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Los Padres National Forest
Mt. Pinos Ranger District
Attn: Gregory Thompson, Project Team Leader
34580 Lockwood Valley Rd, Frazier Park, CA 93225
gsthompson@fs.fed.us

RE: Tecuya Ridge Shaded Fuelbreak Project

Dear Mr. Thompson:

Thank you for this opportunity to provide your agency with initial comments on the Tecuya Ridge Shaded Fuelbreak Project ("Project"). The Project entails constructing a 12-mile-long, 1,626-acre shaded fuelbreak along Tecuya Ridge in the Mt. Pinos Ranger District of the Los Padres National Forest. The project would be accomplished through a commercial logging operation in mixed conifer stands as well as mastication and hand treatment of up to 95 percent of sagebrush-scrub within the Project Area — approximately 1,100 acres of which are within the Antimony Inventoried Roadless Area ("IRA").

The undersigned organizations support efforts to improve ecosystem health and protect communities from wildfires, and work to ensure that vegetation treatment activities are undertaken with minimal impacts to wildlife, roadless areas, water supplies, and other forest resources. We also support the maintenance of defensible space immediately around structures along with programs to promote the construction and retrofitting of homes with fire-safe materials and design as the most effective ways to protect communities from wildfire.

We have reviewed the Project Description issued as part of the scoping process as well as supplemental documentation in full, and we have several concerns about the Project and the potential lack of further documentation in an environmental assessment ("EA") or environmental impact statement ("EIS"). We hereby submit the following comments on the U.S. Forest Service's Tecuya Ridge Shaded Fuelbreak Project. Thank you for considering these comments as the U.S. Forest Service examines ways to most effectively protect communities from wildfires while minimizing the environmental impacts of this project.

1. THE FOREST SERVICE MUST PREPARE AN EA OR EIS BECAUSE THE PROJECT DOES NOT QUALIFY FOR A CATEGORICAL EXCLUSION.

The Proposed Action states that the U.S. Forest Service intends to approve the Project using a categorical exclusion (“CE”) for “timber stand and/or wildlife habitat improvement activities” (hereafter “CE 6”) set forth in 36 CFR § 220.6(e)(6). Under NEPA, a CE is defined as “a category of actions which do not individually or cumulatively have a significant effect on the human environment...and for which, therefore, neither an environmental assessment nor an [EIS] is required” (40 CFR § 1508.4).

This CE does not apply to this project for three reasons. First, the Project is an action that would normally require the preparation of an EIS (40 CFR § 1501.4). Second, the presence and significance of several “extraordinary circumstances” makes this project ineligible for a categorical exclusion. Third, other CEs would be more applicable (acreage limit exceedances notwithstanding), especially considering that CE 6 does not explicitly allow commercial logging as proposed to complete the Project. For these reasons, the U.S. Forest Service must prepare an EA or EIS that fully identifies, evaluates, and mitigates potential impacts of this project.

A. The Project falls under a class of actions that normally requires preparation of an EIS.

The Project includes actions that would normally require the preparation of an EIS. Specifically, the U.S. Forest Service’s NEPA Handbook identifies several classes of actions that normally require preparation of an EIS “because they normally result in significant effects.” Two classes of projects are identified that meet these criteria: aerial application of pesticides (Class 1) and projects that would “substantially alter the undeveloped character of an inventoried roadless area or potential wilderness area” (Class 2). The Proposed Action would substantially alter the undeveloped character of an IRA. This falls under Class 2 actions as outlined in U.S. Forest Service Handbook (“FSH”) 1909.15.21.2. The Proposed Action includes the harvest of timber across approximately 1,100 acres of the Antimony IRA. Such action would substantially alter the undeveloped character of the Antimony IRA and therefore requires the preparation of an EIS.

B. The presence and significance of several “extraordinary circumstances” makes the Project ineligible for a categorical exclusion.

The U.S. Forest Service may only claim a CE for this Project if there are no “extraordinary circumstances.” Specifically, the FSH states that “[a] proposed action may be categorically excluded from further analysis and documentation...only if there are no extraordinary circumstances related to the proposed action” (FSH 1909.15.31.1; see also 40 CFR § 1508.4 (requiring agencies to “provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.”)). There are multiple extraordinary circumstances related to the Proposed Action, detailed below. The presence of and the Proposed Action’s significant impact to these resource conditions precludes the use of a CE for the Project and instead requires the U.S. Forest Service to prepare an EA at minimum.

C. The Project exceeds the acreage limitations that serve as a threshold of significance under other categorical exclusions.

The U.S. Forest Service's failure to select a more applicable CE for the Project is telling. We note three CEs (all covered under 36 CFR § 220.6(e), actions for which a project or case file and decision memo are required) that would be more applicable to the Proposed Action:

(12) Harvest of live trees not to exceed 70 acres, requiring no more than ½ mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing.

36 CFR § 220.6(e)(12)

(13) Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing.

36 CFR § 220.6(e)(13)

(14) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing.

36 CFR § 220.6(e)(14)

These CEs more appropriately cover the Proposed Action as all three explicitly allow for commercial thinning, and two of the CEs are specifically for activities that treat stands with dead, dying, and infested trees — all of which are included in the Purpose and Need for the Project. However, these more appropriate CEs have explicit acreage limitations that preclude their use in this project. Those acreage limitations are important, however, as they indicate a self-imposed threshold that the U.S. Forest Service has identified to determine whether a project may have significant impacts. The U.S. Forest Service cannot try to shoehorn these projects into another CE in an attempt to avoid the acreage limitations in other CEs that better describe the Project.

It should also be noted that the U.S. Forest Service is concurrently proposing an adjacent project approximately 1,200 acres in size. The Cuddy Valley Forest Health/Fuels Reduction Project ("Cuddy Valley Project") was scoped at the same time as the Project and is just south of the Project Area (Figure 1). In fact, the two projects share a boundary near Tecuya Ridge Road. The Cuddy Valley Project entails commercially thinning mixed-conifer forest in Cuddy Valley. The project would use similar methods as the Project, and its scoping notice indicates that the U.S. Forest Service intends to use CE 6 to exempt the project from further environmental

documentation. The Cuddy Valley Project also does not qualify for CE 6 (see our comments on that project submitted separately). Combined, these projects would affect approximately 2,826 acres in the Mt. Pinos Ranger District of the Los Padres National Forest. However, they are being proposed separately despite involving the same methods for similar goals and despite using the same exact language throughout much of their respective project descriptions. The projects are so similar, in fact, that they could be viewed as a single, large project. This is problematic for multiple reasons. This action constitutes improper segmentation (i.e. the splitting of a large project into multiple smaller ones), and it may lead the public to believe that the two smaller projects may cause less significant impacts than one large project. Moreover, such segmentation may result in the U.S. Forest Service avoiding full disclosure of the cumulative impacts of both projects together. In measuring the “significance” of the overall environmental impacts of a given project, the CEQ regulations forbid an agency from attempting to avoid significance by “breaking [an action] down into small component parts” (40 C.F.R. § 1508.27(b)(7)).

Due to these disqualifications for use of CE 6, the U.S. Forest Service must re-examine the Proposed Action to determine whether the Project size can be reduced to fulfill the requirements for use of other CEs or prepare an EA or EIS to determine potential significant impacts of the Project as well as develop alternatives to the Proposed Action.

2. THE FOREST SERVICE MUST PREPARE AN EA OR EIS DUE TO THE PRESENCE OF, AND IMPACTS TO, “EXTRAORDINARY CIRCUMSTANCES.”

U.S. Forest Service regulations state that “[a] proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action” (36 CFR § 220.6(a)). The regulations set forth several criteria for evaluating extraordinary circumstances, including listed or sensitive species, critical habitat, wetlands, municipal watersheds, inventoried roadless areas, and Native American cultural sites (36 CFR § 220.6(b)). Additionally,

In considering extraordinary circumstances, the responsible official should determine whether or not any of the listed resources are present, and if so, the degree of the potential effects on the listed resources. **If the degree of potential effect raises uncertainty over its significance, then an extraordinary circumstance exists**, precluding use of a categorical exclusion.

FSH 1909.15.31.2 (emphasis added)

The Project involves several extraordinary circumstances, including impacts to endangered and sensitive wildlife and impacts to an IRA. For the reasons outlined below, the degree of potential effects to these extraordinary circumstances requires preparation of an EA or EIS.

A. Impacts to Species Protected Under the Endangered Species Act of 1973

The endangered California condor (*Gymnogyps californianus*) is well-known to occur in and around the Project Area. In fact, condor tracking telemetry data provided by the U.S. Fish &

Wildlife Service (“USFWS”) indicate the presence of at least 14 roosting sites within the Project Area between December 2013 and December 2017. These roosting sites occur in both the eastern and western portions of the Project Area (Figure 2). An additional 24 roosting sites from this tracking period occur within 0.5 miles of the Project Area (Figure 2). As these combined 38 roosting sites can and should be considered active, the Project should be limited by S28 as defined in the Land Management Plan Part 2: Los Padres National Forest Strategy (2005b):

S28: Avoid or minimize disturbance to breeding and roosting California condors by prohibiting or restricting management activities and human uses within 1.5 miles of active California condor nest sites and **within 0.5 miles of active roosts**. Refer to California condor species account (or subsequent species guidance document; see Appendix H) for additional guidance.

U.S. Forest Service 2005b (emphasis added)

As this strategy requires avoidance or minimization of activities that may cause disturbance, the U.S. Forest Service must analyze the Proposed Action more thoroughly to determine whether it will cause significant impacts to the species. The U.S. Forest Service’s species account for the California condor highlights the importance of roosting sites:

Condors often return to traditional sites for perching and resting. Traditional roost sites include cliffs and **large trees and snags (roost trees are often conifer snags 40-70 feet tall)**, often near feeding and nesting areas....

Recovery objectives on National Forest System lands (**primarily the Los Padres National Forest**) include...(3) provide for maintenance and protection of nesting, **roosting**, and foraging habitat on National Forest System Lands....

U.S. Forest Service 2005c (emphasis added)

The Proposed Action allows for the removal of live or dead trees of any size, including those greater than 40-70 feet tall. The removal of any trees — especially large coniferous trees — within 0.5 miles of condor roosting sites may significantly impact these important habitat features. Dead or dying “hazard” trees and large trees with relatively small diameters (less than 30 inches DBH) are precisely the types of trees on which condors depend for roosting and perching. Specifically,

Dead conifers are preferred to living trees. Dead trees have no foliage to obstruct flight or visibility or to catch the wind and cause the branches to sway. The loss of some branches further decreases the obstruction of flight. Dead branches are stiff so that they bend and sway but little...

Koford 1953

According to Koford, “[r]oosting trees are generally from 40 to 70 feet tall,” and trees of this size may have diameters much smaller than 30 inches. Even smaller trees may be used for

roosting and perching, as immature condors may roost in “unsuitable” areas such as smaller trees (Koford 1953).

The Project Description not only does not acknowledge the presence of these roosting sites, but it does not describe how the Proposed Action will not impact the unique conditions that the Project Area possesses that makes it so preferable for roosting or perching. The Proposed Action will involve thinning to reduce canopy cover and basal area per acre. Opening up the canopy in or immediately adjacent to condor roosting trees will make the area more susceptible to wind, which Koford identifies as a prime determinant of roosting locations. Specifically, Koford states, “Wind influences the use of a roosting place.... It appeared that the strong wind made the usual tree roosts untenable” (Koford 1953). In summarizing, Koford closes by stating:

For perching, condors require steady places with good footing which are easy to reach or to leave by air and where there is little disturbance by man or enemies. Roosts, in addition, must be high above the ground yet protected from strong winds, **utterly free from disturbance**, and suitably located with respect to food, water, nests, and perhaps to other condors. Any adequate program for conserving this species must provide for the preservation of a sufficient number of perching and roosting places as well as for the protection of nest sites.

Koford 1953 (emphasis added)

In addition, the USFWS states that roosting sites are susceptible to disturbance threats “and their preservation requires isolation from human intrusion” (USFWS 1996). Condor roosting sites are particularly susceptible to human disturbance, and even human presence. Specifically,

The amount of disturbance which a condor will tolerate before flushing decreases rapidly late in the day. For example, I stationed myself below a roost cliff at 4:10 p.m. when 18 condors were there. Six soon departed. The other remained until 5:30 p.m., but by 5:55 p.m. only seven remained and only two condors roosted there. On previous days more than a dozen roosted there. Many other times I had a similar experience. Mild disturbances which will not prevent condors from perching or even from drinking may prevent them from roosting. **The disturbance threshold for roosting seems to be lower than that for any other daily activity of condors.... One man, by disturbing the birds at critical places late in the day, can prevent roosting over an area of several square miles.**

Koford 1953 (emphasis added)

It should be noted that condors do not necessarily roost seasonally or only during certain times of day along Tecuya Ridge. According to an analysis of the telemetry tracking data provided by the USFWS, four roosts — three of which were located within the Project Area — were occupied by condors between July 1 and September 30 and between 11 AM and 4 PM. A condor with a bird ID of #480 was present at a roost in the eastern portion of the Project Area

between 4:17 PM on July 21, 2015 until 11:20 AM on July 22, 2015. Another condor with a bird ID of #369 was present at a roost in the eastern portion of the Project Area from 4:05 PM on August 2, 2017 until 12:26 PM on August 3, 2017. A condor with a bird ID of #526 occupied a roost in the western portion of the Project Area from 4:11 PM on September 23, 2017 until 9:50 AM on September 25, 2017, spending the entire day of September 24 at the roost. Finally, a condor with a bird ID of #483 was present at a roost between 3:57 PM on September 30, 2017 until 8:05 AM on October 1, 2017. See Table 1 and Figure 2 for more information about each of these roosts. The presence of condors at roosts during the late morning and early afternoon during summer months indicates that even projects incorporating limited operating periods can still impact roosting condors.

These are precisely the reasons why the Land Management Plan requires implementation of half-mile buffer zones around active condor roosts (U.S. Forest Service 2005b). The U.S. Forest Service's species account for the California condor also identifies the primary potential threats to California condors:

Potential threats to California condors from resource management activities on National Forest System lands include **modification or loss of habitat or habitat components (primarily large trees)** and behavioral disturbance to nesting condors caused by vegetation treatment activities.

U.S. Forest Service 2005c (emphasis added)

Given the frequent use of the Project Area as a condor roosting area and the acknowledged potential that vegetation treatment projects may have on the habitat components of roosting areas, the best available science indicates that the Forest Service must prepare an EA or EIS to determine the extent to which the Proposed Action may affect the species or its habitat in the Project Area and ultimately avoid all Project activities within a half-mile of roost sites.

Another species the U.S. Forest Service must consider when determining significant impacts to extraordinary circumstances is the California spotted owl (*Strix occidentalis occidentalis*; "CSO"), a species currently under review for protection under the ESA and that has been observed within 100 feet of the Project Area. The Project Area also contains several hundred acres of suitable habitat for the CSO.

Current research indicates that fuel treatments may negatively impact CSOs. A study in 2014 examining the effects of establishing a network of fuelbreaks on various species including the California spotted owl found, in response to fuel treatments:

...the number of California spotted owl territories declined. The effects on owls could have been mitigated by increasing the spatial heterogeneity of fuel treatments....

Stephens et al. 2014

A portion of the Project Area was also impacted by the 2006 Scott Fire, which created snag forest habitat suitable for CSOs. Research suggests that recently-burned areas can provide suitable habitat for California spotted owls. For example, a 2015 study found that:

Based on this and other studies of Spotted Owls, fire, and logging, we suggest land managers consider burned forest within and surrounding [protected activity centers (“PACs”)] as potentially suitable California Spotted Owl foraging habitat when planning and implementing management activities....

Lee and Bond 2015; see also Bond et al. 2009a, Lee and Bond 2015, and Hanson et al. 2018

These studies indicate that California spotted owls may be able to thrive in post-fire landscapes and that fuel treatment may have a negative impact on spotted owl communities.

The U.S. Forest Service has also identified vegetation removal and human disturbance as two of the primary factors threatening the viability of spotted owls according to its species account, likely due to its complex habitat needs. The agency’s species account for the CSO highlights the species’ need for complex habitat in Southern California mountains:

California spotted owl habitats are consistently characterized by greater structural complexity compared to available forest habitat....

- Canopy closure of at least 60 and commonly greater than 70 percent.
- A mature overstory with average [**diameter at breast height (“DBH”)] exceeding 24 inches.**
- A densely stocked stand with basal areas averaging in excess of 190 ft², **with none less than 160 ft².**
- Much of the basal area in the overstory and mid-story, with stands having an average of 10 trees exceeding 26 inches DBH and 29 trees of 16 to 26 inches DBH per acre.
- Multi-layered stands, often having hardwood understories.
- Decadent stands containing large diameter snags, trees with broken tops, diseased trees in which cavities frequently form, and large diameter fallen trees.

U.S. Forest Service 2005c

The U.S. Forest Service completed the *Conservation Strategy for the California Spotted Owl (Strix occidentalis occidentalis) on the National Forests of Southern California* (“CSO Conservation Strategy”) in 2004. The CSO Conservation Strategy presents the following guidelines for fuels management activities outside of the WUI Defense or Threat Zones on national forest land characterized by pine and mixed conifer forest:

- Where treatments have to occur in PACs and [home range core areas (“HRCs”)], retain existing canopy closure in the PAC and 40 to 50 percent canopy closure in the HRC. In PACs, use understory treatments to remove ladder fuels rather than altering canopy closure....
- Retain the largest trees within PACs and [home range cores (“HRCs”)], **including all live trees greater than 24 inches DBH**, unless they are at unnaturally high densities. Exceptions allowed for operability.
- Within PACs and HRCs, retain 4 to 8 of the largest snags available per acre, or at least 20 ft² basal area per acre of snags greater than 15 inches DBH and 20 feet tall.
- Within PACs and HRCs, retain at least 9 down logs per acre of the largest logs available, ideally at least 12 inches in diameter and at least 20 feet long (at least 180 lineal feet of logs).
- During mechanical fuel treatment activities, retain all woodrat nests in spotted owl habitat; avoid disturbing/destroying them. Exceptions allowed for operability.

U.S. Forest Service 2004

According to the California Natural Diversity Database (“CNDDDB”), dozens of CSO detections were reported and the U.S. Forest Service has designated five protected PACs near the Project Area. The Project would reduce the old-growth stands of pinyon, ponderosa, and Jeffrey pine as well as white fir and bigcone Douglas-fir to between 40 and 60 ft² basal area per acre — well below the basal area per acre needed by CSO. Additionally, the Project would involve the removal of trees throughout all diameter classes, including those greater than 24 inches DBH. Moreover, approximately 45% of the Project Area (or 732 acres) is within estimated CSO HRCs according to a GIS analysis. We used the U.S. Forest Service’s PAC database and found five PACs just north of the Project Area (ranging from 2 – 187 acres in size). We calculated a simple geographic centroid for each PAC and created a circular buffer with a 1.5-mile radius around it as suggested by the CSO Conservation Strategy. These buffer zones overlapped approximately 732 acres of the western portion of the Project Area (Figure 3).

The Project does not align with the CSO Conservation Strategy for several reasons. Trees from all diameter classes — including those greater than 24 inches DBH — within HRCs would be removed. Additionally, the Project Description indicates that 10 to 15 hard snags will be retained per five acres. The Proposed Action does not specifically include the retention of downed logs, stating only that “[d]ead and down material left after treatment should be less than 10 tons per acre in the forested treatment areas where available.” This indicates that the Project may remove all dead and down material from forested treatment areas. Finally, the Proposed Action does not include any measures to retain woodrat nests in the Project Area.

The presence of these guidelines in the CSO Conservation Strategy indicates that the U.S. Forest Service has determined or is aware that impacts to CSOs could occur if such guidelines are not followed. It is therefore reasonable to expect that the Project would have significant impacts on CSOs as the Proposed Action does not follow these guidelines. Again, due to this likelihood of significant impacts to CSOs, the U.S. Forest Service must prepare an EA to determine the degree to which the Proposed Action may affect this species proposed for listing under the ESA.

B. Impacts to Sensitive Animal Species

The CSO is a Forest Service Sensitive Species, and as previously discussed, the Project may impact CSO populations near the Project Area.

The Project may impact the northern goshawk (*Accipiter gentilis*), which has been observed in the vicinity of the Project. Records of active goshawk nests in the Tecuya Range exist as recently as 1991 according to the California Department of Fish and Wildlife's ("CDFW") species account (CDFW 2008). A northern goshawk was detected on Frazier Mountain, just south of the Project Area in 2010 (U.S. Forest Service 2012). Additionally, there have been undocumented reports of northern goshawks in the Antimony IRA according to the U.S. Forest Service's analysis of the Antimony IRA — which comprises approximately 1,100 acres of the Project Area — while amending the Land Management Plan (U.S. Forest Service 2013). This U.S. Forest Service Sensitive Species and Species of Special Concern (CDFW) may also occur within the Project Area, which includes portions of the species' predicted habitat according to CDFW (Figure 4). As there is uncertainty as to whether the species occurs within the Project Area and how it may be affected by the Proposed Action, the U.S. Forest Service should prepare an EA or EIS that analyzes the Project's potential impacts to the species in addition to conducting focused protocol surveys in the area to better understand if and where the species is nesting, foraging, etc.

Another U.S. Forest Service Sensitive Species, the Tehachapi pocket mouse (*Perognathus alticola inexpectatus*), likely occurs within and around the Project Area. According to the CNDDDB, there have been observations of the species within 0.25 miles of the Project Area (Figure 5). However, survey data is very limited for this species throughout its range, and its population status within its range is relatively unknown. The EA prepared by the U.S. Forest Service in 2012 for the Frazier Mountain Project noted that surveys for the species were needed:

Surveys are needed to determine the distribution and relative abundance of this species on public lands within the assessment area....

U.S. Forest Service 2012

The need for focused surveys also applies to the Project since it may occur in the Project Area. The California Wildlife Habitat Relationships information system developed by CDFW indicates that several small areas within and around the Project Area are predicted habitat for the species (Figure 5). It is reasonable to assume that the species may occur in these areas and may be impacted by the Proposed Action. In fact, in 2012 the U.S. Forest Service indicated that

future fuel reduction projects near mountain communities would likely impact the Tehachapi pocket mouse:

Cumulative effects: **Sensitive species are likely to be impacted by similar ongoing and future drought-related fuel reduction projects, especially close to mountain communities.** These projects have the potential to change forest floor vegetative components and microclimates, potentially changing the suitability for various sensitive and watch list species. **This is especially important for a species with such limited distribution as the Tehachapi pocket mice** which are only known from a few scattered localities.

U.S. Forest Service 2012 (emphasis added)

An analysis by CDFW in 1998 determined that U.S. Forest Service efforts were needed to safeguard the species:

The Department should continue its efforts of: i) funding focused surveys trapping efforts; ii) encouraging mammalogists, graduate students, and field biologists to undertake research and field surveys; and iii) **requiring that the environmental review of projects in appropriate habitat within the species' historic range contain adequate focused surveys for the species. The U.S. Forest Service should also undertake further surveys in the Angeles and Los Padres national forests....**

If one or more populations of *a. alticola* are found, the responsible agencies, in consultation with the Department, should: i) evaluate the need for emergency protective measures to ensure the species' survival, ii) **determine the habitat requirements of the species and adjust resource management practices within the national forests accordingly,** and iii) identify private landowners whose properties support the species and work to find land management strategies that are mutually beneficial.

Brylski 1998 (emphasis added)

Specifically, the U.S. Forest Service should conduct focused surveys of the Project Area as part of an analysis to determine how the Proposed Action may impact the species. As these surveys have, to our knowledge, not been done already, considerable uncertainty about the presence of the species in the Project Area and the potential impacts of the Proposed Action exists, requiring the U.S. Forest Service to at least prepare an EA for the Project.

