United States Department of Agriculture **Forest Service** **Pacific Southwest Region**

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File Code: 1570-1
Appeal No.: 07-05-00-0007-A215
Date: January 3, 2007

Mr. Michael Graf
Attorney
Sierra Nevada Forest Protection Campaign
915 20th Street
Sacramento, CA 95814

CERTIFIED - RETURN RECEIPT REQUESTED

Dear Mr. Graf:

On November 20, 2006, you filed a Notice of Appeal (NOA) on behalf of the Sierra Nevada Forest Protection Campaign, the Sierra Club, and the Plumas Forest Project pursuant to 36 CFR 215 of the Plumas National Forest Supervisor's Record of Decision (ROD) approving Alternative 4, with modifications, of the Freeman Project Final Environmental Impact Statement (FEIS) that was signed on September 13, 2006.

I have reviewed the entire appeal record, including your written Notice of Appeal (NOA), the ROD, FEIS, and supporting documentation. I have weighed the recommendation from the Appeal Reviewing Officer and incorporated it into this decision. A copy of the Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

FOREST ACTION BEING APPEALED

The Freeman Project will create 3,037 acres of DFPZ and treat an additional 2,211 acres in the area thinning zone to improve forest health surrounding the DFPZ. It will create group selection openings on approximately 160 acres. Whenever possible, these openings will focus on treating insect and disease centers, while keeping economic feasibility in mind. This project will implement 232 acres of aspen restoration and eliminate the variable width extended treatment zone surrounding each aspen stand, while leaving some conifers within the aspens stands and offering both visual retention for recreation users and ecological diversity. Road access for treatments will be provided by reconstruction of 15 miles of road, and construction and subsequent decommissioning of approximately 2 miles of temporary road. Decommissioning will occur on approximately 7.9 miles of system roads as identified for riparian habitat and water quality needs.

The Forest Supervisor made the following modification in the ROD:

- In response to public comments, the economic viability of the helicopter logging was reconsidered for this project. Two area thinning helicopter units totaling 186 acres (including 14 group selection acres) were re-evaluated, and it was determined that 22

acres of unit 87 could be treated as tractor ground. The remaining acreage in these units was too steep to use this method of treatment, and the volumes per acre were too low to support this method of logging and are therefore being dropped from this decision. The number of acres involved did not significantly change the effects analysis.

APPEAL REVIEWING OFFICER'S FINDINGS

The Appeal Reviewing Officer, Terri Marceron, found that the Forest Supervisor's decision was appropriate and complied with existing laws, policies, and regulations. The Forest Supervisor provided information supporting the logic and rationale in selecting Alternative 2 and described the included management activities. Documentation provided by the Forest Supervisor demonstrated compliance with the Plumas National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment Record of Decision (February, 2004) and applicable laws, regulations and policies in light of the appellants concerns about California spotted owl, forest carnivores, soil productivity, and analytic processes.

The ARO found the purpose and need for the project were clear. The Forest Supervisor was responsive to public concerns.

She recommended affirmation of the Forest Supervisor's decision

DECISION

I agree with the ARO's analysis as presented in the recommendation letter. The issues in your appeal are very similar to those you raised in your comments on the DEIS and the record is adequate to support the Forest Supervisor's decision. All appeal issues raised have been considered.

I affirm the Forest Supervisor's decision to implement Alternative 4 with the modification described in the Record of Decision. The project may be implemented on, but not before, the 15th business day following the date of this letter (36 CFR 215.9(b)).

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Beth A. Giron Pendleton
BETH G. PENDLETON
Deputy Regional Forester
Appeal Deciding Officer

Enclosure

United States Department of Agriculture **Forest Service** **Pacific Southwest Region**

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File Code: 1570-1 **Date:** December 29, 2006

Subject: Freeman Project
Appeal No. 07-05-00-0007-A215 (Michael Graf)
Plumas National Forest

To: Appeal Deciding Officer

I am the designated Appeal Reviewing Officer for this appeal. This is my recommendation on disposition of the appeal filed by Michael Graf, for the Sierra Nevada Forest Protection Campaign, the Sierra Club, and the Plumas Forest Project, appealing the Plumas National Forest Supervisor James M. Peña's Record of Decision (ROD) for the Freeman Project Final Environmental Impact Statement (FEIS) signed September 13, 2006.

