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July 1, 2019

Kim S. Turner, Deputy Assistant Field Supervisor  
U.S. Fish and Wildlife Service  
2800 Cottage Way, Suite 2605  
Sacramento, CA 95825

**RE: Comments Regarding Draft Environmental Impact Statement and Draft Habitat Conservation Plan for Northern Spotted Owl and California Spotted Owl on Sierra Pacific Industries California Timberlands (Federal Register Document No. 2019-08933)**

Dear Ms. Turner and U.S. Fish and Wildlife Service:

The following comments are presented on behalf of the Environmental Protection Information Center— (“EPIC”), the Klamath-Siskiyou Wildlands Center (“KS Wild”), the Center for Biological Diversity, the Battle Creek Alliance (“BCA”), and the Klamath Forest Alliance (“KFA”), in response to the May 2, 2019 Federal Register Notice of Availability and Request for Comments published by the U.S. Fish and Wildlife Service (“Service”), for the Draft Environmental Impact Statement (“DEIS”), and Draft Habitat Conservation Plan (“DHCP”), prepared for Sierra Pacific Industries (“SPI”) California Timberlands to cover Incidental Take of Northern Spotted Owl (*Strix occidentalis caurina*) and California Spotted Owl (*Strix occidentalis occidentalis*). (Federal Register Document Citation No. 84 FR 18856; Document No. 2019-08933)

**Contact:**

Should there be any questions, comments or concerns regarding these comments, please contact: Rob DiPerna, California Forest and Wildlife Advocate, EPIC, at: [rob@wildcalifornia.org](mailto:rob@wildcalifornia.org).

**Summary**

The DEIS puts forth a Preferred Alternative as the Proposed Action in the SPI DHCP that is not consistent with the intent of congress in enacting and amending the Endangered Species Act as it fails to rely solely on lands under the ownership or control of SPI as the Permit Applicant. The DHCP proposes to utilize an illegal take definition for the purposes of modeling and establishing and/or removing conservation and mitigation measures that is based solely on generalized habitat values and the question of occupancy or non-occupancy.

Further, the DHCP fails to minimize and mitigate the impacts of SPI timber harvesting and related activities to the maximum extent practicable on proposed Covered Species by only applying critical mitigation and minimization measures to discretionary permitting frameworks, known as Timber Harvest Plans, (“THPs”), but not to ministerial-permitted timber harvesting activities, known as “Exemption” and “Emergency” timber harvest permit activities under the California Z’berg-Negedly Forest Practice Act and implementing regulations, the California Forest Practice Rules.

Finally, experimental removal, collection, and study of barred owls (*Strix varina*) by SPI are a keystone piece of the DHCP as analyzed in the DEIS for which the Service lacks reasonable assurances that the additional necessary permits under the federal Migratory Bird Treaty Act and from the California Department of Fish and Wildlife to satisfy prohibitions against the “taking” of any species in the Order of *stigiform* or *falciform* contained in the California Fish and Game Code can or will be attained. Lacking such assurances that the additional necessary permits can and will be duly and timely obtained and that thereby the DHCP as envisioned will be implemented, the DEIS cannot rely upon the potential and speculative issuance of such additional permits.

The DEIS and the DHCP as noticed for public comment and inspection are both deficient and would be unlawful if executed as currently conceived. We strongly recommend that the Service abandon this effort and focus its efforts on administering and enforcing the ESA, its prohibitions, and recovery mandates and to choose the No Action Alternative as proposed in the DEIS.

### **DHCP Fails to Minimize and Mitigate Proposed Taking of Covered Species to the Maximum Extent Practicable by the Applicant, SPI**

The DHCP put forth by SPI as analyzed in the DEIS does not appear to rely solely upon lands under the ownership or control of the Permit Applicant SPI as the lynch-pin of its overall conservation, minimization, and mitigation as the basis for allowance of Incidental Take of Proposed Covered Species.

The DHCP states that the primary conservation measure proposed by SPI in its Permit Application to minimize and mitigate the impacts of Proposed Incidental Take of Proposed Covered Species to the maximum extent practicable is the establishment of Potential Habitat Areas (“PHAs”) and the implementation of protection and mitigation measures associated with PHAs, and Protection Zones (“PZ’s”) within these.

The DEIS describes SPI land ownership within the area of the Proposed Action:

SPI’s land holdings in California reside in the Klamath Mountains, Southern Cascades, and Sierra Nevada ecological sub regions. The land ownership pattern consists of both large contiguous tracts of land and a significant number of smaller non-contiguous tracts. Much of SPI’s holdings are mixed with USFS lands in a “checkerboard” ownership pattern, such that spotted owls within a single territory utilize both privately- and federally-managed forestland. (DEIS at 1.2.1, p. 3.)

The DHCP indicates that SPI’s primary conservation measure would be the establishment of PHAs and PZs to benefit habitat conservation and to serve as minimization and mitigation for any potentially-authorized Incidental Take of Proposed Covered Species:

This primary Conservation Measure provides that SPI will increase the amount and distribution of habitat contributing to survival and reproductive capacity of CSO and NSO on the Plan Area over the permit term. SPI will implement habitat management and protection strategies that will identify, maintain, restore, and increase aggregations of habitat accounted for by NSO and CSO PHAs in the Plan Area. (DHCP 5.2.2.1, at p. 64.)

The DHCP describes how the PZs contained within proposed PHAs for NSO and CSO were derived by SPI:

Under this Conservation Measure, all known and newly discovered occupied NSO and CSO ACs will receive a Protection Zone (PZ). For the analysis in this HCP, SPI already has drawn PZs at 428 occupied spotted owl ACs on or within 0.25 mile of the Plan Area. Justification, standards, and methods for designating PZs are presented in Appendix 5.2 (Protection Zones), which was

reviewed by the Service and CDFW during HCP development. The PZs are drawn without considering ownership at a minimum of 72 acres. Of the 367 PZs that overlap SPI lands, SPI ownership averages 59 acres (60 percent of the average 98-acre PZ). Most vegetation-disturbing activities will be precluded in all PZs. If an AC has been determined to be unoccupied by 3 consecutive years of protocol surveys, the AC PZ is removed. As designated, these 367 PZs contain 21,706 acres of SPI lands. (DHCP 5.2.2, at p. 64-65.)

