

LASSEN FOREST PRESERVATION GROUP

Forest Issues  
Group



**Sierra Forest Legacy**  
Protecting Sierra Nevada Forests and Communities



May 13, 2019

Objection Reviewing Officer  
Regional Forester  
Tahoe National Forest  
1323 Club Drive  
Vallejo, CA 94529

Submitted via electronic mail to: [objections-pacificsouthwest-regional-office@fs.fed.us](mailto:objections-pacificsouthwest-regional-office@fs.fed.us)

**Re: Objection to Stanislaus National Forest Over-snow Vehicle Use Designation Project & Forest Plan Amendment**

To Objection Reviewing Officer:

The Wilderness Society, WildEarth Guardians, California Wilderness Coalition, Friends of the Inyo, Friends of Plumas Wilderness, Lassen Forest Preservation Group, Forest Issues Group, and Sierra Forest Legacy respectfully submit the following objection to the U.S. Forest Service's decision to select Alternative 5-modified, as analyzed in the Final Environmental Impact Statement (FEIS)

assessing the Stanislaus National Forest Over-Snow Vehicle (OSV) Use Designation Project. The Forest Service's March 2019 Draft Record of Decision (DROD) includes, *inter alia*, designating approximately 129,780 acres of National Forest System lands for public cross-country OSV use across 8 areas, 83.7 miles of OSV trails, and five temporary stream crossings. The DROD also includes amendments to the Stanislaus' 1991 Land & Resource Management Plan that permit OSV designation decisions to override plan direction that Near Natural and Special Interest Areas be managed as semi-primitive non-motorized and closed to motorized travel. The responsible official is Forest Supervisor Jason Kuiken.

**This objection is brought pursuant to both 36 CFR 218 (Project) and 36 CFR 219 (Forest Plan Amendment).**

As required by 36 C.F.R. §§ 218.8(d) & 219.54(c)(1) & (c)(3), the lead objector's name, address, telephone number and email is:

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#### **I. Interests and participation of objecting parties**

**The Wilderness Society** is the leading conservation organization working to protect wilderness and inspire Americans to care for our wild places. Founded in 1935, and now with more than one million members and supporters, The Wilderness Society has led the effort to permanently protect 109 million acres of wilderness and ensure sound management of our shared national lands. We provide scientific, economic, legal, and policy guidance to land managers, communities, local conservation groups, and state and federal decisionmakers. In doing so, we hope to ensure the best management of our public lands for recreation, wildlife conservation, water quality, and the ability to enjoy public lands for inspiration and spiritual renewal. The Wilderness Society's members in California, and members from elsewhere who visit California, enjoy the Stanislaus National Forest for activities such as hiking, backpacking, skiing, wildlife viewing, and camping, and for the aesthetic, spiritual, and wildlife values and opportunities it provides. In 2017, The Wilderness Society conducted a comprehensive, field-verified inventory and evaluation of lands on the Stanislaus National Forest that are suitable for inclusion in the National Wilderness Preservation System.

**WildEarth Guardians** is a nonprofit conservation organization with offices in Idaho, Oregon and five other states. WildEarth Guardians has more than 220,000 members and supporters across the United States and the world. Guardians protects and restores wildlife, wild places, wild rivers, and the health of the American West. For many years, WildEarth Guardians has advocated for protection of wild places and wildlife from the disruption of snowmobiles. We have organizational interests in the proper and lawful management of winter motorized travel and its associated impacts on the Stanislaus National Forest's wildlife and wild places.

**California Wilderness Coalition** (CalWild) has been working to protect and restore California's wildest natural landscapes since 1976. These important wild places provide clean air and water,

refuges for wildlife, and outstanding opportunities for recreation and spiritual renewal for people. CalWild is based in Oakland, California, and has staff located throughout the state.

**Friends of the Inyo** is devoted to the preservation of the Eastern Sierra landscapes, animals, plants and natural ecosystems. Friends of the Inyo strives to keep the public lands of the Eastern Sierra, open to all, and unencumbered by inappropriate development. Our core values compel us to advocate constructively based on science and data, and with ethical conduct.

**Friends of Plumas Wilderness** is a grass-roots conservation group that has been conserving public lands and protecting wild places since 1975. Our mission is to study, explore and maintain the integrity of natural ecosystems in the Northern Sierra and Southern Cascades.

**Lassen Forest Preservation Group** has a deep commitment to the diversity of life and habitats on the Lassen National Forest. Our goal is to protect and enhance old growth forests, wildlife, roadless areas, wilderness, wild rivers and watersheds in our surrounding forests.

**Forest Issues Group** is a 501(c)3 non-profit that focuses its activities on the public lands of the sierra forests and the impact of U.S. Forest Service management and private timber sales on these forests. FIG is an organization made up of local citizens committed to healthy national forests. FIG provides community education and public review of U.S. Forest Service management of the National Forests.

**Sierra Forest Legacy** (SFL) is a regional environmental coalition with over 50 partner groups. SFL is focused on the conservation, enhancement and protection of old growth forests, wildlands, at-risk species, protection of the region's rivers and streams, and the ecological processes that shape the forest ecosystem of the Sierra Nevada. SFL is a leader in bringing together scientists and diverse interests on a wide range of forest issues including fire ecology, fuels management, protection of at-risk wildlife species, and socio-economic values associated with public forest management.

Our groups submitted timely scoping comments,<sup>1</sup> and comments on the Forest Service's draft EIS.<sup>2</sup> Wildlife biologist Darça Morgan submitted comments on the DEIS on October 9, 2018 on behalf of WildEarth Guardians, The Wilderness Society, Winter Wildlands Alliance, and Snowlands Network. The Wilderness Society also submitted a March 13, 2018 supplemental scoping letter documenting the methods for and results of its inventory and evaluation of wilderness-suitable lands on the Stanislaus National Forest. These comments are incorporated herein. In addition, we support the objections filed by Winter Wildlands Alliance and Snowlands Network, and the Central Sierra Environmental Resource Center.

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<sup>1</sup> August 10, 2015 Scoping Comments submitted by The Wilderness Society, Sierra Club, Forest Issues Group, Center for Sierra Nevada Conservation, WildEarth Guardians, and Sierra Forest Legacy on Stanislaus National Forest Over-Snow Vehicle Use Designation Proposed Action.

<sup>2</sup> October 9, 2018 Comment Letter submitted by WildEarth Guardians, The Wilderness Society, California Native Plant Society, Lassen Forest Preservation Group, WildPlaces, California Wilderness Coalition, Friends of Plumas Wilderness, Friends of the Inyo, and Forest Issues Group on the Stanislaus Over-Snow Vehicle Designation Project DEIS (referenced herein as "DEIS Comments").

## **II. Issues and Parts of Decision & Plan Amendment to Which the Objection Applies**

We appreciate the efforts that the Forest Service made to implement much of the direction in subpart C of the Travel Management Rule and to analyze impacts associated with OSV use under NEPA. In particular, we applaud the agency for identifying 8 discrete areas that better reflect the paradigm shift – from a default open unless designated closed approach, to a closed unless designated open approach – that subpart C requires. We appreciate the efforts that the Forest Service made to consider OSV impacts to roadless characteristics (*see, e.g.*, FEIS at 77-78, 82-83, 88-90) and provide a clear description of the minimization criteria. We support the Forest Service's decision to adopt a forest-wide minimum snow depth of 12 inches, and 24 inches in Stanislaus Meadow and the Highland Lakes Area. We also agree with the decision not to designate low-elevation areas (below 5,000 feet) that generally lack adequate snowfall for OSV use to occur and to avoid designating OSV use in some sensitive wildlife habitat, including key deer winter range.