DECISION BEING APPEALED

In comparing the desired conditions specified in the 1988 Plumas National Forest Land and Resource Management Plan, as amended by the Sierra Nevada Forest Plan Amendment, and the existing conditions within the Freeman Project analysis area, the Forest Supervisor determined there is an immediate need to:

1. **Reduce fuels:** to provide continuity with existing Defensible Fuel Profile Zones (DFPZ) and existing fuel reduction project areas; provide continuity with the Plumas Fire Safe Council's efforts to reduce fuels inside the Wildland Urban Interface (WUI); contribute to the larger Herger-Feinstein Quincy Library Group (HFQLG) landscape level DFPZ; reduce the potential size and intensity of wildfires by creating conditions that improve fire suppression effectiveness in the Lake Davis recreation area;and reduce the risk of stand-replacing fire in riparian habitat conservation areas (RHCAs)

2. **Improve forest health:** to improve forest health by reducing the amount of and susceptibility to disease, infection, and insect infestation; to accelerate the growth of California Wildlife Habitat Relationship (CWHR) size class 4 towards size class 5; and to reduce fuels and improve conifer-growing conditions in the Area Thinning zone

3. **Improve bald eagle habitat:** to improve bald eagle (*Haliaeetus leucocephalus*) habitat by promoting the growth and development of CWHR size class trees, which are foraging, roosting and nesting habitat

4. **Contributing to the economic stability of the local community:** by providing an adequate timber supply

5. **Improve aspen stands:** to provide for greater biological diversity in the Freeman Project area by releasing aspen stands from conifer competition

6. **Provide access needed to meet other project objectives and reduce transportation system impacts:** to reduce the impacts of the transportation system on forest resources and to provide the necessary access for the vegetation treatments

The Forest Supervisor selected Alternative 4 with the following modification:

> In response to public comments, the economic viability of the helicopter logging was reconsidered for this project. Two area thinning helicopter units totaling 186 acres (including 14 group selection acres) were re-evaluated, and it was determined that 22 acres of unit 87 could be treated as tractor ground. The remaining acreage in these units was too steep to use this method of treatment, and the volumes per acre were too low to support this method of logging and are therefore being dropped from this decision. The number of acres involved did not significantly change the effects analysis.

APPEAL SUMMARY

The Freeman Project was first listed in the Schedule of Proposed Actions issued April 2004. The Notice of Intent (NOI) was published in the Federal Register on August 25, 2005. The scoping letter was mailed to local tribal organizations, other agencies, individuals, and groups potentially interested in or affected by the Proposed Action. During the scoping period the Ranger District staff met with the Plumas Fire Safe Council and the Quincy Library Group.

The Draft Environmental Impact Statement (DEIS) was published on May 24, 2006. The Notice of Availability was published in the Federal Register on May 26, 2006. Copies of the DEIS were sent to over fifty individuals, organizations, tribes, and government agencies. The DEIS was also placed on the Plumas National Forest web page. There were six commenters by the close of the comment period on July 10, 2006. Michael Graf representing the Sierra Nevada Forest Protection Campaign, the Sierra Club Environmental Law Program, and the Plumas Forest Project, submitted timely comments and has eligibility to appeal.

The legal notice of decision was published October 4, 2006; the deadline for filing appeals was November 20, 2006. The current appeal was filed on November 20, 2006 and is timely. Jane Beaulieu, Plumas NF appeals coordinator, left a voice mail for Mr. Graf on November 27, 2206 offering an informal meeting; on December 1, Mr. Graf told her to call Craig Thomas. Ms. Beaulie left Mr. Thomas a voice mail. He did not return her call; there was no informal disposition meeting.

As relief the appellants request that the Freeman Vegetation Management Project FEIS and ROD be set aside.

ISSUES AND RESPONSES

Issue 1: The Forest Service has not considered a reasonable range of alternatives. (Appeal, pp. 23-25, 39-43)

Response: Appellants assert that the Forest did not consider a reasonable range of alternatives. Specifically they claim that a need for an alternative with less intensive fuel treatments which retain substantially more medium to large diameter trees and higher canopy cover to the benefit of wildlife was 'avoided'. They assert that a fuel reduction and forest regeneration alternative that meets the less intensive logging was permitted under the 2001 Framework (Appeal, pg. 40).

The Forest Service policy for consideration of alternatives is found in Forest Service Handbook (FSH 1905.15 part 14). Reasonable alternatives address significant issues while meeting the purpose and need of the project. Based on public comments, the responsible official identified four significant issues to be addressed in this analysis (FEIS, pg. 40) and developed alternatives to respond to them (FEIS, pp. 55, 57). The Forest Service considered four alternatives in detail: 1) Proposed Action, 2) No Action, 3) Aspen Stand Treatment Changes, and 4) Aspen Changes and Silvicultural Treatment Changes.

Along with the four alternatives analyzed in detail, the Forest considered five additional alternatives that were not analyzed in detail (FEIS, pp. 80-83). Alternative 8, developed specifically in response to the concern about removing 20" to 30" dbh trees, reduces the upper limit to 20"dbh conifer removal in DFPZ and DFPZ/WUI. Alternative 9, Fully Implement the 2001 SNFPA ROD, specifically utilized the 2001 SNFPA diameter limit of 20"dbh over most of the project area. Reasons for not examining Alternatives 8 and 9 in detail are detailed in the FEIS on pages 81 through 83 and are based on the Forest's experience with similar projects over the last five years.