DHCP 5.2.2 then describes the hexagon analysis and concept as the basis for establishing the Protection Zones (PZs) within PHAs, and the “tiering” of PHAs that are at the center of the DHCP Conservation Strategy for NSO home range circles, known as “Activity Centers” (“ACs”):

Tier 1 ACs receive the highest level of protection. Within the 1.3-mile circle representing the home range (“home range circle”) surrounding the AC (USDI 2009), the best available habitat was identified for retention up to a target of 1,336 acres regardless of ownership. These areas were then intersected with SPI ownership to determine SPI’s proportional amount of the areas identified. The portion of these lands on SPI are designed to serve as a long-term habitat refugia in the HCP. (DHCP 5.2.2, at p. 65.)

The DEIS additionally describes how the DHCP will rely on lands not under the ownership or control of SPI when establishing PHAs in discussing the Proposed Action (HCP Alternative):

Increase Potential Habitat Areas (PHAs; a 1,000-acre area consisting of a pair of 500-acre hexagons in SPI’s habitat model) across the landscape over the permit term. Increase aggregations of habitat (as measured by the number of PHAs) composed of at least 50% nesting habitat (as defined by SPI’s habitat forms HF4 [large tree, closed canopy cover forest habitat] and HF2H [medium tree, high canopy cover forest habitat]; see Appendix 4.3 of the SPI HCP, Table 4.3.3). A PHA consists of two adjacent hexagons, including one Nest Hexagon and one Support Hexagon. PHAs are anticipated to increase from 37.6% of hexagons (870,000 acres) at the beginning of the 50-year permit term to 72.5% of hexagons (1,729,000 acres) by the end of the 50-year permit term, though not all of those acres would be on the SPI Covered Lands. To qualify as a PHA, there must be a minimum of 250 acres (25% of the 1,000 acres) of SPI-owned land in the pair of hexagons that make up the PHA. For the ownership distribution within the hexagon network, see the SPI HCP (Table 4.3.4 in Appendix 4.3). (DEIS 2.2.2.1, at p. 13.)

DHCP Appendix 4.3 provides further evidence that SPI-owned and controlled property is not exclusively considered in the hexagon analysis modeling, or in the establishment of the two 500-acre-minimum hexagons:

SPI ownership within each hexagon ranges from 1 to 500 acres. The actual SPI acreage distribution within the 6,593 hexagons is shown in Table 4.3.4.

| <b>Table 4.3.4 - Distribution of SPI Ownership per Hexagon</b> |                              |                |                  |                  |                  |                  |                  |                  |                  |                |              |
|--|------------------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|----------------|--------------|
|  | <b>Hexagon Size Category</b> |                |                  |                  |                  |                  |                  |                  |                  |                |              |
|  | <b>&lt;50</b>                | <b>50-99.9</b> | <b>100-149.9</b> | <b>150-199.9</b> | <b>200-249.9</b> | <b>250-299.9</b> | <b>300-349.9</b> | <b>350-399.9</b> | <b>400-449.9</b> | <b>450-500</b> | <b>Total</b> |
| Hex Count  | 1,330                        | 700            | 579              | 500              | 524              | 488              | 382              | 405              | 359              | 1,326          | 6,593        |
| Acre Sum   | 24,008                       | 52,140         | 71,751           | 87,075           | 118,292          | 133,617          | 124,050          | 151,624          | 152,875          | 650,721        | 1,566,153    |
| Ave. Acres per size category                                   | 18                           | 74             | 124              | 174              | 226              | 274              | 325              | 374              | 426              | 491            | 238          |

|                                   |           |           |           |           |           |           |           |         |         |         |      |
|-----------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|---------|---------|---------|------|
| % of Acres by Size Category       | 2%        | 3%        | 5%        | 6%        | 8%        | 9%        | 8%        | 10%     | 10%     | 42%     | 100% |
| % of hexagons per Size Category   | 20%       | 11%       | 9%        | 8%        | 8%        | 7%        | 6%        | 6%      | 5%      | 20%     | 100% |
| Cumulative Acres                  | 1,566,153 | 1,542,145 | 1,490,005 | 1,418,253 | 1,331,178 | 1,212,886 | 1,079,269 | 955,220 | 803,596 | 650,721 |      |
| Cumulative % of landbase          | 100%      | 98%       | 95%       | 91%       | 85%       | 77%       | 69%       | 61%     | 51%     | 42%     |      |
| Cumulative Ave Acres/Hex Category | 238       | 293       | 327       | 356       | 382       | 410       | 437       | 457     | 477     | 491     |      |

(DHCP, Appendix 4.3, at 4.3.5.1, pp. 17-18)

The DHCP’s proposal to rely on adjacent lands that are not under either the ownership or control of the Permit Applicant, SPI, for its lynch-pin Conservation Strategy and for mitigation and minimization of Proposed Incidental Take is unlawful and inconsistent with the intent of congress in enacting and amending the ESA.

ESA §10 (a)(2)(B)(ii) states that when issuing an incidental take permit, the Secretary must find that “*the applicant* will . . . minimize and mitigate the impacts of such taking” of an endangered or threatened species. (Emphasis added). Additionally, the Code of Federal Regulations defines the term, “applicant,” to mean, “someone “who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.” (50 C.F.R. § 402.02.)

Finally, the Service’s own HCP Handbook prohibits the issuance of Incidental Take based on the evaluation of the actions of anyone other than the Permit Applicant, in this case, SPI. (HCP Handbook at, 7-3.) The Service’s HCP Handbook states that the Permit Applicant/Holder must have, “specific authority over the other parties affected by the HCP,” and be willing to, “exercise that authority, or must receive assurances from them that the terms of the HCP will be upheld.” (HCP Handbook at 7-5, 7-6.)

Here, the DHCP proposed by SPI, and analyzed by the Service as the Proposed Action (DEIS HCP Alternative), would authorize SPI to account only 250-acres of every 1,000-acres of PHA area within the hexagonal analysis polygons to lands it owns and controls, with the rest of the lands not under the ownership or control of SPI. In other words, the vast majority of the minimization and mitigation proposed in the DHCP in its lynch-pin Conservation Strategy would in fact be accounted to ownership other than that of the Permit Applicant, SPI.

Federal courts have already rejected the Service’s approval of another HCP that proposed to authorize Incidental Take of Northern Spotted Owl, one of the Proposed Covered Species in the SPI DHCP, on the basis that the Service erred in relying on the actions of other ownerships than that of the Permit Applicant when analyzing the effects of the HCP and whether or not the HCP would meet the requirements to minimize and mitigate proposed taking to the maximum extent practicable as required by the ESA.

