

**OFFICIAL RESPONSE TO SIGNIFICANT ENVIRONMENTAL  
POINTS RAISED DURING THE TIMBER HARVESTING PLAN  
EVALUATION PROCESS**

**FROM THE DIRECTOR OF THE CALIFORNIA DEPARTMENT OF  
FORESTRY AND FIRE PROTECTION (CAL FIRE)**

TIMBER HARVESTING PLAN (THP) No: 1-20-00143-MEN  
SUBMITTER: Mendocino Redwood Company  
COUNTY: Mendocino  
END OF PUBLIC COMMENT PERIOD: March 19, 2021  
DATE OF RESPONSE AND APPROVAL: April 09, 2021

The California Department of Forestry and Fire Protection (CAL FIRE) serves as the lead agency in the review of Timber Harvesting Plans. These plans are submitted to CAL FIRE, which directs a multidisciplinary review team of specialists from other governmental agencies to ensure compliance with environmental laws and regulations. As a part of this review process, CAL FIRE accepted and responded to comments, which addressed significant environmental points raised during the evaluation of the plan referenced above. This document is the Director's official response to those significant environmental points, which specifically address this Timber Harvesting Plan. Comments, which were made on like topics, have been grouped together and addressed in a single response. Remarks concerning the validity of the review process for timber operations, questions of law, or topics and concerns so remote or speculative that they could not be reasonably assessed or related to the outcome of a timber harvesting operation, have not been addressed.

Sincerely,



Dominik Schwab  
Forester III, Forest Practice  
RPF #2823

Staff Forester / JR

cc: RPF, Unit, File; Timber Owner, Timberland Owner and/or Submitter  
CP, CDFW, DPR, & RWB (through <https://caltreesplans.resources.ca.gov/caltrees/caltrees.aspx>)

## **PUBLIC NOTIFICATION**

To inform the public of this proposed Timber Harvesting Plan (THP) and determine if there were any concerns with the plan the following actions were taken:

- Notification of the receipt of a timber harvesting plan was sent to the adjacent landowner(s).
- Notice of the receipt of the plan was submitted to the county clerk for posting with other environmental notices.
- Notice of the plan was posted at the Department's local office and also at the regional office in Santa Rosa.
- Notice of the receipt of the THP was sent to those organizations and individuals on the Department's list for notification of plans in the county.
- A "Notice of the Intent to Harvest Timber" was posted near the plan site.

## **THP REVIEW PROCESS**

The laws and regulations that govern the Timber Harvesting Plan review process are found in Statute law in the form of the Forest Practice Act which is contained in the Public Resources Code (PRC) and Administrative law in the rules of the Board of Forestry and Fire Protection (the Forest Practice Rules) which are contained in the California Code of Regulations (CCR).

The Forest Practice Rules are lengthy in scope and detail and provide explicit instructions for permissible and prohibited actions that govern the conduct of timber operations in the field. The major categories covered by the rules include:

- Timber Harvesting Plan contents and the Timber Harvesting Plan review process
- Silvicultural methods
- Harvesting practices and erosion control
- Site preparation
- Watercourse and lake protection
- Hazard reduction
- Fire protection
- Forest insect and disease protection practices
- Coastal Commission Special Treatment Areas
- Use, construction and maintenance of logging roads and landings
- County-specific rules

When a THP is submitted to the Department, it undergoes a multidisciplinary review consisting of several steps. In addition to CAL FIRE, the Review Team members include representatives of the California Department of Fish and Wildlife (CDFW); the appropriate Regional Water Quality Control Board (WB or NCRWQCB); California Geological Survey (CGS); the Department of Parks and Recreation (DPR); the appropriate County Planning office; and if within their jurisdiction, the Coastal Commission (CC) (14 CCR §1037.5(a)). Once submitted the Director determines if the plan is accurate, complete, and in proper order, and if so, files the plan (14CCR §1037). In addition, the Review Team determines whether a Pre Harvest Inspection (PHI) is necessary, and what areas of concern are to be examined during the inspection (14 CCR §1037.5(g)(1)).

If the plan is accepted for filing, and a PHI is determined to be needed, a field review is conducted to evaluate the adequacy of the THP. All agency personnel who comprise the multidisciplinary Review Team are invited to attend the PHI as well as other experts and agency personnel whom the Department may request. During this field review, additional mitigation and/or recommendations may be formulated to provide greater environmental protection. These recommendations are forwarded to the RPF along with the Review Team member's PHI Report. The RPF will respond to the recommendations made and forward these to the Region office and Second Review Team Chair.

A Second Review Team meeting is held where members of the multidisciplinary Review Team meet to review all the information in the plan, and develop a recommendation for the Director (14 CCR §1037.5(g)(2)). Prior to and/or during this meeting they examine all field inspection reports, consider comments raised by the public, and discuss any additional recommendations or changes needed relative to the proposed THP. These recommendations are forwarded to the RPF. If there are additional recommendations, the RPF will respond to each recommendation, and forward his responses to the regional office in Santa Rosa.

The representative of the Director of the Department reviews all documents associated with the proposed THP, including all mitigation measures and plan provisions, written correspondence from the public and other reviewing agencies, recommendations of the multidisciplinary Review Team, and the RPF's responses to questions and recommendations made during the review period. Following consideration of this material, a decision is made to approve or deny a THP.

If a THP is approved, logging may commence. The THP is valid for up to five years, and may be extended under special circumstances for a maximum of two more years, for a total of seven years.

Prior to commencing logging operations, the Registered Professional Forester must meet with the licensed timber operator (LTO) to discuss the THP (CCR §1035.2); a CAL FIRE representative may attend this meeting. The Department makes periodic field inspections to check for THP and rule compliance. The number of inspections depends upon the plan size, duration, complexity, and the potential for adverse impacts. Inspections include but are not limited to inspections during operations pursuant to Public Resources Code (PRC) section 4604, inspections of completed work pursuant to PRC section 4586, erosion control monitoring as per PRC section 4585(a), and stocking inspection as per PRC section 4588.

The contents of the THP, the Forest Practice Act, and rules, provide the criteria which CAL FIRE inspectors use to determine compliance. While the Department cannot guarantee that there will be no violations, it is the Department's policy to vigorously pursue the prompt and positive enforcement of the Forest Practice Act, the Forest Practice Rules, related laws and regulations, and environmental protection measures that apply to timber operations on non-federal land in California. This enforcement is directed primarily at preventing forest practice violations, and secondarily at prompt and adequate correction of violations when they occur.

The general means of enforcement of the Forest Practice Act, the rules, and other related regulations range from the use of violation notices, which require corrective action, to criminal proceedings through the court system. Timber operator and Registered Professional Forester licensing action may also be pursued. Most forest practice violations are correctable and the Department's enforcement program assures correction. Where non-correctable violations occur,

criminal action is usually taken. Depending on the outcome of the case and the court in which the case is heard, some sort of environmental corrective work is usually done. This is intended to offset non-correctable adverse impacts.