C. Impacts to Sensitive Plant Species

There is one known occurrence of the rare, U.S. Forest Service Sensitive Species Mt. Pinos onion (*Allium howellii* var. *clokeyi*) on Tecuya Ridge (botanist Pam De Vries, pers. comm.). More focused surveys are needed to determine the extent to which the species occurs in the Project Area. However, the known occurrence on Tecuya Ridge would likely be impacted by the Proposed Action, which includes significant ground disturbance of habitat suitable for the

species. There are also likely occurrences of the Fort Tejon woolly sunflower (*Eriophyllum lanatum* var. *hallii*) in the Project Area due to records in proximity just east of the Project Area (Figure 6). The U.S. Forest Service, facing uncertainty as to the extent of the species and the potential impacts of the Proposed Action, must prepare at least an EA to determine how significant these effects may be.

D. Impacts to Antimony IRA

The Antimony IRA extends across nearly 40,513-acres of the San Emigdio Mountains. Elevations range from 3,250 in the San Joaquin Valley foothills to 7,495 feet atop San Emigdio Peak. Several other peaks — including Brush Mountain, Antimony Peak, Escapula Peak, and Tecuya Mountain — dominate the landscape. San Emigdio Creek bisects the area, and other drainages include Pleito Creek, Santiago Creek, Cloudburst Canyon, Tecuya Creek, Bradley Canyon, and Deadman Canyon. Most of the area is forested with pinyon pine and other conifers. The IRA borders the Wind Wolves Preserve — the largest privately-owned nature reserve on the West Coast — and is adjacent to the Bitter Creek National Wildlife Refuge, where endangered California condors are reintroduced into the wild.

In addition to the forced type-conversion of sagebrush-scrub habitat and the removal of most trees across the Project Area, the Proposed Action also includes creation of skid trails and landing areas that would impact the undeveloped character of the Antimony IRA.

Please note that “roadless character” is not limited to the construction, maintenance, or use of roads; rather, “roadless character” as defined in the 2001 Roadless Area Conservation Rule (“Roadless Rule”) refers to many things, including:

- (1) High quality or undisturbed soil, water, and air;
- (2) Sources of public drinking water;
- (3) Diversity of plant and animal communities;
- (4) Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land;
- (5) Primitive, semi-primitive nonmotorized and semi-primitive motorized classes of dispersed recreation;
- (6) Reference landscapes;
- (7) Natural appearing landscapes with high scenic quality;
- (8) Traditional cultural properties and sacred sites; and
- (9) Other locally identified unique characteristics.

36 CFR § 294.11

The removal of most sagebrush-scrub and a majority of trees across the 1,100 acres of the Antimony IRA within the Project Area would substantially alter the roadless character of the Antimony IRA due to the likely impacts to the diversity of plant and animal communities, habitat for the endangered California condor and proposed California spotted owl, and natural appearing landscapes with high scenic quality (much of the Project Area is designated as having

“high” scenic integrity by the Land Management Plan Part 2: Los Padres National Forest Strategy issued in 2005).

In addition, roadless areas possess unique characteristics that should automatically trigger the preparation of an EIS. Logging the IRA here produces “environmentally significant” impacts on the area’s unique attributes and its potential for wilderness designation (*Lands Council v. Martin*, 529 F.3d 1219, 1230 (9th Cir. 2008), (citing *Smith v. U.S. Forest Serv.*, 33 F.3d 1072 (9th Cir. 1994))). Moreover, the CEQ regulations themselves specify that “[p]roposals that would substantially alter the undeveloped character of an inventoried roadless area” normally require the preparation of an EIS (36 C.F.R. § 220.5(a)(2)).

3. THE PROJECT IS INCONSISTENT WITH THE ROADLESS RULE.

The Project includes timber harvest across over 1,100 acres of the Antimony IRA. The Roadless Rule clarifies the extent to which timber harvest may or may not occur in IRAs:

(a) **Timber may not be cut, sold, or removed in inventoried roadless areas of the National Forest System**, except as provided in paragraph (b) of this section.

(b) Notwithstanding the prohibition in paragraph (a) of this section, timber may be cut, sold, or removed in inventoried roadless areas if the Responsible Official determines that one of the following circumstances exists. **The cutting, sale, or removal of timber in these areas is expected to be infrequent.**

(1) The cutting, sale, or removal of **generally small diameter** timber is needed for one of the following purposes **and will maintain or improve one or more of the roadless area characteristics as defined in § 294.11.**

(i) To **improve** threatened, endangered, proposed, or sensitive species habitat;
or

(ii) To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of **uncharacteristic wildfire effects**, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period;

(2) The cutting, sale, or removal of timber **is incidental to the implementation of a management activity** not otherwise prohibited by this subpart;

(3) The cutting, sale, or removal of timber **is needed and appropriate** for personal or administrative use, as provided for in 36 CFR part 223; or

(4) Roadless characteristics have been substantially altered in a portion of an inventoried roadless area due to the construction of a classified road and **subsequent timber harvest**. Both the road construction and subsequent timber harvest must have occurred after the area was designated an inventoried roadless area and prior to January 12, 2001. Timber may be cut, sold, or

removed only in the substantially altered portion of the inventoried roadless area.

36 CFR § 294.13 (emphasis added)

The Project does not meet any of the criteria established in 36 CFR § 294.13(b). Particularly, the Project cannot be classified under 36 CFR § 294.13(b)(1) for two reasons: the Proposed Action would negatively impact threatened, endangered, proposed, or sensitive species habitat rather than improve it and the Proposed Action will not reduce the risk of uncharacteristic wildfire effects since mixed-severity fire is characteristic of mixed-conifer forests (see Odion et al. 2014).

Additionally, the Proposed Action states that “generally only smaller trees (21 inches [DBH] or less) would be cut or removed within the IRA.” This is problematic for two reasons. First, this design feature is not specific, including a vague term such as “generally” with no indication of how many trees greater than 21 inches DBH will be removed from the IRA during the Project. Second, the size threshold of 21 inches DBH, below which the U.S. Forest Service is considering “smaller,” is inappropriate. As the Roadless Rule does not define a threshold for tree size, stating only that “generally small diameter” trees may be cut for very specific purposes (which do not apply to the Project as described above), the U.S. Forest Service must define such a size threshold by which to limit the Proposed Action in the Antimony IRA. However, the U.S. Forest Service has acknowledged trees as being “smaller” when less than 10 inches DBH in a similar project on Frazier Mountain. The U.S. Forest Service developed a preferred alternative for the Frazier Mountain Project that would have limited timber harvest to 10 inches DBH or less. They noted:

...Alternative 3 where the understory thinning would only remove smaller diameter trees (thin from below up to 10” diameter [DBH]) and would leave the larger diameter (>10” diameter [DBH]) trees.

U.S. Forest Service 2012

Thus, the agency has previously acknowledged that trees may be defined as “smaller” when much less than 21 inches DBH. It should be noted that the Frazier Mountain Project did not include treatment within an IRA, and was therefore not limited by the Roadless Rule. It is therefore reasonable to assume that the U.S. Forest Service is aware that the 21 inches DBH limit they have suggested for the portions of the Project that will occur in the Antimony IRA would not qualify as “generally small diameter” as set forth in the Roadless Rule (see *Sierra Club v. Eubanks*, 335 F. Supp. 2d 1070 (E.D. Cal. 2004)).

Furthermore, the Project cannot be classified under 2 – 4 of 36 CFR § 294.13(b) for multiple reasons. The cutting, sale, or removal of timber would not be incidental to the implementation of a management activity as the removal of timber is the primary focus of the Project. In fact, the Proposed Action would remove approximately 60% of the live tree basal area in the IRA portion of the Project Area — a significant impact to the character of the Antimony IRA. The timber harvest proposed in the Project is not needed or appropriate for personal or

administrative use under 36 CFR § 223. And the Project Area has not been subject to a timber harvest that would have substantially altered the portion of the Antimony IRA that falls within the Project Area before January 12, 2001. Therefore, in compliance with the 2001 Roadless Rule, timber may not be cut, sold, or removed in the Antimony IRA during this Project. This prohibition would inhibit most of the Proposed Action on over 1,100 acres within the Project Area.

4. THE U.S. FOREST SERVICE HAS PREPARED AN EA OR AN EIS FOR SIMILAR AND SMALLER PROJECTS THROUGHOUT THE LOS PADRES NATIONAL FOREST.

The U.S. Forest Service indicated in its scoping notice for the Project that they intend to use a CE to exempt the Project from EA or EIS preparation. The use of a CE for this project does not align with the U.S. Forest Service's decision to prepare an EA or an EIS for several similar and smaller projects across the Los Padres National Forest.

The Monterey Ranger District's Strategic Community Fuelbreak Improvement Project is still under analysis as of the writing of this letter. First proposed in 2012, a draft EIS ("DEIS") for the project was released in early 2017. The DEIS included a proposed action of establishing and enhancing 24.1 miles of fuelbreaks in the Big Sur area. The treatment area for the entire project was estimated to be 542 acres. The scoping notice first issued in 2012 indicated that the project would undergo EIS preparation, presumably due to the project's scope and potential impacts to wilderness. By area alone, the Strategic Community Fuelbreak Improvement Project is smaller than the currently-proposed Project. In fact, the current Project would treat an area three-times as large as the project on the Monterey Ranger District. However, the U.S. Forest Service is seeking to apply a CE rather than develop even an EA to determine whether EIS preparation is needed. While the Project would not impact wilderness, it will have a comparable impact on the Antimony IRA as detailed in the previous section. The U.S. Forest Service is required to consider these potential significant impacts to an IRA in a similar manner as it would consider impacts to a wilderness. We strongly recommend that the U.S. Forest Service develop an EIS for the Project as the agency has already done for the smaller Strategic Community Fuelbreak Improvement Project.

The Mt. Pinos Ranger District announced the Frazier Mountain Project — a project similar in scope to the currently-proposed Project — in 2010. This project entailed the commercial logging, mechanical vegetation removal, prescribed burns, and fuelbreak construction on 2,386 acres on and around Frazier Mountain in the Los Padres National Forest. In the project's scoping notice, the U.S. Forest Service indicated that an EA would be prepared for the project. This was ultimately completed in 2012, at which time a decision memo was issued stating that the preferred alternative that did not include a commercial timber harvest was selected.

In 2005, the Santa Lucia Ranger District announced the Figueroa Mountain Project, which entailed thinning and vegetation clearing across 665 acres. A CE was initially considered to exempt this project from further NEPA documentation, but after working with ForestWatch and

other members of the public, the U.S. Forest Service decided to prepare an EA for the project. This EA was completed and released in 2006, and it included several environmental constraints that improved the proposed action over the initially-proposed project.

Since 2007, no new vegetation removal or thinning projects have been approved in the Los Padres National Forest using a CE. Since this time, all new vegetation clearing projects have either been completed following the preparation of an EA or EIS or cancelled after scoping. The U.S. Forest Service should follow its previous decisions in preparing — at minimum — an EA for the current Project, which entails similar project activities across a larger area.

5. THE PROJECT IS INCOSISTENT WITH THE LAND MANAGEMENT PLAN FOR THE LOS PADRES NATIONAL FOREST.

The Land Management Plan gives deference to local community wildfire protection plans (“CWPPs”) to determine the extent of the WUI and its Defense and Threat Zones (2005b). Indeed, the U.S. Forest Service worked with the Mt. Pinos Communities Fire Safe Council (“MPCFSC”) to develop the Mt. Pinos CWPP. This CWPP — discussed in further detail in the following section — defines the Defense and Threat Zones combined as the area within 1,820 feet from the edge of the Frazier Park, Lake of the Woods, and Pinon Pines Estates communities. However, only approximately 115 acres of the proposed 1,626-acre Project is located within the Threat Zone. Furthermore, this is a generous estimate, as developed parcels located more than one quarter-mile from community centers were used to delineate the approximate Threat Zone (the Mt. Pinos CWPP primarily focuses on community centers to recommend vegetation projects in the Defense and Threat Zones).

The Project is therefore inconsistent with the Land Management Plan, as it proposes vegetation treatment for the direct protection of communities, yet does not adhere to the Mt. Pinos CWPP due to its location outside of the Threat Zone (as defined by the Mt. Pinos CWPP) and its prioritization over other community needs such as the projects recommended by the CWPP (for example, the Frazier Park North Defensible Space Zone project). There is a more detailed analysis of the Project’s inconsistency with the Mt. Pinos CWPP in the following section.

Additionally, much of the Project Area is located in the Back Country Motorized Use Restricted (“BCMUR”) zone as designated by the U.S. Forest Service in 2005. The Land Management Plan Part 2 says of this zone:

Wildland/Urban Interface Threat Zones (see Appendix K in Part 3 of the forest plan) are characteristic of this zone. Managers anticipate locating community protection vegetation treatments that require permanent roaded access (such as fuelbreaks) within the Back Country Motorized Use Restricted zone.

U.S. Forest Service 2005a

The Land Management Plan goes on to state:

Although this zone allows a range of low intensity land uses, **the management intent is to retain the natural character of the zone** and limit the level and type of development.

U.S. Forest Service 2005a (emphasis added)

Thus, the Project does not align with the Land Management Plan as it is not only located outside of the Threat Zone (as detailed above) but also does not contribute to retaining the natural character of the BCMUR zone.

6. THE PROJECT IS INCONSISTENT WITH THE MT. PINOS COMMUNITY WILDFIRE PROTECTION PLAN.

The Mt. Pinos CWPP created by HangFire Environmental for the MPCFSC in 2006 defines the WUI as being comprised of three zones: the Defense Zone, Threat Zone, and Wildland Zone. The “Defense Zone” is the area within 500 feet of developed parcels, the Threat Zone is a 0.25-mile buffer around the Defense Zone, and the area beyond the Threat Zone is the Wildland Zone. The Mt. Pinos CWPP prioritizes vegetation alteration projects in the Defense and Threat Zones.

Indeed, the CWPP highlights the need for an enhanced shaded fuelbreak just north of Frazier Park and defensible space zones directly adjacent to the communities of Frazier Park, Lake of the Woods, and Pinon Pine Estates (both of which include aspects of a shaded fuelbreak) which are shown in Figure 7. The “Frazier Park North Fuelbreak,” “Frazier Park North Defensible Space Zone,” “Lake of the Woods Defensible Space Zone,” and “Pinon Pines Defensible Space Zone” projects consist of enhancing an existing 150-foot, two-mile-long fuelbreak almost entirely within Frazier Park’s Threat Zone and enhancing and establishing up to 300 feet of defensible space directly adjacent to Lake of the Woods and Pinon Pines Estates. Additionally, the Mt. Pinos CWPP identifies the need for the U.S. Forest Service to work with adjacent private landowners to allow them the ability to establish defensible space directly around structures when their structures are within 100 feet of U.S. Forest Service-administered land. We generally support these projects — especially the cooperative establishment of defensible space directly around structures — as they are well-within the WUI and are likely effective measures to protect the communities along Frazier Park Mountain Road in the event of a wildfire.

The Project includes establishment of a 12-mile-long shaded fuelbreak that is 3,400 feet wide in some areas, most of which is located more than one mile from Frazier Park, more than 1.4 miles from Lake of the Woods, and more than 0.5 miles from Pinon Pines Estates — well outside of the Threat Zone as defined in the Mt. Pinos CWPP. The Project is a substantially larger undertaking that deviates from the smarter and likely more cost-effective projects describe above and identified in the Mt. Pinos CWPP. We recommend revisiting the projects originally determined to be needed in the Mt. Pinos CWPP.

Additionally, the Project was not identified as a need or goal in the original Mt. Pinos CWPP. In fact, Tecuya Ridge was not mentioned throughout the entire original 181-page document. However, the CWPP was updated in 2009 with a simple table of proposed and existing projects that includes the “Tecuya Ridge Fuel Break” project. This project includes few details, stating only that it would be a “fuel break that follows the ridgeline above Frazier Park-Pine Mountain” and that it would be 300 feet wide and 12 miles long (MPCFSC 2009). These are the only details provided in the update — there is no further explanation for the need for such a fuelbreak. Additionally, ForestWatch and other interested parties were not made aware of the update before it was incorporated into the CWPP.

It is important to note the intended protocol for the development of CWPPs. These important plans are supposed to be developed using an open and collaborative process including a broad range of stakeholder groups. The framework for this collaborative process was initially outlined in “A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment: 10-Year Strategy,” approved in August 2001 by the Western Governors’ Association (“WGA”), the Secretaries of the Departments of Agriculture and the Interior, and many others. The 10-Year Strategy outlines a comprehensive approach to managing wildland fire, hazardous fuels, and ecosystem restoration on Federal and adjacent lands, and states:

Successful implementation will include stakeholder groups with broad representation including Federal, State, and local agencies, tribes and the public, collaborating with local line officers on decisionmaking to establish priorities, cooperate on activities, and increase public awareness and participation to reduce the risks to communities and environments. Ongoing communication among these three levels should facilitate the exchange of technical information to make fully informed decisions and should include specific outreach and coordination efforts.

WGA et al. 2001

Building upon this guiding principle of collaboration, Congress passed the Healthy Forests Restoration Act of 2003 (“HFRA”) to “reduce wildfire risk to communities...through a collaborative process” (16 U.S.C. §6501(1)). The HFRA established a process for the development of CWPPs “in consultation with interested parties” (16 U.S.C. § 6511(3)).

This collaborative process was further defined in the 10-Year Strategy Implementation Plan, titled “A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment: 10-Year Strategy Implementation Plan,” approved in December 2006 by the WGA and others. In this implementation plan, the authors of the 10-Year Strategy established a Collaborative Framework for the development of CWPPs. At the heart of this Collaborative Framework is the understanding that “in order to be successful, implementation must involve communication and collaboration across ownership boundaries, administrative jurisdictions, and areas of interest” (WGA et al. 2006).

One of the benchmarks of successful collaboration that is specifically identified in the Implementation Plan includes:

- **Include Diverse and Balanced Stakeholder Representation.** Potential stakeholders include local property owners, local governments, tribal representatives, industry groups, conservation groups, academics, scientists, and the interested public. Collaborative organizers should make a reasonable effort to include balanced representation from relevant interests in the collaborative process.

WGA et al. 2006

Finally, this collaborative process is outlined in great detail in *Preparing a Community Wildfire Protection Plan: A Handbook for Wildland-Urban Interface Communities* (“CWPP Handbook”), prepared in March 2004 by the Communities Committee, the National Association of Counties, the National Association of State Foresters, the Society of American Foresters, and the Western Governors’ Association. The CWPP Handbook sets forth the minimum requirements for a CWPP, and topping that list is that a CWPP “must be collaboratively developed by local and state government representatives, in consultation with federal agencies and other interested parties” (Communities Committee et al. 2004). Specifically:

Substantive input from a diversity of interests will ensure that the final document reflects the highest priorities of the community. It will also help to facilitate timely implementation of recommended projects. In some circumstances, the core team may wish to invite local community leaders or stakeholder representatives to work along with them in final decisionmaking.

As early as possible, core team members should contact and seek active involvement from key stakeholders and constituencies such as:

- Existing collaborative forest management groups
- City Council members
- Resource Advisory Committees
- Homeowners Associations—particularly those representing subdivisions in the WUI
- Division of Wildlife/Fish and Game—to identify locally significant habitats
- Department of Transportation—to identify key escape corridors
- Local and/or state emergency management agencies
- Water districts—to identify key water infrastructure
- Utilities
- Recreation organizations
- Environmental organizations
- Forest products interests

- Local Chambers of Commerce
- Watershed councils

Communities Committee et al. 2004

Furthermore, “[t]he discussion and identification of community priorities should be as open and collaborative as possible” (Communities Committee et al. 2004).

Unfortunately, the 2009 update to the Mt. Pinos CWPP was not a collaborative process as required by HFRA. ForestWatch and other interested parties were not notified with an opportunity to join the development of an update to the CWPP, even though we have been involved in nearly every vegetation treatment project proposed by the Forest Service in the Mt. Pinos area since 2005. If the Mt. Pinos CWPP will continue to be used as justifying the need of the Project, the U.S. Forest Service should include further documentation about how a ridgeline fuelbreak on Tecuya Ridge was added to the CWPP, including why it is needed to protect the communities along Frazier Park Mountain Road. This explanation should also include how the update was conducted through a collaborative process, if applicable.

7. THE U.S. FOREST SERVICE FAILED TO FACILITATE AN ADEQUATE SCOPING PROCESS FOR THE PROJECT.

The Project Description does not contain the level of detail required by NEPA and U.S. Forest Service directives implementing NEPA. Because of this lack of detail, interested agencies and the public cannot formulate meaningful comments on this proposal.

First, NEPA requires scoping to be an “early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action” (40 CFR § 1501.7). U.S. Forest Service directives emphasize the importance of scoping in achieving NEPA compliance, stating that:

The **most important** element of the scoping process is to **correctly identify and describe** the proposed action. Elements of the proposed action include the nature, characteristics, and scope of the proposed action, the purpose and need for the proposed action, and the decision to be made.

CWPP Handbook (emphasis added)

An adequate project description assists the public and interested agencies in identifying issues and providing meaningful comments. To this end, the General Counsel of the Council on Environmental Quality (“CEQ”) has concluded that

Scoping cannot be useful until the agency knows enough about the proposed action to identify most of the affected parties, and to present a **coherent proposal** and a suggested initial list of environmental issues **and alternatives**. Until that time there is no way to explain to the public or other agencies what you want them to get involved in.

CEQ 1981

The Project Description fails to present such a “coherent proposal.” Instead, the Proposed Action is described as being needed for disparate reasons such as reducing tree stand densities, treating areas of bark beetle infestation, and providing a safe space for firefighters in the event of a wildfire in or near the Project Area. Moreover, both the scoping letter and the Project Description fail to specify the duration of the Project and at what time of year it will be implemented.

An appropriate scoping letter contains “a brief information packet consisting of a description of the proposal, **an initial list of impacts and alternatives**, maps, drawings, and **any other material or references that can help the interested public to understand what is being proposed**” (CEQ 1981) (emphasis added). The Project’s scoping letter falls far short of this guidance. For example, the letter and Project Description are missing an initial list of impacts and alternatives. Thus, the public does not know what the main issues are surrounding this proposal and therefore cannot frame appropriate comments. Additionally, the U.S. Forest Service did not provide either a list of references or a packet containing all of the works cited in the Project Description. The Project Description should have at least contained a list of references at the end of the document so that the public could easily look up references they may have wanted to examine in further detail. The Project Description only included in-text citations that did not provide enough information about the publication being cited. This is just another hinderance to the public’s ability to better understand what is being proposed and the literature the U.S. Forest Service is using to justify such actions.

We urge the U.S. Forest Service to re-issue a scoping letter that complies with NEPA and U.S. Forest Service directives. An adequate scoping letter is particularly important in cases where CEs are involved, because the scoping letter is the only document the public sees before a decision is made. This will enable the public to participate meaningfully in the process.

8. THE U.S. FOREST SERVICE WAS UNABLE OR UNWILLING TO PROVIDE DOCUMENTS REQUESTED DURING THE COMMENT PERIOD FOR THE PROJECT.

The scoping process for this Project has been significantly compromised — and the public’s ability to participate in it has been significantly reduced — due to the lack of information provided to the public. Specifically, key Forest Service personnel have been out of the office and unavailable during most of the scoping period; minimal documentation has been made available to the public despite repeated requests; and the Project Area is relatively inaccessible and requests for access have been denied. Curiously, these hurdles to public participation could have been easily avoided had the Forest Service not rushed to prematurely issue the scoping notice.

The scoping notice for the Project was issued on March 13, 2018. ForestWatch submitted a request via email for additional information to the project lead, Gregory Thompson, on March 15, 2018. This request was for a copy of any specialist reports for the Project. That same day, Mr. Thompson responded to our request, but he did not send any specialist reports for the

Project as they had not been completed at that time. We then sent a follow-up email on March 15 indicating the difficulty for the public to prepare meaningful comments without important information such as would be found in the Biologist Report or an extraordinary circumstances analysis and requested access to the Project File as well as any shapefiles associated with the Project. Mr. Thompson responded on March 15 indicating that the specialist reports would possibly be available in May, 2018 — well after the close of the public comment period for the scoping portion of the Project (which may be the only public comment period if the Project is exempted from further NEPA documentation through use of a CE) — and listing the files that were available to share. These files were limited to the following:

1. Proposed Action
2. Scoping Letter
3. Scoping List
4. Los Padres Land Management Plan
5. Mt. Pinos CWPP
6. Mt. Pinos CWPP Update
7. Los Padres Strategic Fuel Break Assessment

In the same email response, Mr. Thompson indicated that he would check with the Project's GIS specialist to see if they had any shapefiles associated with the Project.