In summary, the Forest Supervisor examined nine alternatives in total including the alternatives suggested by the appellants. I find the Forest Supervisor considered a range of reasonable alternatives.

Issue 2: The Forest Service's presentation of Lee and Irwin 2005 is contrary to NEPA's requirement to present accurately the best available science. (Appeal, pp. 26-28)

Response: The appellants express concerns that Lee and Irwin 2005 is flawed and leads to misinformed conclusions. *Assessing risks to spotted owls from forest thinning in fire-adapted forests of the western United States* (Lee and Irwin 2005) is a peer reviewed paper published in "Fire and Ecology Management" that specifically deals with fuel reduction in the Sierra Nevadas. A summary of the findings in Lee and Irwin 2005 are disclosed on page 145 of the FEIS as part of the summary of effects to California Spotted Owl.

I find that the use of this publication is not contrary to NEPA's requirement to present accurately the "best available science".

<u>Issue 3:</u> The Freeman documents do not provide an adequate discussion of cumulative impacts and location of past, present, and planned projects in the vicinity of the Freeman that are likely to affect owl or forest carnivore habitat. The BE does not adequately disclose the extent to which such other projects may cumulatively affect the distribution and connectivity of habitat for these species. (Appeal, pp. 33-39)

Response: Before cumulative effects on any particular resource can be determined, the scope of the analysis must be established by setting the geographic boundary and time frame for the analysis. The geographic and temporal scope of the wildlife analysis is documented on page 152 of the FEIS. The Freeman Wildlife Analysis Area was determined by potential effects on California spotted owl PACs and HRCAs and totals approximately 46,039 acres. The appellants take exception to using the Freeman Wildlife Analysis Area for American marten as well as California spotted owl. The rationale for using this Wildlife Analysis Area for other species is also disclosed on page 152 of the FEIS.

The cumulative effects of this project on California spotted owls is summarzed in the FEIS on pages 221 through 226. Highlighted as past actions that contribute to the existing condition are grazing, timber harvest and recreation use. Table 3.44 (FEIS, pg. 223) shows the cumulative reduction of Nesting Spotted Owl habitat due to fuels treatments, group selection and Area Thinning projects implemented under HFQLG on the Beckwourth Ranger District.

The cumulative effects of this project on American marten is summarized in the FEIS on pages 266 through 267. As for the California spotted owl, specific projects named by the appellants as not being considered are listed in Table 3.56 (FEIS, pg. 266) entitled Cumulative Change of Suitable Fisher and Marten Habitat.

I find the project record provides an adequate discussion of cumulative impacts that are likely to affect owl or forest carnivore habitat.

<u>Issue 4:</u> The Freeman Project documents do not specify the location of Group Selection units and thus the public is unable to assess the impacts of this treatment method in critical habitat areas. (Appeal, pp. 45-46)

Response: To clarify, there are no "critical habitat areas" in the project area. As the FEIS states on page 141, "No critical habitat as designated by the USFWS is present within or near the project area (Federal Register, March 13, 2000)."

The decision creates group selection (GS) openings on approximately 160 acres of 14, 967 acres (ROD, pg. 3). The decision was modified from the 174 acres identified in Alternative 4 in the FEIS (FEIS, pg. 61) to 160 acres to respond to public comments (ROD, pg. 3). Whenever possible, these openings will focus on treating insect and disease centers, while keeping economic feasibility in mind (ROD, pg. 3). Description of the alternatives discloses that GS patches will be identified during layout of the project just before implementation:

> GS would range in size from ½-2 acres and would be predominately located in stands containing sawlog-sized conifers, generally ranging from 11-29.9" dbh. GS, consisting of harvesting trees to create openings up to 2 acres in size totaling 175 acres, would be implemented over approximately 2,700 acres (Table 2.2). GS patches will be identified during layout of the project, which will not occur until just before implementation; therefore, the exact locations have not yet been identified (FEIS, pp. 50, 58).

Criteria for group selections are found in Chapter 2 of the FEIS under *Design Features* and include the following:

- In the WUI, GS will be factored into the remaining canopy cover for the overall stand.
- When calculating canopy cover for the DFPZ, GS treatments are not factored into the overall canopy cover
- Further canopy cover may be lost due to post-treatment underburning
- GS areas will be evaluated after treatment; those units not meeting desired surface fuel and silvicultural site preparation conditions would be underburned, grapple piled and burned, or masticated
- If not removed as part of a timber sale, non-saw log material (biomass) would be piled and burned or decked and sold as firewood
- Emphasis will be placed on improving stand health by cutting diseased and insect infected trees or trees otherwise in poor health
- Canopy cover calculations in Area Thinning treatments will factor in the canopy cover of the entire treatment area including GS treatments
- Mechanical felling would be restricted to slopes having a gradient of less than 35%
- Exceptions may be made for short (less than 100') pitches within the interior of units where slope exceeds this limit

Further criteria for group selection that apply specifically to Alternatives 3 and 4 are found on pages 75-76 of the FEIS. Table 2.4 further describes the number of acres and treatments to be used in group selections in a comparison of alternatives (FEIS, pp. 60-61). The Wildlife BA/BE identifies the density of group selections (Wildlife BA/BE, pp. 38-39) as a disclosure of effects.