In *Klamath-Siskiyou Wildlands Center, et al. v. National Ocean and Atmospheric Administration, National Marine Fisheries Service and United States Fish and Wildlife Service* (2015), The United States District Court of Northern California in its Order on Cross-Motions for Summary Judgement ruled that the Service acted arbitrarily and capriciously and violated the requirements of ESA §10 (a)(2)(B)(ii) by failing to rely solely on the mitigation and minimization measures of the Permit Applicant, in that instance being Fruit Growers Supply Company.

The Fruit Growers Supply Company HCP for Northern Spotted Owls was hinged upon the exact same Conservation Strategy as that being proposed in the DHCP for SPI and being analyzed in the DEIS as the Proposed Action (HCP Alternative). Specifically, like SPI, Fruit Growers Supply Company timberlands in northern California are situated in the “checkerboard matrix” where alternating square parcels are owned by Fruit Growers Supply Company mixed with other ownerships, most notably, the United States Forest Service.

The DHCP as proposed by SPI and as analyzed as the Proposed Action (HCP Alternative) in the DEIS is unlawful to the extent that it relies upon the actions of other owners on lands not under the ownership or control of the Permit Applicant, SPI, as it clearly violates the criteria established at ESA §10 (a)(2)(B)(ii) for allowance of issuance of Incidental Take of Proposed Covered Species, violates the Code of Federal Regulations, and the Service’s own HCP Handbook.

### **Hexagon Modeling Analysis Based on False Assumptions**

The DHCP hexagon modeling and analysis is predicated upon erroneous, unsubstantiated assumptions. The DHCP makes the false and erroneous assumption that lands adjacent to SPIs lands are managed largely for conservation and that management impacts are “low intensity,” compared to SPI lands as a basis for the hexagon analysis, modeling, and ultimately, the establishment of criteria for Incidental Take thresholds. DHCP Appendix 4.3 at 4.3.5.1, p. 18 states:

Given the lower intensity of management on USFS and other public lands relative to SPI’s lands, it is reasonable to assume that in most cases the habitat for species associated with forests off ownership is likely as good as or better than estimates derived from using SPI land data to estimate these conditions. (DHCP, Appendix 4.3, at 4.3.5.1, p. 18.)

First, the DHCP proposes to classify lands other than SPI lands using methods developed by SPI for the hexagon analysis that are then extrapolated out to all ownerships. Second, the statement that public and other lands adjacent to SPI lands are “largely managed for conservation,” and that impacts are “low intensity,” is unsubstantiated and materially incorrect, at least in the Klamath Mountain Province where SPI’s lands intersect with federal lands in the range of NSO.

The DHCP’s assumption in the hexagon analysis and modeling assumes that impacts to NSO or to habitat utilized by NSO are not being adversely impacted by natural events or management activities on adjacent federal lands is incorrect.

A compilation of data for NSO and NSO habitat lost to either authorized take by the Service via ESA Section-7 Consultations on U.S. Forest Service Timber Sales and other federal lands projects and impacts to NSO and NSO habitat on these same lands resulting from wildfire prepared by the Klamath Forest Alliance (2019), tells a very different story.

According to the KFA 2019 *Jeopardized Status—Northern Spotted Owl Population and Habitat Report* 2019 based on data from 1993-2012:

Logging and wildfire have strongly influenced the amount and distribution of habitat throughout NSO range. According to Davis et al., 2015<sup>1</sup>, between 1993-2012 over 5 million acres of NSO habitat has

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4 Davis, Raymond J.; Hollen, Bruce; Hobson, Jeremy; Gower, Julia E.; Keenum, David. 2016. Northwest Forest Plan—the first 20 years (1994–2013): status and trends of northern spotted owl habitats. Gen. Tech. Rep. PNW-GTR-929. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 54 p.

been lost, *nearly 4 million acres lost due to logging and over 1 million acres lost to wildfire*. The Klamath Provinces of California and Oregon experienced the highest rates of wildfire loss of over 700,000 acres. Logging in the Klamath Provinces in that time accounted for a loss of nearly 350,000 acres. (Klamath Forest Alliance, Jeopardized Status--Northern Spotted Owl Habitat Report 2019.)  
**(Attachment-A)**

The Service's Yreka Office recently published numbers estimating the amount and categories of NSO habitat lost to wildfire in northwest California National Forests from 2007-2018. This data is presented in the KFA 2019 Report states:

The USFWS, Yreka Office recently released findings from an effort to update and assess habitat conditions (baseline) for the NSO, and to update and assess the status of the species' designated critical habitat as a result of the decade of wildfire in the Pacific Northwest *California*.<sup>2</sup> The study area includes the Klamath, Six Rivers, Shasta-Trinity and Mendocino National Forests within the California Klamath, California Cascades, and California Coast physiographic provinces.

The summary concludes the loss of habitat from wildfire of CA national forests 2007-2018:

52,187 acres of nesting/roosting habitat,

38,177 acres of foraging and

58,770 acres of dispersal.

A total of 149,134 acres of habitat lost in California. This number would be much higher if Oregon and Washington were included. (*Ibid.*)

Finally, the KFA 2019 Report presents a summary of NSO "take" and habitat loss on National Forests in the Klamath Mountain Province due to logging between 2013-2018 alone, stating:

Review and documentation of all public land timber sales and other activities on the Klamath, Six Rivers, Mendocino, Shasta-Trinity and Rogue River Siskiyou National Forests and the Medford BLM (see NSO Project Impacts 2013-2018) shows "take" of approximately 211 owls in the last 5 years. These forests include the Klamath Provinces of California and Oregon as well as small portions of adjacent provinces. Logging, on the above public lands, has resulted in over 50,000 acres of habitat removal and degradation. This information has not been taken into consideration regionally.

Analysis concludes that approximately:

211 Northern spotted owls allowed for "take",

5,684 acres of nesting, roosting and foraging habitat removed,

12,408 acres downgraded,

10,277 acres degraded,

5,104 acres of post fire foraging 1 (previously nesting roosting habitat) removed, 2,511 acres of post fire foraging 2 removed,

10,263 acres of dispersal habitat removed and

5,270 acres of dispersal habitat degraded.