Once harvesting operations are finished, a completion report must be submitted certifying that the area meets the requirements of the rules. CAL FIRE inspects the area to verify that all aspects of the applicable rules and regulations have been followed, including erosion control work. Depending on the silvicultural system used, the stocking standards of the rules must be met immediately or in certain cases within five years. A stocking report must be filed to certify that the requirements have been met.

### FOREST PRACTICE TERMS

BOF	California Board of Forestry and Fire Protection	MAMU	Marbled murrelet
CFS	Cubic feet/second	MRC	Mendocino Redwood Company
CAL FIRE	Calif. Dept. of Forestry & Fire Protection	NCRWQCB	North Coast Regional Water Quality Control Board
CCR	California Code of Regulations	NSO	Northern Spotted Owl
CDFW or DFG	California Department of Fish and Wildlife	OR	Official Response
CEQA	California Environmental Quality Act	PC	Public Comment
CGS	California Geological Survey	PHI	Pre-Harvest Inspection
DDD	Director's Determination Deadline	PRC	Public Resources Code
DPR	Department of Parks and Recreation	RPF	Registered Professional Forester
FPR's	California Forest Practice Rules	THP	Timber Harvesting Plan
LTO	Licensed Timber Operator	USFWS	U.S. Fish and Wildlife Service

[sic] Word used verbatim as originally printed in another document. May indicate a misspelling or incorrect word usage

### BACKGROUND

Timber Harvesting Plan (THP) # 1-20-00143-MEN "Section 12" proposes to harvest timber on 212 acres of Mendocino Redwood Co LLC (MRC) timberland using Selection and Variable Retention silviculture. The THP was received by CAL FIRE on August 25, 2020. The THP was returned on September 3 and 24, 2020, for revisions before being accepted for filing on October 8, 2020. The PHI was conducted on November 3 and 4, 2020. Agency personnel attending this PHI were: Dave Fowler, NCRWQCB; Adam Hutchins, CDFW; Kevin Doherty, CGS; and Kenneth Margiott, CAL FIRE. MRC personnel included Chris Hayter, RPF, Ben Hawk, Mike Mattocks, Sal Chinnici, and Chris Morris. The Final Interagency Review (aka Second Review) occurred on January 21, 2021.

The Second Review Chair recommended the THP for approval and found it to be in conformance with the Act and the Rules of the Board of Forestry. The public comment period was initially set to end on February 1, 2021.

On February 16, 2021, information and changes which could be considered significant were added to the plan record, and on February 17, 2021, the plan was recirculated. The recirculation re-opened the public comment period until March 19, 2021, setting the deadline for the Director's Determination Deadline (DDD) for April 9, 2021, per 14 CCR § 1037.4.

## **PUBLIC COMMENT SUMMARY**

During the public comment period for this THP as described above, there were 5 public comments received from two different members of the public at the CAL FIRE Region Headquarters in Santa Rosa. These public comments brought up concerns that are addressed in this Official Response (OR). Non-duplicated, original text taken directly from the public comments are presented as *italicized text*. Words that are emphasized have underlined font. The public comments are identified with the CAL FIRE "PC" code. A copy of the original letters sent to the Department are viewable through the Department's online Forest Practice Database CalTREES.

**CalTREES instructions:** Navigate to <https://caltreesplans.resources.ca.gov/caltrees/caltrees.aspx> Click the search icon at the top of the page, then type the THP# in the Document Number box (county identifier not needed). Select "Timber Harvest Plan" under the Document Type dropdown list and click on the Search button.

## **SIGNIFICANT ENVIRONMENTAL CONCERNS AND RESPONSES**

### **# 20PC-000000320 from Anita Soost on August 31, 2020**

#### **CONCERN:**

*Hi,*

*I know it is still early in the review process for this THP, but I have a few questions that relate to THP-section 5, specifically the spotted owl subsection. I live on Signal Ridge Road south of Site 7 of this THP. My house sits within the .7 mile buffer boundary for this Site, as shown on p.409 and p. 428-430. I am trying to determine habitat values within Site 7 (i.e. foraging, nesting, roosting). It is very hard to tell from the map on p.409. I would like to know. I see no discussion of this Site 7 or pictures of it in the larger scale maps. Am I missing something? Is the THP only obligated to discuss the two nesting locations MEN0385 and MEN0569? Why are some private properties within the Site 7 buffer zone assigned habitat values, but most are left blank? After I see the rest of the THP I might have more comments. Thanks for your response.*

#### **RESPONSE:**

The northern spotted owl is state and federally listed as threatened. The THP addresses northern spotted owls on pages 78-80 and pages 401-487. The THP will comply with 14 CCR 919.9(e) of the

California Forest Practice Rules which allows a landowner to consult with the United States Fish and Wildlife Service:

If the submitter proposes to proceed pursuant to the outcome of a discussion with the U.S. Fish and Wildlife Service, the submitter shall submit a letter prepared by the RPF that the described or proposed management prescription is acceptable to the USFWS.

For timber operations, the USFWS has provided standard surveying and mitigation measures in a letter titled "USFWS Take Avoidance Analysis and Guidance for Northern spotted owl (*Strix occidentalis caurina*) Attachment A," dated November 1, 2019 (Attachment A). The THP will comply with these recommendations.

The THP must include maps of all NSO activity centers within 0.7 miles of the THP area as well as maps of habitat within 0.7 miles of all NSO activity centers. Page 409-410 show the pre- and post-harvest habitat typing within 0.7 miles of the THP area. In reference to Site 7, CAL FIRE assumes the commenter is referring to THP Unit 7, in Section 16, T14N, R15W, MDBM. Some areas are unclassified as shown in white, but they are outside the 0.7 mile buffers for the NSO activity centers. The requirement is to show pre-and post-habitat within 0.7 miles of the NSO activity centers as described in Attachment A:

Verify pre-harvest habitat typing of project area, survey area and 0.7-mile radius from each activity center using aerial photos, equivalent imagery, or field visits.

For example, on pages 415-416, the pre-and post-harvest habitat is shown within 0.7 miles of activity center for MEN0569 and you can see that the white unclassified areas in Section 17 match those of the map on page 409-410. The THP only needs to show the habitat around the two activity centers, MEN0385 and MEN0569. The pre- and post-harvest habitat maps and tables on pages 411 - 418 for MEN0385 and MEN0569 demonstrate that NSO habitat will be retained in compliance with the USFWS Attachment A Guidelines

#### **#20PC-000000382 from Anita Soost on August 31, 2020**

*Section 2, Item 32, pages 80-81*

*Re: The statement that "no osprey are known to be in the BAA".*

*This is not correct.*

*I live within the BAA of this THP. I have seen an osprey feeding in the neighbors' pond at 7201 Signal Ridge Road.*

*Section 4, page 187, subsection E, part B.*

*There appears to be no discussion of the change in visual resources that this THP might cause. There is an evaluation of impacts that states "no reasonably potential significant effects", but no supporting details for this conclusion. Your are proposing to harvest over 212 acres. I think this topic warrants discussion.*