We then submitted a request via email for copies of the Scoping List and the Mt. Pinos CWPP Update on March 19. Mr. Thompson responded on March 20 with a copy of the Scoping List for the Project and indicated that he would update the Project's webpage to include the Mt. Pinos CWPP Update.

On March 23, we submitted another request via email for the following:

1. Maps of all California spotted owl activity centers (or home range core areas) in the Project Area
2. Field plot data from the stand exams that were conducted for the Project Area, including basal area data if collected.
3. A list (and/or maps if available) of threatened, endangered, proposed, and sensitive species in the Project Area

We received a response via email from Kyle Kinports, the Los Padres National Forest's NEPA Coordinator, on March 23 stating that Mr. Thompson "will be out of the office the next few weeks." Mr. Thompson then responded on April 11 indicating that he would be working with the Los Padres National Forest Freedom of Information Act ("FOIA") Coordinator "to evaluate the requested information to see what is releasable." On April 16 — three days before the scoping comment deadline — we received another response from Mr. Thompson that included a portion of the requested stand data for the Project Area. The response also addressed other portions of our previous request. In that email, he states: "As far as the California spotted owl activities centers, our biological specialist is currently looking at this information and currently does not have a map ready. **The specialist has just started looking at the project** and once she

finishes her reports we will be making them available to the public. As far as a list and or maps of threatened, endangered, proposed, and sensitive species, our specialists are currently putting this information together and once they have the specialists reports completed they will also be made available to the public....” (emphasis added). In that response, Mr. Thompson only provided us with the basal area data from the requested stand exam field plot data. On April 16, we sent another request to Mr. Thompson for the remainder of the field plot data — the tree density (trees per acre) data. We ultimately received a response from Mr. Thompson on April 17 stating that he did “not have a report with the requested information to be able to provide” to us despite the fact that the Project Description noted that “[s]tand exams show that the project area average mixed conifer stand has 480 trees per acre.”

As the U.S. Forest Service intends to use a CE for this project, the scoping comment period may be the only the chance the public has to voice their concerns about the Project and its potential impacts on wildlife and other natural resources. Because of this intention by the U.S. Forest Service, more information should have been prepared before the scoping notice was issued. At the very least, a list of threatened, endangered, proposed, and sensitive species that occur in the Project Area and the Project’s potential impacts to these species should have been provided to the public before or during the public comment period. In fact, the FSH states as much:

Scoping includes refining the proposed action, determining the responsible official and lead and cooperating agencies, **identifying preliminary issues**, and identifying interested and affected persons....Identify and evaluate preliminary issues based on review of similar actions, knowledge of the area or areas involved, **discussions with** interested and affected persons, community leaders, organizations, **resource professionals within the Agency, and State and local governments, and/or consultations with experts and other agencies familiar with such actions and their direct, indirect, and cumulative effects.**

FSH 1909.15.11 (emphasis added)

Additionally, we submitted a request to access roads onto Tecuya Ridge that were seasonally closed to Mt. Pinos District Ranger Tony Martinez on March 29 and again on April 5. Mr. Martinez responded on April 10, noting that he had just returned from vacation before indicating that the roads were closed “due to weather impacts” and that they would update their website when the roads reopen. We clarified our request on April 10, noting that we were aware of the seasonal road closures which is why we were requesting special access to them (primarily Tecuya Ridge Road) during the Project’s comment period. Mr. Martinez responded on April 10 stating, “... the roads are closed to protect them from resource damage, so unfortunately I cannot honor your request.”

The absence of the Project Lead and the District Ranger during a substantial portion of the Project’s comment period was exacerbated further by the absence of the NEPA Coordinator due to jury duty selection (as indicated to us on March 29 in response to an unrelated matter). Thus, three key U.S. Forest Service officials were not available to provide requested information

to the public during almost half of the public comment period. This caused considerable difficulty for the undersigned and the public to prepare substantive comments as part of the NEPA process for the Project. The U.S. Forest Service should be striving to increase public participation as they propose and evaluate projects that affect public lands. The scoping process for the Project did not facilitate public participation. Instead, the U.S. Forest Service distributed limited information regarding the agency's proposed project to a limited number of interested parties and then avoided public requests for more information during what may be the only public comment period for the Project. Regarding public participation needs during the NEPA process, the FSH states:

4. Determine the methods of public involvement to meet the objectives. **Ensure that the level of effort to inform and to involve the public is consistent with the scale and importance of the proposed action and the degree of public interest.**

FSH 1909.15.11.52 (emphasis added)

As the Proposed Action will impact 1,626 acres of mixed-conifer forest and sagebrush habitat, endangered and sensitive species, and an IRA, the Project should be considered significant in its importance and thus the effort to inform and involve the public should be significant as well. Such efforts should include considerable responsiveness to and willingness to answer public requests for more information about the Project.

9. THE U.S. FOREST SERVICE SHOULD ANALYZE THE FOLLOWING ISSUES IN AN EA OR EIS FOR THE PROJECT.

In preparing an EA or EIS for the Project, there are several issues that should be considered. These issues — detailed below — align with issues analyzed in the EA and EIS documents prepared for other projects proposed across the Los Padres National Forest.

A. Range of Reasonable Alternatives

The National Environmental Policy Act of 1969 (“NEPA”) requires the U.S. Forest Service to “[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources” (40 CFR § 1501.2(c)). As part of this alternatives analysis, the EA or EIS must “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated” (40 CFR § 1502.14(a)). Furthermore, the alternatives analysis “is the heart of the environmental impact statement” (40 CFR § 1502.14).

Reasonable alternatives are those that are viable, feasible, meet the stated goals of the project, or are reasonably related to the purposes of the project (*Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992); *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997); *Trout Unlimited v. Morton*, 509 F.2d 1276, 1286 (9th Cir. 1974)). An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action, sufficient to permit a reasoned choice (*Idaho*

Conservation League, 956 F.2d at 1520). But the agency cannot contrive the project’s purpose so narrowly that competing reasonable alternatives cannot be fully considered (*City of Carmel*, 123 F.3d at 1155). The “rule of reason” guides the choice of alternatives, the extent to which the agency must discuss each alternative, and whether the agency defined the project’s purposes too narrowly to allow consideration of alternatives (*City of Carmel*, 123 F.3d; see *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 666 (7th Cir. 1997) [noting that “[o]ne obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose and need so slender as to define competing reasonable alternatives out of consideration (and even out of existence).”]).

It is important to note that “[t]he existence of a viable but unexamined alternative renders an [EIS] inadequate” (*Natural Resources Defense Council v. U.S. Forest Service*, 421 F.3d 797, 813 (9th Cir. 2005) [quoting *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985)]). It is therefore not only the responsibility of the U.S. Forest Service to follow NEPA regulations when exploring reasonable alternatives but also to ensure that “selection and discussion of alternatives fosters informed decision-making and informed public participation” (*California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982)).

Current research supports that defensible space immediately around structures is the most effective approach to protecting homes and other structures from the effects of wildfire. Studies have shown the importance of defensible space in protecting residential structures from a wildfire. A 2014 study found that:

In terms of actionable measures to reduce fire risk, this study shows a clear role for defensible space up to 30 m (100 ft)...Results here suggest the best actions a homeowner can take are to reduce percentage cover up to 40% immediately adjacent to the structure and to ensure that vegetation does not overhang or touch the structure.

Syphard et al. 2014

The U.S. Forest Service should explore programs that would provide targeted assistance and funding to create and enhance defensible space around structures.

The EA or EIS should also evaluate an alternative that would reduce the length and/or width of the proposed fuelbreak in a way that would still achieve Project objectives. Additionally, the EA or EIS should evaluate benefits of large tree retention as part of one or more alternatives to the Proposed Action.

Considering the substantial amount of research questioning the efficacy of fuelbreaks generally, an alternative that explores methods excluding the development of a fuelbreak would also be useful in the discussion surrounding the Project.

B. Protection of Plants and Wildlife

The ESA (16 U.S.C. §§ 1531 et seq.) requires the U.S. Forest Service to consult with the USFWS to ensure that the Project “is not likely to jeopardize the continued existence of any

endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat” (16 U.S.C. § 1536(a)(2)). The Project Area contains habitat for several species protected under the ESA. Please consult with NOAA Fisheries and the USFWS pursuant to Section 7 of the ESA and incorporate measures into the Proposed Action and alternatives to reduce or avoid impacts to protected species.

The Project Area is located in and near known foraging, roosting, and nesting habitats for the endangered California condor. The EA or EIS should identify these habitat areas and should propose adequate buffers to protect the integrity of these sites and condor flight patterns and behavior, consistent with the best available science. The U.S. Forest Service should initiate consultation with the USFWS to determine whether the Project will impact condors or their roosting habitat or flight patterns and whether any particular mitigation measures should be adopted.

The Project Area contains habitat for several species that the U.S. Forest Service has identified as Sensitive or as Management Indicator Species. The EA or EIS should adequately evaluate the impacts of the Project and alternatives on these special-status species and their associated habitats.

In particular, the EA or EIS should contain a thorough discussion on the impacts of the Project on California spotted owls, a U.S. Forest Service sensitive species. The U.S. Forest Service has identified vegetation removal and human disturbance as two of the primary factors threatening the viability of spotted owls. The EA or EIS should disclose whether the fuelbreak is located within any Protected Activity Centers for spotted owls and should propose mitigation measures as appropriate.

To assist in preparation of the EA or EIS, the U.S. Forest Service should follow established survey protocol to assist the agency in accurately identifying habitat and determining the presence or absence of listed species in and around the Project Area. The entire project area should be thoroughly surveyed in accordance with *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants* issued by the USFWS in 2000, and the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* issued by the California Department of Fish & Wildlife in 2009. Species-specific survey protocol should be incorporated as appropriate.

The range and predicted habitat of the northern goshawk — a U.S. Forest Service Sensitive Species and a Species of Special Concern with CDFW — includes the Project Area. Please evaluate the impacts of the Project on northern goshawk habitat and conduct protocol surveys consistent with the *Northern Goshawk Inventory and Monitoring Technical Guide* (U.S. Forest Service 2006).

Consider that goshawks exhibit a preference for high canopy closure and a high density of larger trees. In addition, large snags and downed logs are believed to be important components of northern goshawk foraging habitat because such features increase the abundance of major

prey species. Please incorporate the following Forest Service recommendations, at a minimum, into the Project:

- Retain large trees in vegetation management projects.
- Retain snags and down logs for prey species.
- When conducting vegetation management, maintain a minimum of 200 acres of suitable canopy cover around identified goshawk nest sites. Maintain seasonal restrictions limiting activities within 1/4 mile of the nest site during the breeding season (approx. 2/15 - 9/15) unless surveys confirm northern goshawks are not nesting.

The EA or EIS should also recognize that there is limited information on the historic and current distribution of Northern goshawks in southern California mountains:

More information is needed on where goshawks nest in the southern California mountains. The breeding population is clearly small, probably fewer than thirty pairs, and could easily be extirpated by impacts to nesting sites. Efforts to maintain the integrity of these sites cannot be made until we know where they are.

Stephenson and Calcarone 1999

Based on this uncertainty, please incorporate the following recommendations by Keane (2008) into the Project:

- Conduct specialized inventories to assess distributional status in poorly known areas, such as the mountains of southern California.
- Initiate collaboration between research and management in an adaptive management framework to assess the effects of forest and fuels management policies on Northern Goshawk territory occupancy, demographics, and habitat quality, placing questions within the larger context of the restoration of California forests and natural disturbance regimes. Variation across major California forest types in terms of forest structure, composition, function, patch size and distribution, prey populations, and natural disturbance regimes dictates that management and conservation efforts be developed at appropriate spatial scales. (See Reynolds et al. 2006a for recommendations for developing ecosystem-based conservation strategies for goshawks.)
- If feasible, monitoring in California should follow the U.S. Forest Service's recently developed design for bioregional monitoring of population trends and their association, if any, with broad-scale habitat changes (Hargis and Woodbridge 2006). Empirically derived habitat models should be used to monitor change in habitat distribution and quality at home-range and landscape scales. Monitoring project-level responses of nesting goshawks to management treatments would also be valuable.

Migratory birds are perhaps the most highly valued component of North America's biological diversity, with approximately 1,200 species representing nearly 15% of the world's known bird species. The seasonal movement of migratory birds is one of the most complex and compelling

dramas in the natural world. Migratory birds embark twice each year on long-distance journeys between their breeding areas and their wintering grounds, which are sometimes separated by thousands of miles. State, federal, and international law all recognize the importance of protecting migratory bird species from harm.

Pursuant to the Migratory Bird Treaty Act (“MBTA”), it is unlawful “at any time, by any means or in any manner to . . . take [or] kill . . . any migratory birds, [and] any part, nest, or eggs of any such bird” (16 U.S.C. § 703(a)). This prohibition applies to federal agencies and their employees and contractors who may not intend to kill migratory birds but nonetheless take actions that result in the death of protected birds or their nests (*Humane Soc’y of the United States v. Glickman*, 217 F. 3d 882 (D.C. Cir. 2000) [holding that federal agencies are required to obtain a take permit from USFWS prior to implementing any project that will result in take of migratory birds]; see also *Robertson v. Seattle Audubon Soc’y*, 503 U.S. 429, 437–38, 1992 [finding that federal agencies have obligations under the MBTA] and *Center for Biological Diversity v. Pirie*, 191 F.Supp.2d 161 (D.D.C. 2002) [allowing injunctive relief against federal agencies for violations of the MBTA]).

The prohibition on “take” of migratory birds includes destruction of nests during breeding season. Specifically, “nest destruction that results in the unpermitted take of migratory birds or their eggs, is illegal and fully prosecutable under the MBTA” (USFWS 2003).

In a Memorandum of Understanding Between the U.S. Department of Agriculture Forest Service and the U.S. Fish and Wildlife Service to Promote the Conservation of Migratory Birds (“MOU”), the agencies identified specific actions that, if implemented, would contribute to the conservation of migratory birds and their habitats. The MOU requires the U.S. Forest Service to alter the season of activities to minimize disturbances during the breeding season, to coordinate with the appropriate USFWS Ecological Services office when planning projects that could affect migratory bird populations, and to follow all migratory bird permitting requirements.

Importantly, the MOU “does not remove the Parties’ legal requirements under the MBTA, BGEPA, or other statutes and does not authorize the take of migratory birds.”

Under the MBTA, “any person, association, partnership, or corporation” who violates the MBTA or regulations thereunder are subject to criminal and civil penalties (16 U.S.C. §707). Violations of the MBTA are prosecuted as a misdemeanor, and upon conviction thereof, are subject to fines of up to \$15,000 or imprisonment of up to six months, or both.

In addition to the protections afforded by the federal MBTA and outlined above, several bird species within the Project Area are also protected under state law. Specifically, “[i]t is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird,” and “it is unlawful to take or possess a migratory nongame bird” (see Cal. Fish & Game Code §§ 3503, 3513).

The EA or EIS should evaluate the effects of the Project and alternatives on migratory birds protected under the MBTA. Several migratory bird species occur in this area. The MBTA prohibits the destruction of nests and eggs of migratory birds. The EA or EIS should evaluate the

impacts of project activities on migratory bird nests, should consider the breeding season for each migratory bird species found in the Project Area, and should propose measures (such as adjusting the season of use) to avoid destruction of nests. To mitigate the potential take of migratory bird nests, we recommend that the following mitigation measure be implemented for all vegetation clearing components of this Project:

[Los Padres National Forest] shall ensure that suitable nesting sites for migratory nongame native bird species protected under the Federal Migratory Bird Treaty Act and/or trees with unoccupied raptor nests (large stick nests or cavities) may only be removed prior to February 1, or following the nesting season.

A survey to identify active raptor and other migratory nongame bird nests may be conducted by a qualified biologist at least two weeks before the start of construction at project sites from February 1st through August 31st. Any active non-raptor nests identified within the project area or within 300 feet of the project area may be marked with a 300-foot buffer, and the buffer area may need to be avoided by construction activities until a qualified biologist determines that the chicks have fledged. Active raptor nests within the project area or within 500 feet of the project area may be marked with a 500-foot buffer and the buffer avoided until a qualified biologist determines that the chicks have fledged. If the 300-foot buffer for non-raptor nests or 500-foot 3 buffer for raptor nests cannot be avoided during construction of the Project, the project sponsor may retain a qualified biologist to monitor the nests on a daily basis during construction to ensure that the nests do not fail as the result of noise generated by the construction. The biological monitor may be authorized to halt construction if the construction activities cause negative effects, such as the adults abandoning the nest or chicks falling from the nest.

- Beginning thirty days prior to the disturbance of suitable nesting habitat, the project sponsor may arrange for weekly bird surveys conducted by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in the habitat that is to be removed and any other such habitat within 300 feet of the construction work area (within 500 feet for raptors) as access to adjacent areas allows. The last survey may be conducted no more than 3 days prior to the initiation of clearance/construction work.

If an active raptor nest is found within 500 feet of the project or nesting habitat for a protected native bird is found within 300 feet of the project a determination may be made by a qualified biologist in consultation with CDFG whether or not project construction work will impact the active nest or disrupt reproductive behavior.

- If it is determined that construction will not impact an active nest or disrupt breeding behavior, construction will proceed without any

restriction or mitigation measure. If it is determined that construction will impact an active raptor nest or disrupt reproductive behavior then avoidance is the only mitigation available. Construction may be delayed within 300 feet of such a nest (within 500 feet for raptor nests), until August 31 or as determined by CDFG, until the adults and/or young of the year are no longer reliant on the nest site for survival and when there is no evidence of a second attempt at nesting as determined by a qualified biologist. Limits of construction to avoid a nest may be established in the field with flagging and stakes or construction fencing marking the protected area 300 feet (or 500 feet) from the nest. Construction personnel may be instructed on the sensitivity of the area.

Documentation to record compliance with applicable State and Federal laws pertaining to the protection of native birds may be recorded.

California State Water Resources Control Board 2014

It should also be noted that because the Project Area includes approximately 1,100 acres of the Antimony IRA, there may be rare and sensitive plant species within portions of the projects due to the lack of previous surveys. As rare plant surveys are often conducted near roads because of ease of accessibility, some of the roadless areas within the Project Area may have never been surveyed for various plant species. The EA or EIS should also include the results of focused surveys for rare and sensitive plants that have been shown to occur near the Project Area, including but not limited to the Tehachapi monardella (*Monardella linoides* var. *oblonga*), salt spring checkerbloom (*Sidalcea neomexicana*), and pale-yellow layia (*Layia heterotricha*).

C. Cumulative Impacts

In the EA or EIS, please analyze all impacts of the Project, including cumulative effects (see 40 CFR §§ 1508.9(b), 1508.8.). A cumulative impact is defined under NEPA regulations as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions...Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time” (40 CFR § 1508.7).

The cumulative impacts associated with this Project may include those impacts stemming from the probable extension of this fuelbreak across intermingled and adjacent private lands. Other potential cumulative impacts include the establishment of defensible space and previous wildfire suppression efforts.

D. Protection of Cultural and Archaeological Sites

The Project Area contains several sites deemed important to Native American history and culture. The EA or EIS should briefly describe the extent (but not the location) of Native American heritage sites in the Project Area, should summarize the extent the area has been surveyed for archaeological resources, and should discuss whether additional pre-

implementation surveys should occur. Retain monitoring by a certified archaeologist during all Project activities. Consult with the State Historic Preservation Officer in accordance with the National Historic Preservation Act.

E. Protection of Soil and Water Resources

The use of heavy equipment such as masticators, skidders, and loaders can result in soil disturbance and compaction and can damage neighboring vegetation. The EA or EIS should evaluate methods to avoid damage to soil integrity through compaction, contact with heavy equipment, and loss of litter layer.

The EA or EIS should also identify the steepness of all slopes in the Project Area and explain how the extent and method of vegetation removal will differ to account for differences in slope incline. Fuelbreak construction on steep slopes and in riparian areas and other wetlands should be avoided.

Vegetation manipulation and removal activities can involve ground disturbance, which is consequently likely to generate sediment and affect water quality. The EA or EIS should consider the following mitigation measures:

- Reduce creation of sediment that may eventually be delivered to streams and harm fish. Identify all perennial and intermittent streams in the Project Area.
- Document impacts to water quality and channel stabilization.
- Avoid or restore skid trails, which tend to channelize runoff and contribute to erosion, sedimentation, and gullying.
- Identify specific measures the agency will take to comply with Best Management Practices. Analyze whether any vegetation clearing will increase erosion in the short- or long-term and evaluate the timing of any long-term water quality benefits.

F. Protection of Scenic Resources

The fuelbreak should be designed to minimize impacts to scenic resources. Much of the Project Area is characterized as having a “high” scenic integrity objective according to the Land Management Plan for the Los Padres National Forest. The EA or EIS should examine potential impacts to the scenic integrity of the area.

G. Protection of Trees

The EA or EIS should disclose the extent of trees to be removed during fuelbreak construction and/or maintenance. The Proposed Action should include Design Criteria that prohibits the removal of trees above 6” DBH. If the removal of trees above this level is needed for fuelbreak integrity, then the EA or EIS should disclose the criteria that will be used to determine whether particular trees are to be removed.

It should be noted that studies have shown that removal of large trees may be detrimental to the goals of the Project. Bond et al. (2009b) found that stands dominated by large trees burned at lower severities than stands dominated by smaller trees. They state:

This result suggests that harvesting larger-sized trees for fire-severity reduction purposes is likely to be ineffective, and possibly counter-productive.

Bond et al. 2009b

The U.S. Forest Service should seek to mitigate any tree removal by planting trees in other locations in the Mt. Pinos Ranger District.

H. Noxious Weeds & Invasive Species

The construction and maintenance of fuelbreaks may lead to an increase in invasive plants in the Project Area that, in turn, could spread to surrounding wildlands. Specifically,

Fuel manipulation can contribute to invasion by exotic plants. For example, fuel breaks can act as invasive highways, carrying exotic species into uninfested wildlands. Normally destroyed by stand-replacing fires, exotic seed banks can survive the lower fire severities in fuel breaks, resulting in source populations poised to invade adjacent burned sites....

Fuel manipulations such as fuel breaks can create favorable conditions for nonnative weeds, increasing their movement into wildlands and building seed sources capable of invading after fire.

Keeley 2003

Elsewhere, Keeley states:

Forests and shrublands, particularly in California, have had a long history of experimentation with different types of fuel breaks. They are constructed to create barriers to fire spread and to provide access and defensible space for fire-suppression crews during wildfires. These activities have the potential for creating suitable sites for alien plant invasion, and invasion is closely tied to the loss in overstory cover. In a recent study of 24 fuel breaks distributed throughout California, alien plants constituted as much as 70% of the plant cover and the proportion of aliens varied significantly with distance to roads, fuel break age, construction method, and maintenance frequency (Merriam et al. 2006). The association of alien species with fuel breaks raises two critical concerns. One is that the linear connectedness of these disturbance zones acts as corridors for alien invasion into wildland areas. Another is that these zones of reduced fuels produce lower temperatures and thus safe sites for alien propagules during wildfires, ensuring survivorship of seed banks (Keeley 2001, 2004b). Consequently, following fires these fuel breaks represent a major source area for alien invasion of adjacent wildlands.

Keeley 2006

Given the susceptibility of fuelbreaks to serve as vectors for invasive weeds, the EA or EIS should evaluate the ability and likelihood of all project activities to contribute to the spread of invasive weeds. The EA or EIS should evaluate measures to minimize the introduction and spread of invasives and should be supported by a Noxious Weed Risk Assessment.

I. Efficacy of Fuelbreaks

The EA or EIS should include a comprehensive analysis on the efficacy of fuel breaks. There is a considerable amount of disagreement on the circumstances under which fuel breaks are effective, and what results fuel breaks are and are not able to achieve under a variety of weather conditions. The project analysis would benefit from a frank discussion on these matters.