A total of 51,517 acres of habitat negatively affected. (*Ibid.*)

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<sup>2</sup> Process Paper for the Interim Baseline Adjustment for Northern Spotted Owl and its Critical Habitat: 2008 through 2018 Wildfires Klamath, Shasta-Trinity, Six Rivers, and Mendocino National Forests. Prepared by Yreka Fish and Wildlife Office's Section 7 consultation staff in cooperation with the Forest Service. December 20, 2018

The assumption made by SPI in DHCP Appendix 4.3 in its hexagon analysis, modeling, extrapolation, and establishing of criteria for thresholds to model Incidental Take is false and is not supported by facts or evidence presented.

To the extent that SPI or the Service would argue that the DHCP as presented in the DEIS does not propose to rely on adjacent lands not under the direct ownership or control of SPI as a Permit Applicant, the fact that this assumption is embedded into the hexagon analysis, modeling, extrapolation, and establishment of criteria and thresholds for the modeling of proposed-Incidental Take proves otherwise. SPI's reliance on the false assumption that adjacent lands will be managed for conservation and lightly impacted demonstrates that SPI factored the conservation actions and benefits of its neighbors, albeit based on false and erroneous and unsubstantiated assumptions, when it developed and ran its modeling and analysis for the DHCP and lands to be included in SPI hexagons not under SPI's ownership or control, and based its modeling and criteria for establishing thresholds for Incidental Take on actions of other ownerships not under its direct ownership or control.

### **DHCP Applies Illegal Take Definition by Reliance Upon Habitat Thresholds and Occupancy as Sole Basis for Estimating Incidental Take and for Either Applying or Removing Mitigation**

The DHCP proposes to meet the conservation and mitigation criteria established by congress in enacting and amending the ESA at §10 (a)(2)(B)(ii) by identifying NSO and CSO sites currently occupied on or adjacent to SPI lands and to then utilize habitat characteristics/features present at these as a basis of building a habitat network upon these known-occupied sites utilizing SPI Habitat Form stand and vegetation type classification modeled after vegetation typing provided in the California Wildlife-Habitat Relationship ("CWHR") classification.

The DHCP states that the primary biological goal is to create and maintain habitat networks predicated upon current and anticipated future occupancy:

The primary biological goal of the plan is to maintain and create amounts of habitat contributing to territories for spotted owls that include nesting/roosting stands, territory core areas, and territory support areas, with sufficient foraging habitat to support reproductive spotted owls and their offspring. SPI will evaluate future suitable habitat using currently occupied ACs to guide evaluation criteria. The ACs in SPI study areas have a history of occupancy and reproduction, and recent analyses have indicated that these populations had "essentially level" occupancy in recent years (2011–2012 through 2017) (Baldwin and Raphael, unpublished data, Appendix 3.2). (DHCP at 5, p. 61.)

There are multiple issues that render SPI's approach in the DHCP inadequate and that render the DEIS deficient. First, the above-citation refers to the Baldwin and Raphael unpublished data as being presented in the DHCP at Appendix 3.2. What is in fact contained at DHCP Appendix 3.2, however is a bare-bones summary with summary charts and graphs and little to no narrative description and no actual data to illuminate exactly what was done, where, when, how, using what protocols, and what might have been discovered or found, where, when, how, or using what protocols. There is no information provided for either Appendix 3.1 or Appendix 3.2 that provides any evidentiary basis to support SPI's claim at DHCP 5, p. 61, that population trends are "essentially level," whatever that means or is intended to mean.

The same flaw and issue of concern exists pertaining to DHCP Appendix 3.1 and SPI's so-called, NSO Density Study Interim Report supposedly based upon SPI survey efforts for NSO sites on and near its ownership in the area of Trinity Lake, CA, which is part of the area proposed to be covered by the DHCP. Here again, only a summary of SPI NSO survey data in a small, discrete are of its property, gathered only between 2011-2015 and referred to as a "landscape survey."(See: DHCP Appendix 3.1, at pp.1-2.)

Both Appendix 3.1 and 3.2 presented in the DHCP are referenced as critical pre-HCP preparation and analysis and supporting evidence and documentation for SPI's overall approach to the DHCP as proposed. The failure of SPI to include the actual studies and reports and the data behind these as "evidence" presented in DHCP Appendix 3.1 and Appendix 3.2, and the failure of the Service to include these in full as appendix to the DEIS violates NEPA and the Code of Federal Regulations as the DHCP and DEIS rely upon information that is either incomplete or unavailable to the Service or the public reviewing the DHCP and DEIS.

CFR §1502.22 provides that when an agency is relying upon incomplete or unavailable information for the purposes of evaluating reasonably foreseeable adverse effects on the human environment that the agency shall always make clear that such information is lacking. Further, CFR §1502.22(a) provides that, "If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement."

To the extent that the Service or SPI may wish to argue that the information contained in DHCP Appendix 3.1 and Appendix 3.2 is in fact incorporated into either the DHCP or DEIS but is incorporated by reference, the circumstances here do not allow the Service to rely upon such incorporation by reference.

CFR §1502.21 addresses the conditions under which an agency may rely upon incorporation by reference when preparing an EIS, stating: "The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference."

The SPI DHCP and the appendix referenced here appear to rely in whole upon data that is unpublished, not presented, and/or is otherwise unavailable to the Service or the public reviewing the DHCP and its companion DEIS. The absence of this information renders it impossible to know how SPI determined occupancy for NSO or CSO in the first place, whether or not the methods for such determination were done in a manner consistent with established protocols, what was found, when, where, or how. Further, the evidence presented in the DHCP and DEIS do not provide any evidence to either prove or disprove that SPI may be proposing Incidental Take of NSO or CSO as part of the DHCP that are not in fact located on SPI owned or controlled property but on adjacent property, the vast majority of which in the Action Area are federal and public lands.

Does the Service intend to authorize SPI to execute Incidental Take of NSO or CSO not actually located on property under the direct ownership or control of SPI, and that are in fact located on adjacent federal/public lands? The DHCP and its appendices do not provide the information to either confirm or disprove this potential contingency, or to allow the Service or the public to conduct a meaningful review and evaluation of the potential adverse or beneficial effects of the DHCP as the Proposed action in the DEIS, rendering both inadequate and unlawful.

Second, the Service itself has previously prepared extensive analysis and guidance specific to NSO and the Interior of California for the purposes of evaluating NSO take avoidance that make it clear a generalized habitat-based approach predicated primarily on occupancy and occupancy alone is an inadequate means of evaluating impacts to NSO life history behaviors and determining appropriate thresholds at which take may be either deemed avoided or likely to occur.

