May 13, 2022

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Attn: SERAL
1323 Club Drive
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Submitted via: https://www.fs.usda.gov/project/?project=56500

Re: Objection to SERAL Project

Dear Reviewing Officer:

The Center for Biological Diversity (name, address and telephone are listed in the signature) and John Muir Project object to the SERAL Project (Responsible Official, Jason Kuiken, Forest Supervisor, Stanislaus National Forest). Because the SERAL Project intends to rely on three separate decisions, this objection addresses the draft record of decision issued on March 29, 2022. Specifically, as discussed in our DEIS comments, and below, we object to the use of condition-based management, which is being used here to authorize the salvage logging of dead or dying trees that do not yet exist in the Project area, in violation of NEPA.

NEPA has two fundamental two goals: (1) to ensure that the agency will have detailed information on significant environmental impacts when it makes decisions; and (2) to guarantee that this information will be available to a larger audience. "NEPA promotes its sweeping commitment to 'prevent or eliminate damage to the environment and biosphere' by focusing Government and public attention on the environmental effects of proposed agency action."[1] Stated more directly, NEPA's "'action-forcing' procedures ... require the [Forest Service] to take a 'hard look' at environmental consequences" before the agency approves an action.[2] "By so focusing agency attention, NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct."[3] "Taking a 'hard look' . . . should involve a discussion of adverse impacts that does not improperly minimize negative side effects."[4] It also means "provid[ing] full and fair discussion of significant environmental impacts . . . . General statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided."[5] Moreover,

[1] *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989) (quoting 42 U.S.C. § 4321).
[2] *Metcalf v. Daley*, 214 F.3d 1135, 1141 (9th Cir. 2000) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989)).
[3] *Marsh*, 490 U.S. at 371.
[4] *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 689 F.3d at 1075.
[5] *Conservation Cong. v. Finley*, 774 F.3d 611, 616 (9th Cir. 2014).

under NEPA, agencies must ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements, and the agency must provide the public "the underlying environmental data from which the Forest Service develop[ed] its opinions and arrive[d] at its decisions."[6] "The agency must explain the conclusions it has drawn from its chosen methodology, and the reasons it considered the underlying evidence to be reliable."[7]

Under NEPA, analyzing and disclosing site-specific impacts is essential because the specifics of where, when, and how activities occur on a landscape strongly determines the nature and degree of the impact. For instance, the "location of [the impacts] greatly influences the likelihood and extent of habitat preservation. Disturbances on the same total surface area may produce wildly different impacts on plants and wildlife depending on the amount of contiguous habitat between them."[8] One Court has used the example of "building a dirt road along the edge of an ecosystem" and "building a four-lane highway straight down the middle" to explain how those activities may have similar types of impacts, but the extent of those impacts – in particular on habitat disturbance – is different.[9] Indeed, "location, not merely total surface disturbance, affects habitat fragmentation,"[10] and therefore location data is critical to the site-specific analysis NEPA requires.

Recently, in the case *Southeast Alaska Conservation Council v. U.S. Forest Service*, 413 F. Supp. 3d 973 (D. Ak. 2019), the court found that the Forest Service's failure to disclose the site-specific impacts of a logging proposal violated NEPA. The district court explained that the agency "did not identify the specific sites where the harvest or road construction would occur." The Court found the Forest Service's approach contradicted Ninth Circuit precedent such as *City of Tenakee Springs v. Block*, 778 F.2d 1402 (9th 1995): "The EIS identified which areas within the roughly 1.8-million-acre project area could potentially be harvested over the Project's 15-year period, but expressly left site-specific determinations for the future. For example, the selected alternative allows 23,269 acres of old-growth harvest, but does not specify where this will be located within the 48,140 acres of old growth identified as suitable for harvest in the project area. Similar to the EIS found inadequate in *City of Tenakee Springs*, the EIS here does not include a determination of when and where the 23,269 acres of old-growth harvest will occur. As a result, the EIS also does not provide specific information about the amount and location of actual road construction under each alternative." The district court concluded that the approach violated NEPA because "the Project EIS does not identify individual harvest units; by only identifying broad areas within which harvest may occur, it does not fully explain to the public how or where actual timber activities will affect localized habitats." In March 2020, the court reaffirmed its September 2019 preliminary injunction decision and holding that the Forest Service's condition-based management approach violated NEPA.[11] The court explained that "NEPA requires that environmental analysis be specific enough to ensure informed decision-making and meaningful public participation [and the] Project EIS's omission of the actual

