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Title:

Comments: Please accept this revised scoping comment letter and delete the previous comment letter submitted earlier today.

To the Interdisciplinary Team, We submit the following scoping comments on the Proposed Action (PA) for the SERAL 2.0 Project ("Project"). We support land management actions that reduce wildfire risk for people and nature while maintaining and protecting sensitive species and ecosystems. We are especially supportive of actions that restore the function of beneficial fire to landscapes, since it is through this natural disturbance process that resilience will be restored and biodiversity conserved. To this end, we very much appreciate the inclusion in the PA of prescribed fire over the project areas and that this also includes some areas with prescribed fire as the first entry. We are concerned, however, that the PA as currently described does not strike the right balance between protecting sensitive resources and logging. We describe these concerns in our comments below.

I. Use of Emergency Situation Determination (ESD) for the Project

The letter announcing the opportunity to comment indicates that an ESD has been granted by the Secretary of Agriculture for this Project. This means that among other things, the predecisional objection process under 36 CFR 218 would be waived. It is our understanding that due to the backlog of work related to SERAL 1, implementation of most treatments proposed by SERAL 2 is not possible for 2 to 3 years at least. This appears to be the case for both your agency and the private sector that would implement the project. We also note that many of the treatments cannot occur immediately. Some only can occur 5-7 years or 10-12 years after an initial action, and or will take 10-20 years to complete, given the current levels of funding, seedling supply, and workforce (both agency and private sector). These are long term actions that will take many years to implement and are not emergency actions. Emergency authorities, as noted in the scoping letter truncate public involvement; they also limit the consideration of alternatives and limit judicial review. The PA includes many actions that are controversial, including mechanical fuel treatments in inventoried roadless areas (IRAs) and Wild and Scenic River Corridors (WSRC), forest plan amendments to allow habitat degradation for species at-risk, exemptions from these forest plan amendments that cover most of the project area and allow even more habitat degradation, and herbicide use to manage fuel breaks. Limiting the alternatives considered to the No Action and PA prevents the evaluation of alternatives that could achieve the project objectives and provide better protection for the sensitive resources, including those mentioned here. The ESD process significantly limits public engagement. We object to your agency using emergency authorities for this project, especially since your agency and partners currently do not have the capacity to speedily implement the emergency action project and most of the actions themselves will be implemented over the long term.

II. California Spotted Owl

California spotted owl (CSO) is a Forest Service Sensitive Species and has been proposed for listing under the Endangered Species Act (88 FR 11600). Threats that compel the listing include habitat destruction and modification from logging, high severity wildfire, and climate change (USDI Fish and Wildlife Service 2022, p. iii).

A. The Project-Specific Forest Plan Amendments Provide Less Conservation than the Recently Adopted Forest Plans for the Sierra and Sequoia National Forests.

Your agency, the USDA Forest Service, recently adopted revised forest plans for the Sierra and Sequoia National Forests that are immediately adjacent to and south of the Stanislaus National Forest. Revision of these forest plans included plan components to implement the CSO strategy developed by your agency in 2019 (USDA Forest Service 2019). The Records of Decision issued in May 2023 for the Sierra and Sequoia National Forests find that the adopted plan components are required to "provide the ecological conditions necessary to maintain a viable population of each species of conservation concern in the plan area." (See for example USDA Forest Service 2023c, p. 201). The Records of Decision also found that the plans provide "both ecosystem-level plan components to improve forest resilience and maintain habitat, and species-specific plan components that avoid potential near-term adverse impacts to breeding spotted owls and their habitat." (See for example Ibid, p. 19.) Thus, your agency determined that the suite of adopted plan components was required to meet the National Forest Management Act as implemented using the 2012 Planning Rule. Contrary to the revised forest plans, the project-specific forest plan amendment in the

PA includes numerous plan components that are not consistent with the revised forest plans adopted in May 2023. The proposed plan components allow habitat to be degraded to a greater extent than the newly revised forests plans. The following are examples of key differences between the revised forest plans and the PA that result in less conservation and greater risk to CSO's viability under the PA compared to the revised forest plans.