Nevertheless, the decision suffers from a number of deficiencies – in particular, the designation of over 25,000 acres of Near Natural Areas for cross-country OSV use and the associated amendments of the 1991 Forest Plan, and the corresponding adverse impacts on sensitive wildlife habitat, quiet recreation, and wilderness and roadless values. As we have stated since scoping, the Pacific Valley and Eagle/Night Near Natural Areas have exceptional ecological, wildlife habitat, non-motorized recreation, and – as recently documented by The Wilderness Society's field-based inventory and evaluation – roadless and wilderness values.<sup>3</sup> Management of these areas as semi-primitive non-motorized represents an important component of the 1991 Forest Plan's conservation, recreation, and species protection vision, and their management – and potential recommendation for wilderness designation or other conservation-oriented management – in the upcoming forest plan revision will be an important component of achieving the 2012 planning rule's mandate to provide for ecological integrity, species diversity, and sustainable recreation (36 C.F.R. §§ 219.8-219.10). Those substantive requirements are directly related to the forest plan amendment, and the Forest Service has not demonstrated compliance with them. The decision to designate Near Natural Areas for OSV use also fails to minimize and sufficiently analyze harm to natural resources, including roadless and wilderness values, harassment of imperiled species, disruption of species' habitat, and conflicts with non-motorized uses.

We believe specific modifications from Alternative 3 and other, unanalyzed alternatives, are necessary to satisfy governing legal requirements, including the minimization criteria and the National Forest Management Act, and provide for balanced and sustainable recreation opportunities for both motorized and non-motorized users and protection of sensitive wildlife habitat. The Forest Service should abandon the forest plan amendment and not designate Near Natural Areas for OSV use – but also be explicit that the decision not to designate Near Natural Areas is subject to reconsideration as part of an upcoming forest plan revision, which will consider how to balance and prioritize the various ecological and social values of Near Natural Areas through programmatic direction that includes whether and which parts of those areas are suitable for OSV use.

We encourage the Forest Service to adopt Alternative 3 with additional modifications, as well as remedy the following deficiencies described in more detail in the following sections:

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<sup>3</sup> See attached map of Alternative 5 modified overlaid with Inventoried Roadless Areas and citizen-inventoried lands suitable for inclusion in the National Wilderness Preservation System.

1. Ensuring compliance with the National Forest Management Act, including the directly related substantive provisions at 36 C.F.R. §§ 219.8-219.10, consistency with existing semi-primitive non-motorized prescriptions, and viability of species;
2. Ensuring compliance with the Travel Management Rule, including demonstrating full compliance with the minimization criteria;
3. Providing an accurate baseline/no action alternative for purposes of NEPA analysis; and
4. Taking a hard look at the direct, indirect, and cumulative impacts of the OSV designations and analyzing a full range of reasonable alternatives.

### **III. Objections and Suggested Remedies**

#### **1. Ensure Compliance with the National Forest Management Act<sup>4</sup>**

Under the National Forest Management Act (NFMA), projects like this must be consistent with the governing land and resource management plan. 16 U.S.C. § 1604(i). The decision to designate over 25,000 acres of Near Natural Areas is inconsistent with forest plan standards and guidelines that those areas are to be managed as semi-primitive non-motorized and closed to motorized use. The 1991 forest plan recognizes those roadless areas' important ecological and social values, including providing important habitat and corridors for sensitive wildlife species and offering unique, high-quality opportunities for quiet recreation. To preserve and protect those important functions, the plan prescribes that Near Natural Areas be managed in a semi-primitive non-motorized setting. The entire purpose of such forest plan direction is to guide implementation-level planning and project decisions like this one. The DROD recognizes as much: "forest plans provide the sideboards for future site-specific actions." DROD at 16. Designating Near Natural Areas for OSV use is inconsistent with the forest plan, in violation of NFMA.

To avoid a blatant NFMA consistency violation, the Stanislaus is amending the forest plan so that non-motorized settings are irrelevant whenever the Forest Service chooses to make an inconsistent designation in a travel management decision. *See* DROD Table 1. This approach sets a terrible precedent on the Stanislaus, throughout the region, and across the National Forest System that forest plan direction means nothing and the Forest Service may remove or alter the guideposts – and associated social compact – established in a forest plan to reward decades of illegal trespass into ecologically critical backcountry areas with exceptional wilderness character, wildlife habitat, and quiet recreation opportunities. Moreover, it can do so on the eve of a potential forest plan revision that will consider at a programmatic level how to balance and manage the various ecological and social values of these areas – short-circuiting and prejudicing that once-in-a-generation process by

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<sup>4</sup> These objection points are largely brought pursuant to 36 C.F.R. 219 in response to the forest plan amendment. However, the point that designation of Near Natural Areas for OSV use is inconsistent with forest plan direction is a 36 C.F.R. 218 objection, and the point that the designation of Near Natural Areas for OSV use and associated forest plan amendments threatens the viability of at-risk species is both a 218 and 219 objection. These objection points were addressed in our DEIS Comments at pp. 6-8 & 23-25, as well as in our 2015 scoping comments at pp. 14-17. Impacts to Sierra Nevada red fox and Pacific marten of opening Near Natural Areas to OSV use were also addressed throughout the DEIS comments submitted by Darça Morgan on behalf of WildEarth Guardians and The Wilderness Society.

sanctioning a use and constituency that greatly reduces the potential the areas will be meaningfully considered for more conservation-oriented management, including but not limited to recommendation for wilderness designation. The amendment also has significant adverse ramifications beyond the instant winter travel planning process because it allows the Forest Service to disregard non-motorized prescriptions and designate additional areas through future travel management decisions. *See* DROD at 17 (suggesting that the amendment will “allow the Forest Service to more rapidly adapt site-specific OSV use designations based on new information and/or changed circumstances as a forest plan amendment will not be required to make future changes in OSV use designations”). In other words, the Forest Service has removed any programmatic direction designed to guide future travel management planning.

Such an amendment is strikingly bad policy – particularly at a time when the Pacific Southwest Region has diligently worked for the past seven years to establish public trust and accountability in forest plan revision processes being undertaken in nearby Sierra Nevada forests with overlapping constituencies. The amendment tells those stakeholders that the hard work and collaboration in which they have invested can be readily disregarded and may not, in fact, provide the promised programmatic sideboards on decision-making for the coming decades. It also suggests to the minority of motorized vehicle users who may be inclined to disregard closures or restrictions that persistent trespass can pay off. In short, the amendment threatens the integrity of the forest planning and travel management planning processes and their interrelationship.

Besides setting a terrible precedent, the amendment also violates the 2012 planning rule’s procedural and substantive requirements. Procedural requirements for forest plan amendments include, among other things, that the Forest Service must base the amendment on a preliminary identification of the need to change the plan. 36 C.F.R. § 219.13(b). Substantively, the Forest Service must determine which substantive requirement(s) of §§ 219.8 through 219.11 are directly related to the amendment and apply those requirement(s) within the scope and scale of the amendment. *Id.* § 219.13(b)(5). The determination must be based on the purpose for the amendment and the effects (beneficial or adverse) of the amendment, and informed by best available scientific information, scoping, effects analysis, monitoring data, or other rationale. *Id.* § 219.13(b)(5)(i). “The responsible official must determine that a specific substantive requirement is directly related to the amendment when scoping or NEPA effects analysis for the proposed amendment reveal substantial adverse effects associated with that requirement, or when the proposed amendment would substantially lessen protections for a specific resource or use.” *Id.* § 219.13(b)(5)(ii)(A). In addition, “if species of conservation concern (SCC) have not been identified for the plan area and if scoping or NEPA effects analysis for the proposed amendment reveals substantial adverse impacts to a specific species, or if the proposed amendment would substantially lessen protections for a specific species, the responsible official must determine whether such species is a potential SCC, and if so, apply section 219.9(b) with respect to that species as if it were an SCC.” *Id.* § 219.13(b)(6). These procedural and substantive requirements have not been met.

