Final Environmental Impact Statement

Tehachapi Uplands
Multiple Species Habitat Conservation Plan

October 2012

FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE TEHACHAPI UPLANDS MULTIPLE SPECIES HABITAT CONSERVATION PLAN

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This Environmental Impact Statement (EIS) has been prepared by the U.S. Fish and Wildlife Service (Service) in compliance with the National Environmental Policy Act (NEPA) to evaluate the potential effects of the issuance of an incidental take permit (ITP) to Tejon Ranchcorp (TRC) for activities covered under the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP). TRC has requested an ITP from the Service for the incidental take of 27 species resulting from Covered Activities on 141,886 acres of land located in Kern County, California. Activities proposed to be covered by the ITP include most ongoing ranch operations, limited development-related activities in open space, and commercial and residential development activities. The Service has considered five alternatives in this EIS, including a No-Action Alternative and the Proposed TU MSHCP Alternative. This Final EIS provides responses to substantive comments received on the Supplemental Draft EIS, as well as changes, corrections, and clarifications to the Supplemental Draft EIS based on public and agency comments and internal review.

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Acronyms

BMPs	best management practices
CC&Rs	covenants, conditions, and restrictions
CCH	condor critical habitat
CDFG	California Department of Fish and Game
CEQ	Council on Environmental Quality
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CFR	Code of Federal Regulations
CO	carbon monoxide
Covered Activities	Activities proposed to be covered by the ITP
CRPR	California Rare Plant Rank
CWA	Clean Water Act
DDT	dichlorodiphenyltrichloroethane
EIR	environmental impact report
EIS	environmental impact statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FGC	California Fish and Game Code
FR	*Federal Register*
GHG	greenhouse gas
GIS	geographic information system
GPS	global positioning system
HCP	habitat conservation plan
I-5	Interstate 5
IPMP	integrated pest management plan
ITP	incidental take permit
LEED	Leadership in Energy and Environmental Design
MMRP	Mitigation, Monitoring, and Reporting Program
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOA	Notice of Availability
NRHP	National Register of Historic Places
ranch	Tejon Ranch
ROD	Record of Decision
RWQCB	Regional Water Quality Control Board
RWMP	Ranchwide Management Plan

Service	U.S. Fish and Wildlife Service
SHPO	State Historic Preservation Office
TCWD	Tejon Castac Water District
TMV	Tejon Mountain Village
TMV EIR	Tejon Mountain Village Environmental Impact Report
TMV Project	Tejon Mountain Village Project
TRC	Tejon Ranchcorp
TU MSHCP	Tehachapi Uplands Multiple Species Habitat Conservation Plan
U.S.C.	United States Code
USACE	U.S. Army Corps of Engineers
USGS	U.S. Geological Survey

Chapter 1
Introduction

Overview

Tejon Ranchcorp (TRC) has submitted an application to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act (ESA), as amended, for activities covered under the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP). An ITP must be obtained when private landowners, corporations, state or local governments, or other non-Federal landowners conduct activities on their land that might incidentally harm (or take) wildlife that is listed as endangered or threatened under the ESA. Take is generally defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting a protected animal species.

TRC has requested that an ITP from the Service authorize the incidental take of 27 species, including four federally listed species and 23 other species that may become federally listed in the future (Table 1-1). These 27 species are collectively referred to as the Covered Species.

The ITP would cover 141,886 acres of the 270,365-acre Tejon Ranch (ranch) located in Los Angeles and Kern Counties, California (Figure 1-1). The area covered by the ITP is referred to as the Covered Lands and all 141,886 acres are located in Kern County. Activities proposed to be covered by the ITP (Covered Activities) include most ongoing ranch operations (excluding hunting and mineral extraction), as well as limited development-related activities in open space areas, referred to as Plan-Wide Activities, and planned future community development in development areas, referred to as Commercial and Residential Development Activities. Commercial and Residential Development Activities would consist of land disturbance development activities on up to 5,533 acres in and adjacent to the Interstate 5 (I-5) corridor.

The proposed action being considered in this Environmental Impact Statement (EIS) is the Service's response to the application for an ITP submitted by TRC for proposed activities associated with the TU MSHCP. As required by the National Environmental Policy Act (NEPA), a Draft EIS was prepared and circulated for public review by the Service in 2009 (U.S. Fish and Wildlife Service 2009). In February 2012, the Service prepared and circulated a Supplemental Draft EIS to respond to public comments on the Draft EIS, to consider updated data provided by the U.S. Geological Survey (USGS) on occurrence of the California condor on the Covered Lands, and to acknowledge Kern County's approval of the Tejon Mountain Village Project (TMV Project), one of the Commercial and Residential Development Activities considered in the TU MSHCP, which resulted in the County amending the general plan designations that formed the basis of the underlying alternatives analysis in the Draft EIS. The Supplemental Draft EIS also evaluated revised alternatives to the proposed TU MSHCP, including revised descriptions of the No Action, Condor Only HCP, and Kern County General Plan Buildout Alternatives, as well as one new alternative, the Condor Critical Habitat Avoidance Multiple Species Habitat Conservation Plan Alternative (CCH Avoidance MSHCP Alternative).

