federal ownership that have identified wilderness potential.
- d. Areas designated by Congress for wilderness study, administrative proposals pending before Congress, and other legislative proposals pending which have been endorsed by the President.

For each area subject to evaluation under paragraph 3 of FSM 1923, the determination of the significant resource issues shall be developed with public participation and, at a minimum, consider:

1. The values of the area as wilderness.

2. The values foregone and effects on management of adjacent lands as a consequence of wilderness designation.
3. Feasibility of management (FSH 1909.12, sec. 72.1) as wilderness, in respect to size, nonconforming use, land ownership patterns, and existing contractual agreements or statutory rights.
4. Proximity to other designated wilderness and relative contribution to the National Wilderness Preservation System.
5. The anticipated long-term changes in plant and animal species diversity, including the diversity of natural plant and animal communities of the plan area and the effects of such changes on the values for which wilderness areas were created.

(FSM 1923.03, section 3)

Furthermore, as is stated at FSH 1909.12 Chapter 70, the LTBMU must consider the capability, availability and suitability of each area for wilderness designation.

C. Management of Roadless Areas Should be Addressed

In addition to containing a full and fair wilderness evaluation, we also request that the revision process discuss and describe the consequences non-wilderness management will have on all of the LTBMU's inventoried roadless areas (IRA) that are not recommended for wilderness designation. Specifically, we request that the LRMP examine the direct effects, indirect effects, and cumulative impacts of placing roadless areas in land management zones that allow for types of recreation or land management activities that could result in the roadless areas losing their wilderness character over the life of the plan.

Some of the issues that should be studied, described and discussed in the forest plan revision process include:

- The risks of reducing water quality in IRAs.
- Consequences of and for fire and fuels management in IRAs.
- Impacts of insects and disease in IRAs.
- Impacts to the size of roadless areas given that there is a positive relationship between size of an area protected from human disturbance and maintenance of biodiversity.
- Impacts to IRAs of development at various elevation distributions.
- Impacts to terrestrial animal habitat in IRAs, including fragmentation and connectivity, edge effects, habitat suitability and effectiveness, early successional habitat, game species and late-successional habitat.
- Impacts to aquatic animal habitat and species in IRAs, including fragmentation and connectivity, water hydrology and stream channel morphology, habitat complexity, water quality, pools, riparian vegetation, introduction of nonnative species and diseases and over-harvest and illegal introduction.

- Impacts to terrestrial and aquatic plant species in IRAs, including non-native invasive species and habitat fragmentation.
- Impacts to threatened, endangered, proposed and sensitive species in IRAs.
- Impacts to research, monitoring and reference landscapes in IRAs.
- Consequences for non-mechanized, mechanized and motorized recreation in IRAs.
- Impacts to scenic quality in IRAs.
- Consequences to heritage resources in IRAs.
- Impacts from IRA development on existing wilderness and the possibility of future wilderness designation.

In summary, the CER should be revised to consider the impacts that changed management may have on the natural integrity, apparent naturalness, remoteness, solitude, special features, manageability, logical boundaries, and special places or values in roadless areas.

As for our desired future condition for roadless areas in the LTBMU, we ask that the beautiful Dardanelles (also know as Meiss Meadows) Roadless Area and the Freel Peak Roadless Area be recommended for wilderness designation by the USFS and that the areas be managed as wilderness, and that all other IRAs be managed consistent with the 2001 Roadless Area Conservation Rule.

D. River Segments Should Be Evaluated for Wild and Scenic River Eligibility

The Forest Service Handbook directs that “the land management planning process shall include a comprehensive evaluation of the potential rivers in an administrative unit to be eligible for inclusion in the National system.” (FSH 190.12, section 81.2). Even though one of the key functions of a forest plan revision is to evaluate the eligibility of rivers for inclusion in the National System, the CER makes no mention of the Wild and Scenic River evaluation process.

Our records indicate that since the previous LTBMU Plan was completed, the upper Truckee River was identified as eligible and recommended for designation. This recommendation should be carried forward in the forest plan revision. Also since the previous plan, additional direction (USFS 1996 Direction Letter) was provided in regard to criteria for identifying outstandingly remarkable values (a basic criteria for eligibility). We believe that the new criteria will likely result in the identification of additional streams in the Basin as eligible. The CER should be revised to note that a comprehensive basin-wide assessment will be conducted in the forest plan revision to identify and recommend additional rivers using the basin as the region of comparison.

For example, Eagle Creek and Eagle Creek Falls above Emerald Bay is one of the most photographed scenic sites in the LTBMU. Tourists come from all over the world to visit this site. According to the 1996 Direction letter, recreation is considered to be outstandingly remarkable if they attract visitors from outside of the region and scenery is outstandingly remarkable if it is exemplary in a regional or national context. Eagle Creek and Eagle Creek Falls meet both of these criteria and is also free flowing. Hence, Eagle Creek and Eagle Creek Falls should be considered eligible under the criteria established by the 1996 Direction Letter and should be studied and recommended in the forest plan revision. The 1996 criteria will likely result in

similar findings for other streams in the Basin, which should be documented in a comprehensive basin-wide assessment.

E. Wildland Fire Use

Wildland fire use (WFU) is the management of naturally ignited fires to achieve resource benefits, where fire is a major component of the ecosystem. WFU is most appropriate in areas away from human habitation. The LTBMU has about 46,000 acres of inventoried Roadless area that could be highly suitable for WFU as a management tool. We are happy to see that the CER includes some discussion on this issue.¹¹ However, we feel that this point needs to be emphasized and incorporated throughout the document, including in areas where the negative short-term impacts from wildland fire use would likely prohibit its use based on existing requirements of other agencies (e.g. TRPA) and the currently proposed Pathway 2007 standards (e.g. air quality standards). If this is not done, then other Basin regulations may continue to create barriers to necessary forest treatments. Further, the CER should include a discussion of where in the LTBMU such practices have been used in the past, their outcomes and where they would be appropriate in the future.