*Section 4, page 199*

*Traffic*

*As noted, Signal Ridge Road is the first public road intersecting the appurtenant THP roads. I have lived on Signal Ridge Road for 38 years, just above the proposed THP Site 7. Logging*

*traffic has historically used Signal Ridge Road, as stated, but **not** “without incident or congestion”. About 2 years ago a log truck lost it's load at my driveway. Traffic on Signal Ridge Road is now at an all-time high. The section of the road between Maple Basin Road (MRC) and Greenwood Road is twisting and narrow with overgrown vegetation. People drive at speeds unsafe for the conditions here. I think extra caution signs, more than the required “truck traffic ahead” sign, would be advisable.*

## **RESPONSE:**

### **Osprey**

The THP addresses osprey on page 80 and 153 of the THP. Osprey are a BOF sensitive species, but not listed as state of federally threatened or endangered. Page 80 includes the following operational protection measures:

No Osprey are known to be in the BAA for this THP. Osprey were not seen or heard during plan layout. Per 919.2(d): when an occupied nest site of a listed species is discovered during the timber operations, the timber operator shall protect the nest tree, screening trees, perch trees, and replacement trees and shall apply the provisions of subsections (b) and (c) of 919.2, as well as immediately notify CDFW and CalFire.

On page 12 of the PHI report, the CAL FIRE inspector included the following:

I checked the Biological Assessment area for ospreys and the RPF's assessment is accurate. In response to this public letter, the RPF does include protection measures for osprey in Section II of the THP that comply with the requirements of 14 CCR 919.2. During the PHI, I observed that the THP area does not contain watercourses or ponds that would support osprey habitat. The man-made ponds are adjacent to the THP area do not support fish habitat.

Section II of the THP is where operational restrictions and mitigation measures are listed for the LTO. The statement about osprey not being known in the BAA refers more specifically to where protection measures would need to be implemented if an osprey nest was located, depending on its proximity to the THP area. In response to this concern, on February 17, 2021, the RPF revised the THP in Section III, page 153, to acknowledge that there is habitat in the BAA and a sighting of osprey.

The Watershed Assessment Area, Biological Assessment Area, and THP Area may contain functional habitat for the Osprey, as does any area with a tall post to support a nest platform near a water body. No Osprey or nesting platforms were observed in the vicinity of the plan area during plan preparation. A member of the public located within the assessment area has commented that they have seen an osprey 'at a neighbor's pond'.

There is a distinction made between osprey sighting versus nesting osprey. There is habitat available for foraging and nesting, but protection measures are only implemented for occupied nests. CAL FIRE determined that the THP has adequate protection measures listed in case a new occupied nest is discovered during timber operations.

## **Visual Impact Analysis**

The commenter correctly identified missing visual impact information on page 187 of the THP. On February 16, 2021, CAL FIRE received a revised page 187, to provide an evaluation of visual impacts. The RPF concludes:

A majority of the plan area is well away from public vantage points. Signal Ridge road is the only public road where portions of the THP area may be seen. The portion of the plan that may be seen is the northeast corner of Unit 7 comprising roughly 2 acres. Approximately 150 [feet] of the unit boundary borders Signal Ridge Road. This unit is proposed for Variable retention with dispersed retention. While there will be a change in the visual appearance of the landscape conifers of a range of diameters are marked for retention within the unit. Other portions of the unit not directly bordering the roadway will have a strip of screening vegetation between the roadway and the unit. Any slash created or trees knocked down by timber operations within 100' of the road are to be treated by removal or lopping per 14 CCR 917.2(b). Hardwoods are not to be treated within 100' of the roadway. Comparable activities have occurred along Signal Ridge road both north and south of this location in the recent past.

The CAL FIRE PHI Report addresses visual impacts on page 15:

A member of the public sent in a letter of concern about visual impacts for this THP and traffic impacts for this THP. In response to this letter of concern, visual impacts will not be significant. The post harvest timberstand should remain in a well forested condition. MRC policy prohibits herbicide usage without first falling tanoak trees within 100 feet of a public road. In addition, slash treatment is required within 100 feet of Signal Ridge Road. Furthermore, the area that is likely to be viewed from Philo Greenwood Ridge Road and from residences in the area will be the group selection harvest units.

Based on the revisions made by the RPF and the CAL FIRE Inspector's evaluation during the PHI, CAL FIRE determined that visual impacts have been adequately addressed in Section IV of the THP and significant impacts are unlikely to occur.

## **Traffic**

The commenter is also concerned about traffic on Signal Ridge Road. The CAL FIRE PHI inspector addressed the issue on page 15 of the CAL FIRE PHI report:

A member of the public is also concerned about traffic impacts. Traffic impacts should be no greater than what is normally expected along public roads. This member of the public requests traffic warning signs after they observed a log truck accident along Signal Ridge that resulted in logs being accidentally deposited onto a private driveway two years ago. This member of the public is concerned that the line of site is reduced by overgrowing vegetation on Signal Ridge Road and believes that Truck Traffic Warning signs should be placed on this Mendocino County Road during log hauling operations. My response is that it would be prudent to require that the LTO post truck traffic warning signs near the junction of the appurtenant road junction and Signal Ridge Road. The RPF shall revise the THP prior to



Second Review to state that the LTO shall post Truck Traffic Warning signs at the junction of Signal Ridge Road and the Maple Basin Road during log hauling operations.

The RPF revised the bottom of page 85 of the THP in response to the PHI recommendation, which requires the LTO to post "Truck Crossing" warning signs at the junction of Signal Ridge and Maple Basin Roads during log hauling operations. CAL FIRE believes that this mitigation will reduce potential traffic impacts from this THP to a level that is less than significant.

**#21PC-000000226 from Anita Soost on February 24, 2021**

*Comments on THP 1-20-00143 MEN*

*I find parts of this THP do not fully describe "in sufficient clarity and detail...to allow evaluation by the public..."*

*I am confused by the following:*

*Section 3, Attachment III- 27 (page 150)  
(bottom of the page)*

*"See also the anadromy discussion in Item XX..."  
Item number XX is not a valid reference, is it?*

*In the same same paragraph:*

*"Installation of such a pipe in a manner which will allow passage of all life stages will result in an approximate 4-5' high nick point in the stream channel above the inlet of the pipe."*

*Compare that description to page 151, (same section)*

*"...regardless of what is done there will still be a 4-6' gradient change between the outlet point of the pipe and the inlet point of the pipe."*

*These two descriptions do not match. Is that correct?*

*Is there a 4-6' drop from the outlet to the stream?*

*Is there also 4-6' nick point upstream from the inlet?*

*The diagrams are not near the diagrams, so it is hard to visualize what is intended.*

*Section 3, page 167.7*

*In the first paragraph is the sentence:*

*...the proposed design would not allow for the upstream migration of juveniles or fry."  
and in the following paragraph is the statement:*

*"The crossing in and of itself will allow passage of all life stages."*

*I do not understand how both these statements can be true. Please clarify.*

**RESPONSE:**

The commenter points out a typographical error on page 150, "See also the anadromy discussion in Item XX regarding the status of fish species present at this site." This typographical error is not a significant environmental concern. The RPF has provided a revised page 150 to address this

issue which refers to Item 26. The RPF also describes the species present at the site on the following page:

It is the position of the plan submitter that the fish species present at this site are resident rainbow trout, not migratory anadromous fish. See discussion of this conclusion above under 'Coho Salmon Considerations' at the end of general Item 26.