First, the Forest Service has not identified a valid need for the amendment. The Forest Service suggests that the amendment is necessary because OSV-use designations were not “fully contemplated” in the 1991 forest plan, which pre-dated the Travel Management Rule, and “OSV use is occurring in management areas in the forest under current management of which the Forest Plan directs are to be managed as non-motorized . . . .” FEIS at 15. Neither of these rationales constitute a valid or defensible need to change the plan. Forest plans need not – and indeed should not – fully contemplate OSV-use designations in order to provide the requisite programmatic direction for which areas are generally to be managed as motorized versus non-motorized. Specific motorized

designations consistent with programmatic forest plan direction are then made through implementation-level travel management planning processes like this one. With respect to the other articulated need for the amendment, the fact that forest plan direction has been disregarded and not enforced in no way provides a valid rationale for sanctioning the resulting trespass by simply discarding the plan direction. In short, the Forest Service's identified need to change the plan is unsupported, arbitrary, and capricious.

Second, even if the Forest Service had provided a valid rationale for the amendment to the forest plan direction that Near Natural Areas be managed as non-motorized, the amendment is unnecessary for Alternative 3, which would not designate those areas for OSV use. Yet the FEIS and DROD articulate that the amendment is consistent under each alternative. *See, e.g.*, DROD Table 1; FEIS at 16. Since Alternative 3 is consistent with forest plan direction for Near Natural Areas, there is unquestionably no need to change the plan under that alternative. This approach also violates NEPA's requirement to analyze a range of reasonable alternatives, since the amendments are consistent across action alternatives, and Alternative 2/No Action Alternative is not being seriously considered because it does not comply with the Travel Management Rule. In other words, the Forest Service failed to analyze and seriously consider an alternative not to amend the forest plan direction that Near Natural Areas be managed as non-motorized.

Third, the Forest Service's determination that the amendment is directly related only to a narrow handful of substantive planning rule requirements, *see* FEIS at 17 (concluding that only 36 C.F.R. §§ 219.10(a)(1), (6), and (10) are directly related), is faulty. Near Natural Areas serve important ecological roles as largely undisturbed backcountry areas that connect and provide habitat refugia between Wilderness and other protected areas. The forest plan standards and guidelines to manage those areas as non-motorized are important components of the overall conservation management direction under the 1991 forest plan, particularly as they relate to protection of sensitive wildlife habitat. According to the plan,

[m]arten, fisher and spotted owl habitat areas which are within Wilderness, Wild and Scenic Rivers, and Near Natural Management Areas will be managed according to the management direction for those areas since it will be more protective. Where questions arise about wildlife emphasis in these other Management Areas, refer to Map 3, Appendix I, which displays all SOHAs and all furbearer habitat areas, and follow management direction for these species as well as for marten where it occurs.

Stanislaus National Forest Land & Resource Management Plan, p. 119. Notably, the Forest Plan has not been updated or amended recently to incorporate new information or changing conditions – including but not limited to climate change impacts – related to fisher, marten or Sierra Nevada red fox. Instead of doing so, the Forest Service now intends to remove protective management requirements without analyzing the changed conditions of these species, the importance of Near Natural and other undisturbed areas to their viability and ultimate survival, and the impacts of allowing motorized use in these essential habitat refugia areas.

The Forest Service's claim that no substantial adverse effects of removing the standards and guidelines specifically established to protect these species were revealed during scoping or the NEPA effects analysis is blatantly wrong. Objectors provided substantial information during the NEPA process of potentially significant impacts to marten, Sierra Nevada red fox, goshawk, and California spotted owl by removing the protections afforded by Near Natural, Special Interest and

other non-motorized areas. *See* D. Morgan DEIS Comments.<sup>5</sup> Impacts include, but are not limited to, avoidance of areas of human disturbance, crushing subnivean prey species and habitats, disrupting seasonal habitat partitioning among carnivores, facilitating access for predators, disruption of denning, nesting and breeding, and direct injury and mortality. As in the DEIS, the Forest Service once again downplays the impacts of OSV use on these species. This is discussed in more detail below.

Removing non-motorized management prescriptions thus substantially lessens protections for imperiled wildlife, including Sierra Nevada red fox and Pacific marten, and triggers the substantive species protection provisions of the planning rule, including, but not necessarily limited to: sections 219.8(a)(1) (providing for ecological integrity), 219.9(a)(1)-(2) (providing for species diversity through course-filter plan components to achieve ecosystem integrity and diversity), and 219.9(b) (providing for species diversity through species-specific plan components to conserve proposed and candidate species such as Sierra Nevada red fox and to maintain viable populations of species of conservation concern (SCC)). *See* 36 C.F.R. § 219.13(b)(5)(ii)(A). Moreover, SCC have not been identified for the Stanislaus, and Pacific marten – which is an existing Forest Service Sensitive species and which has been identified as an SCC in other draft and final forest plan revisions in nearby Sierra Nevada forests – most certainly qualifies as a potentially SCC, triggering the requirements of section 219.9(b). *See* 36 C.F.R. § 219.13(b)(6).

The Forest Service also failed to identify other directly related planning rule provisions related to providing for multiple uses and sustainable recreation. These include, but are not necessarily limited to: sections 219.8(b)(2), (4), & (6) (providing for social and economic sustainability, including sustainable recreation settings, opportunities, and access and scenic character; ecosystem services; and opportunities to connect people with nature) and 219.10(a)(1), (5), & (8) (providing for integrated resource management, including – in addition to recreation settings and opportunities: aesthetic values, ecosystem services, fish and wildlife species, habitat and habitat connectivity, scenery, viewsheds, and wilderness; habitat conditions for wildlife, fish, and plant communities enjoyed by the public; and system drivers and stressors including climate change and the ability of ecosystems to adapt). Given the importance of managing Near Natural Areas as semi-primitive non-motorized to protect and preserve their wildlife, quiet recreation, wilderness, and other social and ecological values, removing those non-motorized management prescriptions disrupts a critical component of how the 1991 forest plan balanced and accounted for multiple uses. Should the Forest Service proceed with the amendment, it must fully consider and address the corresponding disruption to that balance through application of a range of directly related substantive planning rule requirements.

Fourth, while we agree that the amendment is directly related to sections 219.10(a)(1), (6), and (10), *see* FEIS at 17, the Forest Service has not demonstrated compliance with those substantive requirements. Section 219.10(a) requires that a forest plan include standards or guidelines that provide for ecosystem services and multiple uses, considering, among other things, recreation settings and opportunities, use and access patterns, and opportunities to connect people with nature. By effectively eliminating standards and guidelines for recreational settings in Near Natural Areas – with corresponding adverse impacts on wildlife, quiet recreation, wilderness, and other social and

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<sup>5</sup> These comments were written by wildlife biologist Darça Morgan and submitted on behalf of WildEarth Guardians, The Wilderness Society, Winter Wildlands Alliance, and Snowlands Network. They provide detailed analysis of the impacts of OSV use on marten and Sierra Nevada red fox, including scientific references, and are incorporated herein.



ecological values – the amendment leaves a void in the forest plan’s provision of ecosystem services and multiple uses, particular as they relate to opportunities for year-round non-motorized recreation.