IV. Using a Categorical Exclusion (CE) to Approve the Forest Plan Revision Will Violate National Environmental Policy Act (NEPA)

NFMA specifically requires that Forest Plans comply with NEPA. 16 U.S.C. § 1604(g)(1). NEPA requires a formal statement on the environmental impact of all major federal actions significantly affecting the quality of the human environment, 42 U.S.C. § 4332(c), specifically including the adoption of formal plans and guidance documents. 40 C.F.R. § 1508.18(b). Previous NFMA regulations have recognized the significant impact Forest Plans have on the environment and required an EIS on each Forest Plan prior to approval. *See* 1982 § 219.10(b); former 36 C.F.R. § 219.9(d) (2000).

We note that the CER states the Forest's intent to follow the 2005 planning rule, which purports to allow forest plans to be "categorically excluded" from NEPA analysis on the grounds that these plans have no environmental effects. 36 C.F.R. § 219.4. Under NEPA, categorical exclusions are limited to actions which have no significant environmental impacts. *See* 40 C.F.R. § 1508.4; 40 C.F.R. § 1507.3. As discussed below, the forest plan revisions have the potential to lead to a number of significant impacts. For such actions, NEPA requires federal agencies to prepare a detailed "environmental impact statement" for every recommendation or report on proposals for legislation and other major federal actions which may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C).

We also strongly disagree with the legality of exempting forest plan revisions in general from detailed NEPA review. NEPA defines "action" to include new or revised agency rules, regulations, plans, policies, and procedures. 40 C.F.R. § 1508.18(a)-(b). Accordingly, Forest Service regulations and guidance documents have long required that the responsible agency official prepare an environmental impact statement (EIS) prior to adoption, revision, or

¹¹ See CER, page 67, "The revised plan should determine if any areas of the Forest are suitable for wildland fire use, or may become suitable."

amendment of a forest plan. 36 CFR § 219.10 (1982); 36 CFR. § 219.10(b) (2000); 36 CFR. § 219.6(b) (2000); see also FSM 1950 (1992); Forest Service Handbook (“FSH”) 1909.15 (1992). Indeed, the Forest Service acknowledges that forest plans “establish goals, objectives, standards, land allocations, monitoring requirements, and desired resource conditions,” 67 Fed. Reg. 72777, which will serve to “guide or prescribe alternatives uses of federal resource, upon which future agency actions will be based.” See 40 CFR § 1508.18(b).

The 2005 planning rule contends that forest plans themselves do not have significant environmental effects. 67 Fed. Reg. 72778. However, as discussed below, forest plans do have significant and immediate environmental impacts on the quality of the human environment. The potential for significant impacts due to the manner in which plans guide and direct site specific projects and activities, restrict activities, and establish requirements for managing areas is set forth in the provisions of the 2005 planning rule, See e.g., Sections 219.2(d), 219.4, 219.15. Under NEPA, the potential for significant and extensive environmental impact together with the controversial nature of forest plan decisions mandates an open and thorough investigation of alternatives and an in-depth evaluation of the environmental consequences of each option. See 40 CFR § 1508.27. Thus, forest plans are federal actions significantly affecting the quality of the human environment, and the Forest Service should maintain the requirement that all forest plans, revisions, and amendments require the preparation of an EIS.¹²

The CER’s intent to avoid detailed NEPA review for this project also is contrary to fundamental NEPA policies, such as requiring environmental review of agency proposals “at the earliest possible time.” 40 CFR § 1501.2. NEPA’s purpose is not only to require agencies to consider every significant aspect of the environmental impact of a proposed action but also to ensure that citizens and officials are informed and allowed to comment on agency action *before* decisions are made. See e.g., *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1067 (9th Cir. 2002). Procedures designed to accomplish this goal must allow for timely consideration of, and comments on, potential environmental impacts. See also *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979) (“The thrust of § 102(2)(C) is thus that environmental concerns be integrated into the very process of agency decision-making. The “detailed statement” it requires is the outward sign that environmental values and consequences have been considered during the planning stage of agency actions. If environmental concerns are not interwoven into the fabric of agency planning, the “action-forcing” characteristics of § 102(2)(C) would be lost.”); *Biodiversity Associates v. U.S. Forest Service Dept. of Agriculture*, 226 F.Supp.2d 1270 (D.Wyo. 2002).

Further, a categorical exclusion prevents adequate review of potential cumulative impacts. See 40 CFR § 1508.7; *Kern v. U.S. Bureau of Land Management*, *supra*, 284 F.3d at

¹² The Forest Service’s current categorical exclusions can be found in the Forest Service Handbook. FSH 1909.15, 31.1 & 31.2 (2007). As the Handbook indicates, the Forest Service has previously published CEs for generally minor actions such as repairing or maintaining administrative facilities, repaving roads, or approving short-term special uses. By suggesting that forest plans should be excluded from NEPA review, the Forest Service essentially equates these comprehensive planning documents, which guide the development and management of millions of acres of forests and grasslands across the nation, with proposals to mow the lawn at an administrative facility and other truly minor impact activities for which CEs have been developed. See FSH 1909.15, § 31.1b(3)(a). In contrast to the categorical exclusion of these minor actions, the effort to categorically exclude development, amendment, or revision of forest plans is clearly inconsistent with NEPA.