Response to comment 4.02 on page 566, Appendix G (FEIS) specifies conditions where GS would occur:

> The group selections would be placed in areas where there are forest health issues (such as mistletoe, root disease, or bark beetles) to the extent that the Forest Service could make these areas economic to treat as a timber sale.

The FEIS (pg. 72) and the ROD (pg. 3) state: "Emphasis will be placed on improving stand health by cutting diseased and insect infected trees or trees otherwise in poor health."

Further, the ROD states: "All DFPZ, area thinning treatments and group selection treatments will meet the standards and guidelines as described in the Sierra Nevada Forest Plan Amendment Supplemental Environmental Impact Statement (SEIS) ROD (2004)."

No fuels treatment, including DFPZ construction, group selection or area thin treatments with biomass removal would occur within the designated 1,000 acre SOHA or 300 acre PACs (FEIS, pp. 214, 218, 219); this addresses the effects to owl nest habitat home range cores areas or home ranges. The discussion found in the FEIS (pp.158-159, 162) and in the Wildlife BA/BE (pp. 154-158) addresses the effects of group selections on marten.

I find that although the appellant says the public cannot assess impacts without disclosure of actual locations of the group selections, the specialists adequately described the effects of GS in the project area based on the acres being treated and the design features that have been identified.

Issue 5: The Freeman project fails to take a hard look at the threat posed to Spotted Owls by the increasing presence of Spotted Owl predators and potential loss of prey in the planning area. (Appeal, pp. 46-47, 25-26)

Response: Specific analysis of barred owls¸ predators of spotted owls, and the competition between barred owls and California spotted owls is found in the FEIS (pp. 225-226). Following a discussion on the hypothesis that barred owls will come into spotted owl habitat after treatments such as those proposed by this project and the disclosure that no barred owls were discovered in either the spotted owl or great gray owl surveys conducted within the Freeman Project area in 2004 and 2005 (FEIS pg 225-26) the FEIS concludes that the potential for the barred owl to establish and compete with spotted owls within the Freeman project area is possible (FEIS, pg. 226).

The FEIS establishes the common prey species with a discussion on page 207, followed by a discussion of how group selection, which mimic a mosaic of forest openings, and other treatment methods have an effect on prey species (FEIS, pp. 220-221).

I find the Forest Supervisor had sufficient information on California spotted owl prey base and predation by other species.

Issue 6: The project does not ensure viability of the California spotted owl.

Contention 1: The Forest Service has not provided sufficient information to determine that owls will have enough quality habitat to survive at each of the three relevant spatial scales, nest core, home range core area and home range. (Appeal, pp. 9-17, 37)

Response: The Record of Decision considered the project impacts, including direct, indirect and cumulative impacts to spotted owls. The decision is consistent with the SNFPA and ROD (2004) Standards and Guidelines that amend the Plumas National Forest LRMP (ROD, pg. 9). Effects to habitat quality are based on analysis at various scales. The direct, indirect and cumulative effects to habitat are found in the FEIS on pages 203-227.

Several researchers have evaluated the spatial scale at which northern spotted owls respond to habitat (Hunter et al 1995, Bingham & Noon 1997, Meyer et al 1998, Franklin et al 2000 and Zabel et al 2003). Blakesley (2003) has provided insight into spatial availability of habitat for California spotted owls (FEIS, pg. 217). Each of these studies found that areas within ~200 ha (500 acres) of nests were influential in determining occupancy and/or fitness. Blakesley (2003) states that occupancy, apparent survival and nesting success all increased with increasing amounts of old-forest characteristics and that reproductive output decreased with increasing amount of non-habitat within the nest area (nest area = 203 ha scale, or 500 acres). These studies suggest that effects outside of the PAC may influence a site's "quality" for spotted owls. Based on these studies, one could argue that management actions that reduce high-quality spotted owl habitat within a 500- acre area around known nests could present more risk to owls than activities occurring outside of this area. Table 3.43 (FEIS, pg. 217) shows the potential suitable habitat acres treated within the 500-acre area around an owl activity center for the owl activity centers directly affected with Alternative 4. There would be no activities within the 300-acre PACs with the Freeman Project (FEIS, pg. 217).