The Service conducted review and provided Technical Assistance to non-federal timberland owners in California for NSO during the Timber Harvest Plan ("THP") review and approval process from 1999-2008 at the request of the California Department of Forestry (CAL FIRE). In its 2009 regulatory guidance and scientific justification document in the transition of full responsibility for NSO THP take avoidance back to

CAL FIRE, The Service detailed multiple reasons why evaluating take avoidance utilizing a generalized habitat threshold using generalized definitions and occupancy as the primary indicator for NSO are flawed:

Evaluation of the scientific bases of the FWS guidelines for NSO in the Interior Region of California (Klamath Province) is dependant on understanding the concept and regulatory definition of take, the practical and operational considerations of determining the likelihood of take, and the information supporting our conclusion that existing habitat guidelines in the FPRs are not sufficient for avoiding take. It is also important to recognize the difference between the use of habitat guidelines in the determination of take versus descriptions of desired habitat conditions for conservation of NSO. (U.S. Fish and Wildlife Service, Regulatory and Scientific Basis for U.S. Fish and Wildlife Service Guidance for Evaluation of Take for the Northern Spotted Owl on Private Timberlands in California's Northern Interior, 2009 at p. 3.)(**Attachment-B**)

The DHCP's reliance upon generalized habitat thresholds and occupancy is the exact same framework utilized in the California Forest Practice Rules ("CFPRs") designed to avoid unauthorized take of NSO by non-federal timberlands owners in California.

The Service's 2009 guidance document and scientific and regulatory basis document details why this approach was deemed unlikely to avoid take of NSO:

The FPR guidelines for avoiding incidental take of NSO were therefore based on comparison of proposed post-harvest habitat conditions with the amount and quality of habitat observed at occupied NSO sites described in various studies. Under this standard, habitat modification potentially could result in substantial reduction of reproduction, survival, and occupancy at NSO activity centers without the appearance of take, because habitat conditions still resemble other lower-quality NSO territories. NSO are known to occupy low-quality sites where their reproduction and survival are substantially reduced (Franklin *et al.* 2000, Dugger *et al.* 2005); the existence of these low-quality sites suggests that reliance on habitat conditions corresponding to the presence or absence of owls at historic territories represents a low bar for determining habitat thresholds and take.(*Ibid.*, at p. 5.)

At the heart of the issue raised by the Service in 2009 is the same issue that renders the SPI DHCP inconsistent with the ESA and its definition of take.

The ESA defines "take" to mean "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." The term "harm" is further defined in 50 CFR 17.3: "Harm" in the definition of "take" in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

The DHCP presents a conservation and mitigation strategy based solely on the question of habitat thresholds and occupancy or non-occupancy. Further, mitigation measures proposed in DHCP Protection Zones (PZs) can be removed on the sole basis of three consecutive years of non-occupancy. No other metrics or essential life history behaviors are described or utilized in relation to either the establishment of PHAs or in PZs or in the removal of protections within PZs.

The DHCP makes no effort to consider apparent survival, fecundity, nesting success or failure, fledgling success or failure, or any other criteria when considering either the establishment of conservation measures in PHAs and PZs or in the decision to remove those protections.

The Service itself has issued Technical Assistance to CAL FIRE on the topic of "occupied," or "unoccupied," or "abandoned," NSO territories. (U.S. Fish and Wildlife Service, Technical Assistance for Determination of Unoccupied and Abandoned Status for Northern Spotted Owl Sites, 2008). (**Attachment-C**)

"New research information available on NSO site occupancy indicates that sites may be unoccupied, (or NSO may fail to respond) for more than 3 years and then subsequently are utilized by nesting NSO. The Yreka office of the Fish and Wildlife office has records from our review of timber harvest plans where 3 or more years of surveys failed to detect NSO in historic sites, and where owls were then later determined to be present." (U.S. Fish and Wildlife Service, Technical Assistance for Determination of Unoccupied and Abandoned Status for Northern Spotted Owl Sites, 2008, at p. 2 of 4.)

The Service concluded its 2008 Technical Assistance letter to CAL FIRE stating:

In summary, the Service does not concur that the sole use of 3 years of protocol surveys is appropriate to determine the permanent abandonment of historic NSO sites." (*Ibid.*, p. 3 of 4.)

Finally, The DHCP's reliance on occupancy as a sole indicator and on the basis of detection or non-detection of NSO and CSO fails to account for the interactive influences of barred owls on NSO and CSO survey detection and response probability where NSO or CSO may be sharing the landscape with barred owls.

Dugger et. al (2009) in *Final Report Estimating Northern Spotted Owl Detection Probabilities--Updating the USFWS Northern Spotted Owl Survey Protocol*, stated:

[t]he recent invasion of the Pacific Northwest by the barred owl (*Strix varia*), a potential competitor of the spotted owl, has had a suppression effect on spotted owl response rates (Olson et al. 2005, Crozier et al. 2006) and may be affecting occupancy dynamics of spotted owls in the landscape (Olson et al. 2005, Dugger et al. in review, Sovern et al. in prep). Therefore, survey results based on spotted owl detections when barred owls are present in the landscape may provide false or limited information about spotted owl presence and lead to inappropriate forest management activities under the Endangered Species Act. (Dugger et. al 2009, at p. 2.)(**Attachment-D**)

The Dugger et. al (2009) study and its findings eventually lead to the revision and updating of the USFWS NSO survey protocol and served as the basis for the 2012 updated and revised NSO Survey Protocol now employed by forest managers in the range of the NSO throughout California. Yet, the DHCP as proposed by SPI relies upon the outdated assumption that simply conducting protocol surveys to determine either occupancy or non-occupancy based solely on response or non-response, and then proposes to potentially remove protections for PZs after three consecutive years of no response based on SPI survey results.

The DHCP's proposal to rely solely on generalized habitat retention and occupancy as the basis for conservation and mitigation or to remove conservation and mitigations fails to address all manner of Incidental Take that might occur if the DHCP were implemented, particularly within the meaning of the regulatory definition of "harm," and thereby applies a take definition and criteria for evaluating Incidental Take that are inconsistent with the ESA and the CFR.

Additionally, the DHCP relies upon unpublished evidence not presented in either the DHCP or DEIS and upon methods and assumptions that are outdated in some cases, and outright inaccurate in others. The DHCP and its Adaptive Management Approach do not contain clear and enforceable mechanisms or triggers to either add or upgrade NSO PHAs should the DHCP measure prove ineffective or should NSO PHA or PZ habitat be lost due to natural events such as wildfire. Yet, the DHCP proposes to use an outdated and now-debunked assumption that lack of response of NSO for three consecutive years of protocol surveys as a trigger to remove PZ protections from historic NSO sites.