1075. The 2005 planning rule suggests that the cumulative impact of forest plans and site-specific projects implementing forest plans can be adequately addressed through a two-stage process. First, "plan level analysis would evaluate existing conditions and broad trends at the geographic scale of the plan area," and second this information will be used to supplement project level evaluations." 67 Fed. Reg. 72770, 72778. However, this process certainly does not meet NEPA's requirement for cumulative impact analysis. CEQ regulations require environmental impact statements to consider the cumulative impact on the environment that results from "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions" and emphasizes that "cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 CFR 1508.7. By delaying consideration of cumulative impacts until site-specific actions are proposed, the proposed rules would result in a failure to consider the cumulative impacts of all site-specific actions. *See e.g., City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1313 (9th Cir. 1990) ("Where there are large scale plans for regional development, NEPA requires both a programmatic and site-specific EIS. . . [and] where several foreseeable similar projects in a geographical region have a cumulative impact, they should be evaluated in a single EIS.") *See also Scientist Institute for Public Information, Inc. v. Atomic Energy Commission*, 481 F.2d 1079, 1087-88 (D.C. Cir. 1973) ("Individual actions that are related either geographically or as logical parts in a chain of contemplated actions may be more appropriately evaluated in a single, program statement. Such a statement also appears appropriate in connection with . . . the development of a new program that contemplates a number of subsequent actions. . . . [T]he program statement has a number of advantages. It provides an occasion for a more exhaustive consideration of effects and alternatives than would be practicable in a statement on an individual action. It ensures consideration of cumulative impacts that might be slighted in a case-by-case analysis. And it avoids duplicative reconsideration of basic policy questions."); Kern, 284 F.3d 1075 ("[C]umulative impact analysis must be timely. It is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now.")

The 2005 planning rule suggests that potential cumulative impacts may be adequately addressed by "tiering" site-specific impact statements to analysis of "existing conditions and broad trends at the geographic scale" in the forest plan. CEQ regulations do allow and encourage tiering of programmatic and site-specific environmental impact statements, 40 CFR § 1502.20; 40 CFR § 1508.28, but where the forest plan itself has not been subjected to NEPA review, that document cannot lend support to an adequate cumulative impacts analysis. *Kern v. U.S. Bureau of Land Management, supra*, 284 F.3d at 1073 ("tiering to a document that has not itself been subject to NEPA review is not permitted, for it circumvents the purpose of NEPA.")

A. Changes to the Existing Forest Plan Direction Have the Potential to Significantly Impact the Environment

The forest plan for the LTBMU presently includes a number of standards and guidelines that prohibit specific uses. Prohibited uses are contained in the original 1988 forest plan as well as in the amendments made to the forest plan in 2004. In both cases, these provisions were evaluated in environmental impact statements and found to affect the environment. In both the planning efforts to create the forest plan in 1988 and amend it in 2004, alternatives were

considered and rejected for which the effect on the environment was estimated to be greater than the adopted plan or amendment. Thus, these environmental analyses determined that the adopted approach would be more protective of the environment than other alternatives.

Conversion of the forest plan that presently provides specific protection to the environment to a planning document that provides uncertain or “aspirational” protection to the environment represents a change to the environment that is potentially significant. For example, the existing forest plan restricts the activities allowed around the nest tree of a California spotted owl (CSO). This restriction was determined to be necessary to meet the requirement in the NFMA to maintain species diversity in the planning area. The EIS concluded that failure to adopt this approach would undermine the ability to meet the NFMA. Thus, the removal of “prohibited uses” from the existing forest plan, as indicated in the CER (p. 37), will allow the application of practices in that are contrary to the protection of CSO nest stands and nesting areas. This change has the potential to significantly affect the environment since protection of nest stands is a practice that is presently relied upon to prevent the need to list California spotted owl as threatened under the Endangered Species Act. (Federal Register, Volume 71, number 100) Thus, the absence of such protection could jeopardize the persistence of CSO in the LTBMU and violate the direction to maintain diversity in the planning area. This is one of many examples of the potentially significant effect resulting from “converting” the existing forest plan into a format that eliminates prohibitions on activities. Thus, the use of a categorical exclusion to support the decision to revise the LTBMU forest plan will violate NEPA.

B. The Level of Direction Required to Protect the Sensitive Environment of the LTBMU Requires a Clear Statement of Prohibited Uses.

The Forest Service is one of several agencies involved in land use planning and environmental protection in the Lake Tahoe area. As recently as 2000, declining environmental quality was recognized for the lake and its surrounding environment. (Murphy and Knopp 2000, p. ii¹³). Further, for over 20 years the region has been party to a unique multi-agency compact to manage the area for the protection and benefit of local resources. Integral to this protection has been the direction in the LTBMU forest plan that limits uses to those that are consistent with protecting the lake and its surrounding resources.

Presently, the LTBMU forest plan adopts direction on forest management that is required by overlapping jurisdictions. Changes to the adopted direction have the potential to reduce the protection presently afforded to the environment and may be a significant impact. For example, the forest plan requires the exclusion for certain activities from stream environment zones (SEZ). These prohibitions were specifically designed to limit the amount of sediment entering the stream and transferred into Lake Tahoe. These measures have been determined by the Lahontan Regional Water Quality Control Board to be necessary to protect water quality and to meet the Clean Water Act. Failure to implement these measures would violate local (controlling) policies and potentially violate the Clean Water Act. As a result, changes to the forest plan that eliminate these policies that are required by local (controlling) jurisdictions have the potential to significantly affect the environment.

