



May 1, 2014

California Department of Fish and Wildlife
Nongame Wildlife Program
Attn: Neil Clipperton
1812 Ninth Street
Sacramento, CA 95811

RE: REJECT THE PETITION TO LIST THE NORTHERN SPOTTED OWL (NSO) AS A THREATENED SPECIES UNDER THE CALIFORNIA ENDANGERED SPECIES ACT (CESA)

Dear Neil Clipperton:

Pursuant to the Calif. Dept. of Fish and Wildlife (DFW) mandate to conduct a status review of species listed as a candidate under Section 2074.6 of the Calif. Fish and Game Code, the undersigned organizations hereby request that the DFW consider the following relevant issues, which we believe support a conclusion that the petition to list the Northern spotted owl (*Strix occidentalis caurina*) as a threatened species under the California Endangered Species Act (CESA) should be rejected.

After reviewing the petition's limited, and in some cases misleading information regarding population trend, range, distribution, abundance, life history and other relevant factors affecting the ability of the NSO population to survive and reproduce, and in consideration of the new population information, we have concluded that the information contained in the petition is not sufficient to indicate that the petitioned action may be warranted, and that the petition should be rejected by the Calif. Fish & Game Commission.

We cite the following justification for the rejection of the petition:

The petition, as presented, lacks any relevant information on NSO population, population trends or habitat requirements. DFW's Evaluation Report cites the minimum requirements for a listing petition pursuant to Fish and Game Code 2072.3. These include "...information regarding the population trend" and "information regarding the kind of habitat necessary for the species survival." As pointed out in the Evaluation Report, this information is either missing or grossly misrepresented. As stated in this Report:

- "The Petition does not assess the species' current population trend in California specifically."
- "The California map is not current and shows northern spotted owl distribution based on CDFG data dated February, 1996."
- "The Petition (pages 12-15) does not include direct information on the abundance of northern spotted owl populations in California, nor does it discuss abundance range-wide."
- "Based on information in the Petition and other data that is readily available to the Department for California, there is uncertainty about whether the declining population trends from specific study areas has translated into an overall decrease in abundance of northern spotted owls in California."

- “The Petition does not specifically summarize the factors affecting the ability of northern spotted owl populations to survive and reproduce in California or range-wide.”
- “The Petition describes habitat loss and decline of preferred prey species range-wide, but does not focus on California habitats or prey species...”

The Evaluation Report cites other glaring deficiencies in the petition, including the use of very small sample areas to project population trends, the use of out-dated population data, and reference data provided to DFW that was in an unusable format.

NSO distribution and population data for California indicate a healthy, stable and dynamic population and an increasing known occupied habitat. Using recent and historic data from DFW's NSO database, the population of NSO pair territories has been steady, or actually increasing, in California. In 1988, there were an estimated 950 known occupied NSO pair territories in California. By 1992, that estimate had increased to 2,061, and by 2003 that estimate had increased to 2699 NSO sites. By 2012, this number has increased to 3,061 known NSO pair territories. Up until 2003, the U.S. Fish and Wildlife Service (USFWS) was recognizing sites that had been unoccupied for three consecutive years as being abandoned, and eligible for removal from the database. Since that time, no NSO sites have been recognized as abandoned and continue to be protected pursuant to the California Forest Practice Rules (CFPR).

In addition, the acres of NSO habitat protected pursuant to the CFPR and federal listing protections have increased over this same period; from 2,266,255 acres in 1988 to 5,004,161 acres in 2012. The data contradict the assertions presented in the petition that claim that NSO populations and habitat are declining. (See Exhibit A.)

California forest owners have been surveying for NSO for more than two decades and data from these surveys substantiate these population trends. These numbers are supported by information collected from forest owners in California. These forest owners have been collecting NSO information for years –and in many cases, for decades –and have been surveying using established USFWS survey protocols, often in cooperation with the USFWS. This information is submitted to DFW's database, and is often shared with the USFWS or other agencies. Unlike the information presented by the petitioner in their petition, the population data gathered by these forest landowners are accurate, current, and specifically relevant to the California population of Northern spotted owls. This information shows, once again, that the NSO population on California's private forestlands is stable. Please reference the 584-page “*Northern Spotted Owl Science Compendium*,” submitted to the DFW by the California Forestry Association dated May 1, 2014.