1. **Desired Conditions for Territories** The revised forest plans establish desired conditions for CSO territories that target the highest quality habitat: SPEC-CSO-DC 02 At least 40 percent (for dry vegetation type and site conditions) or at least 60 percent (for moist vegetation type and site conditions) of each California spotted owl territory consists of the highest quality nesting and roosting habitat (see definition above) in large enough patches to provide interior stand conditions, generally 1 to 2 tree heights from an edge. [Emphasis added]² (USDA Forest Service 2023b, p. 62) In contrast, the PA conflates the ranking of habitat quality within the territory with the desired condition, mistakenly allowing lesser quality habitat to satisfy the desired condition in a territory. This is a critical difference between the revised forest plans and the PA. If the desired conditions are not met in the territory, then there are limits to how logging can modify habitat. The PA allows lower quality habitat to satisfy the desired condition and allows habitat reduction and degradation. Even though over 90% of the territories within the project boundary have far less than 40% in highest quality habitat, limits to logging, as can be seen by reviewing the [Idquo]notes[rddquo] column of Table B.02-4 (PA, p. 57), are rarely invoked because the table concludes that desired conditions have been met.

2. **Definition of [Idquo]Maintain or Improve Habitat Quality[rddquo]** Several plan components related to protected activity centers (PACs), territories, and survey requirements are linked to the requirement to [Idquo]maintain or improve[rddquo] habitat quality. The revised forest plans define maintain and improve as follows: Management activities that maintain or improve habitat quality in the highest quality and best available nesting and roosting habitat would: Management activities that maintain or improve habitat quality in the highest quality and best available nesting and roosting habitat would:[middot] Retain existing CWHR canopy cover class (e.g., do not reduce 5D to 5M);[middot] Retain clumps of the largest available trees greater than 24 inches diameter at breast height; and[middot] Retain at least two canopy layers at the stand/patch scale in areas where large trees occur.(USDA Forest Service 2023, p. 59). In contrast, the PA defines [Idquo]maintain or improve[rddquo] to include actions that reduce habitat quality, e.g., reducing canopy cover class. For instance, our review of the data provided in the scoping package for the SERAL project suggests that CWHR 5D would be reduced to CWHR 5M, a reduction in canopy class, on over 800 acres in territories. And, roughly 250 acres in territories could be reduced from CWHR 5M to CWHR 5P. The definition of [Idquo]maintain or improve[rddquo] in the PA also affects another plan component in ways that exposes CSO to more risk and habitat degradation or loss. The PA includes a standard about surveys indicating that pre-implementation surveys are not required for actions planned outside of PACs that [Idquo]maintain or improve[rddquo] habitat (PA, p. 64, SPEC-CSO-STD-01). This means for the PA that pre-implementation surveys are not required for actions that reduce habitat quality, e.g., change canopy cover class. This increases the risk that occupied owl sites will be negatively affected by logging either from disturbance or habitat alteration and destruction.

3. **Standard for Management in a Territory** The desired condition in the revised forest plans is linked to a standard that directs how habitat within the territory is to be maintained if desired conditions are not met. This standard requires that if desired conditions are not met, then highest quality habitat must be maintained (USDA Forest Service 2023b, p. 63, SPEC-CSO-STD-03). Further, the standard requires that for territories with pair status, best available habitat must be maintained to meet desired conditions with CWHR 4D prioritized over 4M (Ibid.).³ The standard in the PA (PA, p. 64, SPEC-CSO-STD-07) only requires the retention of highest quality habitat if the desired condition that includes lower quality habitat has not been met. The standard in the PA also does not address retention of the next best habitat available, CWHR 4D, if there is insufficient highest quality habitat. The omission of retaining CWHR 4D habitat is especially concerning, since there is so little CWHR 5M and 5D habitat in the project area and CSO are likely depending on CWHR 4D to a much greater extent to meet reproductive requirements. The combined effect of the misstated desired condition for the territory and the more liberal standard for territory management in the PA is to reduce the quality and quantity of reproductive habitat. To get a sense of the potential for habitat degradation under the PA, we examined the habitat quality in territories under Forest Service ownership with at least 600 acres within the project boundary. Of the 44 territories we examined using the data provided in the scoping package (PA, Table B.02-4), only 4 meet the desired conditions as stated in the revised forest plans. In contrast, 42 of the 44 territories meet the desired condition as stated in

the PA. This means that the PA will result in greater reduction in habitat quality and less constraint on habitat reducing activities compared to the revised forest plans. The PA also exempts compliance with this standard within WUI, fuel breaks and Priority PODs 1-10. The exempted areas cover more than half of the project area and would exempt upwards of 75% of the territories from meeting this standard. In contrast, the standard for management in a territory in the revised forest plans is exempted only from the community buffer (USDA Forest Service 2023b, p. 63, SPEC-CSO-STD-03), an area that is close to communities and infrastructure (Ibid., p. 184). If this exemption for territory management was only applied in community buffers in the PA, only a modest portion of the SERAL 2.0 project area and only a few territories would be affected.