¹³ Murphy, D. D. and Knopp, C. M. (eds.) 2000. Lake Tahoe Watershed Assessment. PSW GTR-175 Albany, CA: Pacific Southwest Research Station, Forest Service, U. S. Department of Agriculture. Volumes I and II.

In sum, the use of a categorical exclusion to support the decision to revise the LTBMU forest plan will violate NEPA.

V. A Revised Forest Plan Based on the 2005 Planning Regulations Can Not Satisfy the Requirements of the National Forest Management Act.

Based on our review of the 2005 planning regulations, we have concerns that the revised forest plan will be inconsistent with the National Forest Management Act.

For example, the 2005 planning rule § 219.12(b)(2) expressly defers promulgation of all of the resource guidelines required by 16 U.S.C. 1604(g)(3) to future Forest Service internal directives. These NFMA standards include measures to insure that timber will be harvested from National Forests only where soil, slope, and watershed conditions will not be irreversibly damaged, there is assurance that such lands can be adequately restocked with trees within five years, protection is provided to all bodies of water from detrimental changes in temperature, blockages of water courses, and deposits of sediment that timber harvests would otherwise cause, and where the harvesting system to be used is not selected primarily because it will give the greatest dollar return or the greatest output of timber. *See* 16 U.S.C. § 1604(g)(3)(E).

We also have substantial concerns about the new planning regulations' approach to "provide for the diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives," as required by NFMA. *See* 16 U.S.C. § 1604(g)(3)(B). The 1982 NFMA Regulations required that the Forest Service formulate and implement Forest Plans, and manage National Forests pursuant to those plans, so as to maintain "viable" populations of existing vertebrate species in the planning area and provided detailed guidance for implementing and monitoring the viability requirement. 1982 § 219.19. In contrast, the 2005 Rule § 219.10(b) replaces prior regulations with a vague "overall goal...to contribute to sustaining native ecological systems by providing the ecological conditions to support diversity" and that "plan components must establish a framework to provide the characteristics of ecosystem diversity." We do not understand which plan components will establish this "framework," nor how the Forest intends to provide for diversity in a manner consistent with NFMA's requirements. We note that the 2005 Planning Rule's apparent delegation of full discretion to the "Responsible Official" to determine whether any individual species is in decline and which actions may be necessary, does not meet the legal statutory standard imposed by Section 1604(g)(3)(B).

In addition, we are concerned about whether the Forest is intending to comply with NFMA's requirement that "[r]esource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans." 16 U.S.C. § 1604(i). *See also* 16 U.S.C. § 1601(d)(1) (forestlands in National Forest System shall be maintained "in accordance with land management plans.").

First, it is not clear how the Forest intends to revise its forest plan in a manner that remains in compliance with the applicable regional direction of the 2001 and 2004 Framework decisions, which set forth a number of controlling, substantive standards applicable to *all* Sierra

Nevada forests. To our knowledge, no other Forest in the Sierra Nevada has yet attempted to reconcile the proposed new direction of the 2005 planning rule with the existing standards of the Framework decision, yet the CER does not address the obvious conflicts between the two directions for establishing a revised forest plan.

Second, the 2005 planning rule appears to allow for projects that are inconsistent with forest plans to proceed without modification: “If [a] . . . use, project, or activity is not consistent with the applicable plan, the Responsible Official may . . . amend the plan contemporaneously with the approval of the project or activity so that it will be consistent with the plan as amended. The amendment may be limited to apply only to the project or activity.” 36 C.F.R. § 219.8(e). We request clarification as to how the Forest intends to interpret this provision, which we believe is squarely contrary to the requirements of NFMA.

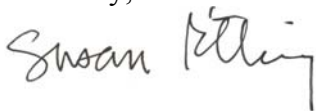
Finally, we believe that the 2005 planning rule’s apparent abandonment of the requirement that the Forest Service must act in a manner consistent with the best available science is contrary to NFMA. The 2005 planning rule § 219.11 now states that the Responsible Official must only “take into account” the best available science. *See also* 70 Fed. Reg. 1048 (former phrase “consistent with” was replaced by “take into account” because the latter term makes clear that science is “just one source of information” to be used in planning.”) Since NFMA requires plans to manage the natural resources of our National Forests in a manner consistent with the best available science, we request clarification from the Forest as to how it intends to proceed in this forest plan revision and in future projects.

CONCLUSION

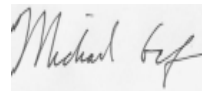
The habitats in the LTBMU are rich and varied and their conservation is a high priority for our organizations. The increased risk to wild and human communities from the effects of catastrophic wildfire is also a significant concern to us. We are committed to working on and developing a forest management plan for this region that protects species and ecosystems while increasing fire resiliency and protecting human communities.

We ask that you provide to us a written response to our comments and a summary of all public comments received on the CER. Please notify each of the parties listed below of future opportunities to review and comment on forest planning that is being undertaken for the LTBMU.

Sincerely,



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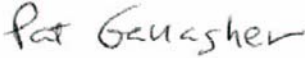
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APPENDIX 1

DETAILED COMMENTS ON AIR QUALITY, RECREATION AND FIRE AND FUELS

I. Comments Specific to Air Quality

The CER (pp. 32 and 40) refers to the Pathway 2007 air quality process, and future standards associated with that process, as the future basis for revisions to the Forest Plan and how air quality will be dealt with. However, the Pathway 2007 process is currently neglecting much of what the Forest Service is supposedly relying on for the forest plan revision.