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[6] *WildEarth Guardians v. Mont. Snowmobile Ass'n*, 790 F.3d 920, 925 (9th Cir. 2015).
[7] *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1075 (9th Cir. 2011).
[8] *New Mexico ex rel Richardson*, 565 F.3d at 706.
[9] *Id*. at 707.
[10] *Id*.
[11] *Southeast Alaska Conservation Council v. United States Forest Serv*., 443 F. Supp. 3d 995 (D. Ak. 2020).

location of proposed timber harvest and road construction within the Project Area falls short of that mandate."

The SERAL project is a project-level decision. As a result, any NEPA analysis must include the detailed information and analysis that NEPA requires because there will not be any further NEPA analysis beyond the EIS. Here, the existing FEIS fails to comply with NEPA because it does not provide the necessary site-specific information regarding the proposed salvage logging. The FEIS does not, and cannot, describe the characteristics of specific logging or associated road-building actions—*e.g.*, the specific locations and associated site-specific impacts, because the information to do that does not yet exist. This failure to disclose site-specific impacts does not meet NEPA's requirements, such as its "hard look" standard. It also precluded a meaningful analysis of alternatives and of cumulative impacts.

The FEIS also generically speaks to the construction of temporary roads to conduct the salvage logging but does not clearly limit their use, such as a limit on the total number of temporary roads. There could therefore be substantial roadbuilding that has gone unanalyzed in violation of NEPA.

These NEPA violations matter because many Sierra species rely on the forest that would be logged. It is well documented that dead trees, whether from drought or fire (including snags of all sizes as well as shrubs and other post-fire vegetation) are of great value to wildlife as discussed for example in the following publications: Blakey et al. 2019[12] (discussing bat use of severely burned forest); Buchalski et al. 2013[13] (discussing bat use of severely burned forest); Burnett et al. 2010[14], 2012[15] (discussing avian use of severely burned forest); Campos and Burnett 2015[16], 2016[17], 2017[18] (discussing avian and bat use of severely burned forest); Fogg et al. 2015[19], 2016[20] (discussing avian use of severely burned forest); Hanson and North 2008[21] (discussing woodpecker use of severely burned forest); Hanson 2014[22] (discussing avian use of

[12] Blakey, Rachel & Webb, Elisabeth & Kesler, Dylan & Siegel, Rodney & Corcoran, Derek & Johnson, Matthew. 2019. Bats in a changing landscape: Linking occupancy and traits of a diverse montane bat community to fire regime. Ecology and Evolution. 9. 10.1002/ece3.5121.
[13] Buchalski, M.R., J.B. Fontaine, P.A. Heady III, J.P. Hayes, and W.F. Frick. 2013. Bat response to differing fire severity in mixed-conifer forest, California, USA. PLOS ONE 8: e57884
[14] Burnett, R.D., P. Taillie, and N. Seavy. 2010. Plumas Lassen Study 2009 Annual Report. U.S. Forest Service, Pacific Southwest Region, Vallejo, CA
[15] Burnett, R.D., M. Preston, and N. Seavy. 2012. Plumas Lassen Study 2011 Annual Report. U.S. Forest Service, Pacific Southwest Region, Vallejo, CA
[16] Campos, Brent R. and Ryan D. Burnett. 2015. Avian monitoring of the Storrie and Chips Fire Areas: 2014 report
[17] Campos, Brent R. and Ryan D. Burnett. 2016. Bird and Bat Inventories in the Moonlight, Storrie, and Chips Fire Areas: 2015 report to the Lassen and Plumas National Forests
[18] Campos, B.R., R.D. Burnett and Z.L. Steel. 2017. Bird and bat inventories in the Storrie and Chips fire areas 2015-2016: Final report to the Lassen National Forest. Point Blue Conservation Science, Petaluma, CA.
[19] Fogg, Alissa M., Zachary L. Steel and Ryan D. Burnett. 2015. Avian Monitoring of the Freds and Power Fire Areas
[20] Fogg, Alissa, Zack Steel, and Ryan Burnett. 2016. Avian Monitoring in Central Sierra Post-fire Areas
[21] Hanson, C. T. and M. P. North. 2008. Postfire woodpecker foraging in salvage-logged and unlogged forests of the Sierra Nevada. Condor 110: 777–782
[22] Hanson, C.T. 2014. Conservation concerns for Sierra Nevada birds associated with high- severity fire. Western Birds 45: 204-212