4. Landscape Analysis: Moist Mixed Conifer Versus Dry Mixed Conifer

For both the PA and the revised forest plans, a landscape analysis is needed to determine if territories are dominated by moist or dry conditions and to establish the range of 40% to 60% of the territory in a specific desired condition. The revised forest plans include an appendix that establishes a method for assessing conditions and assigning the desired condition for each territory (USDA Forest Service 2023b, Appendix H, p. 181-182). This method uses the Sierran Mixed Conifer and Red Fir (RF) WHR types established in the Existing Vegetation (EVEG) along with topographic position data to assign a territory to [Idquo]Moist Mixed Conifer[rdquo] or [Idquo]Dry Mixed Conifer[rdquo]. The distinction between [Idquo]moist[rdquo] and [Idquo]dry[rdquo] is primarily based on topographic position, i.e., moist = drainage bottom, northeast slope; dry = ridge, southwest slope. In contrast, the PA relies on an analysis that assigns [Idquo]Moist Mixed Conifer[rdquo] or [Idquo]Dry Mixed Conifer[rdquo] to the landscape, but does not specifically identify the criteria that were used to distinguish [Idquo]moist[rdquo] from [Idquo]dry[rdquo]. A close examination of the GIS data included in the scoping package indicates that determination of mixed conifer as [Idquo]moist[rdquo] or [Idquo]dry[rdquo] is not dependent on topographic position. For example, there are many areas identified as [Idquo]dry mixed conifer[rdquo] that are Sierran Mixed Conifer WHR types located in drainage bottoms and northeast facing slopes. These are locations that would be considered [Idquo]moist mixed conifer[rdquo] using the methods adopted in the revised forest plans. A rough comparison of the data provided indicates that the extent of the [Idquo]moist mixed conifer[rdquo] is underestimated in the PA and scoping package (PA, p. 49, Table B.01-4). This underestimation of [Idquo]moist mixed conifer[rdquo] translates into desired conditions for territories that provide less suitable habitat compared to the approach used for the revised forest plans.

5. Failure to Provide for Conservation Consistent with the Recently Revised Forest Plans is Arbitrary

The project-specific forest plan amendments in the PA provide for less conservation for CSO compared to the recently revised forest plans for Sierra and Sequoia National Forests. The team working on the SERAL 2 project is aware of the newly adopted forest plans, but chose to ignore them. Forest Service decision makers have made findings that the revised forest plans were based on the best available science information and that the plan components were necessary to provide for the ecological conditions to support viable populations of CSO. The PA disregards forest plan components and analytical approaches found to be essential to CSO conservation in the revised forest plans. The PA is inconsistent with recently adopted forest plan components and is arbitrary. The PA also results in less conservation and greater risk to this species that has been proposed for listing under the Endangered Species Act.

B. Increased Conservation for CSO is Needed

Additional conservation measures for this at-risk species to reverse its decline. We ask that you include the following in the PA as revised plan components or design measures to provide for the ecological conditions necessary to maintain viable populations of this species:

- [middot] Adopt the following definition, plan components, explanatory table, and analysis approach from the newly revised forest plan for the Sierra National Forest:
 - [sect] Definition of [Idquo]maintain and promote[rdquo] habitat in USDA Forest Service 2023 (p. 61)
 - [sect] SPEC-CSO-DC-02
 - [sect] SPEC-CSO-STD-03
 - [sect] USDA Forest Service 2023b, p. 61, Table 8
 - [sect] USDA Forest Service 2023b, p. 181, Appendix H and revise Table B.01-4.
- [middot] Restoration Needs, accordingly
- [middot] Limit the exception in SPEC-CSO-STD-07 to the Community Buffer, as defined in USDA Forest Service 2023b (p. 184)
- [middot] Maintain at least 50% canopy cover in treated units within PACs to improve suitability
- [middot] Maintain and promote, as defined in USDA Forest 2023b (p. 61), highest quality habitat wherever it occurs in the project area (not just in territories to meet desired conditions), because it is in such low abundance in the project area.
- [middot] Retain CWHR 4D in PACs with low amounts of highest quality nesting and roosting habitat to provide for required nesting and roosting habitat
- [middot] Retain CWHR 4D in territories of all occupancy status (not just pairs) to satisfy desired conditions when highest quality habitat is not available.
- [middot] Retain 60% or higher amounts of

highest quality and best available habitat in all territories to compensate for such low amounts of higher quality habitat across the landscape. If these measures are not included in the PA, we ask that you evaluate them in an alternative in the DEIS.