Therefore, the typographical error is resolved within the THP and does not lead to a significant lack of disclosure with the THP.

The commenter is concerned about language on pages 151 and 167.7 involving map point 52. The RPF has stated that if the culvert were installed at a gradient where all life stages of fish could pass, there would be a 4-5' high nick point in the channel above the inlet. In the following sentence he states the following:

There is no design option that will eliminate this result: Be it a bridge, a round pipe, a pipe arch, or even complete removal, regardless of what is done there will still be a 4-6' gradient change between the outlet point of the pipe and the inlet point of the pipe. Even considered at a steady slope this is a gradient of 10 to 15% through the crossing, which would not be passable to juveniles during low flows.

These are describing two different measurements. One is the 4-5' high nick point above the inlet if the culvert were installed at a gentle gradient and the other is the gradient measurement between the inlet and outlet of the culvert, which are two different things. It should be noted that the discussion on pages 150-151 is explained in more detail on pages 167.1-167.16.

The commenter is concerned about potential conflicting language on page 167.7 of the THP. The RPF makes the following statements on page 167.7:

We would venture to guess that flows in the 1 to 3 cfs range would have the potential to allow for upstream migration of resident trout in the 6" size range, however the proposed design will not allow for the upstream migration of juveniles or fry.

And

The crossing in and of itself will allow passage of all life stages. The plan submitter cannot fully remediate or alter what is in part a natural channel to allow passage of a life stage that the native channel already prevents.

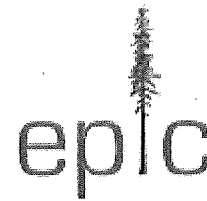
Also, the side view diagram of Map Point 52 on THP page 101 is helpful for visualizing the issue. The RPF's assertion indicating that the culvert will pass all life stages of fish but that the natural channel gradient will always be a limiting factor upstream is reasonable. CAL FIRE believes that there is no significant environmental concern related to the THP's language for repair site 52.

**#21PC-000000276 from the Environmental Protection Information Center (EPIC) on March 19, 2021**

The following letter was submitted via CALTREES on March 19, 2021. In addition, five references were uploaded. These are referenced as follows but not included in this response letter:

1. Blakesley, Jennifer A, Alan B. Franklin, and R.J. Gutierrez, Spotted Owl Roost and Nest Site Selection in Northwest California, *Journal of Wildlife Management*, 56(2): 388-392
2. Forsman, Eric D. and Alan R. Giese, Nests of Northern Spotted Owls on the Olympic Peninsula, Washington, *The Wilson Bulletin*, 109(1) 28-41
3. Forsman, Eric D., E. Charles Meslow, and Howard M. Wight, Distribution and Biology of the Spotted Owl in Oregon, *Wildlife Monographs*, 87, 1-64
4. Franklin, Alan B., David R. Anderson, R. J. Gutierrez, and Kenneth P. Burnham, Climate, Habitat Quality, and Fitness in Northern Spotted Owl Populations in Northwest California, *Ecological Monographs*, 70(4) 539-590
5. Sovern, Stan G. and Margaret Taylor, Nest Reuse by Northern Spotted Owls on the East Slope of the Cascade Range, Washington, *Northwest Naturalist* 92:101-106

Santa Rosa Review Team  
135 Ridgway Avenue  
Santa Rosa, CA 95401  
(707) 576-2959



Dear Santa Rosa Review Team,

On behalf of the Environmental Protection Information Center, please accept these comments on THP 1-20-00143-MEN, "Section 12". EPIC believes that MRC's deviation from Attachment A without consulting with USFWS violates the Forest Practice Rule 919.9 and could result in potential take of northern spotted owls ("NSO"). In addition, EPIC believes that widespread adoption of the deviation proposed by MRC will result in widespread negative cumulative impacts to NSO habitat. For these reasons, CAL FIRE should not approve this THP.

**I. Forest Practice Rule 919.9(e) allows RPFs to base their NSO take avoidance procedures on a discussion with the USFWS**

This THP contains 2 NSO territories within 0.7 miles of the plan area.<sup>1</sup> Because of the NSO's federally threatened status, the Forest Practice Rules contain numerous safeguards designed to protect the NSO and its habitat. California Code of Regulations, Title 14, Section 919.9 states the following:

"Every proposed timber harvesting Plan, NTMP, WFMP, conversion permit, Spotted Owl Resource Plan, or major amendment located in the Northern Spotted Owl Evaluation Area or within 1.3 miles of a known northern spotted owl Activity Center outside of the Northern Spotted Owl Evaluation Area shall follow one of the procedures required in subsections (a)-(g) below for the area within the THP boundary as shown on the THP map and also for adjacent areas as specified within this section. The submitter may choose any alternative (a)-(g) that meets the on-the-ground circumstances. The required information shall be used by the Director to evaluate whether or not the proposed activity would result in the "take" of an individual northern spotted owl."<sup>2</sup>

For this THP, the RPF selected option (e).<sup>3</sup> Option (e) allows the plan submitter to proceed with a THP "pursuant to the outcome of a discussion with the U.S. Fish and Wildlife Service".<sup>4</sup> This requires the submitter to "submit a letter prepared by the RPF that the described or proposed

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<sup>1</sup> Section 12 THP 1-20-00143-MEN, sec 2, p. 78.

<sup>2</sup> Cal. Code. Regs. tit. 14, § 919.9 Northern Spotted Owl.

<sup>3</sup> Section 12 THP 1-20-00143-MEN, sec 5, p. 401.

<sup>4</sup> Cal. Code. Regs. tit. 14, § 919.9(e) Northern Spotted Owl.

management prescription is acceptable to the USFWS.”<sup>5</sup> In this instance, the RPF did not have a unique discussion with USFWS, instead they decided to rely on a document known as the Northern Spotted Owl Take Avoidance Analysis and Guidance for Private lands in California Attachment A: Take Avoidance Analysis - Coast Redwood Region (“Attachment A”).<sup>6</sup>

This THP guarantees the reviewer that this THP follows the guidance put forth in Attachment A.<sup>7</sup> By stating that they would follow the guidance set forth in Attachment A in order to satisfy the requirements of § 919.9(e), the RPF has bound themselves to follow that document when conducting NSO surveys. The reason is that by selecting option (e) the RPF is indicating to the Director of CAL FIRE, who is charged with determining whether or not the proposed harvest would result in the “take” of an individual northern spotted owl, that the USFWS has approved of their procedures for preventing take. Selecting option (e) is meant to assure the Director of CAL FIRE and the public that the expertise of the USFWS has been consulted when designing the procedures for preventing take within a THP. It follows that the RPF is not free to make amendments or propose alternative practices to Attachment A within an individual THP that USFWS has not approved and still select option (e). This is further evidenced by the fact that option (g) is designed for a situation where the RPF wishes to propose their own protection measures.<sup>8</sup> As will be discussed in more detail below, in this THP the RPF has chosen not to conform the NSO surveys with Attachment A and has therefore violated the requirements of § 919.9. In doing so, the RPF has violated the Forest Practice Act and CEQA and this THP should, therefore, be rejected by CAL FIRE.