California's robust regulatory process protects both the NSO and its habitat. Timber harvesting in California is regulated pursuant to California's Forest Practice Act and Regulations. The review, approval and enforcement of its discretionary environmental permit, Timber Harvest Plan, (THP) is conducted by a multi-agency team led by CAL FIRE and other trustee agencies, contain specific NSO protection measures. These measures were developed in cooperation with the USFWS and contain provisions for the protection of NSO individuals, nests, related activity centers and the surrounding forest habitat. These provisions are reviewed by the USFWS on a periodic basis. Furthermore, specific guidance documents developed in cooperation with the USFWS give landowners and foresters detailed measures to include in their THPs to conform to strict federal “no take” standards. Again, these guidance documents are reviewed and updated by the USFWS on a regular basis.

Habitat for the NSO is abundant and of high quality on California's private forestlands. The dynamic yet stable population of Northern spotted owls on private forestlands in California is indicative of the high-quality habitat that is present on these lands. California's private forestlands are some of the most productive in the nation, for not only the sustainable production of forests and their products, but also for the production of prey and food sources for the Northern spotted owl. This abundant food source actually results in a smaller home range for many Northern spotted owls, quite often resulting in higher densities of NSO on private forestlands than public.

Conclusion

The survey, monitoring, scientific analysis, reporting and regulatory protections referenced in this letter clearly indicate that California's NSO population is well distributed across its range, is dynamic yet stable over the past quarter century, and is subject to a regulatory system that protects against mortality while providing quality nesting, roosting, and foraging habitat that moves across the landscape over time.

Moreover, California's in-place regulatory system provides the most powerful environmental protections for the NSO of any state in the nation, and as Director Bonham pointed out in his letter of January 16, 2014:

During the past two decades after NSO became federally listed, sections 919.10 and 939.10 of the California Forest Practice Rules (FPRs) have obligated the California Department of Forestry and Fire Protection (CalFire) to make a finding for each timber harvesting plan (THP) within the range of the NSO that the THP will avoid take of any NSO as defined by the federal Endangered Species Act (ESA). To our knowledge, CalFire in coordination with the U.S. Fish and Wildlife Service and the Department, has effectively implemented this regulatory requirement, allowing THPs to proceed while avoiding take of NSOs. Take as defined by the ESA includes "harm" and "harass," activities which extend well beyond the definition under the Fish and Game Code; viz, "hunt, pursue, catch, capture or kill or attempt to hunt, pursue, catch, capture or kill." The Department concludes a CalFire finding that take under ESA of any NSO would be avoided in accordance with the FPRs would likely be valid for take as defined in the Fish and Game Code.

Given all of the above, it is our strong recommendation that it is unnecessary to duplicate the federal listing, and the NSO should not be recommended by the DFW for listing pursuant to CESA.