The FEIS also analyzed impacts at the home range core area scale. Based on Table 3.40 (FEIS, pg. 215), approximately 631 acres of suitable foraging and nesting habitat (CWHR 4M, 4D, 5M, 5D) could potentially be rendered unsuitable under Alternative 4, based on DFPZ, area thin treatments w/biomass removal and Group Selection prescriptions within the three directly affected HRCAs (FEIS, pg. 214). Acres of habitat change ranges from a high of 343 acres in HRCA associated with PL204 to a low of 1.0 acres in HRCA associated with PL274; the average reduction in suitable acres for the 3 HRCAs would be 210 acres with Alternative 4 (FEIS, pg. 214). With Alternative 4, approximately 672 acres of the 4,418 acres or 15% of HRCA within the Wildlife Analysis Area would be impacted. Within the Wildlife Analysis Area there is approximately 6,281 acres of PAC and HRCA combined; thus approximately 89-90% of all PAC/HRCA combined acres would not be treated under the action alternatives. Habitat alteration by the proposed action alternatives and the associated risks to known owl occupancy within individual HRCAs is displayed in Table 3.41.

I find that although the Forest Supervisor did not analyze owl habitat at the scales appellants desired, owl habitat was analyzed at a variety of scales sufficient to inform the decision.

Contention 2: The Forest Service is not considering the adverse impacts of fuel reduction treatments on owl habitat that the Freeman project document are characterizing as suitable 4M. (Appeal, pg. 1)

Response: In both the DFPZ and area thinning, stands will be thinned from below to meet desired conditions (FEIS pg. 157). Changes to suitable habitat as a result of implementing fuels treatments are summarized in Table 3.39 (FEIS, pg. 213). Within the Freeman Wildlife Analysis Area, approximately 60% of the National Forest System land is suitable habitat: post project 52% of the Freeman Wildlife Analysis area will be suitable (FEIS, pg. 144). The PACs, SOHAs, and remaining suitable habitat will be more resistant to decimation by wildfire.

Part of the purpose and need of the Freeman Project is to reduce hazard fuels to create community defense, contribute to HFQLG objectives, and reduce size and intensity of wildfires/SNFPA FEIS ROD 2004. Post treatments have desired results of under 4' flame lengths, (Table 3.5, FEIS, pg. 99) while retaining owl habitat.

I find the Forest Supervisor did analyze the effects of the proposed fuel treatments on owl habitat.

Contention 3: The Forest Service has not adequately considered the potential for owl habitat fragmentation or cumulative impacts. (Appeal, pp. 20-23)

Response: The Freeman wildlife analysis area that defines the context of cumulative effects analysis for TES and MIS species is described on page 30 of the Wildlife BA/BE and page 5-6 of the MIS Report. The analysis of environmental consequences for vegetation, including the cumulative impacts on vegetation from past, present, and reasonably foreseeable impacts provided the framework for assessing the cumulative effects on CSO as referenced in the wildlife cumulative effects analysis (FEIS, pp. 102-107). The FEIS discusses the potential for California Spotted owl habitat fragmentation on pages 158,159, 218-219, and 221. Cumulative effects for the California Spotted owl are discussed on pages 163 and 221

The Wildlife BA/BE (pg. 111), prepared for this document acknowledges that based on the direct/indirect effects, implementation of alternative 4 would contribute to cumulative effects on spotted owl and spotted owl habitat. There would be a cumulative reduction in habitat for the next 50 years in the fuel treatments to 50+ years in group selection areas. However, USFWLS acknowledges that fuels reduction will have a long-term benefit to California spotted owls by reducing the risk of catastrophic wildfires that pose a major threat to California spotted owl habitat (pg. 110).

Contention 4: The Forest Service does not assess impacts in a manner that takes into account the relationship between the absence of owls from formerly occupied habitat and the overall poor habitat conditions in the project area. (Appeal, pg. 17)

Response: Details on owl population studies, including the decision not to list California spotted owls is shown on page 201-205 of the FEIS. Page 213 (Ibid) contains a discussion of the impacts of Alternative 4 to owl suitable habitat.

Table 24 in the Wildlife BA/BE displays the amount of suitable habitat present in the three HRCAs and how the amounts would be modified by each action alternative. This information is also found on Table 3.42 on Page 216 of FEIS. The discussion of habitat conditions on the correlating pages for these tables discloses the conditions and effects to the habitat.

The issue was addressed also in Appendix G, page 579 of the FEIS "Response to Comments," Comment 5.12, and focused appropriately on habitat affected by the project.

A further discussion of effects to individuals is beyond the scope of this analysis; project level analyses require focus on habitat rather than speculating on the reasons for presence or absence of individuals.

I find the project record contains the appropriate level and focus of analysis of California spotted owl habitat conditions.

Issue 7: The Freeman Project is not ensuring the viability of the American Marten.