Significant scientific controversy exists surrounding the effectiveness of fuel breaks, particularly under the extreme weather conditions that accompany most large fires in southern California. In a recent review of fuelbreak effectiveness in the Los Padres National Forest over a 28-year period involving 342 miles of fuelbreaks, the researchers concluded that wildfire did not intersect with most (79%) of the fuelbreaks in the main division of the Los Padres National Forest. Continuing:

The fact that a substantial proportion of the fuel breaks never intersected a fire during the course of the study suggests that fuel breaks have not historically been placed in areas where fires are most likely to intersect them. Although it is possible that a fire may cross these fuel breaks in the future, fire managers might want to consider focusing maintenance and new construction in areas where fires and fuel treatments are most likely to intersect and thus provide greater opportunities for controlling fires....

Although fuel breaks surrounding communities clearly serve an important role in creating a safe space for firefighting activities, **fuel breaks in remote areas and in areas that rarely or never intersect fires** have a lower probability to serve a beneficial function.

Syphard et al. 2011 (emphasis added)

While the effectiveness of fuelbreaks under extreme weather conditions continues to be debated, there is also significant controversy surrounding the cost-effectiveness of fuel breaks to guard against fires during *moderate* weather conditions.

In light of the ongoing controversy surrounding the overall effectiveness of fuel breaks, and with the potential environmental impacts of fuel breaks in mind, we continue to believe that the U.S. Forest Service should focus its efforts on fuel treatments immediately adjacent to structures in the WUI. In fact, the U.S. Forest Service's own expert concluded:

Effective fuel modification for reducing potential WUI fire losses need only occur within a few tens of meters from a home, not hundreds of meters or more from

a home. This research indicates that home losses can be effectively reduced by focusing mitigation efforts on the structure and its immediate surroundings.

Cohen 1999

During these challenging times of dwindling federal budgets, we believe that the best use of the U.S. Forest Service's limited resources is to focus more on defensible spaces immediately around structures and dwellings, and less on creating expensive fuel breaks that in some cases are located several miles from any structures.

J. Impacts of Mastication

The EA or EIS should evaluate the potential adverse impacts caused by mastication and other mechanical treatment of native vegetation. The EA or EIS should identify the specific locations within the Project Area where machine thinning, chipping, and mastication will be used. The environmental impacts associated with these methods should be thoroughly analyzed and the results included in the EA or EIS.

K. Impacts and Efficacy of Thinning

The most significant effect of this type of heavy thinning is to increase the warming and drying of ground fuels and to increase the growth of ladder fuels, both of which significantly detract of the risk reduction objectives and are expensive to treat. The analysis must address the complex effects of thinning including tendencies to reduce and increase fire hazard.

A report prepared for Congress stated: "We do not presume that there is a broad scientific consensus surrounding appropriate methods or techniques for dealing with fuel build-up or agreement on the size of areas where, and the time frames when, such methods or techniques should be applied" (US GAO RCED-99-65.1999:56). A research report by Omi and Martinson (2002) states: "Evidence of fuel treatment efficacy for reducing wildfire damages is largely restricted to anecdotal observations and simulations."

In fact, there is scientific evidence that thinning can make the fuel hazard worse instead of better. Graham et al. (2004) noted that "[d]etailed site-specific data on anything beyond basic forest structure and fuel properties are rare, limiting our analytical capability to prescribe management actions to achieve desired conditions for altering fuels and fire hazard." Further, thinning can alter the heating of the understory and subsequently reduce moisture levels:

Thinning opens stands to greater solar radiation and wind movement, resulting in warmer temperatures and drier fuels throughout the fire season.

[T]his openness can encourage a surface fire to spread...Opening up closed forests through selective logging can accelerate the spread of fire through them because a physical principle of combustion is that reducing the bulk density of potential fuel increases the velocity of the combustion reaction. Wind can flow more rapidly through the flaming zone. Thinned stands have more sun exposure

in the understory, and a warmer microclimate, which facilitates fire (Countryman 1955)...

[F]uel reduction activities – particularly mechanized treatments – inevitably function to disturb soils and promote the invasion and establishment of non-native species. Pile burned areas associated with the treatments are also prone to invasion (Korb et al. 2004). Annual grasses can invade treated areas if light levels are high enough, leading to increased likelihood of ignition, and more rapid spread of fire, which can further favor annual grasses (Mack and D’Antonio 1998). This type of feedback loop following the establishment of non-native plants may result in an altered fire regime for an impacted region, requiring extensive (and expensive) remedial action by land managers (Brooks et al. 2004).

Odion 2004

The authors of a study that analyzed fires in thinned and unthinned areas in Sierra Nevada forests noted:

Thinned areas predominantly burned at high severity, while unthinned areas burned predominantly at low and moderate severity....

...combined mortality was higher in thinned than in unthinned units.

Hanson and Odion 2006

Hanson and Odion (2006) went on to suggest that mechanical thinning may have “effectively lowered the fire weather threshold necessary for high severity fire occurrence.” Furthermore, researchers with the U.S. Forest Service acknowledge the potential for thinning to create more intense conditions for surface fire spread:

Theoretically, fuel treatments have the potential to exacerbate fire behavior. Crown fuel reduction exposes surface fuels to increased solar radiation, which would be expected to lower fuel moisture content and promote production of fine herbaceous fuels. Surface fuels may also be exposed to intensified wind fields, accelerating both desiccation and heat transfer.

Treatments that include prescribed burning will increase nutrient availability and further stimulate production of fuels with high surface-area- to-volume ratios. All these factors facilitate the combustion process, increase rates of heat release, and intensify surface fire behavior....

Thus, treatments that reduce canopy fuels increase and decrease fire hazard simultaneously. With little empirical evidence and an infant crown fire theory, fuel treatment practitioners have gambled that a reduction in crown fuels outweighs any increase in surface fire hazard....

Omi and Martinson 2002

A recent study also found that protected forests (those with more restrictions on logging activities such as those in the Proposed Action) had lower fire severity levels over a 30-year period (and across 1,500 fires), but they actually had *lower* fire severity levels despite being identified as having increased biomass and fuel loading compared to less-protected forests with more logging activities (Bradley et al. 2016).

The EA or EIS should disclose the scientific uncertainty surrounding fuel reduction and fire behavior and should recognize that vegetation treatments can increase fine fuel loads while removing the large, fire-resilient logs that are relatively less prone to burn.

L. Benefits of Bark Beetles

Native insects work to thin trees, control crowding, reduce stress and lessen competition for water and nutrients. Some levels of insect herbivory, or plant-eating, may even be good for trees and forests, and in the long run produce as much or more tree growth.

According to Scott Black of the Xerces Society (pers. comm. March 15, 2005):

[T]hese insects are native and are very important. Bark beetles help decompose and recycle nutrients, build soils, maintain genetic diversity within tree species, generate snags and down logs required by wildlife, and provide food to birds and small mammals. By feeding upon dead or dying trees, wood borers and bark beetles provide food to insect gleaning species of birds (such as woodpeckers), create snags that may be utilized by cavity nesting birds in the future and overall are invaluable catalysts in forest evolution.

Thinning is often recommended to control outbreaks of bark beetles, but there is little direct evidence that this works. This seems to be recommended based on the presupposition that thinning will increase tree vigor, which will in turn increase the ability for trees to ward off infestation by insects. Some scientists have suggested caution in using thinning to control bark beetles as geographic and climactic variables may alter the effect. Hindmarch and Reid (2001) found that thinned stands exhibited a higher attraction rate of mates by males of *Ips pini*, while females had longer egg galleries, more eggs per gallery and higher egg densities. Warmer temperatures in thinned stands also contributed to a higher reproduction rate. The number of males and females setting on logs was also higher in thinned stands.

Bark beetles are always widespread and quite common. Even if they can be controlled in a “stand” of trees, it is likely to have little impact on infestation on a landscape scale. According to Wilson and Celaya (1998), removal of infested trees may provide some protection to surrounding trees, but these insects (western pine beetle) are very common, so removal of a few infested trees is not a guarantee of protection.

The Project Description describes a need to reduce the basal area per acre below 120 ft² because this is the threshold above which stands “are at imminent risk of bark beetle-associated mortality.” This statement is apparently derived from Oliver (1995) as indicated by the Project Description. However, the U.S. Forest Service is not fully citing the findings by Oliver

(1995). The author of that study found that native beetles reduced stand density by only about 13-20% after ponderosa pine stands reached high stand density levels (greater than 120 ft² basal area per acre). After such a reduction by native beetles, those stands gradually became dense once again. Oliver (2005) again found that young ponderosa pine forests experienced only a 17% reduction in basal area per acre after stands became dense and that the forests experienced lower mortality levels years after the initial beetle-induced mortality. Not only is the potential reduction in stand density by native beetles not as dramatic as the public is being led to believe, this reduction is part of a natural forest succession process.

Moreover, stand data for the Project Area provided by the agency indicate that rather than being characterized by stand densities greater than historical conditions, the stands throughout the Project Area may actually be characterized as having a density deficit compared to historical conditions. According to the U.S. Forest Service's own data, the average basal area across all stands in the Project Area is approximately 86 ft² per acre and 110 ft² per acre across stands with more than 5 ft² per acre. It should be noted that the Project Description describes the stands as having an average basal area of "slightly over 120 [ft² per acre]," though an analysis of the data provided by the agency does not produce this result unless only stands with more than 30-40 ft² basal area per acre are averaged. Moreover, the U.S. Forest Service describes this basal area per acre as exceeding historical conditions. However, McIntyre et al. (2015) found that southern California forests historically (1920s and 1930s) had stand densities of approximately 160 ft² basal area per acre on average. Thus, current stand densities are actually lower in the Project Area than historical averages. This is problematic for two reasons: the U.S. Forest Service has provided misleading information in their Project Description and the Proposed Action would further exacerbate this stand density deficit. The Proposed Action includes thinning the Project Area to a range of 40 to 60 ft² basal area per acre. This would bring stand densities to 25-38% of historical conditions. And as detailed above, the potential mortality induced by bark beetles would likely be 13-20% in the Project Area. Bark beetle mortality would therefore potentially reduce stand densities in the Project Area to approximately 88 to 96 ft² basal area per acre (when using the 110 ft² basal area per acre figure described above). Thus, the Proposed Action would likely cause far greater tree mortality than could be potentially caused by bark beetles if left untreated. In other words, the U.S. Forest Service is proposing the Project in part to protect stands in the Project Area from bark beetle mortality, but by doing so would be more destructive (in terms of tree mortality) than such bark beetle activity would likely be.

Additionally, thinning could attract more beetles to the area through the release of terpenes from fresh wood chips, slash, or wounded green trees. If insect attack is a concern, the U.S. Forest Service must consider and disclose the factors that tend to attract insects and determine whether thinning will make things better or worse in the EA or EIS.

M. Benefits of Snags

The EA or EIS should discuss the retention of snags to benefit wildlife. For example, Verner et al. (1992) recommends at least 20 square feet per acre of basal area of large snags, or about 8

large snags per acre on average, for suitable California spotted owl habitat. Abundant large snags are essential for spotted owls because owl prey species depend on them.

In addition, the EA or EIS should note that higher densities of snags do not always result in higher fire intensity. Bond et al. (2009b) found no evidence that pre-fire mortality influenced fire severity in coniferous forests in the San Bernardino Mountains. They note that their “results provide compelling evidence that when fire does occur, stands with considerable tree mortality due to drought and insects will not burn at higher severity than stands without significant tree mortality, either in the short or long term” (Bond et al. 2009b).

N. Wildfire Frequency

The EA or EIS should evaluate fire frequency in the area in and around Project Area and incorporate this and other recent studies regarding fire frequency and severity in southern California forests. It should also include a fire history map of the area in and around the Project Area.

O. Consistency With Land Management Plan

The EA or EIS should evaluate whether and how the Project is consistent with the standards, guidelines, and desired conditions of the Land Management Plan for the Los Padres National Forest.

P. Frequency of Treatments

The Proposed Action is not clear about whether the U.S. Forest Service intends on reentering these stands at some point in the future, or repeating vegetation removal or prescribed burning treatments. The EA or EIS should disclose the frequency of retreatments, as well as thresholds that will prompt retreatment.

Q. Hazard Tree Guidelines

The Proposed Action states that “[t]he removal of hazard trees (live and dead) of all sizes would occur along utility lines, roads, trails and landings to provide for safety of wood workers and public throughout project implementation, except where restrictions for removal apply.” The EA or EIS should disclose the criteria used to determine which trees constitute a safety hazard.

R. Economic Analysis

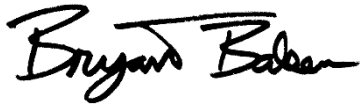
The EA or EIS should include a U.S. Forest Service cost estimate for any commercial tree removal associated with this project. Such an estimate should include administrative costs pertaining to analysis and appeals, costs of timber sale preparation and administration, costs of monitoring during and after implementation, per acre costs of slash piling and burning, per acre costs of brush maintenance following thinning as a result of canopy reduction; the projected timber sales receipts from the timber sale, and the total volume of the timber sale (in board feet of sawtimber and/or tons of biomass).

S. Pile Burning and Prescribed Burning

Pile burning may cause patches of extreme soil heating to the point where soil characteristics are changed. The EA or EIS should disclose the size and location of these patches across the Project Area. Piles result in heavy, localized impacts to soil quality. The EA or EIS should also evaluate the impacts of pile burning on soil structure and composition, as well as the regrowth capability of pile-burned areas.

Thank you for this opportunity to provide comments on the Project. Please provide us with all future public notices, environmental documents, and decision documents related to this project. Thank you for your efforts to protect the Los Padres National Forest.

Sincerely,



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Tables and Figures

Table 1. California condor roost sites in the Project Area and within 0.5 miles of the Project Area between December 2013 and December 2017. Roost sites were estimated using the criteria recommended by Cogan et al. (2012). The roost sites are organized from east to west in the table. Data provided by the USFWS.

Latitude	Longitude	Bird ID	Arrival Date	Arrival Time	Departure Date	Departure Time
34.834675	-118.910065	107	10/2/2014	18:38	10/3/2014	9:17
34.837056	-118.912200	449	10/30/2014	15:23	10/31/2014	9:57
34.831068	-118.913841	509	1/12/2016	15:56	1/13/2016	9:30
34.835755	-118.914945	107	10/20/2014	16:32	10/21/2014	7:08
34.838057	-118.915724	449	10/20/2014	16:33	10/23/2014	10:35
34.836887	-118.916361	449	10/21/2014	16:48	10/22/2014	12:41
34.846665	-118.938860	625	9/19/2015	17:31	9/20/2015	8:33
34.846834	-118.938938	585	9/19/2015	17:32	9/20/2015	8:44
34.846667	-118.939409	369	8/1/2017	17:24	8/2/2017	8:39
			8/2/2017	16:05	8/3/2017	12:26
34.837700	-118.942081	683	11/22/2015	14:11	11/23/2015	9:27
34.840813	-118.942638	483	9/30/2017	15:57	10/1/2017	8:05
34.845859	-118.955277	599	10/31/2017	17:55	11/1/2017	9:52
34.840189	-118.955449	805	11/18/2017	14:02	11/19/2017	10:51
34.850621	-118.955581	247	5/12/2017	19:49	5/13/2017	5:55
34.846605	-118.956734	21	10/3/2014	17:22	10/4/2014	9:48
34.846575	-118.956847	648	11/8/2014	16:12	11/9/2014	8:49
34.844116	-118.957008	493	9/13/2017	17:50	9/14/2017	7:18
34.848444	-118.959040	585	10/31/2015	17:24	11/1/2015	5:48
34.851345	-118.960885	774	6/22/2017	17:42	6/23/2017	8:59
34.851299	-118.961367	493	11/20/2014	15:06	11/21/2014	8:53
34.844266	-118.961710	846	10/6/2017	17:55	10/7/2017	9:53
34.844240	-118.962635	570	10/6/2017	17:50	10/7/2017	9:25
34.843874	-118.964566	262	10/12/2015	16:57	10/13/2015	9:39
34.849768	-118.966374	648	10/3/2017	17:26	10/4/2017	9:44
34.847843	-118.968353	683	11/14/2015	14:34	11/15/2015	12:45
34.843785	-118.981675	107	10/22/2014	16:16	10/23/2014	9:50
34.851046	-118.986073	648	9/21/2015	16:16	9/22/2015	9:25
34.842613	-118.987202	794	11/20/2017	16:30	11/21/2017	10:07
34.845150	-118.996186	480	7/21/2015	16:17	7/22/2015	11:20
34.856889	-119.014969	360	3/18/2016	17:38	3/19/2016	9:37
34.853827	-119.018518	740	10/18/2017	16:06	10/19/2017	7:25
34.854667	-119.052564	526	9/23/2017	16:11	9/25/2017	9:50
34.857081	-119.054245	374	9/1/2015	18:14	9/2/2015	8:39
34.852320	-119.078360	625	12/9/2017	14:18	12/10/2017	8:27
34.857635	-119.090960	625	5/2/2017	18:07	5/3/2017	9:49

34.857986	-119.093758	374	8/3/2017	17:38	8/4/2017	8:47
34.861537	-119.100612	480	9/23/2016	16:49	9/24/2016	9:50
34.869200	-119.102574	627	8/14/2017	17:40	8/15/2017	9:12

Figure 1. Proposed Tecuya Ridge Shaded Fuelbreak Project and Cuddy Valley Forest Health/Fuels Reduction Project. Both project areas (in this figure and subsequent figures) were redrawn from maps supplied in their respective project descriptions provided during scoping.

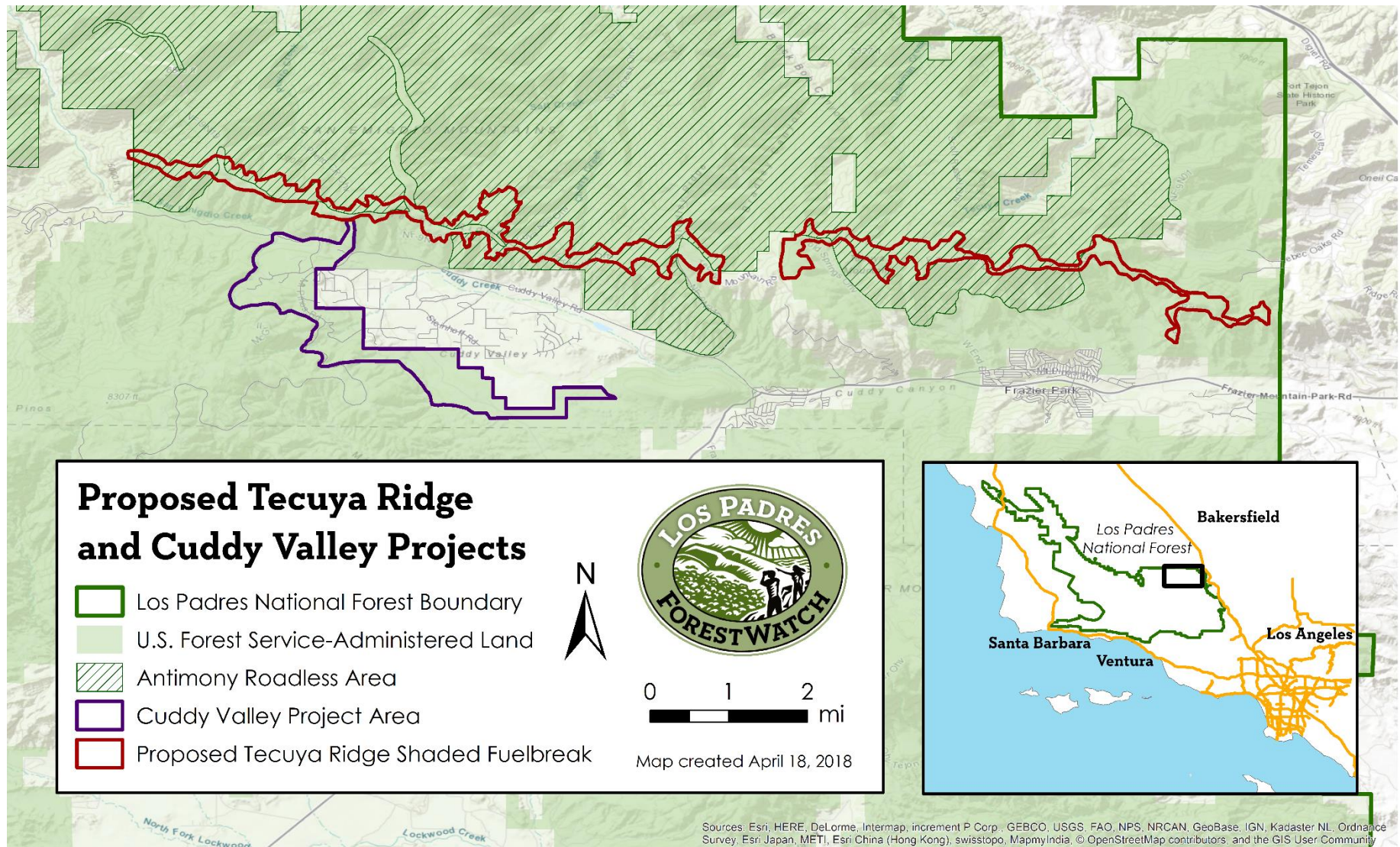


Figure 2. California condor roost sites near the Project Area estimated using condor tracking data (from December 2013 to December 2017) provided by the USFWS and techniques similar to those developed by Cogan et al. (2012). Roost buffer radii are 0.5 miles as directed by U.S. Forest Service (2005b).

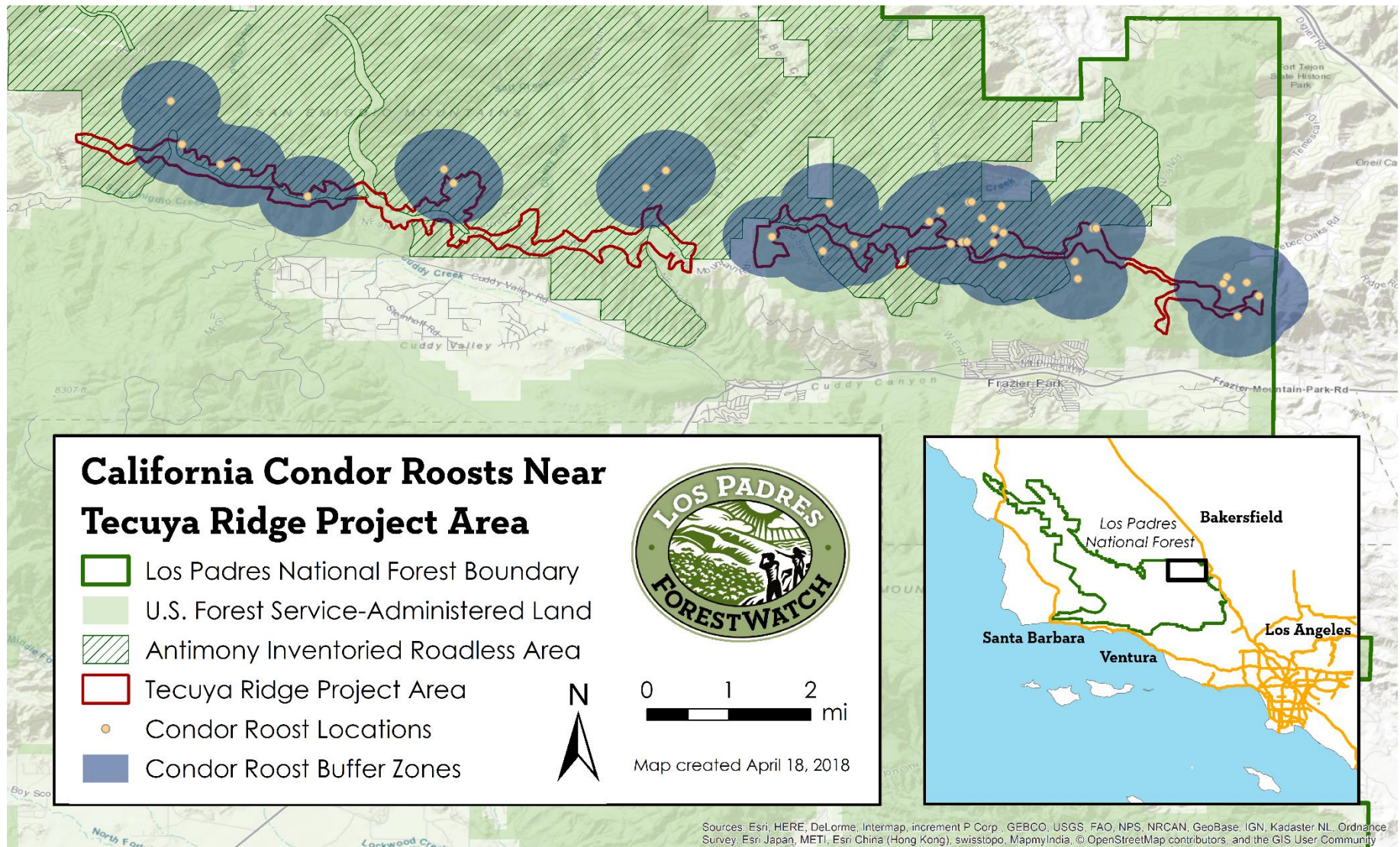


Figure 3. CSO activity centers (as designated by the U.S. Forest Service) and HRCs (estimated according to recommendations by the CSO Conservation Strategy) as well as predicted habitat (retrieved from the CNDDDB(2018)) near the Project Area.