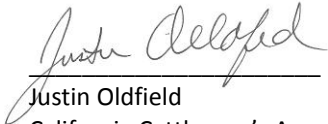
Sincerely,



David A. Bischel
California Forestry Association



Eric Carlson
Associated California Loggers



Justin Oldfield
California Cattlemen's Association



Valerie Nera
California Chamber of Commerce



Noelle Cremers
California Farm Bureau Federation



Cyndi Hillery
Rural County Representatives of California

EXHIBIT A – pg1

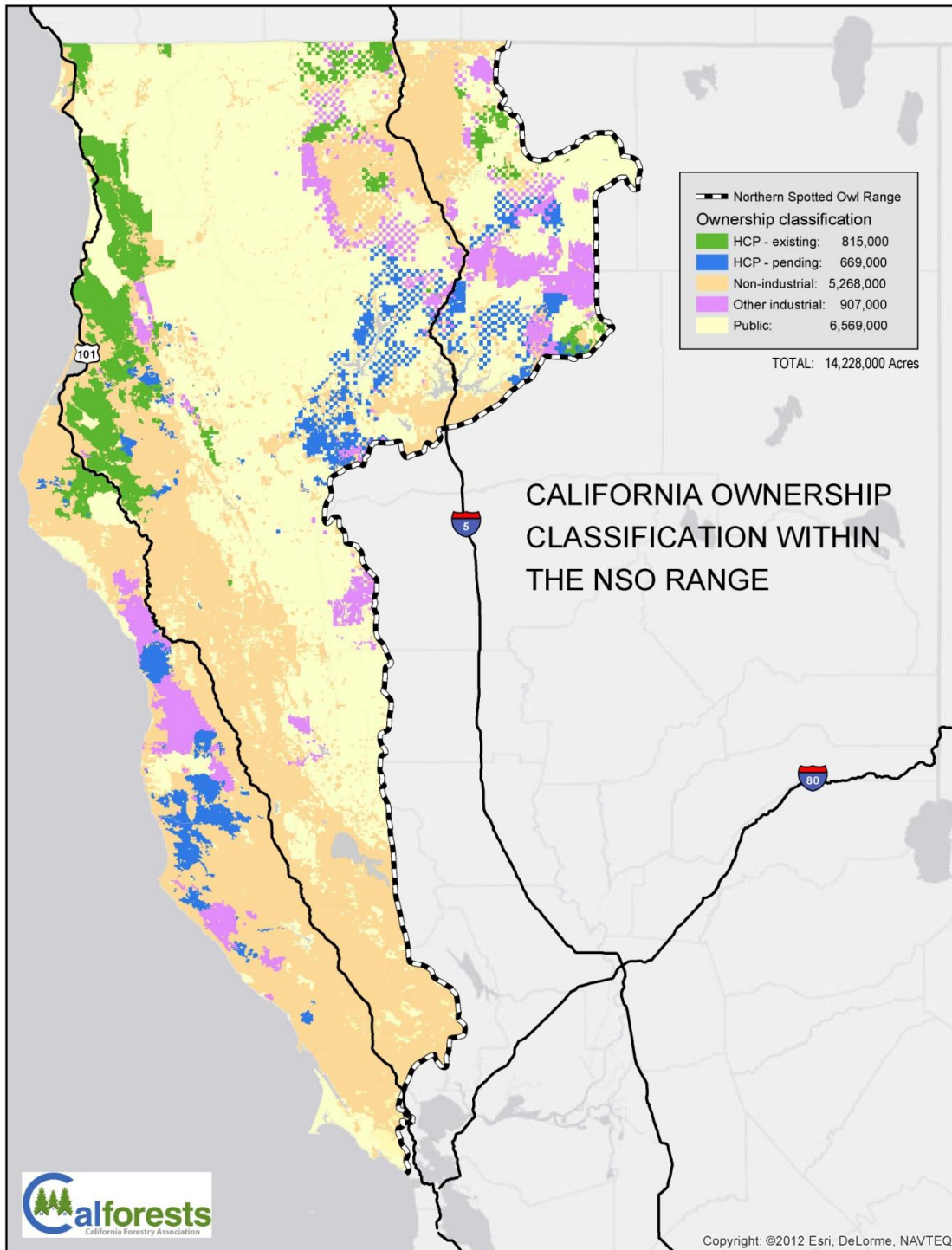


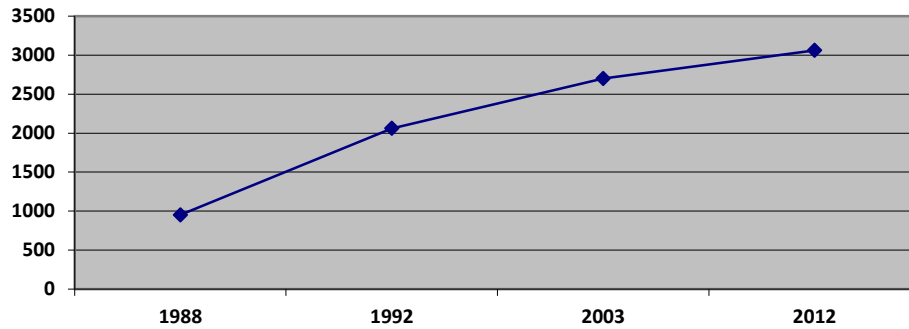
EXHIBIT A - pg2

California's Total Acres within the Northern Spotted Owl Range

Public Forests	6.569 million acres
Private Non-industrial	5.268 million acres
<u>Industrial Forests</u>	<u>2.391 million acres</u>
TOTAL	14.228 million acres