A. Smoke Management and Tahoe Basin Air Quality Standards:

The current Pathway 2007 documents for Air Quality do not include information related to smoke management (beyond a short mention in the “Further Consideration” section). Earlier Pathway 2007 documents and technical working group discussions included specific information regarding the need to address smoke management based on the recognition that air quality standards needed to account for the increased need to support forest health measures, which include burning. That this has been removed from the most recent Pathway 2007 documents is of concern for the following reasons.

First, the Pathway 2007 process is not covering air quality issues and standards as they relate to the USFS needs regarding prescribed burns and forest management. Currently, the visibility standards for the Basin are proposed to be adjusted to meet the 2001-2003 visibility levels, which will be stricter than the previous standards. The original standards (and the proposed standards) are based on annual percentages and as a result allow for some days of reduced visibility.¹⁴ In order for these standards to accommodate increased burning, there must be a reduction of other visibility-reducing pollutants in the Basin to allow the “room” for the necessary burning. Because prescribed fire is not being emphasized, the Pathway 2007 process will likely not pursue tighter restrictions elsewhere to allow for the smoke produced from prescribed burning. This is unfortunate because the Pathway 2007 process is the time to account for these crossed-area situations; it will be far more difficult to change this later.

The Pathway 2007 update will also include proposed standards for “particulate matter and nutrients” – both of which are generated from fire. As with visibility standards, if the Pathway 2007 documents and the CER do not address the need for fire now, perhaps by requiring reductions elsewhere, then prescribed burning and air and water quality standards will continue to conflict.

Because consideration of smoke management has been largely excluded from the Pathway 2007 process and documents, the USFS must address this issue themselves within the Forest Plan Revision process. If nothing is changed, then fuels management strategies involving fire will continue to be in conflict with air quality standards and regulations.

¹⁴ Previous TRPA staff were told by consultants that the original idea was in part based on allowing “room” for forest fires – natural and prescribed.

Second, the Pathway 2007 process does not look at Emission Reduction Treatments (ERTs) which are critical to developing a smoke budget that allows for the use of prescribed burning. In conjunction with the need to address smoke impacts from prescribed fire on air quality and ways to integrate the two often conflicting needs, as explained above, the Forest Service should also analyze various ways to reduce the emissions associated with forest treatments. Such analyses are not included in the most recent Pathway 2007 documents. For example, the CER does refer to the need to address “smoke management” but goes no further in how this might be done. If ERTs are not considered, then this may limit the number of acres which can be treated with prescribed fire while still meeting air quality standards. Although the CER does discuss the need to change the Forest Plan to support increased opportunities to use biomass (versus burn it), this is also something which should be analyzed in terms of a variety of resources including air quality and water quality. The forest plan Revision must address ERTs and other ways to meet forest goals while reducing air quality impacts.

Third, the Pathway 2007 process is giving little, if any, consideration to the Air Quality Related Values (AQRVs) that the Forest Service is required to protect in Class I Areas, in this case, Desolation Wilderness. While the CER refers to the 1998 Desolation Wilderness Management Guidelines regarding management of Desolation Wilderness, including Air Quality, there is no mention of incorporating this into the forest plan revision as it relates to changes proposed within Pathway 2007. As noted in previous comments, earlier Pathway 2007 discussions focused on meeting the AQRVs in Desolation Wilderness; because the proposed Visibility standards were protective of the visibility-related AQRVs (when met), the focus was directed more on dealing with the Forest Service requirements associated with the Acid-Neutralizing Capacity (ANC) of the high-elevation lakes within Desolation Wilderness. Because of the multiple relationships between these factors and the many areas covered by Pathway 2007, the AQRV is yet another requirement that needs to be given direction consideration in the forest plan revision.

The Forest Service should address whether there may be any conflicts between the proposed standards and regulations in Pathway 2007 and this requirement. The Forest Service should also consider the out-of-Basin contributions impacts such as nitrogen (and sulfur), which can affect the ANC of the lakes in Desolation Wilderness Area. The forest plan revision needs to direct attention at protecting AQRVs, and more specifically, the ANC of lakes in Desolation Wilderness.

B. Impacts from Out-Of-Basin Pollution Need to be Addressed

The Forest Plan Revision must address the impacts of out-of-Basin pollution on in-Basin standards. As mentioned in the discussion of air quality standards, the Pathway 2007 process was supposed to address the many “trade-offs” between pollution sources. For example, in order to support the ecological need for more prescribed burning and still meet air quality standards, other sources of smoke and similar pollutants would need to be reduced. The Pathway 2007 process was originally set up to allow for dealing with such linkages. However, because smoke management, AQRVs, ERTs, etc., have all been removed from the primary discussions within the Pathway 2007 documents, the ability to deal with such linkages and trade-offs through Pathway 2007 has been diminished, and remains questionable at this time. Because the Forest

Service must still meet air quality and other requirements, it is left to the Forest Service alone to deal with such trade-offs. The Forest Service must ask that the Pathway 2007 process to reconsider these issues and/or must proceed with these analyses on their own. In either case, the USFS must address these issues in the forest plan revision.

For example, there is a generally recognized portion of several air quality pollutants that come in from out-of-Basin sources; Tahoe planning agencies recognize the need to assume that these out-of-Basin contributions will likely continue as there is little that can be done, outside of implementing better laws regarding downwind impacts. Therefore, Tahoe agencies must assume continued inputs from these non-local sources and adjust in-Basin activities to “make up for” the out-of-Basin pollution impacts. To address this, there are in-Basin sources that could be reduced to accommodate increased smoke from prescribed burning, for example, incentives to replace wood burning heaters with gas appliances.