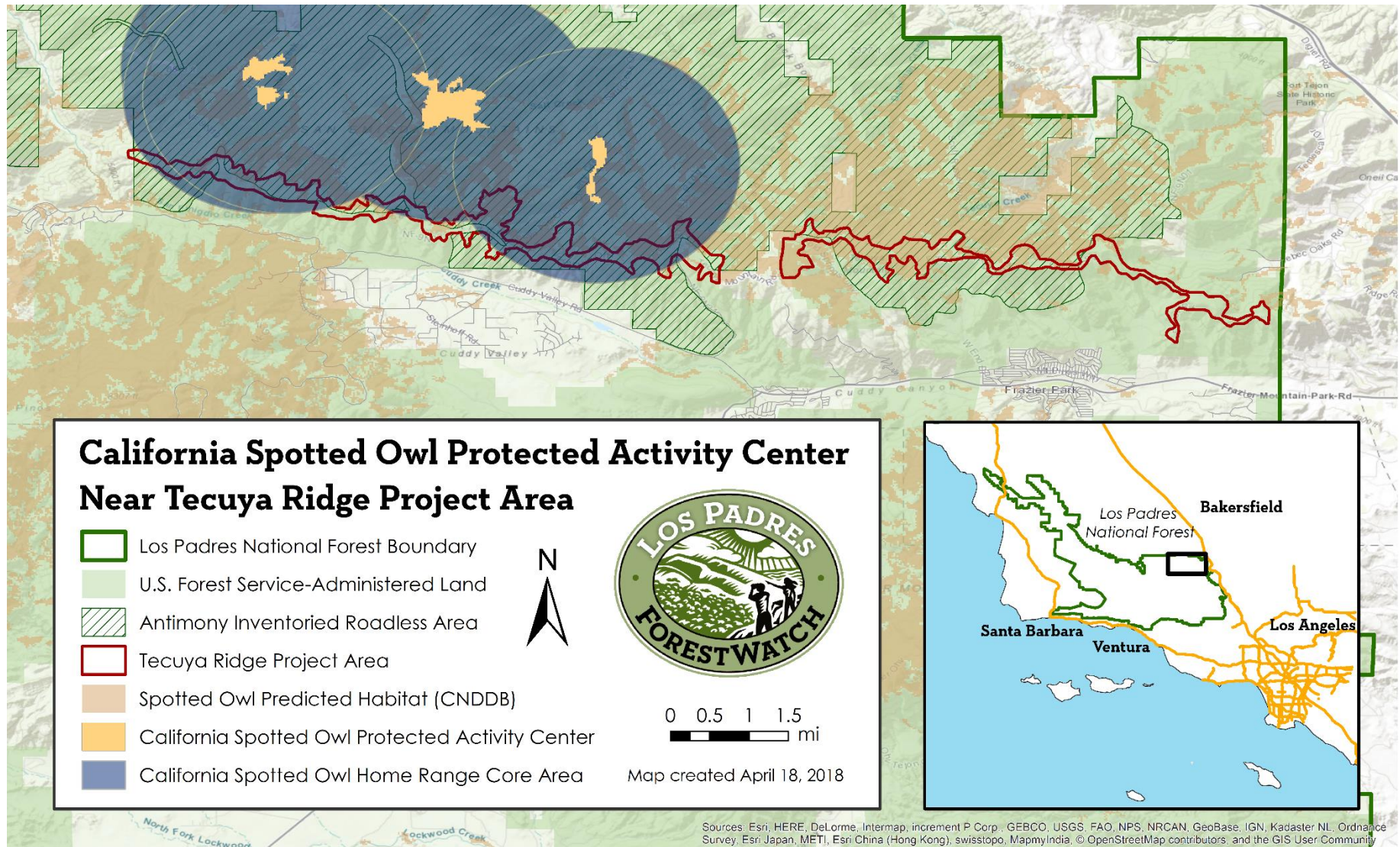


Figure 4. Northern goshawk predicted habitat — retrieved from the CNDDB (2018) — near the Project Area.

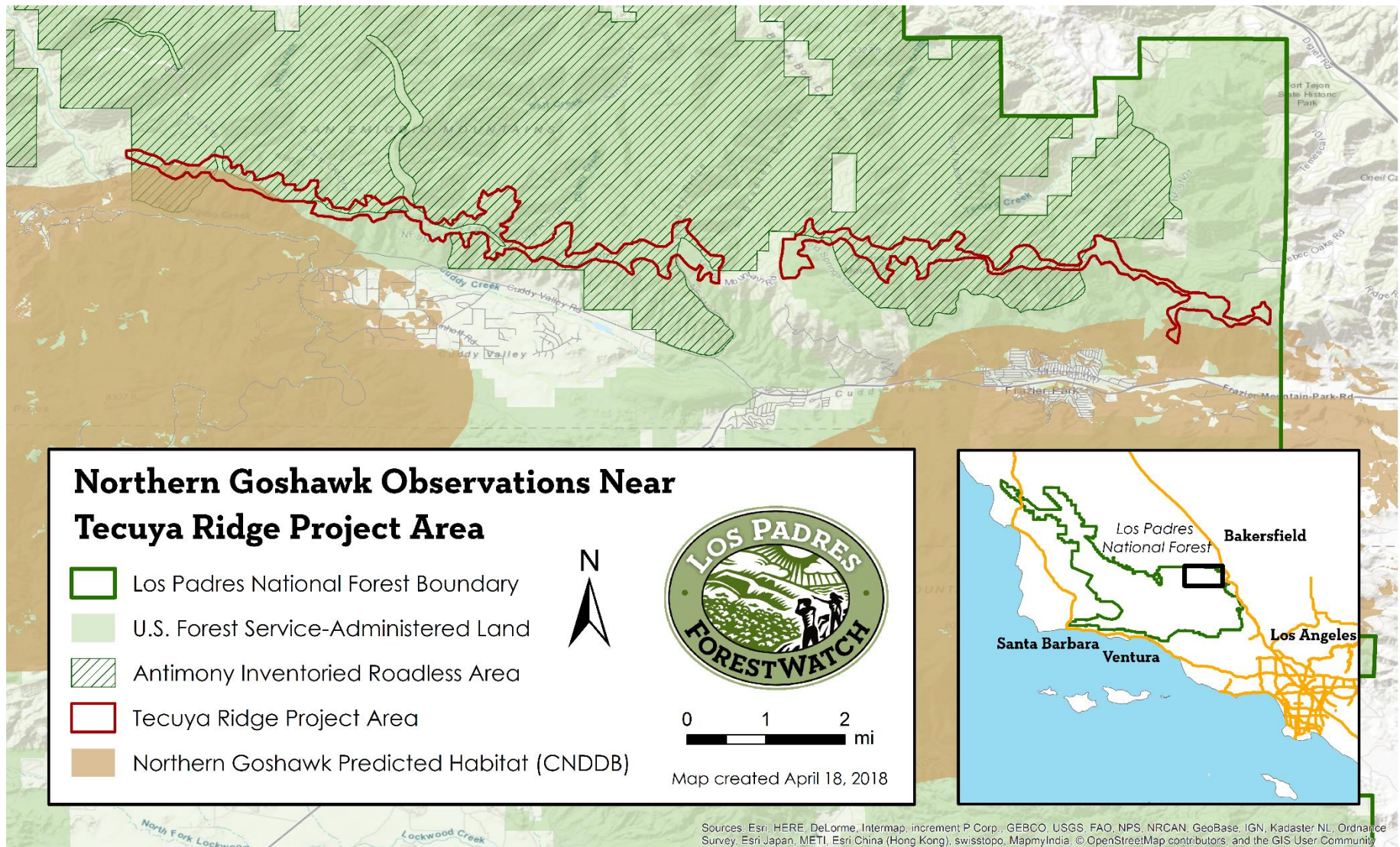


Figure 5. Tehachapi pocket mouse observations and predicted habitat — both retrieved from the CNDDDB (2018) — near the Project Area.

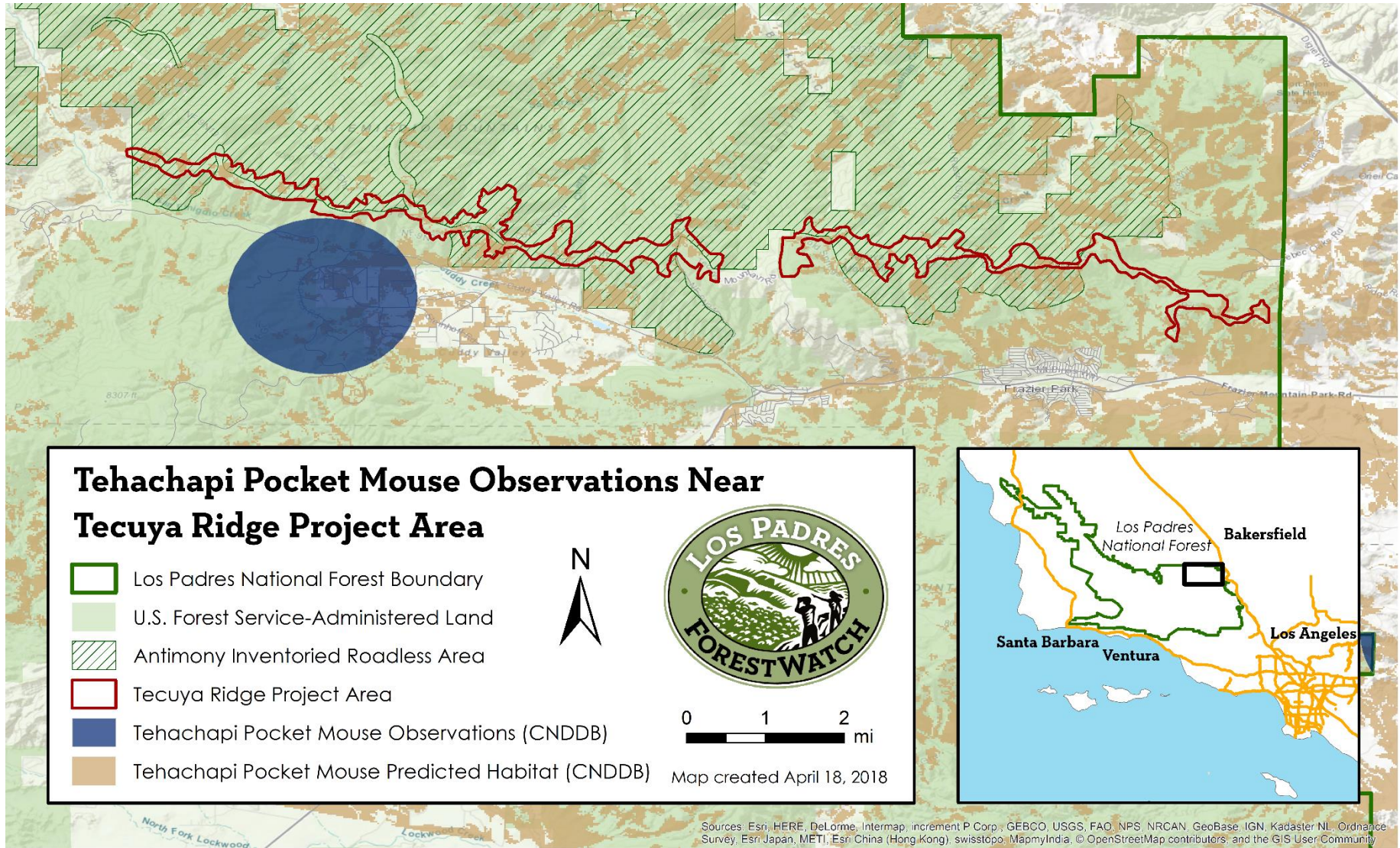


Figure 6. Sensitive plant species observations near the Project Area. All observations were retrieved from the CNDDB (2018).

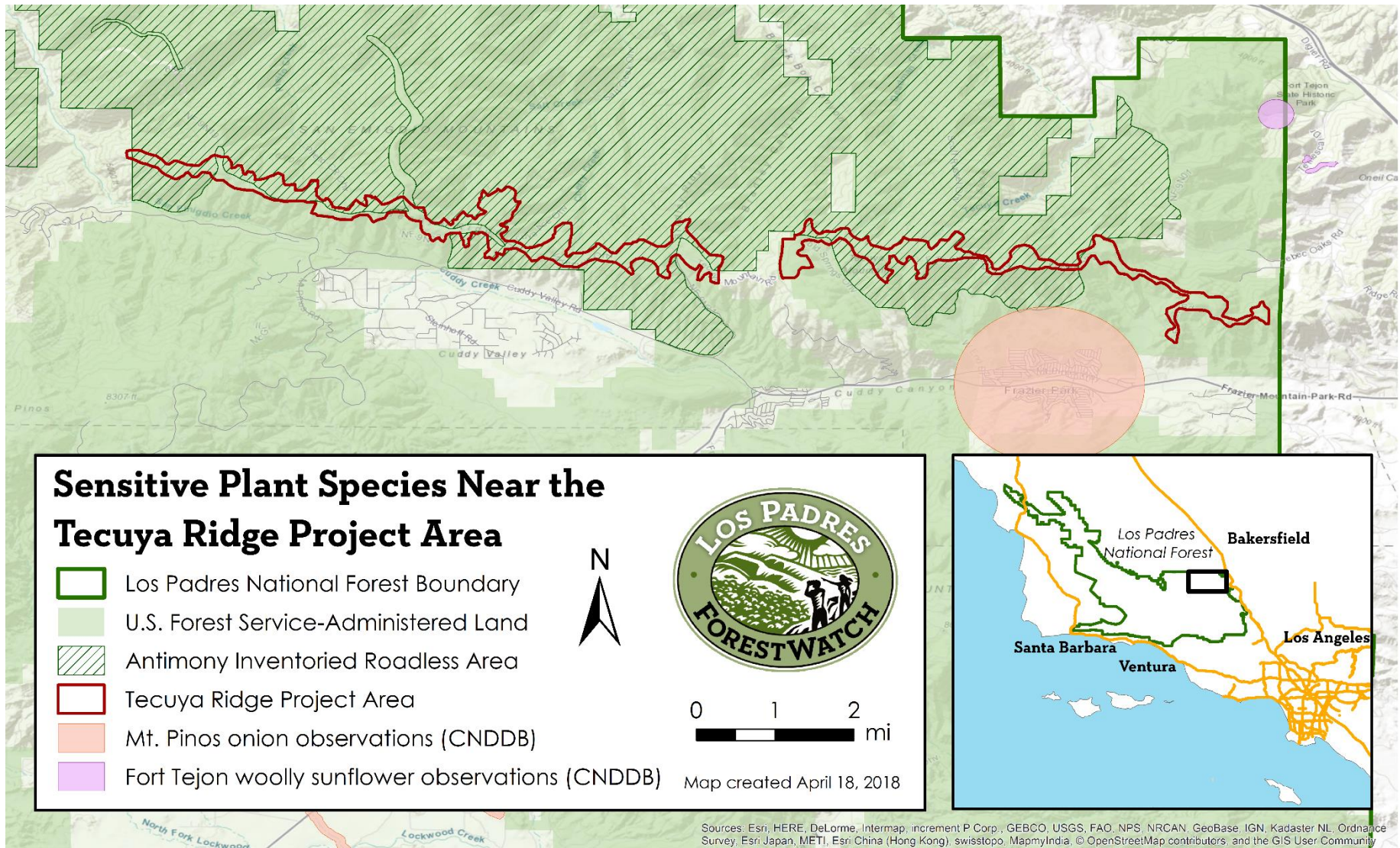
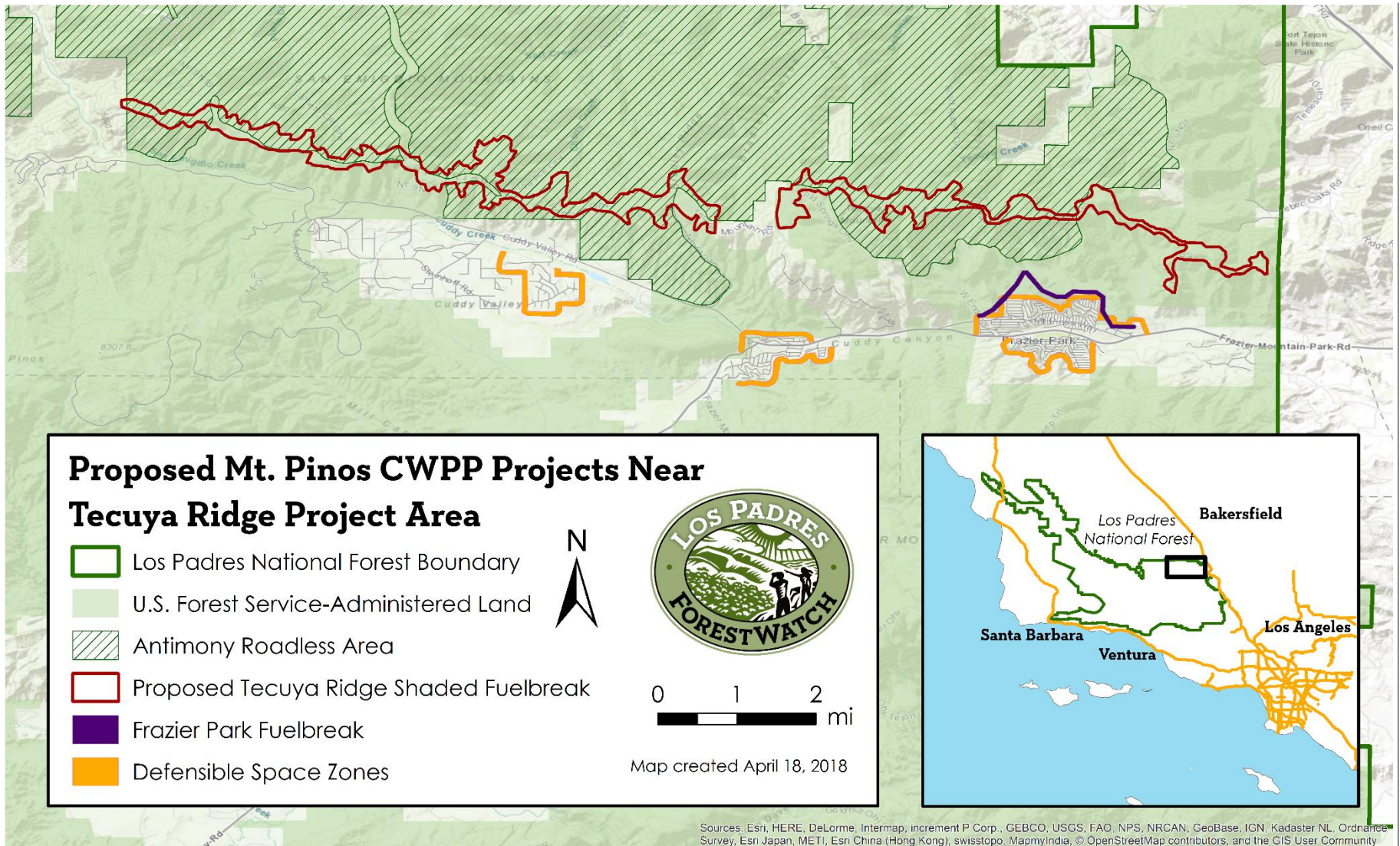


Figure 7. Projects identified by the Mt. Pinos CWPP near the Project Area. Defensible Space Zone project areas were redrawn from MPCFSC (2009).



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April 19, 2018

Los Padres National Forest
Mt. Pinos Ranger District
Attn: Gregory Thompson, Project Team Leader
34580 Lockwood Valley Rd, Frazier Park, CA 93225
gsthompson@fs.fed.us

RE: Cuddy Valley Forest Health/Fuels Reduction Project

Dear Mr. Thompson:

Thank you for this opportunity to provide your agency with initial comments on the Cuddy Valley Forest Health/Fuels Reduction Project ("Project"). The Project entails removing timber and sagebrush-scrub from approximately 1,200 acres in Cuddy Valley in the Mt. Pinos Ranger District of the Los Padres National Forest. The project would be accomplished through a commercial logging operation in mixed conifer stands as well as mastication and hand treatment of up to 95 percent of sagebrush-scrub within the Project Area.

The undersigned organizations support efforts to improve ecosystem health and protect communities from wildfires, and work to ensure that vegetation treatment activities are undertaken with minimal impacts to wildlife, water supplies, and other forest resources. We also support the maintenance of defensible space immediately around structures along with programs to promote the construction and retrofitting of homes with fire-safe materials and design as the most effective ways to protect communities from wildfire.

We have reviewed the Project Description issued as part of the scoping process as well as supplemental documentation in full, and we have several concerns about the Project and the potential lack of further documentation in an environmental assessment ("EA") or environmental impact statement ("EIS"). We hereby submit the following comments on the U.S. Forest Service's Cuddy Valley Forest Health/Fuels Reduction Project. Thank you for considering these comments as the U.S. Forest Service examines ways to most effectively protect communities from wildfires while minimizing the environmental impacts of this project.

1. THE FOREST SERVICE MUST PREPARE AN EA OR EIS BECAUSE THE PROJECT DOES NOT QUALIFY FOR A CATEGORICAL EXCLUSION.

The Proposed Action states that the U.S. Forest Service intends to approve the Project using a categorical exclusion (“CE”) for “timber stand and/or wildlife habitat improvement activities” (hereafter “CE 6”) set forth in 36 CFR § 220.6(e)(6). Under NEPA, a CE is defined as “a category of actions which do not individually or cumulatively have a significant effect on the human environment...and for which, therefore, neither an environmental assessment nor an [EIS] is required” (40 CFR § 1508.4).

This CE does not apply to this project for two reasons. First, the presence and significance of several “extraordinary circumstances” makes this project ineligible for a categorical exclusion. Second, other CEs would be more applicable (acreage limit exceedances notwithstanding), especially considering that CE 6 does not explicitly allow commercial logging as proposed to complete the Project. For these reasons, the U.S. Forest Service must prepare an EA or EIS that fully identify, evaluate, and mitigate potential impacts of this project.

A. The presence and significance of several “extraordinary circumstances” makes the Project ineligible for a categorical exclusion.

The U.S. Forest Service may only claim a CE for this Project if there are no “extraordinary circumstances.” Specifically, the FSH states that “[a] proposed action may be categorically excluded from further analysis and documentation...only if there are no extraordinary circumstances related to the proposed action” (FSH 1909.15.31.1; see also 40 CFR § 1508.4 (requiring agencies to “provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.”)). There are multiple extraordinary circumstances related to the Proposed Action, detailed below. The presence of and the Proposed Action’s significant impact to these resource conditions precludes the use of a CE for the Project and instead requires the U.S. Forest Service to prepare an EA at minimum.

B. The Project exceeds the acreage limitations that serve as a threshold of significance under other categorical exclusions.

The U.S. Forest Service’s failure to select a more applicable CE for the Project is telling. We note three CEs (all covered under 36 CFR § 220.6(e), actions for which a project or case file and decision memo are required) that would be more applicable to the Proposed Action:

(12) Harvest of live trees not to exceed 70 acres, requiring no more than ½ mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing.