California Dept. of Fish & Wildlife Northern Spotted Owl Data

NSO Territorial Sites



Acres of Habitat within USFWS Designated Owl Circles

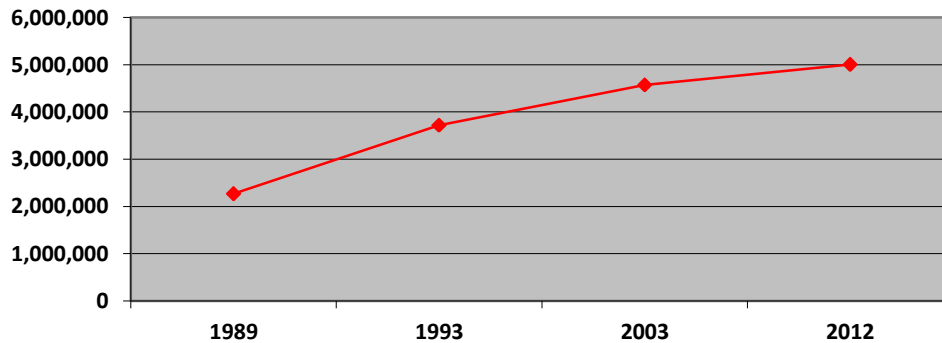


EXHIBIT A – pg3

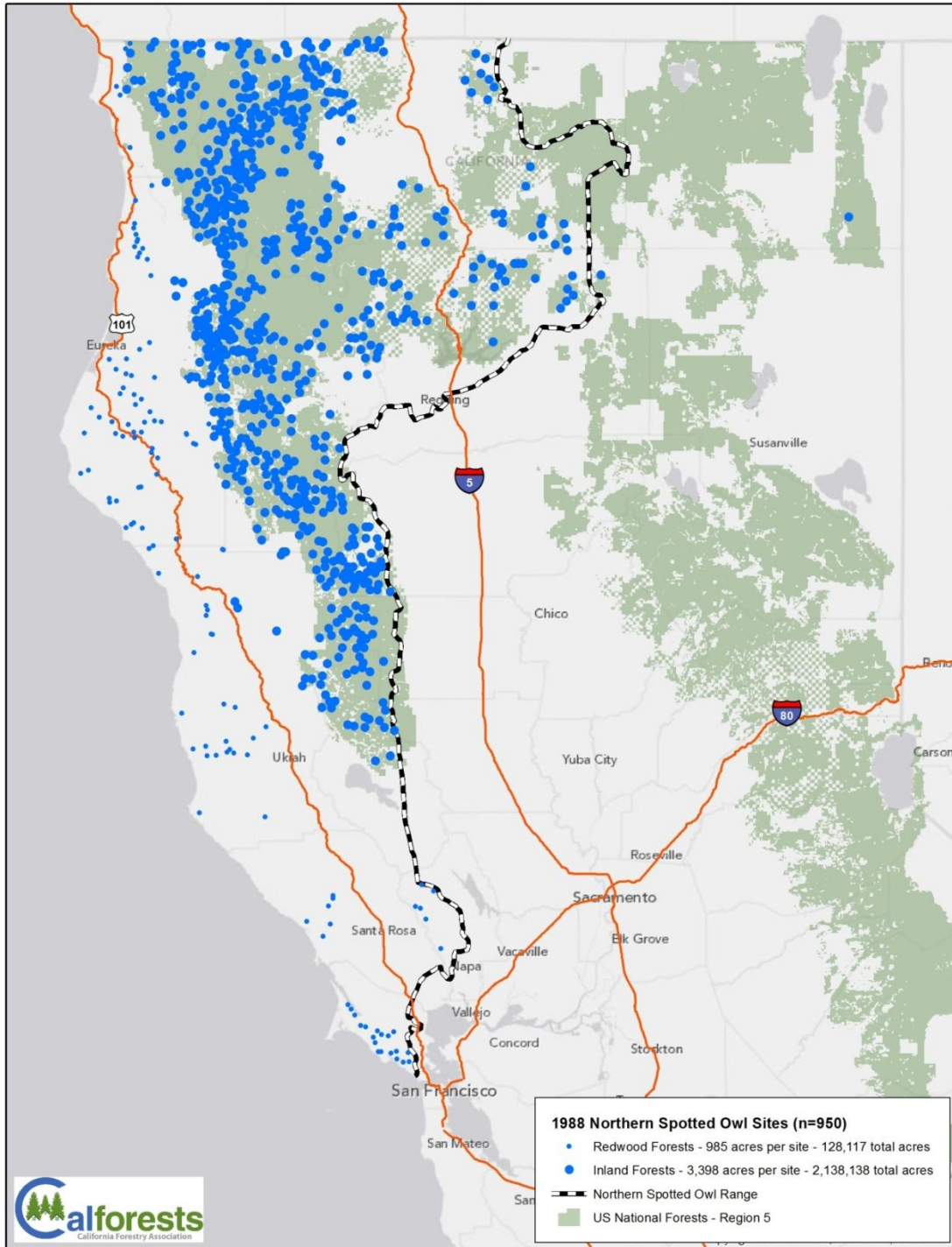


EXHIBIT A – pg4