## **II. Attachment A States that Multiple Activity Centers for an NSO Home Range Are Possible and Often Necessary to Protect the Species**

Attachment A was developed by the U.S. Fish and Wildlife Service to provide guidelines to foresters on how best to avoid incidental take of NSO when conducting timber harvests in the coast redwood region of California.<sup>9</sup> The guidelines provide specific measures which “the Service believes... represent effective measures to avoid take of NSO.”<sup>10</sup> Attachment A makes clear that “[a]ccurately mapping the location of each activity center is critical to the protection of core use area habitat.”<sup>11</sup> In doing so, Attachment A stresses that “[m]ultiple activity centers for an

<sup>5</sup> Cal. Code. Regs. tit. 14, § 919.9(e) Northern Spotted Owl.

<sup>6</sup> Section 12 THP 1-20-00143-MEN, sec 2, p.78.

<sup>7</sup> Section 12 THP 1-20-00143-MEN, sec 2, p.78

<sup>8</sup> Cal. Code. Regs. tit. 14, § 919.9(g) Northern Spotted Owl.

<sup>9</sup> Dept. of Interior, Fish and Wildlife Service, NSO Take Avoidance Analysis and Guidance for Private lands in California (Nov. 1, 2019)

<sup>10</sup> Dept. of Interior, Fish and Wildlife Service, NSO Take Avoidance Analysis and Guidance for Private lands in California (Nov. 1, 2019)

<sup>11</sup> Dept. of Interior, Fish and Wildlife Service, NSO Take Avoidance Analysis and Guidance for Private lands in California, p.2 (Nov. 1, 2019)

NSO home range are possible."<sup>12</sup> This means that "[i]f one core use area does not encompass all known activity centers (current and historical), then multiple core use areas will need to be mapped and protected to avoid the likelihood of incidental take" and that "[w]here it makes biological sense, multiple activity centers can be contained within a single core use area."<sup>13</sup> Attachment A further specifies that "[i]f NSO move to a new location (>1,000 feet from the historical activity center), the appropriate protection measures should be provided to each activity center, or consultation with NSO review agencies should occur to evaluate the status of what may be multiple activity centers."<sup>14</sup>

The reason for these broad protection measures is that NSO reuse nests and regularly rotate between nest sites.<sup>15</sup> Forsman et al. (1984) conducted a long-term demographic study of NSO nest sites in Oregon.<sup>16</sup> They found that "[o]f 25 nests that were checked in 2 or more years, 17 were used more than once."<sup>17</sup> They also documented a single NSO pair using 5 different nest sites.<sup>18</sup> Some NSO pairs used alternative nest sites as far away as 1.2km.<sup>19</sup> During another long-term demography study, Sovereign, Taylor, & Forsman (2011) observed that NSO "switched nests between nesting attempts 81.2% of the time."<sup>20</sup> Similarly, Forsman & Giese (1997) found that "[o]wls changed nests between successive nesting events in 80% of all cases."<sup>21</sup> This was

<sup>12</sup> Dept. of Interior, Fish and Wildlife Service, NSO Take Avoidance Analysis and Guidance for Private lands in California, p. 2 (Nov. 1, 2019)

<sup>13</sup> Dept. of Interior, Fish and Wildlife Service, NSO Take Avoidance Analysis and Guidance for Private lands in California, p. 2 (Nov. 1, 2019)

<sup>14</sup> Dept. of Interior, Fish and Wildlife Service, NSO Take Avoidance Analysis and Guidance for Private lands in California, p. 9 (Nov. 1, 2019)

<sup>15</sup> See, e.g., Forsman, Eric D., E. Charles Meslow, and Howard M. Wight. "Distribution and biology of the spotted owl in Oregon." *Wildlife Monographs* (1984): pp. 3-84; Sovern, Stan G., Margaret Taylor, and Eric D. Forsman. "Nest reuse by Northern Spotted Owls on the east slope of the Cascade Range, Washington." *Northwestern Naturalist* 92.2 (2011): 101-108; Forsman, Eric D., E. Charles Meslow, and Howard M. Wight. "Distribution and biology of the spotted owl in Oregon." *Wildlife Monographs* (1984): 3-84; Blakesley, Jennifer A., Alan B. Franklin, and R. J. Gutiérrez. "Spotted owl roost and nest site selection in northwestern California." *The Journal of wildlife management* (1992): 388-392.

<sup>16</sup> Forsman, Eric D., E. Charles Meslow, and Howard M. Wight. "Distribution and biology of the spotted owl in Oregon." *Wildlife Monographs* (1984): pp. 3-84.

<sup>17</sup> Forsman, Eric D., E. Charles Meslow, and Howard M. Wight. "Distribution and biology of the spotted owl in Oregon." *Wildlife Monographs* (1984): p. 32

<sup>18</sup> Forsman, Eric D., E. Charles Meslow, and Howard M. Wight. "Distribution and biology of the spotted owl in Oregon." *Wildlife Monographs* (1984): p. 32

<sup>19</sup> Forsman, Eric D., E. Charles Meslow, and Howard M. Wight. "Distribution and biology of the spotted owl in Oregon." *Wildlife Monographs* (1984): p. 32

<sup>20</sup> Sovern, Stan G., Margaret Taylor, and Eric D. Forsman. "Nest reuse by Northern Spotted Owls on the east slope of the Cascade Range, Washington." *Northwestern Naturalist* 92.2 (2011)

<sup>21</sup> Forsman, Eric D., and Alan R. Giese. "Nests of northern spotted owls on the Olympic Peninsula, Washington." *The Wilson Bulletin* (1997): 28-41.

true despite the fact that “their historical nests were usually still intact.”<sup>22</sup> Just because an activity center is not believed to be occupied does not mean that protecting the area around it from timber harvests is no longer necessary to prevent take of NSO. This is because NSO could have returned to a previous activity center, unbeknownst to the timber operator. It is also true that NSO that would have returned to an activity center to breed may no longer be able to do so because of timber operations near that activity center. This is why Attachment A specifies multiple times that protecting multiple activity centers within one territory, even presumably unoccupied activity centers, is necessary to prevent incidental take of NSO.