36 CFR § 220.6(e)(12)

(13) Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction. The proposed action may

include incidental removal of live or dead trees for landings, skid trails, and road clearing.

36 CFR § 220.6(e)(13)

(14) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing.

36 CFR § 220.6(e)(14)

These CEs more appropriately cover the Proposed Action as all three explicitly allow for commercial thinning, and two of the CEs are specifically for activities that treat stands with dead, dying, and infested trees — all of which are included in the Purpose and Need for the Project. However, these more appropriate CEs have explicit acreage limitations that preclude their use in this project. Those acreage limitations are important, however, as they indicate a self-imposed threshold that the U.S. Forest Service has identified to determine whether a project may have significant impacts. The U.S. Forest Service cannot try to shoehorn these projects into another CE in an attempt to avoid the acreage limitations in other CEs that better describe the Project.

It should also be noted that the U.S. Forest Service is concurrently proposing an adjacent project approximately 1,626 acres in size. The Tecuya Ridge Shaded Fuelbreak Project (“Tecuya Ridge Project”) was scoped at the same time as the Project and is just north of the Project Area (Figure 1). In fact, the two projects share a boundary near Tecuya Ridge Road. The Tecuya Ridge Project entails commercially thinning mixed-conifer forest along 12 miles of Tecuya Ridge. The project would use similar methods as the Project, and its scoping notice indicates that the U.S. Forest Service intends to use CE 6 to exempt the project from further environmental documentation. The Tecuya Ridge Project also does not qualify for CE 6 (see our comments on that project submitted separately). Combined, these projects would affect approximately 2,826 acres in the Mt. Pinos Ranger District of the Los Padres National Forest. However, they are being proposed separately despite involving the same methods for similar goals and despite using the same exact language throughout much of their respective project descriptions. The projects are so similar, in fact, that they could be viewed as a single, large project. This is problematic for multiple reasons. This action constitutes improper segmentation (i.e. the splitting of a large project into multiple smaller ones), and it may lead the public to believe that the two smaller projects may cause less significant impacts than one large project. Moreover, such segmentation may result in the U.S. Forest Service avoiding full disclosure of the cumulative impacts of both projects together. In measuring the “significance” of the overall environmental impacts of a given project, the CEQ regulations forbid an agency from attempting to avoid significance by “breaking [an action] down into small component parts” (40 C.F.R. § 1508.27(b)(7)).

Due to these disqualifications for use of CE 6, the U.S. Forest Service must re-examine the Proposed Action to determine whether the Project size can be reduced to fulfill the requirements for use of other CEs or prepare an EA or EIS to determine potential significant impacts of the Project as well as develop alternatives to the Proposed Action.

2. THE FOREST SERVICE MUST PREPARE AN EA OR EIS DUE TO THE PRESENCE OF, AND IMPACTS TO, “EXTRAORDINARY CIRCUMSTANCES.”

U.S. Forest Service regulations state that “[a] proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action” (36 CFR § 220.6(a)). The regulations set forth several criteria for evaluating extraordinary circumstances, including listed or sensitive species, critical habitat, wetlands, municipal watersheds, inventoried roadless areas, and Native American cultural sites (36 CFR § 220.6(b)). Additionally,

In considering extraordinary circumstances, the responsible official should determine whether or not any of the listed resources are present, and if so, the degree of the potential effects on the listed resources. **If the degree of potential effect raises uncertainty over its significance, then an extraordinary circumstance exists**, precluding use of a categorical exclusion.

FSH 1909.15.31.2 (emphasis added)

The Project involves several extraordinary circumstances, including impacts to sensitive plants and animals. For the reasons outlined below, the degree of potential effects to these extraordinary circumstances requires preparation of an EA or EIS.

A. Impacts to Sensitive Animal Species

The CSO is a Forest Service Sensitive Species, and as previously discussed, the Project may impact CSO populations near the Project Area.

The Project may impact the northern goshawk (*Accipiter gentilis*), which has been observed in the vicinity of the Project. Records of active goshawk nests in the Tecuya Ridge area just north of the Project Area exist as recently as 1991 according to the California department of Fish and Wildlife’s (“CDFW”) species account (CDFW 2008). A northern goshawk was detected on Frazier Mountain, just east of the Project Area in 2010 (U.S. Forest Service 2012). Additionally, there have been undocumented reports of northern goshawks in the Antimony Inventoried Roadless Area (“IRA”) north of the Project Area according to the U.S. Forest Service’s analysis of the Antimony IRA (U.S. Forest Service 2013). This U.S. Forest Service Sensitive Species and Species of Special Concern (CDFW) may also occur within the Project Area, which includes portions of the species’ predicted habitat according to CDFW (Figure 2). As there is uncertainty as to whether the species occurs within the Project Area and how it may be affected by the Proposed Action, the U.S. Forest Service should prepare an EA or EIS that analyzes the Project’s potential impacts to the species in addition to conducting focused protocol surveys in the area to better understand if and where the species is nesting, foraging, etc.

Another U.S. Forest Service Sensitive Species, the Tehachapi pocket mouse (*Perognathus alticola inexpectatus*), likely occurs within and around the Project Area. According to the CNDDDB, there have been observations of the species within the Project Area (Figure 3). However, survey data is very limited for this species throughout its range, and its population status within its range is relatively unknown. The EA prepared by the U.S. Forest Service in 2012 for the Frazier Mountain Project noted that surveys for the species were needed:

Surveys are needed to determine the distribution and relative abundance of this species on public lands within the assessment area....

U.S. Forest Service 2012

The need for focused surveys also applies to the Project since it may occur in the Project Area. In addition to past observations, the California Wildlife Habitat Relationships information system developed by CDFW indicates that several small areas within and around the Project Area are predicted habitat for the species (Figure 3). It is reasonable to assume that the species may occur in these areas and may be impacted by the Proposed Action. In fact, in 2012 the U.S. Forest Service indicated that future fuel reduction projects near mountain communities would likely impact the Tehachapi pocket mouse:

Cumulative effects: **Sensitive species are likely to be impacted by similar ongoing and future drought-related fuel reduction projects, especially close to mountain communities.** These projects have the potential to change forest floor vegetative components and microclimates, potentially changing the suitability for various sensitive and watch list species. **This is especially important for a species with such limited distribution as the Tehachapi pocket mice** which are only known from a few scattered localities.

U.S. Forest Service 2012 (emphasis added)

An analysis by CDFW in 1998 determined that U.S. Forest Service efforts were needed to safeguard the species:

The Department should continue its efforts of: i) funding focused surveys trapping efforts; ii) encouraging mammalogists, graduate students, and field biologists to undertake research and field surveys; and iii) **requiring that the environmental review of projects in appropriate habitat within the species' historic range contain adequate focused surveys for the species. The U.S. Forest Service should also undertake further surveys in the Angeles and Los Padres national forests....**

If one or more populations of *a. alticola* are found, the responsible agencies, in consultation with the Department, should: i) evaluate the need for emergency protective measures to ensure the species' survival, ii) **determine the habitat requirements of the species and adjust resource management practices within the national forests accordingly,** and iii) identify private landowners whose

properties support the species and work to find land management strategies that are mutually beneficial.

Brylski 1998 (emphasis added)

Specifically, the U.S. Forest Service should conduct focused surveys of the Project Area as part of an analysis to determine how the Proposed Action may impact the species. As these surveys have, to our knowledge, not been done already, considerable uncertainty about the presence of the species in the Project Area and the potential impacts of the Proposed Action exists, requiring the U.S. Forest Service to at least prepare an EA for the Project.

B. Impacts to Sensitive Plant Species

The Tehachapi or flax-like monardella (*Monardella linoides* ssp. *oblonga*) has been well-documented within the Project Area according to the CNDDDB (Figure 4). There are also known occurrences of Baja navarretia (*Navarretia peninsularis*) in the Project Area according to the CNDDDB (Figure 4). The U.S. Forest Service species account also notes that the species occurs on the northeast flank of Mt. Pinos and in Little Cuddy Valley (U.S. Forest Service 2005b). In fact, one of only five known locations of Baja navarretia on the Mt. Pinos Ranger District occurs within the Project Area. Identified threats to both the Tehachapi monardella and the Baja navarretia include road maintenance, off-highway vehicle activity, and casual recreational use, all of which result in trampling and soil compaction. Wood cutting or brush clearing activities have also been identified as a threat to this plant (CNDDDB 2018). Brush clearing may result in the accumulation of litter on the forest floor, a condition that would impact the growth of both species, which generally occur in areas where little or no litter is present. Finally, brush clearing and mastication would result in increased solar radiation reaching the forest floor which would, in turn, increase ambient temperatures and cause more rapid soil surface drying. This condition would seriously impact both species as both typically occurs in moist soil conditions.

The Proposed Action has the potential to significantly impact these species known to occur in the Project Area. It may additionally impact species that are likely to occur in the Project Area such as the Mt. Pinos onion (*Allium howellii* var. *clokeyi*), Abram's oxytheca (*Acanthoscyphus parishii* var. *abramsii*), Palmer's mariposa lily (*Calochortus palmeri* var. *palmeri*), and Mt. Pinos larkspur (*Delphinium parryi* ssp. *purpureum*). All of these species are U.S. Forest Service Sensitive Species and have been observed nearby in areas such as Mt. Pinos, Frazier Mountain, and Cuddy Valley according to the California Consortium of Herbaria. The proximity of existing records of these species and the lack of focused surveys in the Project Area creates uncertainty about the degree to which these species may be impacted.

3. THE U.S. FOREST SERVICE HAS PREPARED AN EA OR AN EIS FOR SIMILAR AND SMALLER PROJECTS THROUGHOUT THE LOS PADRES NATIONAL FOREST.

The U.S. Forest Service indicated in its scoping notice for the Project that they intend to use a CE to exempt the Project from EA or EIS preparation. The use of a CE for this project does not

align with the U.S. Forest Service’s decision to prepare an EA or an EIS for several similar and smaller projects across the Los Padres National Forest.

The Mt. Pinos Ranger District announced the Frazier Mountain Project — a project similar in scope to the currently-proposed Project — in 2010. This project entailed the commercial logging, mechanical vegetation removal, prescribed burns, and fuelbreak construction on 2,386 acres on and around Frazier Mountain in the Los Padres National Forest. In the project’s scoping notice, the U.S. Forest Service indicated that an EA would be prepared for the project. This was ultimately completed in 2012, at which time a decision memo was issued stating that the preferred alternative that did not include a commercial timber harvest was selected.

In 2005, the Santa Lucia Ranger District announced the Figueroa Mountain Project, which entailed thinning and vegetation clearing across 665 acres. A CE was initially considered for use to exempt this project from further NEPA documentation, but after working with ForestWatch and other members of the public, the U.S. Forest Service decided to prepare an EA for the project. This EA was completed and released in 2006, and it included several environmental constraints that improved the proposed action over the initially-proposed project.

Since 2007, no new vegetation removal or thinning projects have been approved in the Los Padres National Forest using a CE. Since this time, all new vegetation clearing projects have either been completed following the preparation of an EA or EIS or cancelled after scoping. The U.S. Forest Service should follow its previous decisions in preparing — at minimum — an EA for the current Project, which entails similar project activities across a larger area.

4. THE PROJECT IS INCONSISTENT WITH THE LAND MANAGEMENT PLAN FOR THE LOS PADRES NATIONAL FOREST.

The Land Management Plan gives deference to local community wildfire protection plans (“CWPPs”) to determine the extent of the WUI and its Defense and Threat Zones (U.S. Forest Service 2005a). Indeed, the U.S. Forest Service worked with the Mt. Pinos Communities Fire Safe Council (“MPCFSC”) to develop the Mt. Pinos CWPP. This CWPP — discussed in further detail in the following section — defines the Defense and Threat Zones combined as the area within 1,820 feet from the edge of the Frazier Park, Lake of the Woods, and Pinon Pines Estates communities. However, we estimate that over 20% of the Project Area is not located within the Defense and Threat Zones. Furthermore, this is likely an underestimate, as developed parcels located more than one quarter-mile from community centers were used to delineate the approximate Threat Zone (the Mt. Pinos CWPP primarily focuses on community centers to recommend vegetation projects in the Defense and Threat Zones). Moreover, some of these private parcels may not be considered “developed” as they are primarily covered by sagebrush-scrub and rangeland, particularly near the eastern portion of the Project Area. Thus, the amount of the Project Area that is truly within the Defense or Threat Zones is likely being overestimated by our own analysis.

The Project is therefore inconsistent with the Land Management Plan, as it proposes vegetation treatment for the direct protection of communities, yet does not adhere to the Mt. Pinos CWPP

due to its location outside of the Threat Zone (as defined by the Mt. Pinos CWPP) and its prioritization over other community needs such as the projects recommended by the CWPP (for example, the Frazier Park North Defensible Space Zone project). There is a more detailed analysis of the Project's inconsistency with the Mt. Pinos CWPP in the following section.

5. THE PROJECT IS INCONSISTENT WITH THE MT. PINOS COMMUNITY WILDFIRE PROTECTION PLAN.

The Mt. Pinos CWPP created by HangFire Environmental for the MPCFSC in 2006 defines the WUI as being comprised of three zones: the Defense Zone, Threat Zone, and Wildland Zone. The "Defense Zone" is the area within 500 feet of developed parcels, the Threat Zone is a 0.25-mile buffer around the Defense Zone, and the area beyond the Threat Zone is the Wildland Zone. The Mt. Pinos CWPP prioritizes vegetation alteration projects in the Defense and Threat Zones.

Indeed, the CWPP highlights the need for an enhanced shaded fuelbreak just north of Frazier Park and defensible space zones directly adjacent to the communities of Frazier Park, Lake of the Woods, and Pinon Pine Estates (both of which include aspects of a shaded fuelbreak) which are shown in Figure 5. The "Frazier Park North Fuelbreak," "Frazier Park North Defensible Space Zone," "Lake of the Woods Defensible Space Zone," and "Pinon Pines Defensible Space Zone" projects consist of enhancing an existing 150-foot, two-mile-long fuelbreak almost entirely within Frazier Park's Threat Zone and enhancing and establishing up to 300 feet of defensible space directly adjacent to Lake of the Woods and Pinon Pines Estates. Additionally, the Mt. Pinos CWPP identifies the need for the U.S. Forest Service to work with adjacent private landowners to allow them the ability to establish defensible space directly around structures when their structures are within 100 feet of U.S. Forest Service-administered land. We generally support these projects — especially the cooperative establishment of defensible space directly around structures — as they are well-within the WUI and are likely effective measures to protect the communities along Frazier Park Mountain Road in the event of a wildfire.

While the Mt. Pinos CWPP does include support for the Organizational Camps Project ("OCP") — a forest thinning project in approximately the same area as the Project Area — the Proposed Action deviates from the OCP significantly. The Mt. Pinos CWPP references a proposal by the U.S. Forest Service to conduct the OCP, which would affect 700 acres. Specifically, the proposed action of that project would include:

...Some thinning of established Jeffery pine plantations as well as naturally developed Jeffery pine would also take place. Plantations of existing Jeffery pines would be thinned to about 100 sq. ft. of Basal Area (BA), leaving about 200 trees per acre.

Stands of naturally occurring Jeffery/pinyon pine/white fir would be thinned to carry about **100-140 sq. ft. of basal area** (BA) to favor California Black Oak. All trees larger than 30 inches dbh would remain on site (unless a safety hazard).

Slash would be treated with conventional methods such as hand piling, prescription fire, or chipping. Site preparation for planting would also be accomplished with prescribed fire. **Planting of tree seedlings may be done to enhance species diversity, provide structural diversity, and fill in slash disposal or burn created openings.**

Approximately **25 acres of sagebrush** may be treated with a masticator or hand treatments.

MPCFSC 2006; emphasis added

The Project does not align with the OCP originally supported by the Mt. Pinos CWPP for several reasons. First, the Project is substantially larger than the OCP. The Project Area is approximately 1,100 acres in size compared to the 700 acres proposed in the OCP. It would also include the treatment of over 400 acres of sagebrush-scrub compared to the 25 acres proposed in the OCP. Second, the Proposed Action would include thinning stands in the Project Area to 60-100 ft² basal area per acre (with a target of 80 ft²). This significantly contrasts the OCP's proposed action, which would have only thinned stands in the area to 100-140 ft² basal area per acre. Lastly, the Proposed Action does not include any plans for planting tree seedlings in the Project Area as proposed in the OCP.

As the Project greatly exceeds the scope of the OCP, it is not consistent with the Mt. Pinos CWPP. We suggest that the U.S. Forest Service revisit the Mt. Pinos CWPP to better understand what was originally recommended.

6. THE U.S. FOREST SERVICE FAILED TO FACILITATE AN ADEQUATE SCOPING PROCESS FOR THE PROJECT.

The Project Description does not contain the level of detail required by NEPA and U.S. Forest Service directives implementing NEPA. Because of this lack of detail, interested agencies and the public cannot formulate meaningful comments on this proposal.

First, NEPA requires scoping to be an “early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action” (40 CFR § 1501.7). U.S. Forest Service directives emphasize the importance of scoping in achieving NEPA compliance, stating that:

The **most important** element of the scoping process is to **correctly identify and describe** the proposed action. Elements of the proposed action include the nature, characteristics, and scope of the proposed action, the purpose and need for the proposed action, and the decision to be made.

CWPP Handbook (emphasis added)

An adequate project description assists the public and interested agencies in identifying issues and providing meaningful comments. To this end, the General Counsel of the Council on Environmental Quality (“CEQ”) has concluded that

Scoping cannot be useful until the agency knows enough about the proposed action to identify most of the affected parties, and to present a **coherent proposal** and a suggested initial list of environmental issues **and alternatives**. Until that time there is no way to explain to the public or other agencies what you want them to get involved in.

CEQ 1981

The Project Description fails to present such a “coherent proposal.” Instead, the Proposed Action is described as being needed for disparate reasons such as reducing tree stand densities, treating areas of bark beetle infestation, and providing a safe space for firefighters in the event of a wildfire in or near the Project Area. Moreover, both the scoping letter and the Project Description fail to specify the duration of the project and at what time of year it will be implemented.

An appropriate scoping letter contains “a brief information packet consisting of a description of the proposal, **an initial list of impacts and alternatives**, maps, drawings, and **any other material or references that can help the interested public to understand what is being proposed**” (CEQ 1981) (emphasis added). The Project’s scoping letter falls far short of this guidance. For example, the letter and Project Description are missing an initial list of impacts and alternatives. Thus, the public does not know what the main issues are surrounding this proposal and therefore cannot frame appropriate comments. Additionally, the U.S. Forest Service did not provide either a list of references or a packet containing all of the works cited in the Project Description. The Project Description should have at least contained a list of references at the end of the document so that the public could easily look up references they may have wanted to examine in further detail. The Project Description only included in-text citations that did not provide enough information about the publication being cited. This is just another hinderance to the public’s ability to better understand what is being proposed and the literature the U.S. Forest Service is using to justify such actions.

We urge the U.S. Forest Service to re-issue a scoping letter that complies with NEPA and U.S. Forest Service directives. An adequate scoping letter is particularly important in cases where CEs are involved, because the scoping letter is the only document the public sees before a decision is made. This will enable the public to participate meaningfully in the process.

7. THE U.S. FOREST SERVICE WAS UNABLE OR UNWILLING TO PROVIDE DOCUMENTS REQUESTED DURING THE COMMENT PERIOD FOR THE PROJECT.

The scoping process for this Project has been significantly compromised — and the public’s ability to participate in it has been significantly reduced — due to the lack of information provided to the public. Specifically, key Forest Service personnel have been out of the office and unavailable during most of the scoping period; minimal documentation has been made available to the public despite repeated requests; and the project area is relatively inaccessible and requests for access have been denied. Curiously, these hurdles to public participation could

have been easily avoided had the Forest Service not rushed to prematurely issue the scoping notice.

The scoping notice for the Project was issued on March 13, 2018. ForestWatch submitted a request via email for additional information to the project lead, Gregory Thompson, on March 15, 2018. This request was for a copy of any specialist reports for the Project. That same day, Mr. Thompson responded to our request, but he did not send any specialist reports for the Project as they had not been completed at that time. We then sent a follow-up email on March 15 indicating the difficulty for the public to prepare meaningful comments without important information such as would be found in the Biologist Report or an extraordinary circumstances analysis and requested access to the Project File as well as any shapefiles associated with the Project. Mr. Thompson responded on March 15 indicating that the specialist reports would possibly be available in May, 2018 — well after the close of the public comment period for the scoping portion of the Project (which may be the only public comment period if the Project is exempted from further NEPA documentation through use of a CE) — and listing the files that were available to share. These files were limited to the following:

1. Proposed Action
2. Scoping Letter
3. Scoping List
4. Los Padres Land Management Plan
5. Mt. Pinos CWPP
6. Mt. Pinos CWPP Update
7. Los Padres Strategic Fuel Break Assessment

In the same email response, Mr. Thompson indicated that he would check with the Project's GIS specialist to see if they had any shapefiles associated with the Project.

We then submitted a request via email for copies of the Scoping List and the Mt. Pinos CWPP Update on March 19. Mr. Thompson responded on March 20 with a copy of the Scoping List for the Project and indicated that he would update the Project's webpage to include the Mt. Pinos CWPP Update.

On March 23, we submitted another request via email for the following:

1. Maps of all California spotted owl activity centers (or home range core areas) in the Project Area
2. Field plot data from the stand exams that were conducted for the Project Area, including basal area data if collected.
3. A list (and/or maps if available) of threatened, endangered, proposed, and sensitive species in the Project Area

We received a response via email from Kyle Kinports, the Los Padres National Forest's NEPA Coordinator, on March 23 stating that Mr. Thompson "will be out of the office the next few weeks." Mr. Thompson then responded on April 11 indicating that he would be working with the Los Padres National Forest Freedom of Information Act ("FOIA") Coordinator "to evaluate

the requested information to see what is releasable.” On April 16 — three days before the scoping comment deadline — we received another response from Mr. Thompson that included a portion of the requested stand data for the Project Area. The response also addressed other portions of our previous request. In that email, he states: “As far as the California spotted owl activities centers, our biological specialist is currently looking at this information and currently does not have a map ready. **The specialist has just started looking at the project** and once she finishes her reports we will be making them available to the public. As far as a list and or maps of threatened, endangered, proposed, and sensitive species, our specialists are currently putting this information together and once they have the specialists reports completed they will also be made available to the public...” (emphasis added). In that response, Mr. Thompson only provided us with the basal area data from the requested stand exam field plot data. On April 16, we sent another request to Mr. Thompson for the remainder of the field plot data — the tree density (trees per acre) data. We ultimately received a response from Mr. Thompson on April 17 stating that he did “not have a report with the requested information to be able to provide” to us despite the fact that the Project Description noted that “[s]tand exams show that the project area average mixed conifer stand has 480 trees per acre.”

As the U.S. Forest Service intends to use a CE for this project, the scoping comment period may be the only the chance the public has to voice their concerns about the project and its potential impacts on wildlife and other natural resources. Because of this intention by the U.S. Forest Service, more information should have been prepared before the scoping notice was issued. At the very least, a list of threatened, endangered, proposed, and sensitive species that occur in the project areas and the project’s potential impacts to these species should have been provided to the public before or during the public comment period. In fact, the FSH states as much:

Scoping includes refining the proposed action, determining the responsible official and lead and cooperating agencies, **identifying preliminary issues**, and identifying interested and affected persons....Identify and evaluate preliminary issues based on review of similar actions, knowledge of the area or areas involved, **discussions with** interested and affected persons, community leaders, organizations, **resource professionals within the Agency, and State and local governments, and/or consultations with experts and other agencies familiar with such actions and their direct, indirect, and cumulative effects.**

FSH 1909.15.11 (emphasis added)

The absence of the Project Lead and the District Ranger during a substantial portion of the Project’s comment period was exacerbated further by the absence of the NEPA Coordinator due to jury duty selection (as indicated to us on March 29 in response to an unrelated matter). Thus, three key U.S. Forest Service officials were not available to provide requested information to the public during almost half of the public comment period. This caused considerable difficulty for the undersigned and the public to prepare substantive comments as part of the NEPA process for the Project. The U.S. Forest Service should be striving to increase public

participation as they propose and evaluate projects that affect public lands. The scoping process for the Project did not facilitate public participation. Instead, the U.S. Forest Service distributed limited information regarding the agency's proposed project to a limited number of interested parties and then avoided public requests for more information during what may be the only public comment period for the Project. Regarding public participation needs during the NEPA process, the FSH states:

4. Determine the methods of public involvement to meet the objectives. **Ensure that the level of effort to inform and to involve the public is consistent with the scale and importance of the proposed action and the degree of public interest.**

FSH 1909.15.11.52 (emphasis added)

As the Proposed Action will impact 1,626 acres of mixed-conifer forest and sagebrush habitat, and endangered and sensitive species, the Project should be considered significant in its importance and thus the effort to inform and involve the public should be significant as well. Such efforts should include considerable responsiveness to and willingness to answer public requests for more information about the Project.