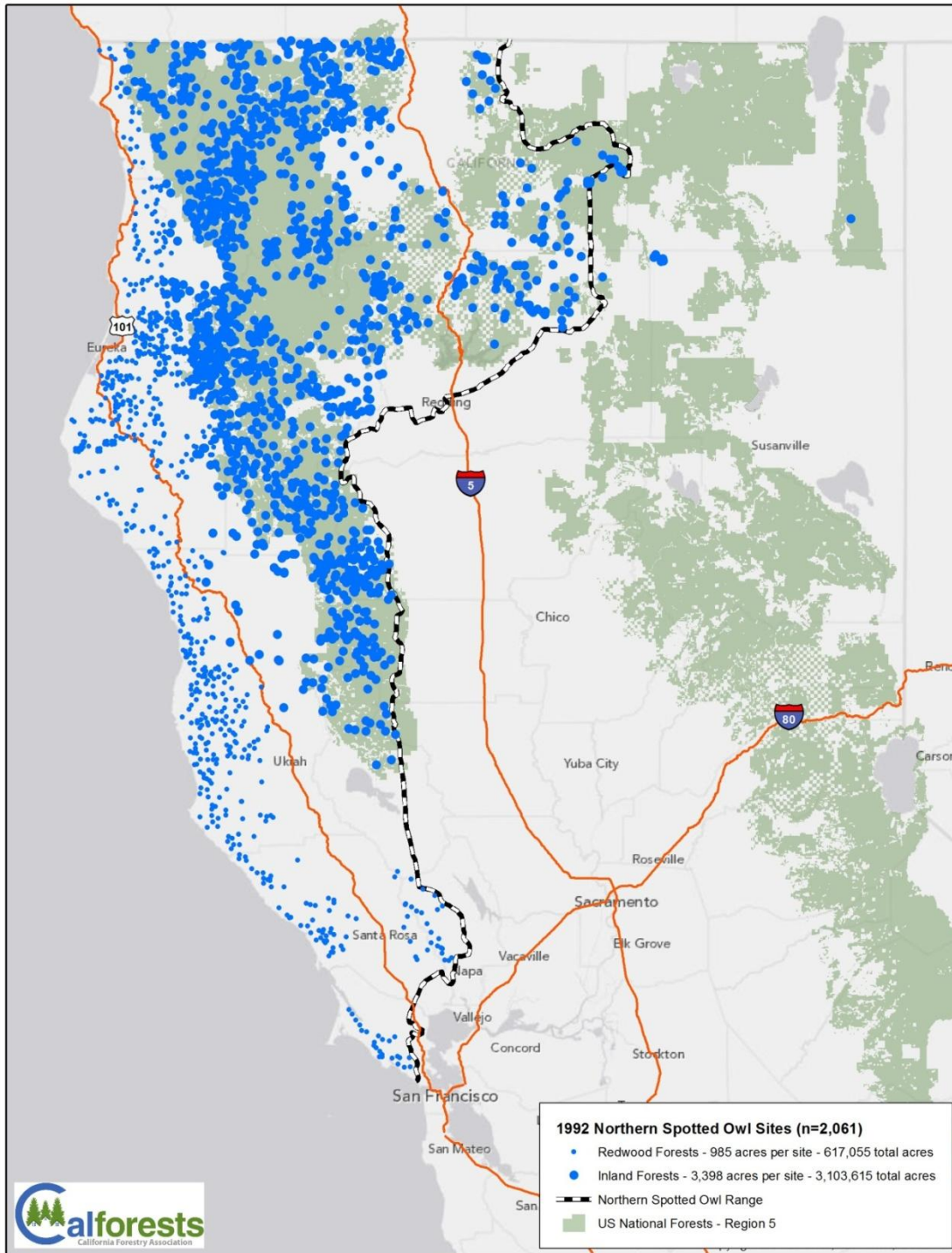


EXHIBIT A – pg5

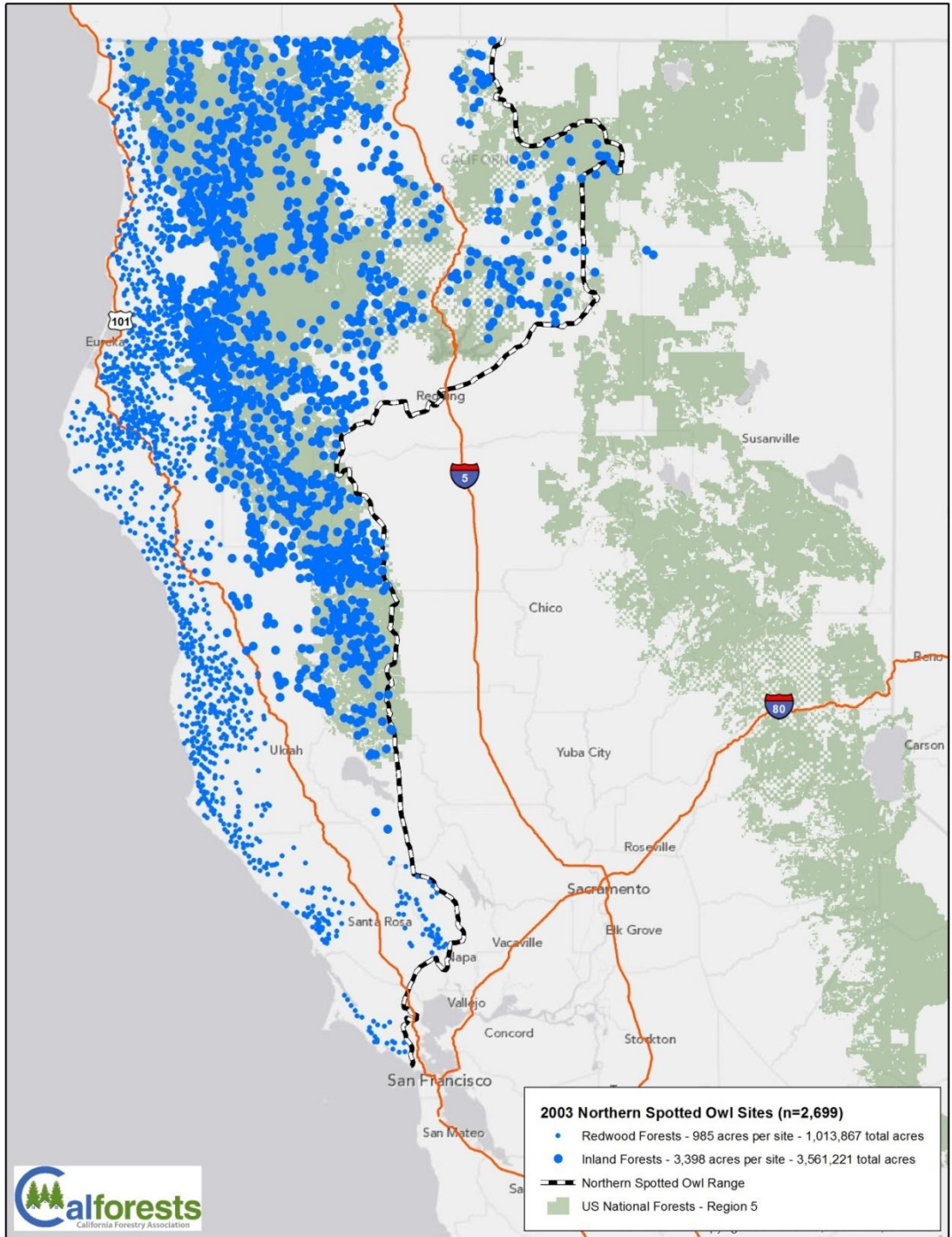


EXHIBIT A – pg6