Fifth, while we appreciate the additional attention in the FEIS and DROD to impacts on roadless and wilderness-suitable lands, the Forest Service still fails to adequately or accurately assess and disclose how the designation of Near Natural Areas and associated forest plan amendments may short-circuit and prejudice the upcoming wilderness recommendation process. The DROD claims that designation of Near Natural Areas for OSV use will have “no effect or minimal short term effect on roadless area characteristics” and “would not prevent these areas from being considered during a future wilderness recommendation process . . . or future designation as Wilderness by Congress.” DROD at 9. While it is true that allowing OSV use in Near Natural Areas will not preclude future wilderness recommendation or designation, the Forest Service’s conclusions and analysis on this issue are misleading, incomplete, and contrary to the record. While the visible and audible impacts of OSV use on an area’s naturalness and opportunities for solitude or primitive recreation may indeed be short-term and minimal in most instances, permitting OSV use in an area with wilderness characteristics undoubtedly diminishes its wilderness potential. Indeed, the Pacific Southwest Region and the Stanislaus’ sister forests that have recently completed or are conducting the wilderness recommendation process relied heavily on the presence of authorized motorized uses to downgrade and disqualify areas from any meaningful consideration.<sup>6</sup> The Forest Service cannot turn around and claim with a straight face that its decision to open semi-primitive non-motorized, wilderness-suitable areas that are top candidates for recommended wilderness consideration does not short-circuit and prejudice future opportunities to protect those areas as recommended or designated wilderness. By designating them for OSV use and amending the forest plan now, the Forest Service has set motorized users’ expectations in a way that will almost certainly have significant impacts on the upcoming forest plan revision and associated wilderness recommendation process. If the agency is sincere in its belief that that will not be the case, then it must be clear in setting public expectations now by stating in the ROD that designation of Near Natural and other wilderness-suitable areas for OSV use *will not* be used to downgrade or disqualify them from future consideration for wilderness recommendation and *will be* subject to reconsideration as part of an upcoming forest plan revision, which will consider how to balance and prioritize the various ecological and social values of Near Natural Areas through programmatic direction that includes whether and which parts of the areas are suitable for motorized use.

Sixth, removing protections from Near Natural Areas violates NFMA’s requirement that the Forest Service “provide for diversity of plant and animal communities” in the planning process. 16 U.S.C. § 1604(g)(3)(B). To comply with this mandate, the agency must manage wildlife habitat to maintain viable populations of existing native and desired non-native vertebrate species and ensure that all management actions, projects, and decisions are consistent with forest plan direction designed to achieve those diversity and viability requirements. The decision to designate Near Natural Areas for OSV use violates those requirements.

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<sup>6</sup> See, e.g., Inyo National Forest Plan Revision Final EIS, Appendix B at 125 (excluding from analysis “the portions of polygons that include authorized motorized trails based on recent travel management decisions” because, according to the Forest Service, those uses limit opportunities for solitude or primitive recreation and/or would frustrate management of the unit as recommended wilderness).

The FEIS fails to consider the overall effects of the OSV project on the viability of Sierra Nevada red fox and Pacific marten. As wildlife biologist Darça Morgan explained in her DEIS comments submitted on behalf of WildEarth Guardians and The Wilderness Society,

Sierra Nevada red fox is in a critical state and to comply with NFMA's viability and diversity protection requirements, the Forest Service must avoid any possibility of leading to a trend toward federal listing of the Sonora Pass sub-population. The lack of [limited operating periods] for Sierra Nevada red fox and proposal to designate OSV use within portions of Near Natural Areas originally identified for wildlife protection significantly threaten species viability because they stray from the existing viability assumptions in the Sierra Nevada forest plan analysis.

D. Morgan DEIS Comments, p. 15. The FEIS fails to acknowledge the importance of these areas for Pacific marten and Sierra Nevada red fox, and the essential added protections that they provide. Furthermore, designating OSV trails in core Sierra Nevada red fox territories goes against the recommendations of the premiere Sierra Nevada red fox expert, Dr. Ben Sacks (see August 7, 2015 letter to Stanislaus NF), and poses undue risk to the viability of the species, contrary to NFMA. *See* D. Morgan DEIS Comments, pp. 4, 7, 14, 25.

The FEIS similarly fails to address the overall effects of the OSV project, and particularly the proposed Forest Plan amendments, on the viability of Goshawk and California Spotted Owl.

In short, the likely effects of the proposed amendment are directly related to the Forest Service's substantive obligations under NFMA and the 2012 planning rule related to at-risk species. This requires the agency to satisfy the requirements of sections 219.8 and 219.9 of the planning rule (in addition to the recreation-focused requirements of section 219.10).

Suggested Remedy: Abandon the forest plan amendment and do not designate Near Natural Areas for OSV use, while being explicit that the decision not to designate Near Natural Areas is subject to reconsideration as part of an upcoming forest plan revision, which will consider how to balance and prioritize the various ecological and social values of Near Natural Areas through programmatic direction that includes whether and which parts of those areas are suitable for OSV use. Should the Forest Service proceed with the amendment, it must articulate an adequate need for the amendment, demonstrate compliance with the directly related substantive requirements of the 2012 planning rule at 36 C.F.R. §§ 219.8-219.10, ensure that the amendments do not threaten the viability of at-risk species, and fully and accurately disclose the impacts of the amendment on the upcoming wilderness recommendation process.

## **2. Ensure Compliance with the Travel Management Rule<sup>7</sup>**

Executive Orders 11644 and 11989 and the Travel Management Rule, 36 C.F.R. § 212.55 & 212.81(d), impose a substantive legal duty to locate each area and trail designated for OSV use with the objective of minimizing damage to natural resources, harassment of wildlife and disruption of wildlife habitat, and conflicts with other recreational uses. Federal courts including the Ninth Circuit Court of Appeals have repeatedly affirmed the substantive nature of the agency's obligation to

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<sup>7</sup> These objection points, which are brought pursuant to 36 C.F.R. 218, were addressed in our DEIS Comments at pp. 8-14. Failure to minimize impacts to Sierra Nevada red fox and Pacific marten were also addressed throughout the DEIS comments submitted by Darça Morgan on behalf of WildEarth Guardians and The Wilderness Society.

meaningfully apply the minimization criteria at a “granular” level to articulate how each area and route was located with the objective of minimizing impacts. *E.g., WildEarth Guardians v. U.S. Forest Serv.*, 790 F.3d 920, 929-32 (9th Cir. 2015). We are encouraged by the Forest Service’s acknowledgment of this obligation and effort to apply the criteria. *See* FEIS at 23-26. Nevertheless, those efforts – found largely in Appendices C and D, still fall short in several respects.

Overall, the Appendices lack sufficient site-specific information such as whether the area contains occupied habitat, existence of denning or nesting habitat, or whether OSV use in the area is expected to be high, moderate, or low. Similar to the DEIS, the FEIS lacks necessary information about how and why the agency located the boundaries of open areas or specific OSV trails where it did to minimize impacts, particularly related to Alternative 5-Modified and the reductions in protection for Near Natural Areas. And the agency continues to rely on potential future mitigation actions, many of which are contingent on uncertain future monitoring, lack specificity and clear triggers for implementation, are unenforceable, and lack any responsive actions demonstrated to reduce impacts. For instance, while we generally support increased education and enforcement, the FEIS relies on opaque “prescribed management requirements” such as “[i]ncreas[ing] signage, education, compliance patrols, and enforcement of OSV use to establish OSV-use areas” to minimize impacts to Sierra Nevada red fox. *E.g.,* FEIS, Appx. D at 204. To the extent that the Forest Service is relying on future mitigation measures, it must ensure that they are specific and enforceable, and fully analyze their effectiveness in a supplemental EIS.