8. THE U.S. FOREST SERVICE SHOULD ANALYZE THE FOLLOWING ISSUES IN AN EA OR EIS FOR THE PROJECT.

In preparing an EA or EIS for the Project, there are several issues that should be considered. These issues — detailed below — align with issues analyzed in the EA and EIS documents prepared for other projects proposed across the Los Padres National Forest.

A. Range of Reasonable Alternatives

The National Environmental Policy Act of 1969 (“NEPA”) requires the U.S. Forest Service to “[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources” (40 CFR § 1501.2(c)). As part of this alternatives analysis, the EA or EIS must “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated” (40 CFR § 1502.14(a)). Furthermore, the alternatives analysis “is the heart of the environmental impact statement” (40 CFR § 1502.14).

Reasonable alternatives are those that are viable, feasible, meet the stated goals of the project, or are reasonably related to the purposes of the project (*Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992); *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997); *Trout Unlimited v. Morton*, 509 F.2d 1276, 1286 (9th Cir. 1974)). An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action, sufficient to permit a reasoned choice (*Idaho Conservation League*, 956 F.2d at 1520). But the agency cannot contrive the project's purpose so narrowly that competing reasonable alternatives cannot be fully considered (*City of Carmel*, 123 F.3d at 1155). The “rule of reason” guides the choice of alternatives, the extent to which

the agency must discuss each alternative, and whether the agency defined the project's purposes too narrowly to allow consideration of alternatives (*City of Carmel*, 123 F.3d; see *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 666 (7th Cir. 1997) [noting that “[o]ne obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose and need so slender as to define competing reasonable alternatives out of consideration (and even out of existence).”]).

It is important to note that “[t]he existence of a viable but unexamined alternative renders an [EIS] inadequate” (*Natural Resources Defense Council v. U.S. Forest Service*, 421 F.3d 797, 813 (9th Cir. 2005) [quoting *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985)]). It is therefore not only the responsibility of the U.S. Forest Service to follow NEPA regulations when exploring reasonable alternatives but also to ensure that “selection and discussion of alternatives fosters informed decision-making and informed public participation” (*California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982)).

Current research supports that defensible space immediately around structures is the most effective approach to protecting homes and other structures from the effects of wildfire. Studies have shown the importance of defensible space in protecting residential structures from a wildfire. A 2014 study found that:

In terms of actionable measures to reduce fire risk, this study shows a clear role for defensible space up to 30 m (100 ft)...Results here suggest the best actions a homeowner can take are to reduce percentage cover up to 40% immediately adjacent to the structure and to ensure that vegetation does not overhang or touch the structure.

Syphard et al. 2014

The U.S. Forest Service should explore programs that would provide targeted assistance and funding to create and enhance defensible space around structures.

The EA or EIS should also evaluate an alternative that would reduce the size of the Project Area in a way that would still achieve Project objectives. Additionally, the EA or EIS should evaluate benefits of large tree retention as part of one or more alternatives to the Proposed Action.

B. Protection of Plants and Wildlife

The ESA (16 U.S.C. §§ 1531 et seq.) requires the U.S. Forest Service to consult with the USFWS to ensure that the Project “is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat” (16 U.S.C. § 1536(a)(2)). The Project Area contains habitat for several species protected under the ESA. Please consult with NOAA Fisheries and the USFWS pursuant to Section 7 of the ESA and incorporate measures into the Proposed Action and alternatives to reduce or avoid impacts to protected species.

The Project Area is located in and near known foraging, roosting, and nesting habitats for the endangered California condor. The EA or EIS should identify these habitat areas and should

propose adequate buffers to protect the integrity of these sites and condor flight patterns and behavior, consistent with the best available science. The U.S. Forest Service should initiate consultation with the USFWS to determine whether the project will impact condors or their roosting habitat or flight patterns and whether any particular mitigation measures should be adopted.

The Project Area contains habitat for several species that the U.S. Forest Service has identified as Sensitive or as Management Indicator Species. The EA or EIS should adequately evaluate the impacts of the project and alternatives on these special-status species and their associated habitats.

To assist in preparation of the EA or EIS, the U.S. Forest Service should follow established survey protocol to assist the agency in accurately identifying habitat and determining the presence or absence of listed species in and around the project area. The entire project area should be thoroughly surveyed in accordance with *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants* issued by the USFWS in 2000, and the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* issued by the California Department of Fish & Wildlife in 2009. Species-specific survey protocol should be incorporated as appropriate.

The range and predicted habitat of the northern goshawk — a U.S. Forest Service Sensitive Species and a Species of Special Concern with CDFW — includes the Project Area. Please evaluate the impacts of the project on northern goshawk habitat and conduct protocol surveys consistent with the *Northern Goshawk Inventory and Monitoring Technical Guide* (U.S. Forest Service 2006).

Consider that goshawks exhibit a preference for high canopy closure and a high density of larger trees. In addition, large snags and downed logs are believed to be important components of northern goshawk foraging habitat because such features increase the abundance of major prey species. Please incorporate the following Forest Service recommendations, at a minimum, into the project:

- Retain large trees in vegetation management projects.
- Retain snags and down logs for prey species.
- When conducting vegetation management, maintain a minimum of 200 acres of suitable canopy cover around identified goshawk nest sites. Maintain seasonal restrictions limiting activities within 1/4 mile of the nest site during the breeding season (approx. 2/15 - 9/15) unless surveys confirm northern goshawks are not nesting.

The EA or EIS should also recognize that there is limited information on the historic and current distribution of Northern goshawks in southern California mountains:

More information is needed on where goshawks nest in the southern California mountains. The breeding population is clearly small, probably fewer than thirty pairs, and could easily be extirpated by impacts to nesting sites. Efforts to

maintain the integrity of these sites cannot be made until we know where they are.

Stephenson and Calcarone 1999

Based on this uncertainty, please incorporate the following recommendations by Keane (2008) into the project:

- Conduct specialized inventories to assess distributional status in poorly known areas, such as the mountains of southern California.
- Initiate collaboration between research and management in an adaptive management framework to assess the effects of forest and fuels management policies on Northern Goshawk territory occupancy, demographics, and habitat quality, placing questions within the larger context of the restoration of California forests and natural disturbance regimes. Variation across major California forest types in terms of forest structure, composition, function, patch size and distribution, prey populations, and natural disturbance regimes dictates that management and conservation efforts be developed at appropriate spatial scales. (See Reynolds et al. 2006a for recommendations for developing ecosystem-based conservation strategies for goshawks.)
- If feasible, monitoring in California should follow the U.S. Forest Service's recently developed design for bioregional monitoring of population trends and their association, if any, with broad-scale habitat changes (Hargis and Woodbridge 2006). Empirically derived habitat models should be used to monitor change in habitat distribution and quality at home-range and landscape scales. Monitoring project-level responses of nesting goshawks to management treatments would also be valuable.

Migratory birds are perhaps the most highly valued component of North America's biological diversity, with approximately 1,200 species representing nearly 15% of the world's known bird species. The seasonal movement of migratory birds is one of the most complex and compelling dramas in the natural world. Migratory birds embark twice each year on long-distance journeys between their breeding areas and their wintering grounds, which are sometimes separated by thousands of miles. State, federal, and international law all recognize the importance of protecting migratory bird species from harm.

Pursuant to the Migratory Bird Treaty Act ("MBTA"), it is unlawful "at any time, by any means or in any manner to . . . take [or] kill . . . any migratory birds, [and] any part, nest, or eggs of any such bird" (16 U.S.C. § 703(a)). This prohibition applies to federal agencies and their employees and contractors who may not intend to kill migratory birds but nonetheless take actions that result in the death of protected birds or their nests (*Humane Soc'y of the United States v. Glickman*, 217 F. 3d 882 (D.C. Cir. 2000) [holding that federal agencies are required to obtain a take permit from USFWS prior to implementing any project that will result in take of migratory birds]; see also *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429, 437–38, 1992 [finding that federal agencies have obligations under the MBTA] and *Center for Biological Diversity v. Pirie*,

191 F.Supp.2d 161 (D.D.C. 2002) [allowing injunctive relief against federal agencies for violations of the MBTA]).

The prohibition on “take” of migratory birds includes destruction of nests during breeding season. Specifically, “nest destruction that results in the unpermitted take of migratory birds or their eggs, is illegal and fully prosecutable under the MBTA” (USFWS 2003).

In a Memorandum of Understanding Between the U.S. Department of Agriculture Forest Service and the U.S. Fish and Wildlife Service to Promote the Conservation of Migratory Birds (“MOU”), the agencies identified specific actions that, if implemented, would contribute to the conservation of migratory birds and their habitats. The MOU requires the U.S. Forest Service to alter the season of activities to minimize disturbances during the breeding season, to coordinate with the appropriate USFWS Ecological Services office when planning projects that could affect migratory bird populations, and to follow all migratory bird permitting requirements.

Importantly, the MOU “does not remove the Parties’ legal requirements under the MBTA, BGEPA, or other statutes and does not authorize the take of migratory birds.”

Under the MBTA, “any person, association, partnership, or corporation” who violates the MBTA or regulations thereunder are subject to criminal and civil penalties (16 U.S.C. §707). Violations of the MBTA are prosecuted as a misdemeanor, and upon conviction thereof, are subject to fines of up to \$15,000 or imprisonment of up to six months, or both.

In addition to the protections afforded by the federal MBTA and outlined above, several bird species within the project area are also protected under state law. Specifically, “[i]t is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird,” and “it is unlawful to take or possess a migratory nongame bird” (see Cal. Fish & Game Code §§ 3503, 3513).

The EA or EIS should evaluate the effects of the Project and alternatives on migratory birds protected under the MBTA. Several migratory bird species occur in this area. The MBTA prohibits the destruction of nests and eggs of migratory birds. The EA or EIS should evaluate the impacts of project activities on migratory bird nests, should consider the breeding season for each migratory bird species found in the project area, and should propose measures (such as adjusting the season of use) to avoid destruction of nests. To mitigate the potential take of migratory bird nests, we recommend that the following mitigation measure be implemented for all vegetation clearing components of this Project:

[Los Padres National Forest] shall ensure that suitable nesting sites for migratory nongame native bird species protected under the Federal Migratory Bird Treaty Act and/or trees with unoccupied raptor nests (large stick nests or cavities) may only be removed prior to February 1, or following the nesting season.

A survey to identify active raptor and other migratory nongame bird nests may be conducted by a qualified biologist at least two weeks before the start of construction at project sites from February 1st through August 31st. Any active

non-raptor nests identified within the project area or within 300 feet of the project area may be marked with a 300-foot buffer, and the buffer area may need to be avoided by construction activities until a qualified biologist determines that the chicks have fledged. Active raptor nests within the project area or within 500 feet of the project area may be marked with a 500-foot buffer and the buffer avoided until a qualified biologist determines that the chicks have fledged. If the 300-foot buffer for non-raptor nests or 500-foot 3 buffer for raptor nests cannot be avoided during construction of the Project, the project sponsor may retain a qualified biologist to monitor the nests on a daily basis during construction to ensure that the nests do not fail as the result of noise generated by the construction. The biological monitor may be authorized to halt construction if the construction activities cause negative effects, such as the adults abandoning the nest or chicks falling from the nest.

- Beginning thirty days prior to the disturbance of suitable nesting habitat, the project sponsor may arrange for weekly bird surveys conducted by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in the habitat that is to be removed and any other such habitat within 300 feet of the construction work area (within 500 feet for raptors) as access to adjacent areas allows. The last survey may be conducted no more than 3 days prior to the initiation of clearance/construction work.

If an active raptor nest is found within 500 feet of the project or nesting habitat for a protected native bird is found within 300 feet of the project a determination may be made by a qualified biologist in consultation with CDFG whether or not project construction work will impact the active nest or disrupt reproductive behavior.

- If it is determined that construction will not impact an active nest or disrupt breeding behavior, construction will proceed without any restriction or mitigation measure. If it is determined that construction will impact an active raptor nest or disrupt reproductive behavior then avoidance is the only mitigation available. Construction may be delayed within 300 feet of such a nest (within 500 feet for raptor nests), until August 31 or as determined by CDFG, until the adults and/or young of the year are no longer reliant on the nest site for survival and when there is no evidence of a second attempt at nesting as determined by a qualified biologist. Limits of construction to avoid a nest may be established in the field with flagging and stakes or construction fencing marking the protected area 300 feet (or 500 feet) from the nest. Construction personnel may be instructed on the sensitivity of the area.

Documentation to record compliance with applicable State and Federal laws pertaining to the protection of native birds may be recorded.

California State Water Resources Control Board 2014

C. Cumulative Impacts

In the EA or EIS, please analyze all impacts of the Project, including cumulative effects (see 40 CFR §§ 1508.9(b), 1508.8.). A cumulative impact is defined under NEPA regulations as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions...Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time” (40 CFR § 1508.7).

The cumulative impacts associated with this Project may include those impacts stemming from the expansion of thinning activities across intermingled and adjacent private lands. Other potential cumulative impacts include the establishment of defensible space and previous wildfire suppression efforts.

D. Protection of Cultural and Archaeological Sites

The Project Area contains several sites deemed important to Native American history and culture. The EA or EIS should briefly describe the extent (but not the location) of Native American heritage sites in the Project Area, should summarize the extent the area has been surveyed for archaeological resources, and should discuss whether additional pre-implementation surveys should occur. Retain monitoring by a certified archaeologist during all Project activities. Consult with the State Historic Preservation Officer in accordance with the National Historic Preservation Act.

E. Protection of Soil and Water Resources

The use of heavy equipment such as masticators, skidders, and loaders can result in soil disturbance and compaction and can damage neighboring vegetation. The EA or EIS should evaluate methods to avoid damage to soil integrity through compaction, contact with heavy equipment, and loss of litter layer.

The EA or EIS should also identify the steepness of all slopes in the Project Area and explain how the extent and method of vegetation removal will differ to account for differences in slope incline. Tree removal and mastication on steep slopes and in riparian areas and other wetlands should be avoided.

The California State Water Resources Control Board has identified vegetation manipulation and removal as activities that can generate sediment and affect water quality in the Los Padres National Forest. (California State Water Resources Control Board 2011). The EA or EIS should consider the following mitigation measures:

- Reduce creation of sediment that may eventually be delivered to streams and harm fish. Identify all perennial and intermittent streams in the Project Area.

- Document impacts to water quality and channel stabilization.
- Avoid or restore skid trails, which tend to channelize runoff and contribute to erosion, sedimentation, and gullying.
- Identify specific measures the agency will take to comply with Best Management Practices. Analyze whether any vegetation clearing will increase erosion in the short- or long-term and evaluate the timing of any long-term water quality benefits.

F. Protection of Scenic Resources

The Project should be designed to minimize impacts to scenic resources. Most of the Project Area is characterized as having a “high” scenic integrity objective according to the Land Management Plan for the Los Padres National Forest. The EA or EIS should examine potential impacts to the scenic integrity of the area.

G. Protection of Trees

The EA or EIS should disclose the extent of trees to be removed during the Proposed Action and/or maintenance. The Proposed Action should include Design Criteria that prohibits the removal of trees above 6” DBH. If the removal of trees above this level is needed for any reason, then the EA or EIS should disclose the criteria that will be used to determine whether particular trees are to be removed.

It should be noted that studies have shown that removal of large trees may be detrimental to the goals of the Project. Bond et al. (2009) found that stands dominated by large trees burned at lower severities than stands dominated by smaller trees. They state:

This result suggests that harvesting larger-sized trees for fire-severity reduction purposes is likely to be ineffective, and possibly counter-productive.

Bond et al. 2009

The U.S. Forest Service should seek to mitigate any tree removal by planting trees in other locations in the Mt. Pinos Ranger District.

H. Noxious Weeds & Invasive Species

The thinning of forested stands may lead to an increase in invasive plants in the Project Area that, in turn, could spread to surrounding wildlands. Keeley (2003) noted that “fuel manipulation can contribute to invasion by exotic plants.”

Given the susceptibility of areas that have experienced fuel manipulation activities to be invaded by nonnative and invasive plants, the EA or EIS should evaluate the ability and likelihood of all project activities to contribute to the spread of invasive weeds. The EA or EIS should evaluate measures to minimize the introduction and spread of invasives and should be supported by a Noxious Weed Risk Assessment.

I. Impacts of Mastication

The EA or EIS should evaluate the potential adverse impacts caused by mastication and other mechanical treatment of native vegetation. The EA or EIS should identify the specific locations within the Project Area where machine thinning, chipping, and mastication will be used. The environmental impacts associated with these methods should be thoroughly analyzed and the results included in the EA or EIS.

J. Impacts and Efficacy of Thinning

The most significant effect of this type of heavy thinning is to increase the warming and drying of ground fuels and to increase the growth of ladder fuels, both of which significantly detract of the risk reduction objectives and are expensive to treat. The analysis must address the complex effects of thinning including tendencies to reduce and increase fire hazard.

A report prepared for Congress stated: “We do not presume that there is a broad scientific consensus surrounding appropriate methods or techniques for dealing with fuel build-up or agreement on the size of areas where, and the time frames when, such methods or techniques should be applied” (US GAO RCED-99-65.1999:56). A research report by Omi and Martinson (2002) states: “Evidence of fuel treatment efficacy for reducing wildfire damages is largely restricted to anecdotal observations and simulations.”

In fact, there is scientific evidence that thinning can make the fuel hazard worse instead of better. Graham et al. (2004) noted that “[d]etailed site-specific data on anything beyond basic forest structure and fuel properties are rare, limiting our analytical capability to prescribe management actions to achieve desired conditions for altering fuels and fire hazard.” Further, thinning can alter the heating of the understory and subsequently reduce moisture levels:

Thinning opens stands to greater solar radiation and wind movement, resulting in warmer temperatures and drier fuels throughout the fire season.

[T]his openness can encourage a surface fire to spread...Opening up closed forests through selective logging can accelerate the spread of fire through them because a physical principle of combustion is that reducing the bulk density of potential fuel increases the velocity of the combustion reaction. Wind can flow more rapidly through the flaming zone. Thinned stands have more sun exposure in the understory, and a warmer microclimate, which facilitates fire (Countryman 1955)...

[F]uel reduction activities – particularly mechanized treatments – inevitably function to disturb soils and promote the invasion and establishment of non-native species. Pile burned areas associated with the treatments are also prone to invasion (Korb et al. 2004). Annual grasses can invade treated areas if light levels are high enough, leading to increased likelihood of ignition, and more rapid spread of fire, which can further favor annual grasses (Mack and D’Antonio 1998). This type of feedback loop following the establishment of non-native

plants may result in an altered fire regime for an impacted region, requiring extensive (and expensive) remedial action by land managers (Brooks et al. 2004).

Odion 2004

The authors of a study that analyzed fires in thinned and unthinned areas in Sierra Nevada forests noted:

Thinned areas predominantly burned at high severity, while unthinned areas burned predominantly at low and moderate severity....

...combined mortality was higher in thinned than in unthinned units.

Hanson and Odion 2006

Hanson and Odion (2006) went on to suggest that mechanical thinning may have “effectively lowered the fire weather threshold necessary for high severity fire occurrence.” Furthermore, researchers with the U.S. Forest Service acknowledge the potential for thinning to create more intense conditions for surface fire spread:

Theoretically, fuel treatments have the potential to exacerbate fire behavior. Crown fuel reduction exposes surface fuels to increased solar radiation, which would be expected to lower fuel moisture content and promote production of fine herbaceous fuels. Surface fuels may also be exposed to intensified wind fields, accelerating both desiccation and heat transfer.

Treatments that include prescribed burning will increase nutrient availability and further stimulate production of fuels with high surface-area- to-volume ratios. All these factors facilitate the combustion process, increase rates of heat release, and intensify surface fire behavior....

Thus, treatments that reduce canopy fuels increase and decrease fire hazard simultaneously. With little empirical evidence and an infant crown fire theory, fuel treatment practitioners have gambled that a reduction in crown fuels outweighs any increase in surface fire hazard....

Omi and Martinson 2002

A recent study also found that protected forests (those with more restrictions on logging activities such as those in the Proposed Action) had lower fire severity levels over a 30-year period (and across 1,500 fires), but they actually had *lower* fire severity levels despite being identified as having increased biomass and fuel loading compared to less-protected forests with more logging activities (Bradley et al. 2016).

The EA or EIS should disclose the scientific uncertainty surrounding fuel reduction and fire behavior and should recognize that vegetation treatments can increase fine fuel loads while removing the large, fire-resilient logs that are relatively less prone to burn.

K. Benefits of Bark Beetles

Native insects work to thin trees, control crowding, reduce stress and lessen competition for water and nutrients. Some levels of insect herbivory, or plant-eating, may even be good for trees and forests, and in the long run produce as much or more tree growth.

According to Scott Black of the Xerces Society (pers. comm. March 15, 2005):

[T]hese insects are native and are very important. Bark beetles help decompose and recycle nutrients, build soils, maintain genetic diversity within tree species, generate snags and down logs required by wildlife, and provide food to birds and small mammals. By feeding upon dead or dying trees, wood borers and bark beetles provide food to insect gleaning species of birds (such as woodpeckers), create snags that may be utilized by cavity nesting birds in the future and overall are invaluable catalysts in forest evolution.

Thinning is often recommended to control outbreaks of bark beetles, but there is little direct evidence that this works. This seems to be recommended based on the presupposition that thinning will increase tree vigor, which will in turn increase the ability for trees to ward off infestation by insects. Some scientists have suggested caution in using thinning to control bark beetles as geographic and climactic variables may alter the effect. Hindmarch and Reid (2001) found that thinned stands exhibited a higher attraction rate of mates by males of *Ips pini*, while females had longer egg galleries, more eggs per gallery and higher egg densities. Warmer temperatures in thinned stands also contributed to a higher reproduction rate. The number of males and females setting on logs was also higher in thinned stands.

Bark beetles are always widespread and quite common. Even if they can be controlled in a “stand” of trees, it is likely to have little impact on infestation on a landscape scale. According to Wilson and Celaya (1998), removal of infested trees may provide some protection to surrounding trees, but these insects (western pine beetle) are very common, so removal of a few infested trees is not a guarantee of protection.

The Project Description describes a need to reduce the basal area per acre below 120 ft² because this is the threshold above which stands “are at imminent risk of bark beetle-associated mortality.” This statement is apparently derived from Oliver (1995) as indicated by the Project Description. However, the U.S. Forest Service is not fully citing the findings by Oliver (1995). The author of that study found that native beetles reduced stand density by only about 13-20% after ponderosa pine stands reached high stand density levels (greater than 120 ft² basal area per acre). After such a reduction by native beetles, those stands gradually became dense once again. Oliver (2005) again found that young ponderosa pine forests experienced only a 17% reduction in basal area per acre after stands became dense and that the forests experienced lower mortality levels years after the initial beetle-induced mortality. Not only is the potential reduction in stand density by native beetles not as dramatic as the public is being led to believe, this reduction is part of a natural forest succession process.