C. Need to Address Impacts From Ozone

The forest plan revision should address impacts from ozone on pine species (*Pinus* spp.) and the direct and indirect implications of this damage (e.g. ozone-damaged trees are more susceptible to drought, beetle infestation, etc.).

The Pathway 2007 process is currently proposing to rely on the California Air Resources Board’s 8-hour standard for ozone (0.07 ppm) to protect forest health. As stated in the most recently-available Pathway 2007 document for Air Quality, “No specific air quality standard is proposed for forest health, because the ozone standard mandated in California and proposed to be applied for the whole Lake Tahoe Basin within the Human Health Desired Condition is expected to be sufficient.” There, however, is not other analysis or data presented to support this claim of protection or to evaluate its application to the Lake Tahoe Basin. There appears to be no process in the Pathway 2007 process that will confirm whether this standard truly protects pines from ozone damage. For example, earlier discussions within the Air Quality Technical Working Group included looking at designated measurements on a regular basis intended to assess whether ozone damage was occurring. Because this does not appear to be included in Pathway 2007 anymore, it is up to the Forest Service to assure that this is done.

Management to reduce ozone damage should be a priority for the Forest Service since it plays such an important role in forest health (and fire hazard). The Forest Service should address what data support the conclusion that this standard is sufficient and the validity of the data as well as include mechanisms for monitoring ozone damage to pine.

D. Biomass Facilities and Air Quality Standards

In 2003, the TRPA amended their Code to support increased use of biomass under specific conditions. The amendment allowed the lower level of emissions released from biomass operations for that material originally intended for piling and burning. This amendment addressed the conflict in the TRPA Code which limited stationary source emissions (such as cogeneration) but did not limit emissions from piling and burning. Based on an analysis showing that emissions from the biofuel facility would be at least a specified amount *less than* if the same

material had been burned in a pile, TRPA made the finding that there was environmental benefit in allowing these biofuel facilities to process biomass.

The use of biofuel facilities instead of piling and burning should be addressed and thoroughly evaluated in the forest plan revision. This is also an example of why, in addition to evaluating these issues themselves, the Forest Service should approach those involved in the Pathway 2007 and reiterate the need for inclusion of these forest related issues in the Air Quality documents (and likely vegetation, etc.).

E. Information on Slash Disposal

The CER (p. 32) claims that some options for slash disposal now conflict with scientific knowledge and current management practices. The CER should be revised to clarify specifically what the conflicts are, what the smoke impacts are from these practices and evaluate how the impacts can be reduced.

II. Comments Specific to Recreation

A. The Estimated Increase in Recreational Demand is Internally Inconsistent

The CER's estimate of increased visitor use appears to be based on National Visitor Use Monitoring (NVUM) program data from which they conclude that there will be an increase by "50,000 additional visitors each year for the next 20 years" which a 1.6 % annual increase. This conclusion, however, appears to conflict with data presented elsewhere in the CER. In one case, conclusions elsewhere indicate a much higher rate of increase and in another instance, the data support a lower rate of increase. First, estimates reported in Chapter 3 (p. 112) indicate that "the projected increase in visitors to the LTBMU (2005-2025) is 72,000 more visitors/year (50% increase)" or an increase by 2.5 % per year. This estimate is about 50% greater than that reported in Chapter 2 (CER, p. 33). This inconsistency should be corrected.

Second, the historic recreation visitor day (RVD) data supplied in the CER (p. 113) indicates that the average annual increase since 1988 has been about an additional 7,000 RVD per year – far short of the additional 72,000 per year estimated for future increases. There are a number of studies that future increases will not be as high as estimated by the Forest Service. The population of residents in the Basin is in a five year decline (reflected in school closures and a shift of housing ownership to 70% non-resident ownership). Further, the number of visitors has generally been flat or declining over the past five years. These findings are supported by the TRPA traffic studies that show the total annual VMT in the basin is currently (2004) at a lower level than was measured in 1981 for the TRPA's 1982 Environmental Threshold Carrying Capacity study (Laurel Ames, Pathway 2007 Forum, Pers. Comm). This study showed that in 2004 there was a 4.5% decrease in traffic over 1981 levels.

The CER should be revised to correct internal inconsistencies and to incorporate a realistic projection of increased use that is based likely changes in local use patterns and not based on nationwide expectations.

B. Recreational Capacity and Environmental Threshold Carrying Capacity

The U.S. Congress mandated five Carrying Capacity Threshold Standards for the Lake Tahoe basin. In addition, the Forest Service is required to adhere to the state air quality, water quality and noise standards for each state. The memorandum of understanding (MOU) with the TRPA states that for all non-exempt activities, the Forest Service projects will be reviewed in accordance with Chapter 6 of the Code of Ordinances for compliance with threshold standards, specifically including “The project will not cause the environmental threshold carrying capacity thresholds to be exceeded” (Code of Ordinances, Chapter 4, Appendix E(4)II.b.4 . Congress defined the phrase environmental threshold carrying capacity as “an environmental standard necessary to maintain a significant scenic, recreational, educational, scientific, or natural value of the region.....” (PL 96-551, Art II – i).

The CER (p. 33) identifies “Recreation Capacity” as a “significant management challenge.” In discussing “recreational capacity” the CER notes the peak use of facilities in the summer season, and that traffic congestion, insufficient parking, and alternative transportation solutions are common issues from public workshops. The CER defines capacity as having physical, social and institutional components. This consideration of capacity, however, does not incorporate the notions of environmental limits to recreational capacity or the specific direction from Congress on carrying capacity.