More specifically, the Forest Service failed to minimize impacts to the social and ecological values of Near Natural Areas, including wilderness character and potential. As described throughout this objection, the adverse impacts of the designation of Near Natural Areas for OSV use on wilderness character and potential, ecological integrity, sensitive wildlife habitat, and opportunities for quiet recreation are significant and have not been minimized in any meaningful fashion. Particularly where the forest plan prescribes non-motorized conservation-oriented management, the agency has a heightened obligation to demonstrate how removing those protections is consistent with its substantive obligation to minimize the impacts associated with its travel management designations. Indeed, other than considering some limited impacts to designated Wilderness, Appendices C and D do not address wilderness or roadless characteristics, despite their importance as “other forest resources” to which the minimization criteria apply. *See* 36 C.F.R. § 212.55(b)(1).

The Forest Service also failed to minimize impacts to wildlife. Our DEIS Comments identified many instances where the Forest Service fails to demonstrate how it located OSV area boundaries and trails to minimize disruption of wildlife habitat, harassment of wildlife, and impacts to wildlife connectivity corridors, and detailed the impacts that OSV use has on at-risk species, including Pacific marten, Sierra Nevada red fox, California spotted owl, Northern goshawk, and several amphibian species. *See* DEIS Comments, pp. 14, 17-20; D. Morgan DEIS Comments (both incorporated herein). Notably, throughout the minimization criteria and NEPA analyses, the Forest Service bases its determinations on whether an area is expected to receive high, moderate, or low OSV use. Yet, it is unclear how the agency determined use values and whether, for example, high use only includes groomed trails and staging areas, or if it also includes concentrated use within OSV areas and on non-groomed trails.

#### Goshawk and California Spotted Owl

The Forest Service failed to actually apply the minimization criteria to goshawk, CSO and their habitats. The FEIS, including the minimization tables in Appendices C and D, fail to identify where occupied owl or goshawk PACs are relative to each open area or trail, and whether use is expected to

be high, moderate or low. See also the discussion below on the Forest Service's failure to take a hard look at the impacts of the OSV plan and Forest Plan amendments and the dilution of impacts by focusing the analysis on forest-wide suitable habitat.

The FEIS admits that OSV use within .25 miles of goshawk nest sites have the potential to disturb nesting. FEIS, p. 228. OSV identified routes occurring within 0.25 mile of mapped northern goshawk PACs varies by alternative, ranging from 15 percent under alternative 5-modified to 22 percent under alternative 3. FEIS, p. 229, Table 60. About 10 percent of goshawk habitat overlaps OSV high and moderate use areas under alternative 5-modified.

Despite this extensive OSV use in identified habitat and the knowledge that OSV use disrupts goshawk nesting, the FEIS repeatedly claims that harassment of CSO and goshawk is unlikely "because their nests are typically found in closed areas where high OSV use is unlikely to occur and there is limited overlap between the OSV season and nesting season (CSO March 1 through Aug. 31; goshawk February 15 through Sept. 15)." *See, e.g.*, FEIS, Vol. II, Appendix D, pp. 206, 207 (Alpine East and Eagle Areas). The FEIS provides no basis or scientific references for this claim, and there is significant overlap between the season of use (which in most areas goes through at least April 15 if not longer) and the nesting season. Further, this claim fails to consider the increased reach and mobility of OSVs such as tracked motorcycles and smaller OSVs which can travel longer distances and go into previously inaccessible areas.

The Forest Service did not prescribe any management requirements to minimize harassment to goshawk or CSO. *See, e.g.*, FEIS, Vol. II, Appendix C, pp. 141-143. Instead, the agency relies on future monitoring to reduce potential impacts. FEIS, p. 228. Post-impact monitoring at some future time does not suffice to satisfy the requirement to locate trails and areas open to OSV use with the objective of minimizing impacts in the first instance.

### Pacific marten

Similarly, the Forest Service did not prescribe any management requirements to minimize harassment of marten, impacts to its habitat or potential denning sites, or subnivean prey species, and failed to actually apply the minimization criteria. The FEIS, including the minimization tables in Appendices C and D, fail to identify *occupied* marten habitat relative to each open area or trail, and whether use is expected to be high, moderate or low. The minimization tables do not identify a single area or trail within marten habitat that would have moderate or high use. Indeed, in all open areas and trails, OSV use is expected to be low or "moderate to high use...is expected to be minimal." *See, e.g.*, FEIS, Vol. II, Appendix D, pp. 211, 212. However, there is no site-specific information to back up those claims. In fact, the FEIS summarily dismisses all likelihood of impacts by claiming that any level of risk to marten is "[l]ow based on Zielinski study result." *See e.g.*, FEIS, Vol II, Appendix D, pp. 209, 211, 212. The agency provided no citation to the specific Zielinski study result the Forest Service is relying on, or how the agency applied that study to this OSV project.

Contrary to the claims in the minimization tables, the FEIS admits that moderate to high OSV use will occur in 10-17 percent of marten habitat:

the potential for OSV-related impacts to marten (injury or mortality, noise-based disturbance, predation facilitated by OSV trails, impacts to subnivean prey species) would be most likely to occur within high use areas, and to a lesser degree in moderate

use areas. These amounts range from a low of 10 percent under alternative 3 to 17 percent under alternative 5-modified.

FEIS, p. 196. But the FEIS does not disclose where these areas are, if den sites known on the forest occurs near here, if these areas include potential denning habitat or occupied habitat, if this is high or low quality habitat, if there have been marten surveys in the area, or how impacts to marten might be minimized in these areas. These details are needed in order to make a more informed determination about project impacts and to minimize those impacts. See also the discussion below on the Forest Service's failure to take a hard look at the impacts of the OSV plan and Forest Plan amendments and the dilution of impacts by focusing the analysis on forest-wide suitable habitat.

#### Sierra Nevada red fox

Again, the FEIS, including the minimization tables in Appendices C and D, fails to identify *occupied* habitat relative to each open area or trail, to articulate whether use is expected to be high, moderate or low, and to apply the minimization criteria to locate areas and trails with the *objective* of minimizing harassment or other impacts to Sierra Nevada red fox and its habitat. While the Forest Service claims that it minimized "the proportion of NFS lands designated for motorized use within known occupied Sierra Nevada red fox territories or within suitable habitat," there is no explanation of how the Forest Service actually applied the minimization criteria to locate trails with the objective of minimizing impacts. See FEIS, pp. 204, 208, 209. Indeed, in the two areas where the level of risk to fox is "high" (Highway 108 and Highway 108 East), the Forest Service admits that there is "substantial overlap with known occupied habitat or within identified suitable habitat." FEIS, pp. 208-209. Substantial overlap with occupied habitat in high use areas does not comport with minimizing impacts.

Further, it is unclear what the Forest Service means by "minimizing the proportion" of occupied or suitable habitat. See the discussion below on the Forest Service's failure to take a hard look at the impacts of the OSV plan and Forest Plan amendments and the dilution of impacts by focusing the analysis on forest-wide suitable habitat. The proportion of suitable and occupied habitat designated for OSV may appear to be insignificant when compared to suitable habitat forest-wide, but the impacts to occupied habitat may still be significant, especially for this isolated and highly vulnerable population of Sierra Nevada red fox.