Finally, the DHCP presented by SPI appears to rely on data representing the conditions of habitat and status of NSO that are now outdated and unrepresentative of current and actual conditions. Whether changes have occurred due to harvest, wildfire, both or something else, the DHCP must present information and data

that reflect the current condition of SPI property and the current condition of NSO and CSO on and adjacent to SPI property. SPI also provides no evidentiary basis to support its claims that previously managed or otherwise impacted lands on its ownership can and will in-fact be re-grown to account for the balance projected in its modeling of Incidental Take, harvest, and regrowth over time.

### **DHCP Fails to Minimize and Mitigate Taking to Maximum Extent Practicable in all Categories of SPI Timber Harvest or to Ensure Mitigation and Minimization Measures Will be Implemented**

The DHCP fails to propose to minimize and mitigate the impact of Proposed Incidental Take of Proposed Covered Species to the maximum extent practicable by not requiring that all proposed mitigation and minimization measures apply to all categories of SPI's timber harvesting activities within the Plan Area that may result in "harm," harassment" or Incidental Take of Proposed Covered Species. Additionally, the DHCP fails to provide adequate assurances that mitigation and minimization measures will be implemented under all permit types and activity categories of SPI's timber harvesting within the area of the Proposed Action.

Specifically, both the DHCP and DEIS make it clear that mitigation and minimization measures being proposed to offset the impacts of proposed Incidental Take of Proposed Covered Species may not be implemented under timber harvesting permit frameworks other than Timber Harvest Plans ("THPs"), such as Exemption harvests (Title 14, California Code of Regulations 1038), or Emergency Timber Operations (Title 14, California Code of Regulations 1052).

DEIS 2.2.2.1, Bullet #5 describes that mitigation and minimization measures proposed in the DHCP to minimize adverse impacts to known reproductive sites for NSO and CSO may not be implemented or required under Exemption or Emergency ministerial permit timber harvest and related activities conducted by SPI:

When timber harvesting will occur under a THP or suitable habitat will be significantly altered, conduct pre-harvest surveys and designate 0.25-mile seasonal buffers around all active nest sites from March 15 to August 31, with no harvest or vegetation-disturbing activities allowed within the buffer during that time. When harvesting operations are conducted under emergency of exemption notices (CFR 14 CCR 1038 or 1052), full protocol surveys might not be conducted, but efforts will be made to locate and avoid spotted owls. These efforts include AC searches, spot checking other known ACs near the project, checking databases, and communicating with adjacent landowners. (DEIS 2.2.2.1, Bullet #5, at p. 14.)

While it is unknown and unclear what is meant or intended by the phrase, "might not be conducted," with respect to pre-harvest surveys, or the phrase "efforts will be made," to locate NSO and CSO prior to the initiation of Exemption or Emergency harvest activities, it is clear that the lack of prescriptive requirements to allow the Service and/or the public to enforce or monitor to ensure compliance with such vague language as a standard renders the DHCP insufficient to ensure minimization and mitigation of proposed Incidental Take of Proposed Covered Species to the maximum extent practicable.

Reliance by the Service upon such language as "might not," and "efforts will be made," fails to provide the Service or the public with assurances that minimization and mitigation to the maximum extent practicable will be implemented in violation of ESA §10 (a)(2)(B)(ii), and other criteria governing the authorization of Incidental Take.

Both Exemption (1038) and Emergency (1052) timber harvesting permit frameworks available to nonfederal timberland owners under the California Forest Practice Rules are ministerial permitting frameworks, meaning that the normal requirement to prepare a full Timber Harvest Plan ("THP") is waived, and that the administering agency, the California Department of Forestry and Fire Protection ("CAL FIRE") does not exercise discretionary authority over the harvest activities, nor is there a multi-disciplinary inter-agency review, or public comment or inspection.

Timber harvest and related activities on non-federal lands in California under these permitting frameworks have a much higher likelihood of resulting in “take” whether authorized or unauthorized via “harm,” “harassment,” and the disturbance of essential life history behaviors of NSO and CSO due to the lack of regulatory review, oversight and prescriptive constraints normally afforded by California’s THP permitting framework and process for non-federal timberlands.

On August 13, 2018, the California Department of Fish and Wildlife (“CDFW”) in consultation with the Yreka Office of the U.S. Fish and Wildlife Service created and issued a guidance document for nonfederal land timberland owners, Registered Professional Foresters (“RPFs”) and others to utilize when considering post-fire exemption or emergency timber operations in the range of the NSO in California. The stated purpose of this document is to:

“[P]rovides guidance to Registered Professional Foresters (RPFs) and others for analyzing potential impacts to NSO Activity Centers and/or habitat prior to post-wildfire salvage Timber Operations. The California Department of Fish and Wildlife (CDFW), in consultation with the U.S. Fish and Wildlife Service (Service), developed this guidance as a recommended process to determine NSO occupancy and assess potential impacts of salvage Timber Operations on NSO in a post-fire landscape. It is the responsibility of any person engaged in Timber Operations within the known geographic range of the NSO to avoid unauthorized take as defined in the Endangered Species Act (ESA) (16 U.S.C., § 1538) and the California Endangered Species Act (CESA) (Fish & G. Code, § 2080).” (Potential Impacts of Post-Wildfire Timber Operations on Northern Spotted Owls: Analysis in the Interior of Northern California, California Department of Fish and Wildlife, August 13, 2018.) (**Attachment-E**)

CDFW in consultation with the Service’s Yreka Office provided post-wildfire timber operations considerations and guidance with the intent of assisting nonfederal timberland owners in avoiding unauthorized take of NSO during the course of post-wildfire timber operations and related activities, stating:

Recent studies have documented variable use by spotted owls in forests burned by wildfire, depending on the extent and severity of the fire (Gaines et al. 1995, King et al. 1998, Bond et al. 2002, Jenness et al. 2004, Clark 2007, Bond et al. 2009, Clark et al. 2011, Roberts et al. 2011, Lee et al. 2012, Clark et al. 2013, Eyes 2014, Bond et al. 2016, Jones et al. 2016). Timber Operations to salvage burned timber have the potential to result in take of NSO by removing fire-affected trees used by NSO for nesting, roosting, or foraging, or causing disturbance during the breeding season if the owls are present.