severely burned forest); Hanson et al. 2019[23] (discussing owl use of severely burned forest); Loffland et al. 2017[24] (discussing bee use of severely burned forest); Roberts et al. 2021[25] (discussing avian use of severely burned forest); Seavey et al. 2012[26] (discussing woodpecker use of severely burned forest); Siegel et al. 2012[27], 2013[28], 2014[29], 2014[30], 2016[31] (discussing woodpecker use of severely burned forest); Stillman et al. 2019[32] and 2019[33] (discussing woodpecker use of severely burned forest); Taillie et al. 2018[34] (discussing avian use of severely burned forest); Tingley et al. 2014[35], 2016[36] (discussing woodpecker use of severely burned

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[23] Hanson CT, Bond ML, Lee DE. 2019. Effects of post-fire logging on California spotted owl occupancy. Nature Conservation 24: 93–105. https://doi.org/10.3897/natureconservation.24.20538

[24] Loffland, H.L., J.S. Polasik, M.W. Tingley, E.A. Elsey, C. Loffland, G. Lebuhn, and R.B. Siegel. 2017. Bumble bee use of post-fire chaparral in the central Sierra Nevada. The Journal of Wildlife Management 81:1084–1097.

[25] Roberts, L.J.; Burnett, R.; Fogg, A. 2021. Fire and Mechanical Forest Management Treatments Support Different Portions of the Bird Community in Fire-Suppressed Forests. Forests 12, 150.

[26] Seavy, N.E., R.D. Burnett, and P.J. Taille. 2012. Black-backed woodpecker nest-tree preference in burned forests of the Sierra Nevada, California. Wildlife Society Bulletin 36: 722–728

[27] Siegel, R.B., M.W. Tingley, and R.L. Wilkerson. 2012. Black-backed Woodpecker MIS surveys on Sierra Nevada national forests: 2011 annual report. Report to U.S.D.A. Forest Service Pacific Southwest Region. The Institute for Bird Populations, Point Reyes Station, CA
While species like black-backed woodpeckers immediately utilize severely burned forests, many other species that rely on severely burned areas—such as the cavities — show up several to many years post-fire. Siegel et al. 2012 explains: "Many more species occur at high burn severity sites starting several years post-fire, …. and these include the majority of ground and shrub nesters as well as many cavity nesters. Secondary cavity nesters, such as swallows, bluebirds, and wrens, are particularly associated with severe burns, but only after nest cavities have been created, presumably by the pioneering cavity-excavating species such as the Black-backed Woodpecker. Consequently, fires that create preferred conditions for Black-backed Woodpeckers in the early post-fire years will likely result in increased nesting sites for secondary cavity nesters in successive years."

[28] Siegel, R.B., M.W. Tingley, R.L. Wilkerson, M.L. Bond, and C.A. Howell. 2013. Assessing home range size and habitat needs of Black-backed Woodpeckers in California: Report for the 2011 and 2012 field seasons. Institute for Bird Populations

[29] Siegel, R.B., M.W. Tingley, and R.L. Wilkerson. 2014. Assessing home-range size and habitat needs of Black-backed Woodpeckers in California: report for the 2013 field season. Report to U.S.D.A. Forest Service Pacific Southwest Region. The Institute for Bird Populations, Point Reyes Station, CA

[30] Siegel, R.B., R.L. Wilkerson, M.W. Tingley, and C.A. Howell. 2014. Roost sites of the Black-backed Woodpecker in burned forest. Western Birds 45:296–303

[31] Siegel, R.B., M.W. Tingley, R.L. Wilkerson, C.A. Howell, M. Johnson, and P. Pyle. 2016. Age structure of Black-backed Woodpecker populations in burned forests. The Auk: Ornithological Advances 133:69–78
Siegel et al. states that its "results indicate that natal dispersal is the primary means by which Black-backed Woodpeckers colonize recently burned areas in western forests, and that breeding dispersal is uncommon. The decline of Black-backed Woodpecker populations 6–10 yr after fire likely reflects the lifespan of individual birds that colonized the burned area, or of offspring that they produced in the early postfire years."