According to the DROD,

After conducting an analysis to determine whether OSV use within 5 miles of the verified detections of Sierra Nevada red fox on the Stanislaus National Forest had the potential to affect the species, the wildlife biologist determined that closing SNRF suitable habitat areas to OSV after January 1 annually was not "necessary". This conclusion was based on the finding that the overlap between OSV use and suitable SNRF habitat within 5 miles of known detections was quite low, and particularly low in Alternative 5-Modified (less than 6% of suitable habitat available within 5 miles of known detections; FEIS, Table 51). The wildlife biologist, did not however, dismiss the need for some action to minimize the potential for adversely impact [sic] potential breeding of the small isolated population known to inhabit the Sonora Pass area. Hence the reduced seasonal closure prescription starting on April 15th annually.

DROD, p. 8. The Forest Service does not provide any explanation of how it determined that the January 1 season of use closure required by the Forest Plan (as amended by the 2004 Sierra Nevada

Forest Plan) was not “necessary” and that April 15 would suffice. Given the dire condition of this distinct and isolated population, the Forest Service should err on the side of caution and do everything it can to protect and restore this imperiled species. The risk of harm to the population is far greater than the need to open its habitat, especially in Near Natural and other roadless areas, to OSV use. The Forest Service failed to take this into account and thus failed to locate trails and open OSV areas with the objective of minimizing harassment and other impacts to the Sierra Nevada red fox and its habitat.

Suggested Remedy: Adopt Alternative 3, with modifications suggested throughout this objection and our previous comments, to comply with the substantive obligation to minimize impacts to Near Natural Areas and their important social and ecological values and resources. Fully demonstrate in the record how the Forest Service located OSV areas and trails to minimize damage to soils, watersheds and vegetation, harassment of wildlife and disruption of wildlife habitat, conflicts between OSV use and quiet recreation, and damage to roadless and wilderness values and other resources – particular with respect to Near Natural Areas for which the forest plan prescribes non-motorized conservation-oriented management. Ensure that any mitigation measures relied on are specific and enforceable, and fully analyze their effectiveness in a supplemental EIS.

### **3. Provide an Accurate Baseline & No Action Alternative<sup>8</sup>**

Under NEPA, agencies are required to “describe the environment of the areas to be affected . . . by the alternatives under consideration.” 40 C.F.R. § 1502.15. As the Ninth Circuit has explained, “without establishing the baseline conditions . . . , there is simply no way to determine what effect the proposed [action] will have on the environment and, consequently, no way to comply with NEPA.” *Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988). Relatedly, NEPA requires agencies to include a no action alternative in every EIS. 40 C.F.R. § 1502.14(d). The purpose of the no action alternative is to “allow[] policymakers and the public to compare the environmental consequences of the status quo to the consequences of the proposed action.” *Ctr. for Biological Diversity v. U.S. Dep’t of Interior*, 623 F.3d 633, 642 (9th Cir. 2010). In other words, the no action alternative “provide[s] a baseline against which the action alternative[s] are evaluated.” *Id.* (quotations and citation omitted).

The FEIS articulates an inaccurate and illegal baseline in its No Action Alternative/Alternative 2, which suggests that 351,108 acres of semi-primitive non-motorized areas that are to be closed to motorized uses under the forest plan are in fact open to that use under current management. *See* FEIS at 26-29. This approach improperly skews the environmental analysis by inaccurately suggesting that the decision to designate over 25,000 acres of Near Natural Areas for OSV use *reduces* the acreage of OSV use areas within semi-primitive non-motorized areas and therefore is environmentally beneficial. Moreover, the Forest Service provides no monitoring data or other information to support its articulation of the management status quo – that OSV use is occurring across hundreds of thousands of acres of semi-primitive non-motorized areas. Without any data to back up that claim, we are left guessing as to the accuracy of the articulated baseline.<sup>9</sup>

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<sup>8</sup> This objection point, which applies to both the project (36 C.F.R. 218) and the forest plan amendment (36 C.F.R. 219), was addressed in our DEIS Comments at p. 15.

<sup>9</sup> Indeed, the Ninth Circuit recently rejected a BLM travel management plan where the agency had not demonstrated an understanding of the actual condition of routes on the ground and therefore had no way to properly assess the impacts of its designation decisions. *ONDA v. Rose*, No. 18-35258, slip op. at 9-10 (9th Cir. April 25, 2019).

The Forest Service’s approach to the No Action Alternative and environmental baseline is especially inappropriate where subpart C requires a closed-unless-designated-open approach to winter travel management – one that necessitates justifying, *and minimizing the impacts of*, any and all OSV designations. By enshrining unsanctioned use in the baseline, the Forest Service’s approach improperly focuses its analysis on closing areas that are not and should not be available to OSV use in the first place. As explained above in Section 1, the approach sends perverse incentives and messages to the public by enshrining as the “management status quo” decades of failed implementation and enforcement of forest plan standards and guidelines – it suggests to motorized users that ignoring forest plan direction and establishing patterns and practices of illegal use will be rewarded by enshrining that use into future no action alternatives.

Suggested Remedy: Prepare a revised or supplemental EIS with an accurate environmental baseline and no action alternative that is consistent with governing forest plan direction for semi-primitive non-motorized areas.

#### **4. Ensure Compliance with the National Environmental Policy Act<sup>10</sup>**

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., is designed to facilitate informed decision-making and public transparency by requiring federal agencies to take a “hard look” at the direct, indirect, and cumulative impacts of their proposed actions and reasonable alternatives. While an improvement over the DEIS, the analysis in the FEIS still fails to adequately analyze certain impacts, including wilderness values and potential and wildlife habitat and to analyze a range of reasonable alternatives.

##### *Hard Look at Impacts*

As described in Section 1, above, the FEIS fails to fully analyze and disclose the impacts of OSV designation decisions on wilderness values and potential – particularly of the Pacific Valley and Eagle/Night Near Natural Areas, as well as the other areas identified by The Wilderness Society’s inventory as suitable for inclusion in the National Wilderness Preservation System. While it is correct that the presence of authorized motorized use does not preclude future consideration for wilderness designation, the FEIS and DROD conclusions that OSV designation decisions will have little or no effect on roadless characteristics and potential wilderness recommendation or designation, *see* FEIS at 88-89 & Table 25, is arbitrary, capricious, and unsupported by the record – with other Sierra Nevada forests disqualifying areas with designated motorized trails during the wilderness evaluation process due to the impacts of motorized use on wilderness character. Moreover, with the inflated and inaccurate baseline/no action alternative, as discussed in Section 3 above, the FEIS impacts analysis is skewed and misleading, suggesting that the decision to designate Near Natural Areas for OSV use represents a reduction in acreage available for that use.