Moreover, stand data for the Project Area provided by the agency indicate that rather than being characterized by stand densities greater than historical conditions, the stands throughout the Project Area may actually be characterized as having a density deficit compared to historical conditions. According to the U.S. Forest Service's own data, the average basal area across all stands in the Project Area is approximately 98 ft² per acre and 109 ft² per acre across stands with more than 5 ft² per acre. It should be noted that the Project Description describes the stands as having an average basal area of "slightly over 120 [ft² per acre]," though an analysis of the data provided by the agency does not produce this result unless only stands with more than 30-40 ft² basal area per acre are averaged. Moreover, the U.S. Forest Service describes this basal area per acre as exceeding historical conditions. However, McIntyre et al. (2015) found that southern California forests historically (1920s and 1930s) had stand densities of approximately 160 ft² basal area per acre on average. Thus, current stand densities are actually lower in the Project Area than historical averages. This is problematic for two reasons: the U.S. Forest Service has provided misleading information in their Project Description and the Proposed Action would further exacerbate this stand density deficit. The Proposed Action includes thinning the Project Area to a range of 60 to 100 ft² basal area per acre (with a target of 80 ft² basal area per acre). This would bring stand densities to 38-63% of historical conditions. And as detailed above, the potential mortality induced by bark beetles would likely be 13-20% in the Project Area. Bark beetle mortality would therefore potentially reduce stand densities in the Project Area to approximately 88 to 96 ft² basal area per acre (when using the 110 ft² basal area per acre figure described above). Thus, the Proposed Action would likely cause greater tree mortality than could be potentially caused by bark beetles if left untreated. In other words, the U.S. Forest Service is proposing the Project in part to protect stands in the Project Area from bark beetle mortality, but by doing so would be more destructive (in terms of tree mortality) than such bark beetle activity would likely be.

Additionally, thinning could attract more beetles to the area through the release of terpenes from fresh wood chips, slash, or wounded green trees. If insect attack is a concern, the U.S. Forest Service must consider and disclose the factors that tend to attract insects and determine whether thinning will make things better or worse in the EA or EIS.

L. Benefits of Snags

The EA or EIS should discuss the retention of snags to benefit wildlife. For example, Verner et al. (1992) recommends at least 20 square feet per acre of basal area of large snags, or about 8 large snags per acre on average, for suitable California spotted owl habitat. Abundant large snags are essential for spotted owls because owl prey species depend on them.

In addition, the EA or EIS should note that higher densities of snags do not always result in higher fire intensity. Bond et al. (2009) found no evidence that pre-fire mortality influenced fire severity in coniferous forests in the San Bernardino Mountains. They note that their "results provide compelling evidence that when fire does occur, stands with considerable tree mortality due to drought and insects will not burn at higher severity than stands without significant tree mortality, either in the short or long term" (Bond et al. 2009).

M. Wildfire Frequency

The EA or EIS should evaluate fire frequency in the area in and around the proposed action and incorporate this and other recent studies regarding fire frequency and severity in southern California forests. It should also include a fire history map of the area in and around the Project.

N. Consistency With Land Management Plan

The EA or EIS should evaluate whether and how the project is consistent with the standards, guidelines, and desired conditions of the Land Management Plan for the Los Padres National Forest.

O. Frequency of Treatments

The Proposed Action is not clear about whether the U.S. Forest Service intends on reentering these stands at some point in the future, or repeating vegetation removal or prescribed burning treatments. The EA or EIS should disclose the frequency of retreatments, as well as thresholds that will prompt retreatment.

P. Hazard Tree Guidelines

The Proposed Action states that “[t]he removal of hazard trees (live and dead) of all sizes would occur along utility lines, roads, trails and landings to provide for safety of wood workers and public throughout project implementation, except where restrictions for removal apply.” The EA or EIS should disclose the criteria used to determine which trees constitute a safety hazard.

Q. Economic Analysis

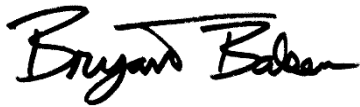
The EA or EIS should include a U.S. Forest Service cost estimate for any commercial tree removal associated with the Project. Such an estimate should include administrative costs pertaining to analysis and appeals, costs of timber sale preparation and administration, costs of monitoring during and after implementation, per acre costs of slash piling and burning, per acre costs of brush maintenance following thinning as a result of canopy reduction; the projected timber sales receipts from the timber sale, and the total volume of the timber sale (in board feet of sawtimber and/or tons of biomass).

R. Pile Burning and Prescribed Burning

Pile burning may cause patches of extreme soil heating to the point where soil characteristics are changed. The EA or EIS should disclose the size and location of these patches across the Project area. Piles result in heavy, localized impacts to soil quality. The EA or EIS should also evaluate the impacts of pile burning on soil structure and composition, as well as the regrowth capability of pile-burned areas.

Thank you for this opportunity to provide comments on the project. Please provide us with all future public notices, environmental documents, and decision documents related to this project. Thank you for your efforts to protect the Los Padres National Forest.

Sincerely,



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Figures

Figure 1. Proposed Cuddy Valley Forest Health/Fuels Reduction Project and Tecuya Ridge Fuelbreak Project. Both project areas (in this figure and subsequent figures) were redrawn from maps supplied in their respective project descriptions provided during scoping.

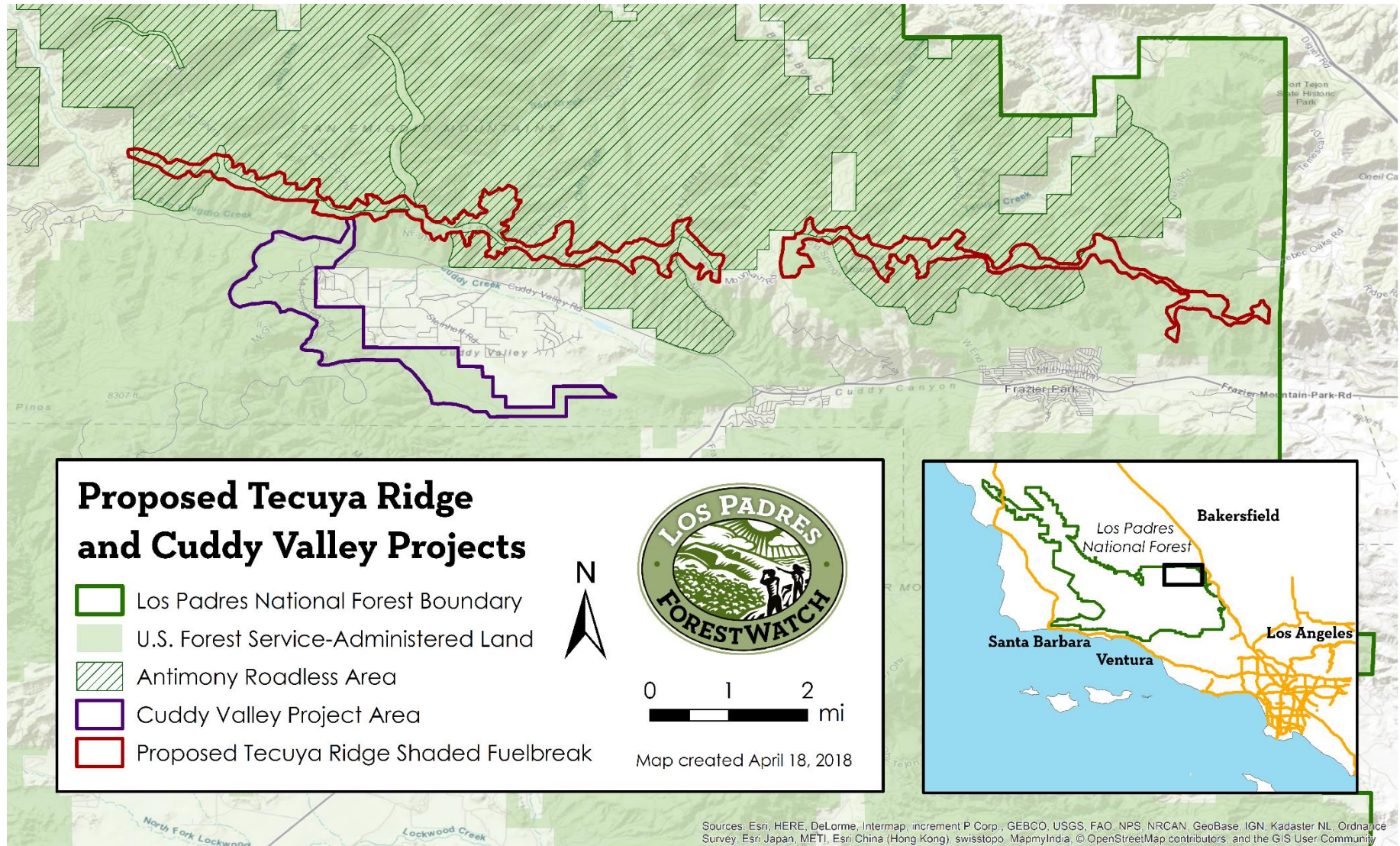


Figure 2. Northern goshawk predicted habitat — retrieved from the CNDDDB (2018) — near the Project Area.

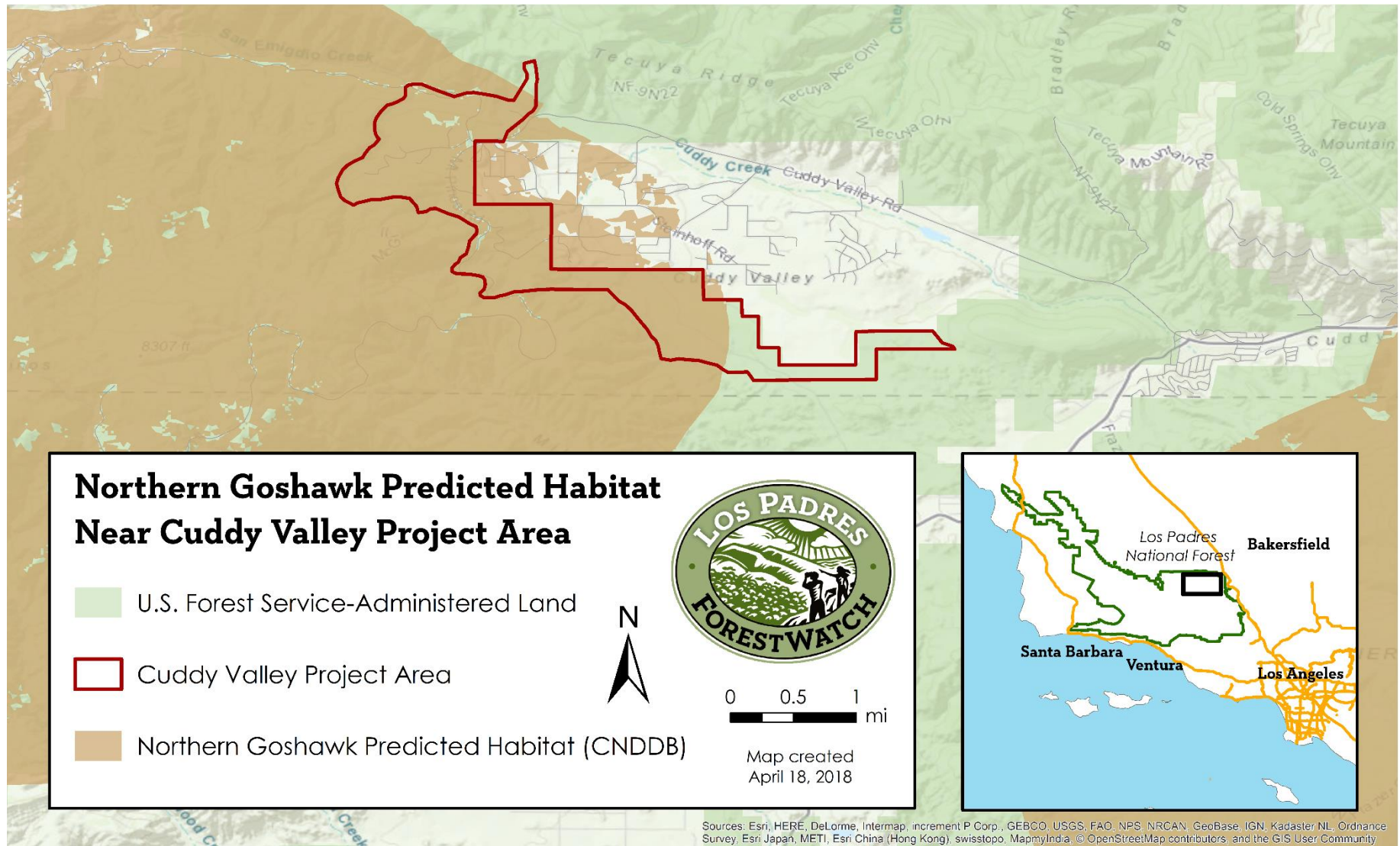


Figure 3. Tehachapi pocket mouse observations and predicted habitat — both retrieved from the CNDDDB (2018) — near the Project Area.

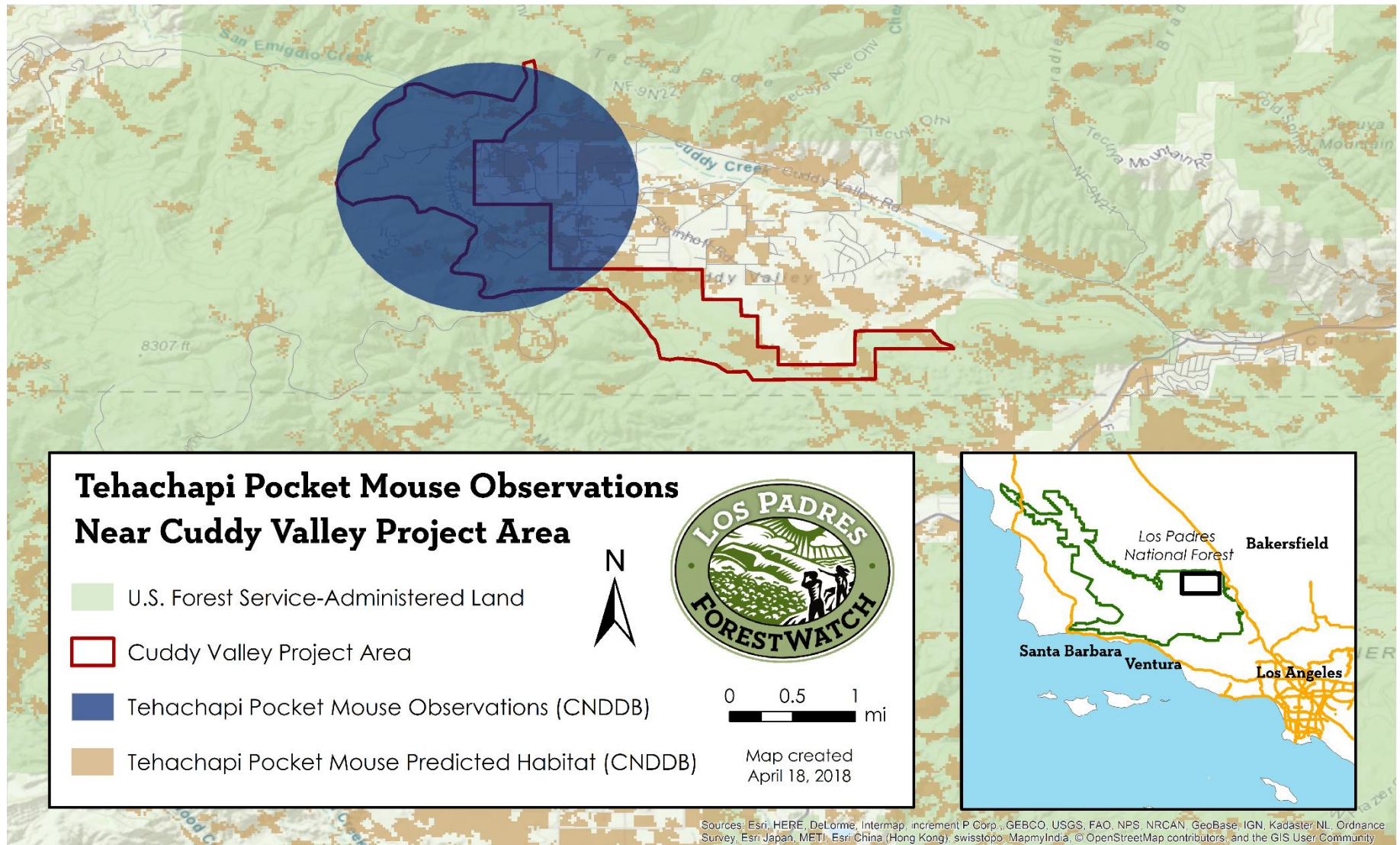


Figure 4. Sensitive plant species observations near the Project Area. All observations were retrieved from the CNDDDB (2018).

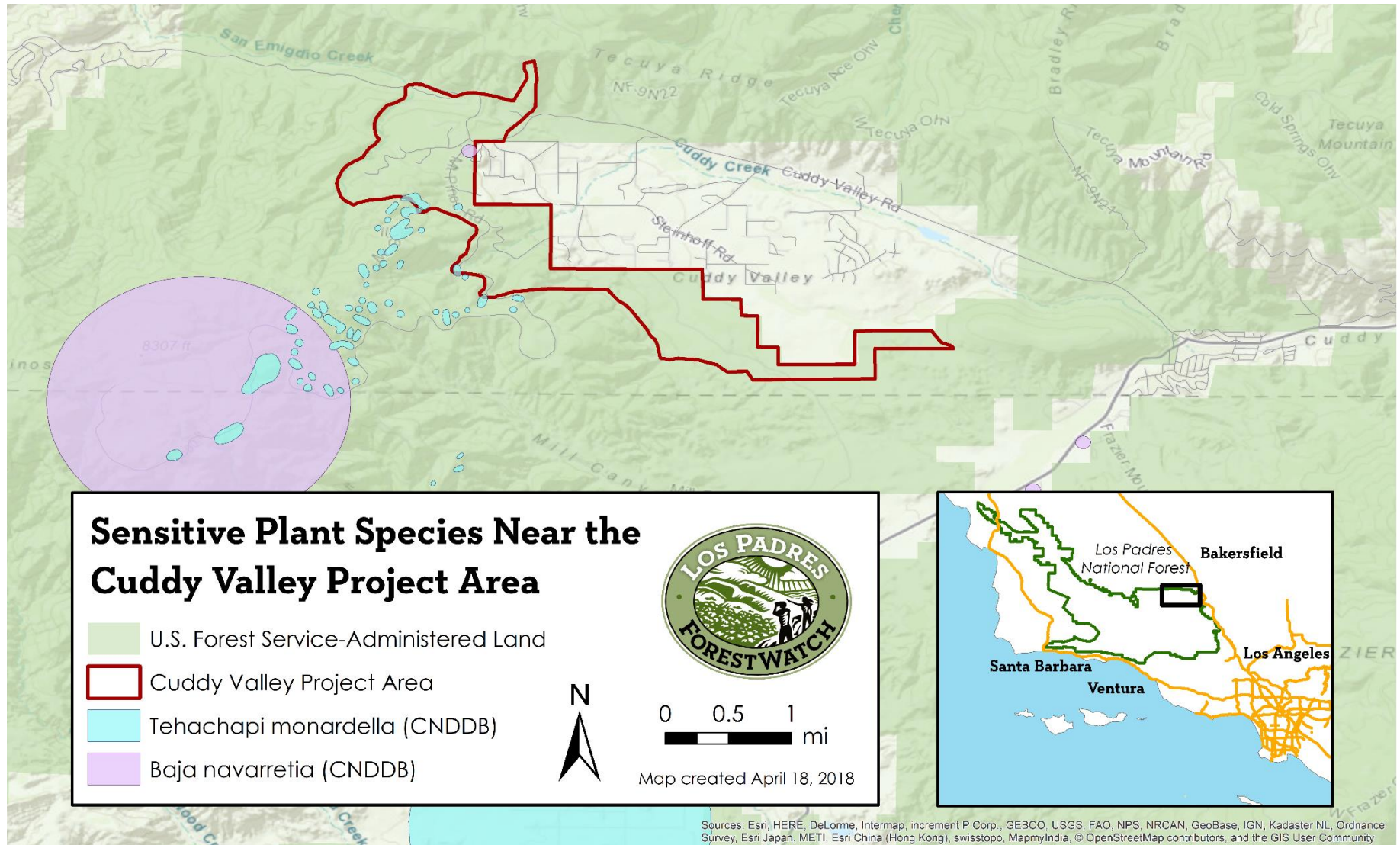
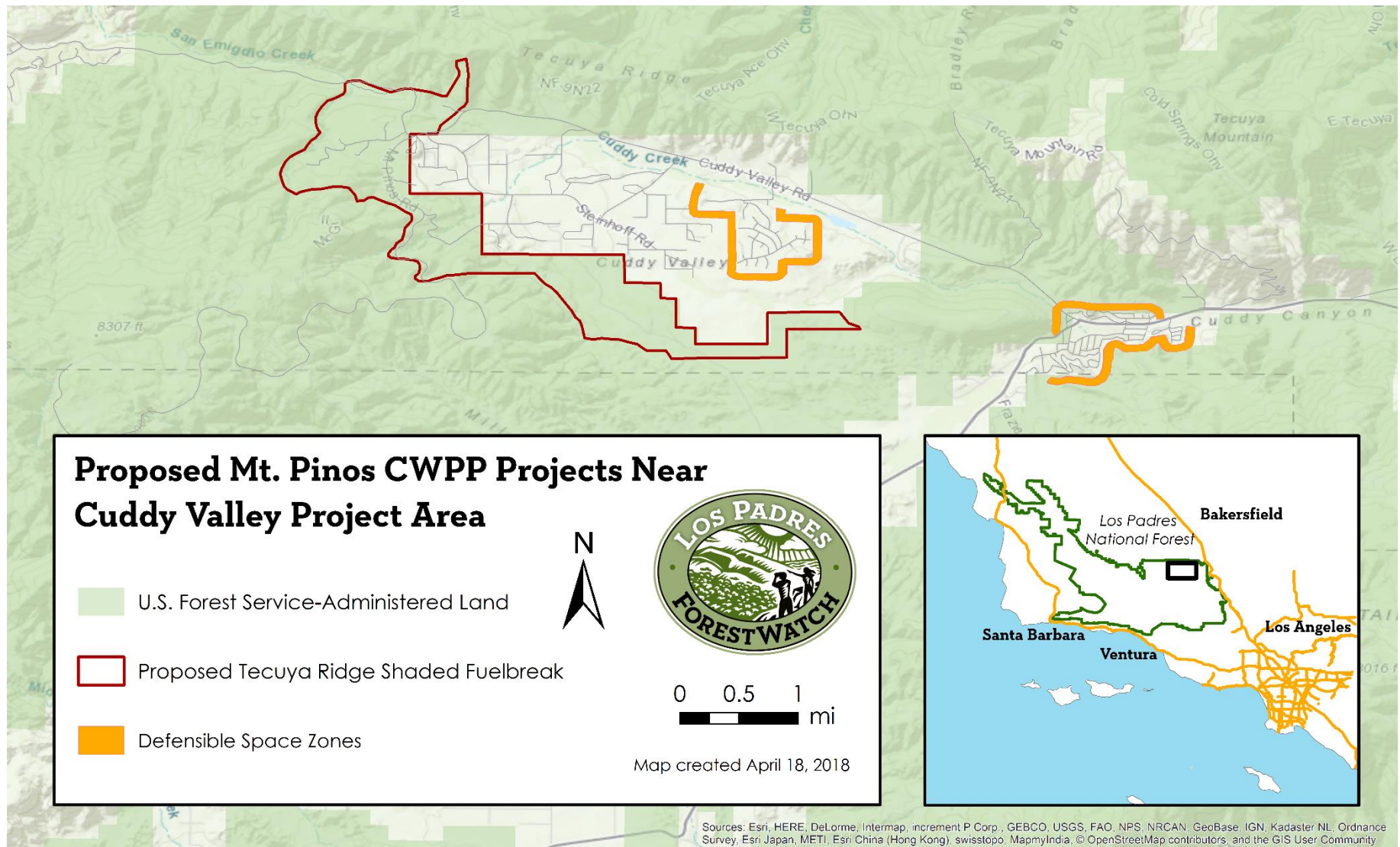


Figure 5. Projects identified by the Mt. Pinos CWPP near the Project Area. Defensible Space Zone project areas were redrawn from MPCFSC (2009).



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