CDFW recognizes that the economic value of burned timber declines rapidly following wildfire. As such, harvesting of burned or damaged trees through salvage logging under the California Forest Practice Rules (FPRs) (Cal. Code Regs., tit. 14, § 1038 or 1052, exemption or emergency notices) often commences immediately following wildfires. Notwithstanding, the requirements of ESA, CESA, and FPRs still apply to salvage Timber Operations. (*Ibid.* at p. 3 of 6.)

The CDFW document recommends utilization of the Service’s own 2012 survey protocol for NSO, emphasizing the importance of surveys to verify the potential for presence or absence of NSO in a post-wildfire landscape prior to the initiation of salvage (emergency or exemption) timber harvest, and recommends that RPFs and non-federal timberland owners pre-consult with CDFW prior to the initiation of exemption or emergency timber operations:

RPFs should contact CDFW to request a site-specific pre-consultation prior to submission of the Notice of Emergency Timber Operations (EO) to the California Department of Forestry and Fire Protection (CAL FIRE) for salvage Timber Operations. (*Ibid.* at p. 4 of 6.)

The DHCP presents no assurances or clear, enforceable provisions to allow the Service or the public to have confidence that whatever “efforts” that “might” be made will be implemented, or that taking of NSO and

CSO will be minimized and mitigated given that the DHCP offers no hard-and-fast prescriptive or enforceable assurances that will be universally applied during the course of either Exemption or Emergency timber harvest and related activities.

The DHCP does not propose to minimize and mitigate to the maximum extent practicable all activities associated with SPI timber harvest and related activities that may result in Incidental Take of Proposed Covered Species. The type or category of state timber harvest and vegetation management activity permit has and should have no bearing on the question before the Service, which is whether or not the DHCP would minimize and mitigate any authorized Incidental Take of Proposed Covered Species to the maximum extent practicable.

The DHCP fails to propose to minimize any authorized Incidental Take to the maximum extent practicable or to present assurances to the Service or the public that measures to minimize and mitigate potential incidental taking will be implemented in every and all instances, thereby rendering the DHCP inconsistent with criteria established by congress in violation of ESA §10 (a)(2)(B)(ii), and other criteria governing the authorization of Incidental Take.

Considered in this light, the DEIS No Action Alternative would provide greater conservation benefit for Proposed Covered Species than the DEIS HCP Alternative (Proposed Action), since the CDFW guidance and considerations document would represent the baseline “no-take” standard for SPI timber harvest and related activities conducted under Exemption and Emergency timber operations, at least for the Northern Spotted Owl.

### **Service Lacks Assurances that Additional Necessary Permits Can and Will Be Obtained**

The DHCP put for by SPI and the DEIS in articulating the Proposed Action (DEIS HCP Alternative), describe that experimental collection and study of barred owl (*Strix varina*) is proposed as a key mitigation and conservation benefit of the Proposed Action.

DEIS 2.2.2.1, Bullet #8 in describes the barred owl experimental study and collection as part of the Proposed Action (HCP Alternative), stating that SPI will address bared owl as a stressor on NSO and CSO by:

Proposing to conduct several studies with the following objectives: 1) assess the genetic differentiation of barred owl populations across northern and central California, 2) analyze allele frequency changes on the front of the range expansion, 3) estimate the amount of spotted owl – barred owl admixture in each population, and 4) identify wildlife species that barred owls prey upon in California. (DEIS 2.2.2.1, at p. 15.)

The DEIS further describes the proposed experiment:

[C]ollection of barred owls at an expected rate of 50 per year, for a potential total of 2,500 barred owls collected over the 50-year permit term, as described in Appendix 5.5 of the SPI HCP. If barred owl populations increase throughout the SPI Covered Lands, this estimate could rise to 150 barred owls collected per year, for a potential total of 7,500 barred owls collected over 50 years. (*Ibid.*)

To facilitate the proposed experiment presented by SPI in the DHCP as analyzed in the DEIS, SPI will at a minimum require a barred owl take and collection permit under the federal Migratory Bird Treaty Act (MBTA), as well as a separate permit to allow “take” of barred owls as prohibited under California State Law from the California Department of Fish and Wildlife (“CDFW”). It is not certain that either of these additional permits can or will be attained, or for the duration of time (50-years) contemplated in the DEIS and DHCP.

Pursuant to 14 U.S.C. § 1539(2)(B)(v), the Service must receive “assurances” that core components of the HCP “will be implemented” prior to approving the plan. SPI can provide no such assurances. To the extent that the Service can rely upon itself to issue future MBTA permits, this guarantee may violate the MBTA and its

implementing regulations. To the extent permissible, Service cannot provide assurances that CDFW will issue its permits. The DHCP therefore violates the Endangered Species Act. Furthermore, this failure to provide assurances introduces substantial uncertainties to the impact of the DHCP as analyzed in the DEIS.

### **Service and Sierra Pacific Have Not Provided Assurances SPI Can Fully Fund its Commitments and Proposed Activities in Violation of ESA Section 10 and NEPA**

An applicant seeking an incidental take permit from the Service must submit a habitat conservation plan specifying:

the impact which will likely result from such taking;  
what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;  
what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

ESA § 10(a)(2)(A)(i)-(iv), 16 U.S.C. § 1539(a)(2)(A)(i)-(iv). ESA Section 10(a)(2)(B) requires the Secretary to determine that the Section 10 criteria are met. "It is plain on the face of the statute" that the Services must independently make this finding. *Gerber v. Norton*, 294 F.3d 173, 184-85 (D.C. Cir. 2002). The Services' decision must have adequate basis in the record, for failure "to provide the necessary analysis" on a statutory factor renders the issuance of an ITP arbitrary and capricious. *Sierra Club v. Babbitt*, 15 F. Supp.2d at 1281. The Services may not blindly adopt the applicant's economic rationale as determinative. *Southwest Center for Biological Diversity v. Bartel*, 470 F. Supp. 2d at 1158.

An important finding the Service must make is that the applicant has the funding to implement the steps it proposes to minimize and mitigate the impacts of its proposed actions. Here, the Service has failed to ensure Sierra Pacific will have the funding over the life of the requested incidental take permit and implement all of the commitments made in the HCP. The DEIS and DHCP only contain superficial statements about Sierra Pacific's ability to fully fund its commitments over the life of the requested permit. For example, the DHCP notes:

"SPI warrants that it has, and shall expend, such funds as may be necessary to fulfill its obligations under the ITP and the HCP. SPI's demonstrated capability and commitment to fund the Projects and studies during development of the HCP provides assurances that commitments under the HCP will be completed when needed." (DHCP at p. 134.)