C. Analysis in the Draft Environmental Impact Statement To evaluate the impacts of the PA on CSO, we ask that you complete a PAC-by-PAC and territory-by-territory analysis comparing pre- and post-treatment conditions to evaluate: 1) the degree to which logging reduces dense canopied forests, i.e., reduces CWHR 6, 5D or 4D to lower cover classes; and 2) other changes to CWHR types 4M and 5M. These analyses should evaluate the changes to specific CWHR classes and not aggregate the classes into more generalized types like foraging habitat or nesting/roosting habitat. The DEIS should also assign a specific desired condition to each territory and use this threshold to make adjustments to actions to ensure that desired conditions are maintained. This assignment should be based on the approach adopted in the recently revised forest plans for the Sierra and Sequoia National Forests.

III. Pacific Marten Pacific marten is a Forest Service Sensitive Species and a Species of Conservation Concern on the adjacent Sierra National Forest. Marten populations decline and become extirpated in areas where canopy cover is managed below 65-75% (Hargis et al. 1999; Potvin et al. 2000; Moriarty et al. 2011). Moriarty et al. (2016) tracked 22 Pacific marten for four years with GPS collars to examine their habitat requirements. The researchers describe marten home ranges with 40-80% structurally complex stands and 24-33% simplified stands (i.e., recently treated DFPZ fuel reduction treatments at 40% canopy cover) and 4-10% openings (meadow, talus, group selection on public lands and clear cuts on private lands). They found that these habitat conditions are not ideal for marten because the mortality rate (mostly bobcat and coyote predation) during the study was the highest ever recorded for marten. The study concluded that these habitat conditions may be at a critical threshold beyond which marten may not survive. The PA resembles the logging projects evaluated in Moriarty's studies. In light of this, the DEIS should specify how marten persistence is supported during mechanical treatments in marten habitat.

IV. Use of Herbicides to Maintain Fuel Breaks The PA includes the application of herbicide to control shrubs and other plants on up to 13,000 acres in fuel breaks. The herbicides and associated surfactants proposed for use are known to be hazardous to humans and wildlife. For example, glyphosate has been identified by the World Health Organization as a potential carcinogen and a ban on its sales and use has been proposed by the European Union (Agathokleous 2022). The proposed fuel breaks are features that you intend to use to manage fire for the indefinite future, and we object to the use of herbicides for their ongoing maintenance. We ask that maintenance treatments be designed to minimize the use of herbicides and maximize the use of non-chemical control methods. For instance, we ask that the creation of fuel breaks be sequenced with prescribed fire as a follow up treatment to maintain desired fuel profiles and begin the process of reintroducing fire to the landscape.

V. Logging Trees Up to 40" Diameter at Breast Height (DBH) We are especially concerned about the removal of trees up to 40" DBH for meadow and aspen restoration. The extent and location for meadow and aspen restoration has not been described in the PA. Trees of this size provide important habitat structure and carbon storage. Trees of this size are also not common on the landscape. To address our concerns, we ask that you include the following in the DEIS:

- Map and summarize the locations of the proposed meadow and aspen restoration;
- Estimate the number of trees by restoration location targeted for logging that are over 30" DBH;
- Include a design measure to girdle large and very large trees, leaving them as standing dead trees, or fell these trees and leave in place as large wood or move to a site with low levels of large wood.

VI. Treatments in Inventoried Roadless Areas (IRAs) and Wild and Scenic River Corridors (WSRCs) The PA mentions conducting treatments IRAs and WSRCs, but does not identify the IRAs or WSRCs affected or the area to be treated. The draft EIS should disclose the specific locations for treatment in the IRAs and WSRCs and describe in detail the logging or mechanical treatment to be conducted. In general, we support management in IRAs, consistent with the Roadless Area Conservation Rule (RACR), to accomplish fuel reduction that focuses on stand-alone prescribed fire and the removal of small diameter trees. We also support management in WSRCs to reduce fire hazard while protecting the outstandingly remarkable values for which the area was designated. Because the PA does not provide any detail about the approach to be taken in the IRAs or WSRCs in the Project, we are unable to tell if the activities proposed would be consistent with the RACR or comply with the WSR Act. For any action proposed in an IRA or WSRC, we ask that design measures to achieve the following be included in the PA:

- Limit the removal of trees to those less than 16" DBH;
- Ensure that the overstory remains intact;
- Ensure that surface and ladder fuels are reduced compared to existing

conditions;[middot] Ensure that the use of existing roads does not result in obvious visual disturbance to the treated area;[middot] Ensure that ground disturbance from timber operations is remediated and trails and other scars are not visible;[middot] Ensure that within the season after treatment, any roads that were used are decommissioned, remediated and removed; and[middot] Place and maintain barriers to prevent the use of roads in IRAs and WSRCs during operations and until roads can be decommissioned. In the environmental analysis, we ask that you discuss how the project would impact, either positively or negatively, the ecological condition and characteristics associated with IRAs in the context of possible future conservation designations, including wilderness. For the WSRC, we ask that you evaluate the impacts of the outstandingly remarkable values for the WSRC.