Other components of the analysis of impacts to wilderness character are confusing or inaccurate. For instance, the FEIS cites to the Chapter 70 wilderness evaluation criteria from the Forest Service’s Land Management Planning Handbook 1909.12 – the criteria that The Wilderness Society applied in identifying lands suitable for inclusion in the National Wilderness Preservation System –

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<sup>10</sup> These objection points, which apply to both the project (36 C.F.R. 218) and the forest plan amendment (36 C.F.R. 219), were addressed in our DEIS Comments at pp. 6-8 & 14-23. Failure to adequately analyze the impacts to Sierra Nevada red fox and Pacific marten were also addressed throughout the DEIS comments submitted by Darça Morgan on behalf of WildEarth Guardians and The Wilderness Society.

but the FEIS only considers impacts to wilderness character of *designated* – not potential/suitable – wilderness. FEIS at 77. Designated wilderness is governed by the Wilderness Act, not Chapter 70. And while we appreciate the identification and consideration of 50,486 acres of “other” roadless lands, the FEIS lacks clarity or information about how those other areas were identified and pursuant to what criteria. FEIS at 83. The Wilderness Society’s inventory and evaluation – pursuant to a detailed protocol which adheres closely to the Chapter 70 directives – identified a total of 249,512 acres of roadless lands suitable for inclusion in the NWPS, representing a 110,512-acre increase over existing IRAs. It is unclear what accounts for the more than 60,000 acre discrepancy in those “other” roadless areas.

The FEIS also fails to fully analyze and disclose the direct, indirect and cumulative impacts of the OSV designation decisions and forest plan amendments on wildlife. Our DEIS comments addressed these issues in detail. *See* DEIS Comments, pp. 17-20; D. Morgan DEIS Comments. As discussed above, the Forest Service largely bases its analysis on its designation of areas as high, moderate or low use. Yet, it is unclear how the agency determined use levels and whether, for example, high use only include groomed trails and staging areas, or if it also includes concentrated use within open areas and on non-groomed trails.

As discussed above, the Forest Service dilutes its analysis of the impacts to species such as goshawk, California spotted owl, marten and Sierra Nevada red fox by focusing on the proportion of habitat affected by the OSV designations and forest plan amendments relative the amount of suitable habitat across the entire forest. This makes it appear that only a small percentage of the species’ habitats are impacted without taking the necessary hard look at the direct, indirect and cumulative impacts to the habitat actually impacted – particularly occupied habitat. *See, e.g.*, FEIS, pp. xxiii-xxvii (quantifying the level of risk or potential impacts to species based on the total acres of suitable habitat forest-wide). The agency looked at suitable habitat across vast areas where there have been no species detections, without any site-specific analysis of the areas where data has been collected and where there have been species detections. But it is these pivotal *occupied* areas – particularly in the roadless and Near Natural Areas and Sonora pass – where the OSV project will have the most impacts and the forest plan amendments are removing crucial protections. The FEIS goes to great lengths to make it appear that impacts will be minimal, and this watered-down analysis does not suffice under NEPA.

According to the FEIS:

Alternative 3 represents the management direction in the Forest Plan which directs, Near Natural areas are to be managed as non-motorized (USDA Forest Service 2017, pp. 115–117). This provides a means for the Responsible official to compare the potential impacts of the proposed OSV-use designations in Near Natural areas versus Forest Plan management direction. However, because the proposed OSV-use designations in alternatives 1, 4, and 5-modified would overlap with less than 10 percent of all marten habitat in the Stanislaus National Forest, potential impacts of proposed OSV use in Near Natural areas is insignificant.

FEIS, p. 97.

As to Sierra Nevada red fox,

Alternative 3 represents the management direction in the Forest Plan which directs, Near Natural areas are to be managed as non-motorized (USDA Forest Service 2017,



pp. 115–117). This provides a means for the Responsible official to compare the potential impacts of the proposed OSV-use designations in Near Natural areas versus Forest Plan management direction. However, because the proposed OSV-use designations in alternatives 1, 4, and 5-modified would overlap with less than 7 percent of all Sierra Nevada red fox habitat in the Stanislaus National Forest, potential impacts of proposed OSV use in Near Natural areas is insignificant. Because all alternatives would maintain OSV use overlap with red fox habitats at or below current levels, and because OSV use overlap in Near Natural areas represents a range from zero to about 7 percent of all habitat in the Stanislaus National Forest, potential impacts of proposed OSV use in Near Natural areas is insignificant.

DEIS, p. 205. Accordingly, while the Forest Service admits that Alternative 3 provides the basis to compare potential impacts, the agency does not actually conduct that analysis, instead claiming that impacts are insignificant. But this purported insignificance is based on the agencies' comparison to forest-wide suitable habitat. It is not based on any actual impacts analysis. As explained above, the Near Natural Areas were designated as non-motorized to provide added protections for imperiled wildlife such as marten and Sierra Nevada red fox. By hiding behind percentages and broad generalizations, diluting the impacts analysis, and failing to conduct the required comparative analysis with site-specific information and the best available science, the Forest Service ignores the very real and potentially significant impacts of removing those protections and authorizing OSV use there.

The Forest Service provides significantly less analysis for goshawk and California spotted owl, but similarly hides behind broad generalizations and percentages, and unsupported claims, to force the result it wants – no impacts to goshawk or CSO. For example, the FEIS states “about 10 percent of goshawk habitat overlaps OSV high and moderate use areas under alternative 5-modified.” FEIS, p. 229. By comparing the amount of goshawk reproductive habitat forest-wide to moderate/high use areas, the Forest Service dilutes the impacts and avoids any site-specific analysis of the impacts of specific trails or OSV-use areas on occupied goshawk habitat, particularly during nesting season, which starts about February 15. Further, the FEIS makes the unsupported claim that “[d]ue to the structural nature of suitable habitat (i.e., dense forested stands), the level of cross-country OSV travel in goshawk suitable habitat is expected to be relatively low, and most disturbance is likely to occur primarily along existing roads and trails.” Similarly, the FEIS states that

[a]bout 11 percent of owl habitat overlaps OSV high and moderate use areas under alternatives 4 and 5-modified. Alternatives 1 and 3 show the least amount of overlap at about 7 percent (table 57). Due to the structural nature of suitable habitat (i.e., dense forested stands), the level of cross- country OSV travel in California spotted owl suitable habitat is expected to be relatively low, and most disturbance is likely to occur primarily along existing roads and trails.

FEIS, p. 221. As explained above, this ignores the increased mobility and reach of modern OSV machines, which enable them to ride farther and into areas previously inaccessible, including denser forest stands.

The Forest Service also failed to address our concerns regarding how its proposed OSV area and trail designations will impact wildlife habitat connectivity corridors. For example, many of the species and their suitable habitat are found not just on the Stanislaus, but on neighboring federal

lands. The Forest Service failed to identify corridors necessary for the expansion and viability of Sierra Nevada red fox so it is no longer an isolated population threatened with extirpation.

Finally, the FEIS does not address our concerns about climate change. *See* D. Morgan DEIS Comments, pp. 13-15. Our DEIS comments explained that climate change effects must be integrated into the NEPA analysis as part of the environmental baseline and affected environment, integrated into each alternative, as assessed as part of the agency's hard look at impacts. *Id.*, pp. 13-14. According the U.S. Fish & Wildlife Service, additional competition and predation from coyotes during the next 50 years as a result of climate change is likely to lower reproductive success of Sierra Nevada red fox. *Id.*, p. 14. The FEIS fails to acknowledge the impacts of OSV disturbance to denning attempts and predation of pups by coyote and fails to develop adequate management requirements to protect Sierra Nevada red fox from project related disturbance by arbitrarily shortening the season of use. The Forest Service does not adequately consider the impacts of increasing stressors across occupied Sierra Nevada red fox habitat along with ongoing climate change. Reduced snowpack from climate change should also be part of the environmental baseline and inform the analysis of direct, indirect, and cumulative impacts. *Id.*, p. 15.