**III. This THP’s NSO Take Avoidance Determination Package Does Not Comply with the Attachment A Guidelines**

**A. The RPF’s deviations from Attachment May Result in Take of NSO**

This THP’s NSO Take-Avoidance Determination package begins by once again confirming that this THP was submitted for review under § 919.9(e).<sup>23</sup> The RPF explains this in the following way:

“Specifically using USFWS recommendations to CAL FIRE under scenario 4 and ‘Attachment A.’ This THP proposes alternative measures to some of these recommendations. They are discussed in the following NSO take avoidance determination package.”<sup>24</sup>

On its face, this explanation is unsatisfactory. §919.9(e) allows timber harvesters to submit a timber harvest plan “pursuant to the outcome of a discussion with the U.S. Fish and Wildlife Service” not to propose their own alternatives.<sup>25</sup> It is true that Attachment A is the outcome of such a discussion but it does not follow that RPFs are free to propose their own alternatives within an individual THP. The reason is that USFWS will never review these individual THPs and therefore it makes no sense to say that a THP containing alternative measures to those outlined in Attachment A was submitted “pursuant to the outcome of a discussion with the U.S. Fish and Wildlife Service.” To allow RPFs to do this would be to eliminate the justification for §919.9(e) because it would allow RPFs to effectively ignore USFWS recommendations in their THPs while gaining the presumptive incidental take avoidance afforded by checking the box for §919.9(e). By simultaneously purporting to rely on Attachment A while proposing alternative measures to Attachment A, the RPF has violated §919.9 of the Forest Practice Act.

<sup>22</sup> Forsman, Eric D., and Alan R. Giese. “Nests of northern spotted owls on the Olympic Peninsula, Washington.” *The Wilson Bulletin* (1997): 28–41.

<sup>23</sup> Section 12 THP 1-20-00143-MEN, sec 5, p. 401.

<sup>24</sup> Section 12 THP 1-20-00143-MEN, sec 5, p. 401.

<sup>25</sup> Cal. Code. Regs. tit. 14, § 919.9(e) Northern Spotted Owl

It appears that what the RPF has chosen to do is protect only the most recent NSO location and not protect ACs.<sup>26</sup> This is evident from the fact that the THP's maps only show one AC per NSO territory.<sup>27</sup> The RPF has given a rationale for only protecting the most recent locations, but that rationale is immaterial to whether this THP complies with the forest practice rules.<sup>28</sup> As discussed above, Attachment A clearly stipulates that in order to avoid incidental take of NSO, it may be necessary to protect multiple ACs, including unoccupied ACs. By automatically not protecting past ACs, the RPF has decided to risk conducting timber operations in places that could result in the incidental take of NSO. This is because NSO move around between ACs and have a tendency to reuse old ACs.<sup>29</sup> So, there is a significant chance that NSO are currently occupying past ACs and not the one that MRC believes is the best. As such, the Director cannot certify that this THP will not result in the take of NSO because the RPF has not complied with the forest practice rules designed to prevent the take of NSO.

**B. The RPF's deviations from Attachment A will result in significant negative cumulative impacts to NSO**

If allowed to continue with this practice, MRC will degrade all of the high quality NSO habitat on their lands as NSO move from location. Under MRC's deviation, each time an NSO moves and MRC identifies a new "most significant location" they permit themselves to log in the old Activity Center. Because NSO move frequently between ACs, this practice will result in MRC regularly changing what land is protected and allowing themselves to log there. In essence, MRC will chase the NSO, logging where they had previously been. The result will be that MRC THP's will log much of the best habitat for the NSO still available simply because NSO are not currently using that habitat. Logging in high quality habitat reduces the quality of that habitat for NSO and makes NSO more vulnerable to two of their highest causes of mortality: predation and cold wet weather.<sup>30</sup> By only protecting the most recent or best sites, MRC is making both of these outcomes more likely to occur in an area that is vital for the NSO's future as a species. So, MRC's proposed deviation has the result of significantly reducing the future viability of the species on their lands.

**IV. Conclusion**

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<sup>26</sup> Section 12 THP 1-20-00143-MEN, sec 5, pp. 419-419.1

<sup>27</sup> Section 12 THP 1-20-00143-MEN, sec 5, p. 409-418

<sup>28</sup> Section 12 THP 1-20-00143-MEN, sec 5, p. 419-419.1

<sup>29</sup> Sovem, Stan G., Margaret Taylor, and Eric D. Forsman. "Nest reuse by Northern Spotted Owls on the east slope of the Cascade Range, Washington." *Northwestern Naturalist* 92.2 (2011): 101-108.

<sup>30</sup> Franklin, Alan B., et al. "Climate, habitat quality, and fitness in northern spotted owl populations in northwestern California." *Ecological Monographs* 70.4 (2000): 539-590.



The RPF has indicated that they would comply with forest practice rule §919.9(e) which requires them to consult with the USFWS about measures to prevent take of NSO. Instead of relying on Attachment A, a document that was produced by USFWS for the purposes of such consultation, the RPF chose to propose their own deviations from Attachment A without consulting with USFWS. The proposed deviations have the potential to cause incidental take of NSO as well as seriously reduce the amount of high quality NSO habitat on MRC lands which will have a negative cumulative effect on NSO. By proposing their own deviations from Attachment A without consulting with USFWS, the RPF has violated the Forest Practice Rules and this THP must be rejected. If you have any questions about the content of this letter, please do not hesitate to contact EPIC at [matt@wildcalifornia.org](mailto:matt@wildcalifornia.org).

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## RESPONSE:

### THP Review History

NSO protection measures were not brought to attention during first review of the THP. During the PHI, the CDFW had the following recommendation:

In Section II, Item 32 the THP proposes to follow the USFWS Northern Spotted Owl Take Avoidance Analysis and Guidance for Private Lands in California, Attachment A: Take Avoidance Analysis – Coast Redwood Region (November 1, 2019). However, the THP proposes an exception to Attachment A for reproductively active Northern Spotted Owl Activity Centers that has potential for significant adverse impacts. The THP proposes operations which may occur within 0.25-mile of an Activity Center prior to July 31 if owlets are capable of sustained flight, or two weeks out of the nest. The THP should instead determine fledgling owls are greater than 0.25-mile from the nest if operations are proposed within 0.25-mile of the nest site prior to the end of the breeding season.

The U.S. Fish and Wildlife Service Northern Spotted Owl Fact Sheet cites the best available science and explains parental care of owlets can last into September. Mortality from starvation, predation, and accidents is high during this post-fledgling period (greater than 70 percent mortality in some studies), and disturbance due to nearby operations can contribute significant harm. The U.S. Fish and Wildlife Service revised guidance for Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California (October 1, 2020) (attachment 20201112\_1-20-00143 MEN\_PHI\_USFWS MAMU and NSO Disturbance Revised Guidance) explains flushing of an owl during the breeding season increases the risk of decreased feedings and fledgling success, and may reduce individual fitness (Appendix B, page 3). Avoiding significant adverse impacts to Northern Spotted Owls includes minimizing disturbance to breeding Northern Spotted Owls and their young during the period when young may still be dependent on adults for defense from predators and feeding.