VII. [ldquo]Speculative[rdquo] Decision for Future Salvage Logging

The PA includes post-disturbance logging to salvage trees affected by fire, insects and disease. Management requirements are noted for this salvage logging. This speculative decision making is referred to as condition-based management (CBM). The salvage logging aspect of the PA is nearly identical to the speculative management that was included in SERAL 1. We object to the use of this controversial approach to management for the same reasons we raised in our comments on SERAL 1. And as we noted in our comments on SERAL 1, there are many other environmental decision-making processes that can be used to expeditiously address the desire to salvage dead or dying trees including categorical exclusions and environmental assessments combined with shortened decision-making time lines that can be requested of CEQ. We are concerned about a trend in Forest Service projects to use CBM as part of the NEPA process. The idea of CBM has been circulating in the Forest Service for several years. In 2019 a definition was proposed for inclusion in Forest Service regulations on implementing the National Environmental Policy Act (NEPA; 36 CFR Part 220), but was abandoned in the final rulemaking. The American Bar Association recently reviewed the status of CBM and offered the following as a description of CBM: CBM projects use an overarching set of [ldquo]goal variables[rdquo][mdash]predetermined management criteria that guide implementation[mdash]that Forest Service staff apply to on-the-ground natural resource [ldquo]conditions[rdquo] encountered during the course of project implementation, a period that can span years or even decades: essentially, when the Forest Service finds X resource condition on the ground, it applies Y timber harvest prescription. However, basic information regarding the project[rsquo]s details[mdash]such as unit location, timing, road building, harvesting methods, and site-specific environmental effects[mdash]is not provided at the time the Forest Service conducts its NEPA environmental review (when the public can weigh in), nor when it gives its final approval to a project (when the public can seek administrative review). Instead, site-level disclosures are made after NEPA environmental and administrative review is complete, depriving the public of opportunities to comment and influence the decision based on localized conditions. (Cliburn et al. 2021)

Management frameworks that establish goals and approaches to achieving them can make project planning more efficient. This is what a well-designed forest plan can provide. This type of guidance also can be provided by [ldquo]left-side analysis[rdquo] that has formed the basis of landscape planning completed by the Forest Service for the past 25 years. The problem, however, comes with the Forest Service[rsquo]s attempt to marry CBM with the requirements of the National Environmental Policy Act (NEPA). NEPA requires federal agencies to disclose to the public and in advance of environmental decision making the likely site-specific impacts of project related activities. In a recent legal case, the courts held that the Forest Service[rsquo]s Prince of Wales Landscape Level Analysis Project[mdash]a 15-year logging project on Prince of Wales Island in the Tongass National Forest using CBM[mdash]violated NEPA because it failed to provide the site-specific analysis that was needed to satisfy NEPA[rsquo]s [ldquo]hard-look[rdquo] standard. See *Se. Al. Conservation Council v. U.S. Forest Serv.*, 413 F. Supp. 3d 973 (D. Alaska 2019). Central to our concern is the identification of the locations for the proposed treatments and disclosure of the site-specific impacts of the proposed treatments on the affected resources. NEPA requires such analysis and disclosure. This is recognized in the draft document on CBM developed by the Forest Service. Importantly, that document states [ldquo]It is incumbent upon the Forest Service to provide enough site-specificity in the proposed action, existing conditions, and effects analysis in order to comply with NEPA[rdquo] (USDA Forest Service 2023a, included as Attachment A). We expect any NEPA documents completed for the Project to meet this standard regarding site-specificity.

Thank you for the opportunity to provide comments on the PA. Please add the individuals listed below to your email circulation list for this project. If you have specific questions about these comments, please contact Susan Britting (britting@earthlink.net).¹ For simplicity, we will refer to the revised forest plan for the Sierra National Forest in this comment section. We note

that with respect to CSO the plan components adopted for the revised forest plans for the Sierra and Sequoia National Forests area the same.