Contention 1: The Forest has not considered or explained how marten can remain viable when they appear to have disappeared from much of the Plumas National Forest. (Appeal, pp. 28-32)

Response: The project effects on American marten are discussed in detail within the biological evaluation on pages 149 through 152. Forty recorded observations/detections of American marten on the Plumas NF date back to 1975. None of these sightings were in the Freeman Wildlife Analysis Area. Numerous surveys since 1994 have not detected marten in the project area. The closest sightings are in the Lake Basin Area about 9.5 miles south. (Wildlife BA/BE, pg. 146)

Based on Zielinski (2005), trends in marten detections in Plumas County and by inference the Plumas NF, from the early 1900's to the late 1900's are downward, primarily due to relatively small amounts of late seral/old-growth forest attributes (FEIS, pg. 258).

The Plumas NF has mapped a draft forest carnivore network that consists of scattered known marten sightings, large habitat management areas and wide dispersal or connecting corridors. The intent of the network is to provide a continuously connected system of habitats focused on the needs of marten and fisher. This corridor is designed to provide a habitat connectivity corridor linking the Tahoe NF with the Lassen NF (FEIS, pg. 251).

In addition, the SNFPA FSEIS ROD provides guidelines which call for the retention of between three and six snags per acre over 15" dbh and maintaining between three large down logs per acre (eastside) or 10-15 tons of large downed woody material per acre (westside).

The effects analysis in the Wildlife BA/BE displayed the potential impacts to marten habitat, including the uncertainty regarding potential cumulative impacts (Wildlife BA/BE, pp. 149-155), however determined that no loss in viability would occur due to the following:

1. Retention of 83% of existing suitable denning habitat on National Forest within the 41,388 acre Wildlife Analysis Area (Alternative 4 – Table S-3)
2. Retention of 87.8% to 90.6% of existing suitable habitat within the draft forest carnivore network in the 41,388 acre Wildlife Analysis Area (Alternative 4)
3. Creation of a network of fuel reduction areas designed to reduce the loss of habitat due to wildfire (Wildlife BA/BE, pg. 157; FEIS, pg. 268)

I find the project record supports the determination that no loss in viability for the marten would occur.

Contention 2: The Forest Service is not considering the adverse impacts of fuel reduction treatments on marten habitat that the Freeman project documents are characterizing as suitable 4M. (Appeal, pp. 32-33)

Response: The purpose and need of Freeman Project is to reduce hazard fuels to create community defense, contribute to HFQLG objectives, and reduce size and intensity of wildfires/SNFPA FEIS ROD 2004. Post treatments have desired results of under 4' flame lengths, (Table 3.5, pg. 99) while retaining habitat.

Effects of fuel reduction treatments on American marten habitat are displayed in the FEIS (pp. 262-267) and in the Wildlife BA/BE (pp. 149-155). Alternative 4 reduces 4D and 5D (denning habitat) quality on 1,549 acres of 9,077 acres and reduces 4M and 5M (foraging habitat) quality on 1,867 acres of 15,749 to 15,913 acres (FEIS, pg. 263). It is an unknown how some of the important prey species preferred by marten and fisher (e.g. small mammals and birds) would respond to group selection harvest units. The increased diversity and edges created by groups within forested stands may provide increased foraging opportunities for marten and fisher (FEIS, pg. 264).

In both the DFPZ and area thinning, stands will be thinned from below to meet desired conditions (FEIS, pg. 157). Changes to suitable habitat as a result of implementing fuels treatments are retention of 82.9% to 86.8% of current suitable denning habitat, and 87.8% to 90.6% of the current suitable habitat network (FEIS, pg. 268; FEIS, pg. 264, Table 3.55). Post Freeman treatment the remaining habitat will be better protected from wildfire.

I find the project record discloses the effects of treatments on marten habitat.

Contention 3: The Forest Service has not adequately considered the potential for marten habitat fragmentation. (Appeal, pg. 8)

Response: The biological assessment discusses the general effects of group selection on fragmentation (Wildlife BA/BE, pg. 38). With Alternative 4, 46 acres of group selection acres would create gaps within 4M, 4D, 5M, 5D forested stands within the draft forest carnivore network. It is estimated that approximately 577 acres of DFPZ and 274 acres of area thin treatments with biomass removal would occur within 4M, 4D, 5M, 5D forested stands within the draft forest carnivore network (FEIS, pg. 263).

The BA/BE states (pp. 154-155) that while the Freeman project potentially contributes to a cumulative reduction in suitable marten habitat, it is uncertain as to what influences these various reductions in habitat would do to potential future marten activity in the Freeman Wildlife Analysis Area. The reductions are not expected to increase any large scale high contrast fragmentation above existing levels. Thus habitat connectivity is maintained across the Forest north to south from Middle Fork Feather River to Grizzly Ridge and on to Mt. Jura.

I find the Forest Supervisor adequately considered possible marten habitat fragmentation.