[32] Stillman, A.N., R.B. Siegel, R.L. Wilkerson, M. Johnson, and M.W. Tingley. 2019. Age-dependent habitat relationships of a burned forest specialist emphasise the role of pyrodiversity in fire management. Journal of Applied Ecology 56:880-890

[33] Stillman, A.N., R.B. Siegel, R.L. Wilkerson, M. Johnson, C.A. Howell and M.W. Tingley. 2019. Nest site selection and nest survival of Black-backed Woodpeckers after wildfire. The Condor: Ornithological Applications XX:1–13

[34] Taillie, P. J., R. D. Burnett, L. J. Roberts, B. R. Campos, M. N. Peterson, and C. E. Moorman. 2018. Interacting and non-linear avian responses to mixed-severity wildfire and time since fire. Ecosphere 9(6):e02291. 10.1002/ecs2.2291

[35] Tingley, M.W., R.L. Wilkerson, M.L. Bond, C.A. Howell, and R.B. Siegel. 2014. Variation in home range size of Black-backed Woodpeckers (*Picoides arcticus*). The Condor: Ornithological Applications 116: 325–340

[36] Tingley, M.W., V. Ruiz-Gutiérrez, R.L. Wilkerson, C.A. Howell, and R.B. Siegel. 2016. Pyrodiversity promotes avian diversity over the decade following forest fire. Proceedings of the Royal Society B 283:20161703.

forest); White et al. 2016,[37] 2019[38] (discussing avian use of severely burned forest). These papers advise, for example:

- "Manage a substantial portion of post-fire areas for large patches (20–300 acres) burned with high severity as wildlife habitat."
- "Retain high severity patches in areas where pre-fire snags are abundant as these are the trees most readily used by cavity nesting birds in the first three years after a fire."
- "Snag retention immediately following a fire should aim to achieve a range of snag conditions from heavily decayed to recently dead in order to ensure a longer lasting source of snags for nesting birds."
- "Consider that snags in post-fire habitat are still being used by a diverse and abundant avian community well beyond the 2 – 8 years they are used by Black-backed Woodpeckers."
- "Retain smaller snags in heavily salvaged areas to increase snag densities because a large range of snag sizes, from as little as 6 inches DBH, are used by a number of species for foraging and nesting. Though, most cavity nests are in snags over 15 inches DBH."
- "Retain patches of high burn severity adjacent to intact green forest patches, as the juxtaposition of unlike habitats is positively correlated with a number of avian species, including those declining such as Olive-sided Flycatcher."

Furthermore, there can be important differences between forest stands that have burned at high-severity--for example, a pre-fire dense forest with large trees that burns at high-severity will produce post-fire conditions that are different from a pre-fire open forest that burns at high-severity and that is yet another issue that cannot be addressed in a site-specific manner because the wildfire has not occurred yet.

To resolve these issues, we ask that the condition-based management decision be abandoned and a commitment instead made to conduct site-specific NEPA analysis at a future time.

Sincerely,

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[37] White, A. M.; Manley, P. N.; Tarbill, G. L.; Richardson, T. W.; Russell, R. E.; Safford, H. D.; Dobrowski, S. Z. 2016. Avian community responses to post-fire forest structure: implications for fire management in mixed conifer forests. Animal Conservation. 19(3): 256-264

[38] White, A.M., G.L. Tarbill, B. Wilkerson, and R. Siegel. 2019. Few detections of Black-backed Woodpeckers (Picoides arcticus) in extreme wildfires in the Sierra Nevada. Avian Conservation and Ecology 14:17