While the DEIS does not the requirement that Sierra Pacific provide funding assurances, nowhere in the DEIS is any financial information relevant to Sierra Pacific provided for public review. This is entirely insufficient and provides neither the Service nor the public with assurances that Sierra Pacific can actually fully fund all activities required of it under an approved HCP. While the HCP does include a chart listed expected required costs to Sierra Pacific of implementing the commitments in the HCP, it does not actually provide any assurances beyond a conclusory statement that it can actually fund those costs for the life of the requested permit. The failure to provide additional and verifiable information violates both ESA Section 10 and NEPA. This information must be provided, and the public provided with an opportunity to comment on it, in order to possibly comply with the ESA and NEPA.

### **Service Violated NEPA By Failing to Disclose and Analyze Impacts**

The effects analysis contained in the DEIS violates NEPA in several respects. While the DEIS contains some disclosure and analysis of effects, several categories of effects receive cursory and inadequate consideration, including: water drafting; herbicide use; past, present, and future timber harvest; climate change;

and carbon sequestration. The Service should include a more robust analysis of these topics, including quantification of effects, in order to meet its NEPA obligations.

The DHCP and DEIS note that water drafting is a covered activity, yet the effects of water drafting are not disclosed in either document. While the DHCP provides a few sentences on what water drafting is and the size of the trucks Sierra Pacific may use, there is no actual disclosure of the amount of water drafting, the location of water drafting, or the anticipated effects of water drafting. Further, the DHCP notes that measures to minimize impacts from water drafting are included in THPs, but no detail is included about what those measure might be, how they would work, or what the goal of such measures would be. The Service cannot assure that the effects from implementation of the HCP will be minimized as it relates to water drafting in violation of the ESA. The failure to disclose and document effects related to water drafting, including quantifying amounts, violates NEPA.

For herbicide use, the draft documents indicate Sierra Pacific will continue to use herbicides on its lands, however the DEIS is devoid of any disclosure and analysis of the potential effects of such herbicide use. This violates NEPA.

The DEIS fails to disclose, quantify, and analyze past, present, and reasonably foreseeable future timber harvest projects on and near Sierra Pacific lands. While the DEIS does include some description of private land logging as it relates to HCPs in effect or in development, there is no disclosure or analysis beyond broad statements about this timber harvest on both private and public lands. That this analysis is largely lacking from the DEIS is particularly concerning, especially given the DEIS' concession that "loss of NSO habitat due to timber harvest on private lands is projected to be approximately 3,023,950 acres range-wide. This would essentially result in over 100% loss of NSO habitat on non-federal lands." (DEIS at p. 124.)

That the Service would consider allowing additional logging in NSO habitat on private lands given that it already anticipates 100% loss of NSO habitat on non-federal lands is concerning in and of itself, but additionally further justifies a more robust effects analysis to meet NEPA's requirements.

In particular, the NEPA analysis should include adequate and quantified data about the time, type, place, and scale of past, present, and reasonably foreseeable future timber harvests on both public and private lands on or near Sierra Pacific lands. Further, the Service should explain in sufficient detail how different project plans and harvest methods affected the environment. This analysis also must describe the geographic location of such timber harvest in relation to Sierra Pacific lands. While the DEIS does disclose the total amount of logging on a range-wide scale, it does not disclose whether this logging occurred on or near Sierra Pacific lands. This analysis matters greatly to ascertain the actual effects of this logging and how it will impact various species.

Finally, the DEIS fails to adequately disclose and analyze the effects of the proposed action on climate change and carbon sequestration. Importantly, the Service must provide a quantified analysis and not just a general discloser of effects. In particular, the Service must quantify the anticipated loss of carbon sequestration from logging and the scale and timing of future sequestration as a result of replanting. This analysis is possible and should be completed. This analysis also must consider the effects of climate change on the landscape, and whether or not changing climate will impact future tree growth rates (and resulting impact on rates of carbon sequestration on Sierra Pacific lands). For example, in California, climate change is expected to result in increased temperatures. Should these increased temperatures result in slower tree growth rates, or tree replacement of different tree species, that should be considered in this analysis. As it stands, the climate change and carbon sequestration analysis are inadequate and violate NEPA.

## **Conclusion**

The DHCP put forth by the Permit Applicant SPI is inconsistent with the criteria established by congress in enacting and amending the Endangered Species Act for allowance and issuance of Incidental Take Permits by

its proposed-reliance upon lands not under the ownership or control of SPI for its lynch-pin conservation and mitigation and minimization strategy. The DHCP is further inconsistent with the criteria established by congress that require minimization and mitigation of any authorized Incidental Take to the maximum extent practicable, and by reliance upon vague, unenforceable language as a mitigation standard to be applied and only selectively so at the discretion the Permit Applicant. Finally, the DHCP and by extension DEIS are invalid to the extent they both rely upon speculative issuance of additional permits for which the Permit Applicant, can offer no assurances of attainment to ensure that key pieces of the DHCP conservation strategy as conceived will be implemented.

The Service must choose the “No Action” alternative with respect to the DHCP and accompanying DEIS for SPI’s Incidental Take Application.

Sincerely,

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## **Attachments**

**Attachment-A:** Klamath Forest Alliance, Jeopardized Status--Northern Spotted Owl Habitat Report 2019.

**Attachment-B:** U.S. Fish and Wildlife Service, Regulatory and Scientific Basis for U.S. Fish and Wildlife Service Guidance for Evaluation of Take for the Northern Spotted Owl on Private Timberlands in California's Northern Interior, 2009.

**Attachment-C:** U.S. Fish and Wildlife Service, Technical Assistance for Determination of Unoccupied and Abandoned Status for Northern Spotted Owl Sites, 2008.

**Attachment-D:** Final Report: Estimating Northern Spotted Owl Spotted Owl Detection Probabilities--Updating the USFWS Northern Spotted Owl Survey Protocol. Dugger et. al, 2009.

**Attachment-E:** Potential Impacts of Post-Wildfire Timber Operations on Northern Spotted Owls: Analysis in the Interior of Northern California, California Department of Fish and Wildlife, August 13, 2018.