Issue 8: Because population monitoring data are absent or inadequate for many of the MIS species, the effects analysis for these species is also inadequate. (Appeal, pp. 43-44)

Response: Project level MIS analysis was completed specifically for the Freeman Project. The project level analysis (Freeman Project Management Indicator Species Report (MIS Report)) documented the species that were present in the project area or had habitat that would be affected and therefore warranted further analysis. The MIS Report analyzed activities potentially impacting MIS and their habitat as part of the effects analysis. Estimated populations of selected MIS species, survey efforts, and project level distribution for mule deer, Canada geese, golden eagle, prairie falcon, the trout group and largemouth bass were covered in the project level MIS Report. Those wildlife MIS species that are also TES are discussed in the Freeman Project Biological Assessment/Biological Evaluation (Wildlife BA/BE). A list of TES species that potentially occur on the Plumas National Forest is found in Table 3.1 on page 13 of the Wildlife BA/BE. Project level affects analysis was completed for bald eagle, American peregrine falcon, California spotted owl, northern goshawk and American marten, and disclosed in the Wildlife BA/BE by species. These reports disclosed the potential impacts of the proposed action on MIS.

The Freeman Vegetation Management project record also included the 2006 Plumas National Forest Management Indicator Species report. This report provided a full analysis of the current distribution and status of all MIS located on the Plumas National Forest. The project record addressed Management Indicator Species documented in the Plumas Forest Plan (ROD, pg. 3), and listed in Appendix G (pp. G-1 and G-2) of the Plumas National Forest Land and Resource Management Plan (BE, pg. 6).

I find that the Forest Supervisor adequately analyzed and disclosed effects to Management Indicator Species. He included population information for Plumas NF MIS where known.

Issue 9: The Forest Service is not complying with its legal obligations to monitor for wildlife.

Contention 1: Monitoring required by the forest plan was not completed for 23 species evaluated in the Freeman project and additional species affected by the project. (Appeal, pp. 47-52)

Response: Unless project level monitoring is specifically listed in a forest land and resource management plan, there is no requirement to monitor at a project-specific level. Monitoring requirements for wildlife species are listed in the Plumas Land and Resource Management Plan (Plumas LRMP). Appendix E of the SNFPA amended the Plumas LRMP population monitoring requirements for those species identified as MIS. Habitat monitoring as indicated in the Plumas LRMP (1988) remains the same. The summary of population monitoring on the Plumas National Forest is located in the 2006 Plumas National Forest Management Indicator Species Report.

In the FEIS Response to Comments (5-22, pg. 581) the issue of monitoring non-MIS species was addressed:

> The Woodpecker Group and gray squirrel are not identified as Management Indicator Species (MIS) in the 1988 *Plumas National Forest Land and Resource Management Plan* ("Forest Plan") Appendix G and are therefore not subject to Appendix E of the 2001 Sierra Nevada Forest Plan Amendment (2001 Framework).
>
> For the Woodpecker Group and gray squirrel, the Monitoring Plan for the Plumas Forest Plan speaks to monitoring habitat, specifically with regards to meeting Standards and Guidelines for snags and hardwoods and does not discuss monitoring populations of woodpeckers and gray squirrels. The effects of the Freeman Project and subsequently woodpecker species and gray squirrels, are collectively discussed in the Freeman Project Wildlife Supplemental Report.

I find the Forest Supervisor adequately disclosed monitoring results where known.

Contention 2: The assertion that there is an upward trend on the Plumas National Forest for California spotted owl is not supported by monitoring data. (Appeal, pp. 52-53)

Response: The California spotted owl was petitioned to be listed as a federally listed species under the Endangered Species Act. In May of 2006, the US Fish and Wildlife Service determined that in California this action was not warranted. The US Fish and Wildlife Service found that the populations in the Sierras showed little evidence of a decline, and concluded that the owl status in the Sierra Nevada is not deteriorating as is evidenced by the increasing adult survival and stationary trend of the populations (FEIS, pg. 204). The Draft 2006 Meta analysis *Demography of the California Spotted Owl in the Sierra Nevada: Report to the US Fish and Wildlife Service on the January 2006 Meta-Analysis* (referred to as Blakesley et al 2006) is the most current and comprehensive summary of population trends for the California spotted owl. It has been prepared to help in the decision process for the potential listing of the California spotted owl. The 2006 meta-analysis was similar to the 2001 meta-analysis (Franklin et al. 2004) but included 5 years of additional data (2001-2005), excluded the San Bernardino study and included a population viability analysis. This 2006 meta-analysis indicates that there is no strong evidence for decreasing population trends from any of the demographic studies.

I find the project record adequately discloses the reasoning for concluding that the California spotted owl population is not decreasing.