To reduce potentially significant adverse impacts to Northern Spotted Owls during a particularly vulnerable period of the breeding season, remove the deviation in Section II, Item 32 under Protection 5 (page 80) for reproductively active Northern Spotted Owl Activity Centers where nesting is known, presumed, or undetermined. If the THP proposes an exception to the take avoidance strategy the THP is committed to adhering to as described in Section II, CDFW recommends consulting with the wildlife agencies.

In response to this recommendation, the RPF agreed to remove the exception and revised THP page 80. CDFW had no further recommendations regarding NSO.

The CAL FIRE inspector included the following in his PHI report, page 14:

I reviewed the NSO habitat maps in Section V of the THP and then examined NSO habitat during the PHI and on other occasions when conducting Forest Practice inspections in the Greenwood watershed and Navarro River Watershed. During the PHI, I determined that NSO habitat typing is accurate. During the PHI, I listened to a discussion between CDFW Biologist Adam Hutchins, HRC/MRC Forest Science Director Sal Chinnici and MRC Biologist Chris Morris concerning NSO habitat typing and NSO protection measures. The three biologists appeared to be able to address NSO habitat and NSO protection measures.

During second review of the THP, no additional NSO revisions were recommended by the Review Team Chairperson and the plan was recommended for approval.

### **Compliance with 14 CCR 919.9(e) and Attachment A**

The Northern Spotted Owl is state and federally listed as threatened. The THP addresses northern spotted owls on pages 78-80 and pages 401-487. The THP will comply with 14 CCR 919.9(e) of the California Forest Practice Rules which allows a landowner to consult with the United States Fish and Wildlife Service:

If the submitter proposes to proceed pursuant to the outcome of a discussion with the U.S. Fish and Wildlife Service, the submitter shall submit a letter prepared by the RPF that the described or proposed management prescription is acceptable to the USFWS.

For timber operations, the USFWS has provided standard surveying and mitigation measures in a letter titled "USFWS Take Avoidance Analysis and Guidance for Northern spotted owl (*Strix occidentalis caurina*) Attachment A," dated November 1, 2019 (Attachment A). The THP will comply with these recommendations.

On page 78 of the THP, it states the following:

The THP area is within the range of the Northern Spotted Owl and contains habitat suitable for the Northern Spotted Owl. NSO is Federally Threatened, State Threatened, and a BOF Species of Special Concern. There are 2 NSO territories within 0.7 miles of the plan area.

For the purposes of review of this plan, the provision of 14 CCR 919.9 (e) following Scenario 4 (Northern Spotted Owl Take Avoidance Scenarios, published 11/1/2019) shall be used to demonstrate with Northern Spotted Owl take avoidance guidelines in the Northern Spotted Owl Take Avoidance Analysis and Guidance for California Coast Forest District, Attachment A (AFWO-11B0075-11TA0069) revised November 1 2019 (FWS-R8-ES).

The commenter is concerned that the THP is not in conformance with 14 CCR 919.9 (e) and should have used 14 CCR 919.9 (g), which would allow the landowner to propose their own protection measures. Note, the guidance letter from the USFWS included with Attachment A states:

While the Service believes the revised guidelines represent effective measures to avoid take of NSO, they are not the only manner in which take can be avoided. These guidelines are to be used as recommended tools to avoid take for the public and implementing agencies, but are not required approaches imposed by the Service.

CAL FIRE believes that this is a guidance document and that minor changes, when explained and justified, still comply with the guidance document. The RPF could change the THPs compliance to 14CCR 919.9(g) and provide the same protection measures, but by using the guidance of Attachment A under 14 CCR 919.9(e), the RPF has demonstrated how incidental take will be avoided.

### **Activity Center and Core Area Designation**

The comment letter is concerned that the THP does not follow Attachment A in establishing and maintaining activity centers and their designated core areas.

The THP includes two known NSO activity centers, MEN0385 and MEN0569. The THP proposes 203 acres of selection harvest and 9 acres of variable retention harvest.

Per THP pages 411 and 412, the THP will retain the following post-harvest habitat within 0.7 miles of Activity Center MEN0385:

Habitat Type	Pre-harvest-Acres	Post-harvest-Acres	Change
Nesting	423	420	-3
Foraging	464	467	+3
Unsuitable	98	98	0
Total Suitable	887	887	0

As shown in the above table, there are only 3 acres of nesting habitat changing to foraging habitat post-harvest. Only a small portion of the THP area is within 0.7 miles of the THP area and over 0.5 miles away. The minimum required retention from Attachment A is 200 acres of nesting/roosting habitat and 500 acres of suitable habitat. Therefore, the THP is maintaining in excess of the minimum requirements.

The designated core area is outside the THP area. There is no harvest of habitat adjacent to the core area.

Per THP pages 415 and 416, the THP will retain the following post-harvest habitat within 0.7 miles of Activity Center MEN0569:

Habitat Type	Pre-harvest-Acres	Post-harvest-Acres	Change
Nesting	238	215	-23
Foraging	690	714	+24
Unsuitable	57	57	0
Total Suitable	928	929	+1*
* Rounding error			

As shown in the above table, there is a decrease in 23 acres of nesting habitat. The area of nesting habitat that is changing to foraging habitat is in a portion of unit 6, which proposes selection silviculture. It should be noted that the transition to foraging habitat is reported conservatively. The selection prescription for the THP requires a minimum of 75 square feet of basal area, which will meet the foraging habitat requirement. It is likely that the area will become nesting/roosting habitat again in the near future as the forest canopy reaches >60% canopy cover. The minimum required retention from Attachment A is 200 acres of nesting/roosting habitat and 500 acres of suitable habitat. Therefore, the THP is maintaining in excess of the minimum requirements.

The core area for MEN0569 is adjacent to THP unit 5. Preharvest, unit 5 is foraging habitat and will remain so post-harvest. No downgrade of habitat is proposed within close proximity to the core area.

In Section V of the THP, page 419-419.1, the core area designation is described by MRC:

Finally, MRC reviews historic and current survey information in order to apply the guidance and recommendations of Attachment A core use area protection measures to the Biologically Most Significant Locations (BMSL) of the NSO. The BMSL is the location of the highest-ranking detection of the NSO for a given territory among the years it has been surveyed. For example, the location of a confirmed nest tree is higher ranking than the roosting location of a non-nesting pair (see further information below). In the SPOWDB, activity centers are maintained at the BMSL and are only moved if new data matches or surpasses the rank of the current activity center (CDFW 2019).

USFWS take avoidance guidance (Attachment A) recommends establishing a 100-acre no harvest core use area polygon for each accurately mapped NSO activity center. This core area contains the highest quality nesting/roosting habitat that is contiguous with the activity center. As stated by the USFWS (2019):

"While the Service believes that the revised guidelines represent effective measures to avoid take of NSO, they are not the only manner in which take can be avoided. These guidelines are to be used as recommended tools to avoid take for the public and implementing agencies but are not required approaches imposed by the Service."