The CER is required to address the carrying capacity of recreation facilities and uses in terms of the definition of capacity by the US Congress for the Tahoe basin, as an environmental standard. This requires a shift in the focus of the CER, from the facilities and their impacts, to the environment and what fits within the constraints of that environment.

The Forest Service is well aware of the concept of carrying capacity since this is what guides planning in designated wilderness areas and which regulates the numbers of users, days of use, and places of use. However, the CER relies on perceptions of crowdedness or aesthetic pleasantness, reasonable prices, cleanliness, security, convenience and effectiveness of management (CER, p.33) to define carrying capacity. None of these attributes relates to environmental threshold carrying capacities. In fact, the CER notes that” institutional capacity speaks to the ability to effectively manage the people, facilities and settings,” and fails to specifically mention the environment.

The CER should be revised to address how the recreation planning connected to the forest plan revision will address the environmental threshold carrying capacity established by Congress.

C. The “Unique Niche” of Lake Tahoe is not Addressed

The CER notes that “each National Forest is in the process of describing its special places and unique niche within the national system.” The bulleted list under specific need for change does not list any recreation changes, from expansion to reduction activities, that are needed to protect the environment or that attempt to achieve the environmental threshold carrying capacity thresholds. It is notable that not one of the bulleted items refers to the importance of the

recreation component of the CER to contribute to the attainment of the Lake Tahoe clarity standards.

The bulleted list raises the question – why is it that the LTBMU does not consider that protection of Lake Tahoe is its special niche? From the Outstanding Natural Waters designation to the bi-state Compact, to the ubiquity of the Keep Tahoe Blue bumper sticker throughout the country, to the substantial amounts of funds provided by Congress to protect and improve the clarity of Lake Tahoe, the evidence that Tahoe is a national treasure, famed for its clear blue waters and protected by Congressional actions couldn't be clearer.

The CER should be re-written to re-focus on the nation's interest in the natural resources of the Lake Tahoe basin and the clarity of the lake.

II. Comments Specific to Fire and Fuels

A. Comments on Chapter 1

The Forest Service states that:

Since the 19th century, white fir and incense cedar have doubled in relative abundance, whereas Jeffrey pine has declined by half. Tree density is currently 184% of historic conditions, most of which is comprised of trees less than 16" in diameter. Current research suggests the majority of terrestrial vegetation communities in Lake Tahoe Basin has greater than 50% departure from historic fire return interval. Fire suppression management has resulted in a substantial departure from historic structural and species composition characteristics for most terrestrial vegetation types. High tree density and dominance of species intolerant to disturbance have several potential negative impacts which will not be improved under the current trend:

- Understory herbaceous and shrub growth and regeneration are suppressed.
- Trees are more vulnerable to effects of drought, and insect and disease outbreaks.
- Large high-intensity, high-severity, stand-replacing fires are more likely, which could reduce habitat diversity and availability, and alter soil properties.
- Habitat diversity is decreased. For example, shade tolerant conifer species, namely white fir, have encroached and become established in meadows and aspen stands. In some cases, conifer encroachment will result in a conversion of vegetation and habitat types if the current trend continues and conservation actions are not taken.

(CER, p. 31)

At this point the CER has described effects typical of a low or mixed severity fire regime that has been subjected to suppression of low severity fires. Every responsible scientist in this field has pointed out that these problems are a result of removing low severity fire from the system. Yet nowhere in the document does it suggest that resolving these problems may involve putting low severity fire back in the system. The CER needs to be revised to emphasize the use of prescribed fire to achieve restored conditions.

B. Comments on Chapter 2

The statements in the Need for Change begin by patronizing the public and then proceed to claim air quality regulations preclude any discussion of active fire management:

Public opinion is now in tune with National Forest management policies, and provided support for developing the Community Wildfire Protection Plans that are now in place. Current Forest Service efforts focus on reducing hazardous fuel loads in the Wildland Urban Interface (WUI). This work is expected to be substantially complete within the next 10-15 years. At that time, hazardous fuels reduction work will shift to a less aggressive maintenance mode and the LTBMU will be able to focus more vegetation management resources on reducing stand densities outside the WUI and other forest management strategies such as increasing the range of stand development stages in the forest to provide a more natural mix of young and old trees.

Specific Need for Change

- Develop integrated desired conditions and objectives that incorporate fire protection, hazardous fuels management, vegetation management, wildlife habitat conservation, and fire ecology, emphasizing the role of fire as a necessary disturbance agent.
- Update guidance for smoke management. Although the current plan provides guidelines and mitigations for reducing smoke emissions and impacts, some of the options for slash disposal now conflict with scientific knowledge and current management practices. The revised Forest Plan needs to consider potential smoke emissions from these sources.

(CER, p. 22)

The CER makes no explicit commitment to restoring fire to these forests – the use of prescribed fire or Wildland Fire Use to restore the more remote stands is not emphasized. In fact, the Forest Service appears to wonder if it will even get around to these stands as it expects to be busy in the WUI for the next 15 years. The Forest Service will no doubt spend \$3000 per acre to suppress fires on these back country lands, but it will refuse to spend \$300 per acre to restore natural fuel loading. By ignoring the effects of suppression on these stands, the Forest Service is simply not evaluating the environmental conditions necessary to support the conclusions in the CER or to meet the intent of a CER as defined in the forest planning regulations.

C. Comments on Chapter 3

The Forest Service says that they will improve air quality in part because “prescribed burning of vegetation debris will not be increased.” (CER, p. 47). It is unclear what is meant by prescribed burning. Does it mean hand pile burning of logging slash, machine pile burning, or perhaps allowing natural fuels to be consumed by a carefully monitored lightning fire? The nature of the prescribed burning referenced in this statement and elsewhere in the CER should be clarified in the revised CER.