Contention 3: The finding of an upward trend for the goshawk population on the Plumas National Forest is not supported by evidence. (Appeal, pp. 53-54)

Response: The FEIS acknowledges that there is uncertainty about the trend for goshawk population while acknowledging the increase of goshawk "protected activity centers" (PAC) since the development of the Forest Plan (FEIS, pg. 228). The FEIS indicates that the goshawk population on the Plumas appears relatively secure with an upward trend (FEIS, pg. 229) based on recent survey work by Redwood Sciences Lab on the Plumas National Forest (FEIS, pp. 228-229).

I find the Forest Supervisor had evidence to support the finding of an upward trend for the goshawk population on the Plumas NF.

Issue 10: The Freeman Project violates applicable regional soil standards ensuring the protection of soil quality and NEPA for failing to disclose relevant and significant information regarding impacts to soil quality. (Appeal, pp. 55-60)

Response: The soils standards described in the FEIS and the *Cumulative Watershed Effects and Soils Assessment* (Drake 2006, Freeman Project Record) follow "Region 5 Soil Quality Standards" (FSH 2509.18) and soil standards listed on pages 4-43through 4-45 in the Plumas National Forest Land and Resource Management Plan (1988). The Freeman FEIS lists in Appendix C and D Standards and Guides and Standard Operating Procedures, respectively.

The *CWE and Soils Assessment* contains information and soil map units from Order II and III soil surveys of the Plumas National Forest, which are higher order surveys than required by the aforementioned standards. Page 357 of the FEIS outlines soil resource inventory methods; the *CWE and Soils Assessment* contains additional in-depth information.

The *CWE and Soils Assessment* and the FEIS (pp. 383-390) disclose the results from the soils assessment. For example, Table 8 on page 39 of the *CWE and Soils Assessment*, and Table 3.87 (FEIS, pg. 386), exhibit soil productivity assessments for average percent effective ground cover in sampled treatment units of the Freeman Project.

The effects to soils by alternative are disclosed in Table 2.6 "Other effected (sic) resources in the Freeman Project area" (FEIS, pg. 70) and in "Summary of Effects" (FEIS, pp. 346-348). Soil compaction risks and potential for the Freeman Project are disclosed and discussed in the FEIS on pages 367, 372-399 and on pages 38-39 in the *CWE and Soils Assessment*.

The Forest Inventory Assessment for the Freeman Project (Project File) includes unit-by-unit inventories of: canopy cover, California Wildlife Habitat Relationship (CWHR), **downed woody debris**, and snags. This inventory indicates the existing distribution of downed wood debris in six size classes ranging from 0.0" to greater than 20.1". The role of Large Woody Debris in soil formation is discussed in the FEIS (pp. 345, 357, 373-374, 377-8, 388-9) and on page 41 of the *CWE and Soils Assessment*.

Protection measures by alternative are given on page 78 of the FEIS; monitoring requirements are found in Appendix F. The *CWE and Soils Assessment* describes in greater detail the effects by alternative.

Page 75 of the *CWE and Soils Assessment* addresses BMP effectiveness monitoring. Page 55 in Appendix F (FEIS) gives an overview of the BMP effectiveness monitoring program, as well as project Watershed and Soil Resource monitoring activities.

I find that the Forest Supervisor adequately analyzed and disclosed effects to soil productivity.

<u>Issue 11:</u> Snag levels in the project area are not evaluated. This violates the Forest Plan and NEPA. (Appeal, pp. 44-45, 54-55)

Response: The 2005 Forest Inventory Assessment for the Freeman Project (Project File) includes unit-by-unit inventories of: canopy cover, CWHR, downed woody debris, and **snags**. Snags were counted within inventoried plots and divided into two size classes: smaller or greater than 20". Individual snags over 20" were measured and recorded in the inventory.

Snags will be harvested during implementation of the Freeman project for safety and access. The loss or gain of snags during implementation of the Freeman project is undetermined, though the intent of the treatment is to retain 3-6 snags per acre.

Snags and logs as components of wildlife habitat are addressed in the FEIS (pg. 329). Snag level effects on habitat are found in the FEIS on page 160.

I find the Forest Supervisor evaluated snag levels in the project area in enough detail to inform his decision.

RECOMMENDATION

The Forest Supervisor's decision and supporting rationale are clearly presented in the Record of Decision. His reasons for selecting Alternative 4 as modified are logical and responsive to direction contained in the Plumas National Forest Land and Resource Management Plan as amended. The Forest Supervisor responded to scoping by identifying issues that drove developing more alternatives. The Forest Supervisor's decision to select and modify Alternative 4 indicates he considered and responded to public input.

My review was conducted pursuant to and in accordance with 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. I reviewed the appeal record, including the comments received during the comment period and how the Forest Supervisor used this information, the Appellant's objections and recommended changes.

Based on my review of the record, I recommend the Forest Supervisor's decision be affirmed on all issues. I recommend that the appellants' requested relief be denied on all issues.

/s/ Terri Marceron

TERRI MARCERON
Appeal Reviewing Officer
Forest Supervisor, Lake Tahoe Basin Management Unit