#### *Range of Alternatives*

To facilitate the requisite "hard look" at impacts, NEPA also requires agencies to "[r]igorously explore and objectively evaluate all reasonable alternatives" to a proposed action – an analysis that is considered the "heart" of an EIS. 40 C.F.R. § 1502.14. The FEIS fails to meet this requirement with respect to more conservation-oriented alternatives. Reasonable conservation-oriented alternatives that the Forest Service failed to analyze include, but are not limited to:

- a) An alternative repeatedly proposed by The Wilderness Society that would not designate any areas identified through its field-based inventory and evaluation as suitable for inclusion in the National Wilderness Preservation System. While Alternative 3 would not designate the Pacific Valley and Eagle/Night Near Natural Areas for OSV use, it would still designate over 34,000 acres of wilderness-suitable lands for that use (see attached map). The draft decision would designate over 68,000 acres of wilderness-suitable lands for OSV use (see attached map). Given the significant impacts of OSV use on wilderness character and potential (discussed above in Section 1 and throughout our comment letters), the analysis of only those alternatives that would designate significant acreages of wilderness-suitable lands for OSV use renders the FEIS deficient.
- b) As discussed in Section 1 above, one or more action alternatives that would not amend the forest plan direction that Near Natural Areas are to be managed as semi-primitive non-motorized areas that are closed to motor vehicle use.

Each of these reasonable, conservation-oriented alternatives would satisfy the purpose and need for the project, and their analysis is necessary to a facilitate the hard look at impacts that NEPA prescribes.

**Suggested Remedy:** Prepare a supplemental EIS that analyzes the reasonable, conservation-oriented alternatives described above and takes the necessary hard look at impacts to wilderness character and potential and sensitive wildlife habitat.

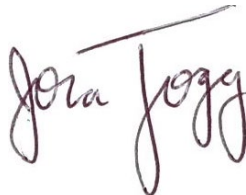
## Conclusion

We appreciate your consideration of the information and concerns addressed in this objection. While the FEIS and DROD include positive elements and improved analysis, the flaws identified in this objection must be addressed. Pursuant to 36 C.F.R. §§ 218.11 & 219.57(a), we respectfully request to meet with the reviewing officer to discuss our objection and suggested resolutions. Please contact us with any questions.

Sincerely,



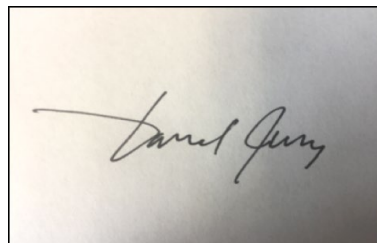
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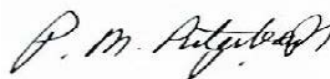
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A handwritten signature in blue ink, appearing to read "Ben Solvesky". The signature is fluid and cursive, with the first name "Ben" and last name "Solvesky" clearly distinguishable.

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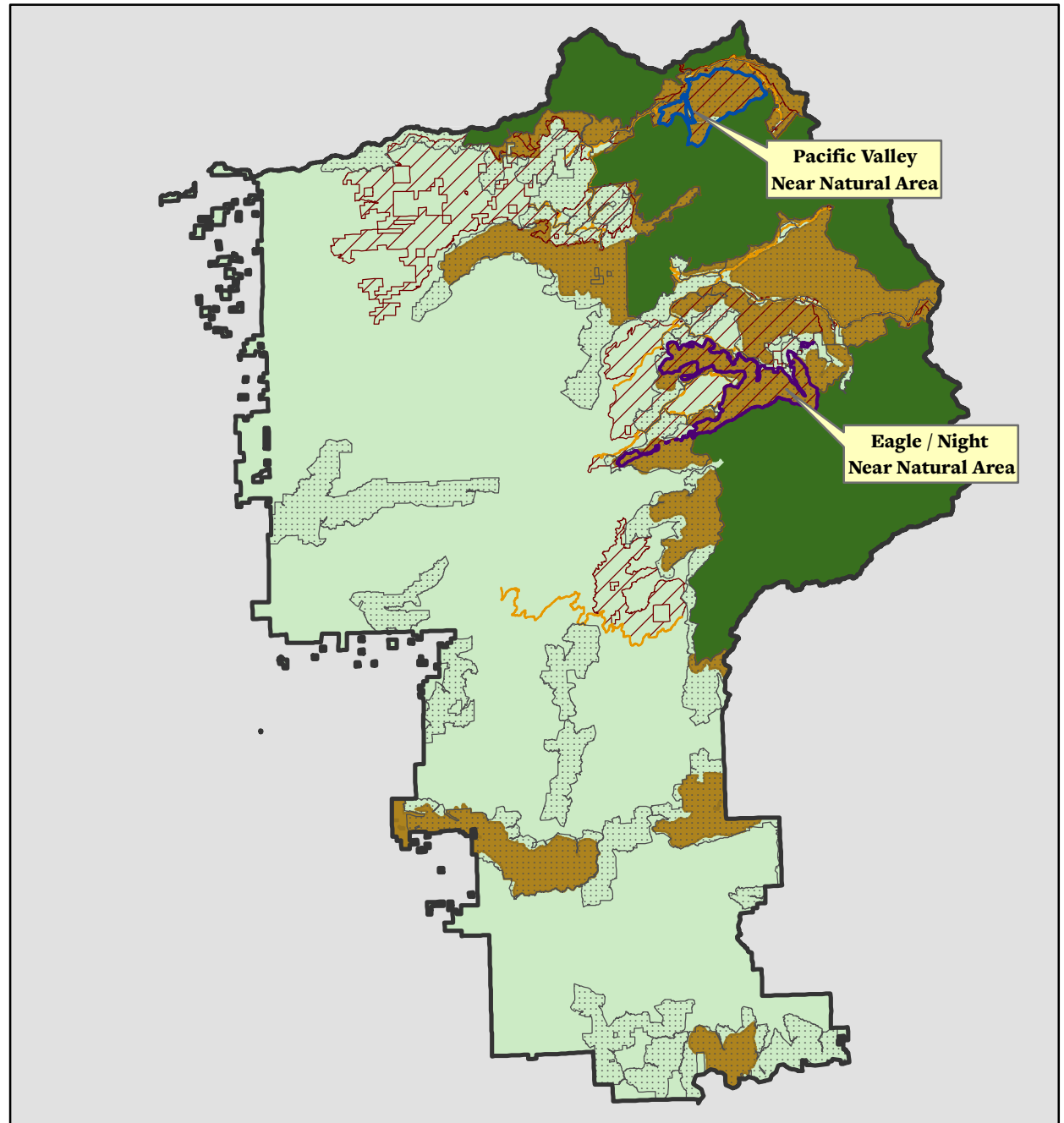
# Stanislaus National Forest Over-Snow Vehicle (OSV) Use Designation FEIS

## Alternative 5



-  **Citizen-Inventoried Wilderness-Suitable Lands**
-  **Eagle / Night Near Natural Area**
-  **Pacific Valley Near Natural Area**
-  **Open OSV Route**
-  **Designated for OSV Use**
-  **USFS Inventoried Roadless Areas (IRAs)**
-  **Designated Wilderness**
-  **Stanislaus National Forest**

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Miles



# Stanislaus National Forest Over-Snow Vehicle (OSV) Use Designation FEIS

## Alternative 3



-  Citizen-Inventoried Wilderness-Suitable Lands
-  Eagle / Night Near Natural Area
-  Pacific Valley Near Natural Area
-  Open OSV Route
-  Designated for OSV Use
-  USFS Inventoried Roadless Areas (IRAs)
-  Designated Wilderness
-  Stanislaus National Forest

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