The Forest Service also states that the ecosystem diversity goal is:

Predicted Condition - Vegetation and wildlife habitat diversity will be increased through management practices including natural successional progression. There will be more older and younger seral stages, especially in the mixed conifer type.
(CER, p. 47)

The term “management practices” may include mean a variety of actions such as logging or burning, and the CER does not clearly define this term. Also, the term “natural successional progression” is undefined. We are not aware of this term used to define a management practice as implied by its use in the “predicted condition” statement. Also, is the term “natural successional progression” used in the context of continued fire suppression or without fire suppression? As presently stated, the predicted conditions statement is not comprehensible. The terms noted here and their application in the predicted condition statement should be clarified in the revised CER.

The Forest Service states that:

Current research however suggests that the majority of terrestrial vegetation communities in Lake Tahoe Basin have greater than 50% departure from historic fire return interval. Fire suppression management has resulted in a substantial departure from historic structural and species composition characteristics for most terrestrial vegetation types.
(CER, p. 50)

Given this departure, it is unclear why the Forest Service states that “prescribed burning will not be increased.” Departure from the fire return interval can only be fully restored when fire is returned as a process in the ecosystem. The CER should be revised to clarify how maintaining the current level of prescribed fire will reduce the present departure from historic conditions.

The CER states the predicted condition for fire and fuels management as:

The fire management program to be implemented will consist of approximately 6% detection, 33% prevention, 52% attack, and 9% fuels. This program will meet management objectives by integrating cost efficiency and nondollar values that are particularly important to the more sensitive issues on the unit. The wildfire response strategy in areas included in or adjacent to urbanized areas will be control of all fires to protect life, property, and other high values at risk. Timber management practices adjacent to urbanized areas will reduce natural fuel loading.
(CER, p. 60)

As demonstrated most recently by North et al. (in review)¹⁵, timber management will not restore these forests. They found that thinning left too many small trees to be effective at reducing fuels. This study also recognized that a combination of thinning and fire could be effective. However,

¹⁵ North, M., Innes, J. and Vald, H. (in review). Comparison of thinning and prescribed fire restoration treatments to Sierran mixed-conifer historic conditions.

since the Forest Service has already stated that it will not increase the amount of prescribed burning, the timber management referenced in the predicted condition statement is not likely to be effective in restoring these forests.

The CER also draws conclusions about wildland fire use and makes statements about the performance of mechanical treatments as fire surrogates that are not supported in the CER by research or citations to other assessments. For example, the Forest Service states that “the use of wildland fire for resource benefit is expected to become a major component of fire and resource management in many parts of the country. However, its utilization in the basin is likely to be limited due to resources at risk.” (CER, p. 66). There is no further discussion about what the resources at risk might be or any mention of how one might mitigate for such risks. Such a discussion is especially important since practices such as wildland fire use (WFU) are often the best and cheapest techniques for managing the risk of high severity fire and it is a proven technique. The CER should explain fully why it is not feasible to apply this practice. In another instance, the Forest Service states that “Additionally, surrogate treatments such as prescribed fire and mechanical thinning can be used to mimic historic disturbance.” (CER, p. 66). There are no citations to support this claim. In fact, there is recent research that indicates that mechanical thinning (as practiced by the Forest Service) is not effective at mimicking historic disturbance. (See North et al. (in press), p. 3).

In another instance, the CER emphasizes its bias toward mechanical thinning when referencing past forest management practices and the present condition of forest health. The CER reports that “the basin has not harvested sufficient numbers of trees per acre required to achieve long-term health that poses a lower risk of outbreaks.” This harvest centric view of forest management ignores the fact that there are other actions besides thinning that can reduce inter-tree competition. For thousands, perhaps millions of years mixed conifer forests of the Tahoe Basin have been thinned by surface fires. These fires reduced beetle risk and the risk of catastrophic fire. The CER should be revised to acknowledge that prescribed fire and WFU can be used to address forest health concerns.

The “Need for Change” section lists the following items:

Given these changes, several items need to be incorporated through Forest Plan revision with regard to fire and fuels management. These items include:

- Updates in agency fire management policy, direction, and terminology
- Focus on historic fire regimes, and forest vegetation composition and structure
- Integrated fire and fuel management and vegetation management direction
- Reintroduction of fire to the ecosystem to promote forest health
- Emphasis on reduction of hazardous fuels
- Smoke management
- Desired conditions and objectives that enhance firefighter and public safety

(CER, p. 76)

Unfortunately, these items have not been related to specific goals or objectives and are general statements that seem only to indicate that the Forest Service will “strive to endeavor” to do good

things. These statements are not useful in evaluating how the Forest Service proposes to manage fire.

Lastly, the CER (p. 149, table 18) combines prescribed burning and chipping. These are two distinct practices that do not result in the same effect on the treated area. The CER should be revised to report the treatment results separately for these two actions.

In sum, the introduction in the CER (p. 1) states that “a Comprehensive Evaluation Report (CER) evaluates current conditions and trends in the Forest Plan area that contribute to social, economic, and ecologic sustainability.” With respect to fire and fuels, the CER does not evaluate current conditions, nor does it look rationally at trends in fuel loading and climate change¹⁶. The CER should be revised to address these issues and those identified above.

¹⁶ Westerling, A. L., Hidalgo, H. G., Cayan, D. G., and Swetnam, T. W. 2006. *Science* 313: 940 (2006); published online 6 July 2006 (10.1126/science.1128834).