A single NSO territory may have many activity centers. Activity centers are defined in the USFWS protocol as (USFWS 2012):

"Spotted owls have been characterized as central-place foragers, where individuals forage over a wide area and subsequently return to a nest or roost location that is often centrally-located within the home range (Rosenberg and McKelvey 1999). Activity centers are a location or point representing 'the best of' detections such as nest stands, stands used by roosting pairs or territorial singles, or concentrated nighttime detections."

The USFWS (2012) further defines activity center as:

"An area where a resident single or pair of spotted owls have demonstrated concentrated use. There may be multiple activity centers within an NSO territory as owls move from year to year or are detected within their home range in different locations over a series of years."

An NSO home range or territory is the area used for nesting, roosting, and foraging. The median home range radius of NSO is defined by the USFWS as 0.7 miles (approximately 985 acres) in the coast range where MRC lands are located. Given MRC's long history of NSO surveys there may be many activity centers located within each territory, in some cases one per each year of surveys conducted.

During the period in which MRC operated under an approved Spotted Owl Resource Plan, activity centers were established which, by Attachment A standards, would not meet the criteria necessary to be established as an activity center. MRC established more activity centers than would otherwise be required by Attachment A. The distinction between a detection and activity center is less clear during this period. The combination of a long monitoring record and in some cases, establishment of lower threshold activity centers has resulted in an unprecedented record of spotted owl use/activity centers across a large portion of the ownership.

Even-age clear cut silviculture has not been practiced on this ownership since 1998. Today, more than 40% of the entire ownership is comprised of nesting/roosting habitat, and over 80% is suitable habitat (nesting/roosting/foraging). Although no formal studies have been conducted to confirm this assumption, it is reasonable to assume that all this available habitat has resulted in a widespread pattern of use across our ownership. Clearly more than would be typical for this region and would have been expected to be encountered when the current Attachment A Take Avoidance Guidelines were established. One can clearly state habitat availability is not a limiting factor for spotted owls on our ownership. As such, the requirement to include every known activity center within the no harvest core area is not necessary to avoid take of NSO.

NSO protection measures for this THP are focused on the BMSL for each known NSO territory. This typically represents the activity center within a territory which is the highest-ranking detection based on MRC surveys and cross-referenced with the SPOWDB.

The hierarchy of detections used by MRC and the SPOWDB to determine significance of activity centers is as follows (CDFW 2019):

1. Nest
2. Nest Stand
3. Daytime Pair
4. Daytime resident single
5. Nighttime pair
6. Multiple detections of a nighttime single

The Department concludes that MRC has not proposed eliminating any NSO activity centers. The two activity centers have been mapped and protected with a designated core area using years of survey history and the best available habitat.

For MEN0385, the activity center is the most recent nest site which was detected in 2015 and the core area includes all the historical activity centers. The core area is 101 acres which meets the 100-acre minimum.

For MEN0569, the activity center is the most recent nest site which was detected in 2008 and the core area includes all the historical activity centers. The core area is 118 acres which meets the 100-acre minimum.

The 2019 USFWS Attachment A revision defines activity center as “A mapped point located at the highest-ranking detection for each breeding season (e.g., nest, then daytime pair, then daytime single, etc.) at an area of concentrated activity. Activity centers occur within, but not necessarily in the exact center of, the “core use area,” defined below. An NSO home range may have multiple mapped activity centers, and multiple activity centers may need protection to prevent take. Generally, single nighttime detections where an owl cannot be located during adequate daytime follow-ups should not be considered a valid activity center. All activity centers within a home range should be identified, mapped, and considered, however, not all activity centers are of equal value and site-specific information may be useful in determining which activity centers require more or less protection on an annual basis as determined by the NSO review agencies.”

The key provision in this definition is that not all activity centers are of equal value and require more or less protection on an annual basis. In both activity centers, MRC has included historic activity centers into the respective core areas and afforded appropriate protection at current and historic activity centers.

In summary, there is no downgrading of any NSO habitat in close proximity to either NSO activity center. In addition, a net total of only 26 acres of nesting habitat is changing to foraging habitat using selection silviculture. The minimum habitat retention standards have also been met within 0.7 miles of each activity center. In subsequent years, additional NSO surveys will be conducted in compliance with the USFWS survey protocols. Due to these reasons, the Department has determined that if the THP is implemented as proposed, cumulative effects and/or take of NSO is unlikely.

**#21PC-000000280 from the Environmental Protection Information Center (EPIC) on March 23, 2021**

A reference document was uploaded to CALTREES after the close of the public comment period on March 23, 2021. The public comment period closed on March 19, 2021. The reference was downloaded with the following comments:

*EPIC is supplementing our comments submitted on 3/19/21 with this additional document. Please include this document and the accompanying the following analysis in your consideration of EPIC's comments. The document is a letter from Randy Brown of the USFWS to Robert Douglas, Forest Science Manager at MRC. The letter contains technical assistance designed to reduce the*

*probability of incidental take of northern spotted owl. The letter contains the following instructions: "[f]or all activity centers, MRC will include the habitat protection measures in Sections 2.4 to 2.6." The letter then immediately provides additional protections for occupied activity centers, making clear that this instruction is meant for all activity centers regardless of whether or not they are currently occupied. Section 2.4 to 2.6 of the letter contain numerous protections for the northern spotted owl that are clearly designed to protect even unoccupied activity centers. For example, the instructions state "No tree or snag previously identified as containing a northern spotted owl nest structure will be felled regardless of the occupancy status of the activity center." So, it is clear that these protections must apply to all historical ACs within a plan area, regardless of whether or not they are occupied. MRC must comply with the terms of this document in order for CAL FIRE to conclude that their timber harvests will not result in incidental take of NSO. As currently, conceived this Timber Harvest Plan does not comply with this document because it fails to adequately protect historic activity centers. As such, CAL FIRE must not approve this THP.*

The document referenced is:

Brown, Randy A, "Response to Request for Technical Assistance Regarding the Proposed Mendocino Redwood Company Spotted Owl Resource Plan, January 15, 2010.

The letter includes the Mendocino Redwood Company Spotted Owl Resource Plan (SORP) and determined that the company's harvest operations conducted as proposed would not be likely to incidentally take northern spotted owls.

## **RESPONSE:**

MRC no longer uses the SORP so its contents and requirement are not applicable to this THP. For the purposes of review of this plan, the provision of 14 CCR 919.9 (e) following Scenario 4 (Northern Spotted Owl Take Avoidance Scenarios, published 11/1/2019) shall be used to demonstrate take avoidance. Please see the response to #21PC-000000276.

## **CONCLUSION**

It is the Department's determination that this THP, as proposed, is in compliance with the FPRs and has been through a detailed multi-agency review system. The discussion points and mitigation measures included in the THP have been found to address the concerns brought up by the public comment process.

## **References**

United States Dept. of Interior, Fish and Wildlife Service, Northern Spotted Owl Take Avoidance Analysis and Guidance for Private lands in California, Attachment A: Take Avoidance Analysis-Coast Region, November 1, 2019

United States Dept. of Interior, Fish and Wildlife Service, Protocol for Surveying Proposed Management Activities that May impact Northern Spotted Owls, Revised January 9, 2012