Table 1-1. Covered Species—Tehachapi Uplands Multiple Species Habitat Conservation Plan

Common Name	Scientific Name	Federal Status	State Status	CRPR List[2]
Invertebrates				
Valley elderberry longhorn beetle	*Desmocerus californicus dimorphus*	FT	None	None
Amphibians				
Tehachapi slender salamander	*Batrachoseps stebbinsi*	None	ST	None
Yellow-blotched salamander	*Ensatina eschscholtzii croceater*	None	SSC	None
Western spadefoot	*Spea hammondii*	None	SSC	None
Reptiles				
Two-striped garter snake	*Thamnophis hammondii*	None	SSC	None
Coast horned lizard (frontale and blainvillii populations)	*Phrynosoma coronatum*	None	SSC	None
Birds				
Tricolored blackbird	*Agelaius tricolor*	None	SSC	None
Burrowing owl	*Athene cunicularia*	None	SSC	None
Golden eagle	*Aquila chrysaetos*	None	SSC, FP	None
Western yellow-billed cuckoo	*Coccyzus americanus occidentalis*	FC	SE	None
Yellow warbler	*Dendroica petechia brewsteri*	None	SSC	None
White-tailed kite	*Elanus leucurus*	None	FP	None
Little willow flycatcher	*Empidonax traillii brewsteri*	None	SE	None
Southwestern willow flycatcher	*Empidonax traillii extimus*	FE	SE	None
American peregrine falcon	*Falco peregrinus anatum*	None	FP	None
California condor	*Gymnogyps californianus*	FE	SE, FP	None
Bald eagle	*Haliaeetus leucocephalus*	None	SE, FP	None
Purple martin	*Progne subis*	None	SSC	None
Least Bell's vireo	*Vireo bellii pusillus*	FE	SE	None
Mammals				
Ringtail	*Bassariscus astutus*	None	FP	None
Tehachapi pocket mouse	*Perognathus alticolus inexpectatus*	None	SSC	None
Plants[1]				
Kusche's sandwort	*Eremogone macradenia* var. *arcuifolia (*formerly *Arenaria macradenia* var. *kuschei)*	None	None	None
Tehachapi buckwheat	*Eriogonum callistum*	None	None	1B.1
Fort Tejon woolly sunflower	*Eriophyllum lanatum* var. *hallii*	None	None	1B.1
Round-leaved filaree	*California macrophyllum*	None	None	1B.1
Tejon poppy	*Eschscholzia lemmonii* ssp. *kernensis*	None	None	1B.1
Striped adobe lily	*Fritillaria striata*	None	ST	1B.1

1 The ESA does not prohibit take of listed plant species; therefore, incidental take of listed plant species is not conferred by an ITP. TRC incorporated measures into the TU MSHCP intended to conserve listed plant species in the Covered Lands and requested the Service include these plant species on the ITP in recognition of the conservation benefits provided to these species under the plan, and to receive assurances for them under the Service's No Surprises assurances rule codified at 50 CFR 17.22(b)(5) and 17.32(b)(5). References to incidental take of covered plant species in this EIS refer to effects on or loss of the plant species resulting from Covered Activities.

2 In March 2010, CDFG changed the name of the California Native Plant Society (CNPS) List or CNPS Ranks to California Rare Plant Rank (CRPR). This was done to reduce confusion associated with the fact that CNPS and CDFG jointly manage the Rare Plant Status Review groups (300+ botanical experts from government, academia, nongovernment organizations, and the private sector) and to indicate that the rank assignments are the product of a collaborative effort and not solely a CNPS assignment.

Federal Status: FE=Listed as Endangered; FT=Listed as Threatened; FC=Federal Candidate

State Status: ST= State Listed as Threatened; SSC= Species of Special Concern; FP=State Fully Protected

CRPR List 1B.1=Rare, threatened, or endangered in California and elsewhere, seriously endangered in California.

Public Comments on the Supplemental Draft EIS

The Supplemental Draft EIS public comment period began on February 3, 2012, and ended on May 3, 2012 (77 Federal Register [FR] 5564). Fourteen comment letters were received during the 90-day public comment period, including one comment letter from a Federal agency, one comment letter from a state agency, two comment letters from local jurisdictions, three comment letters from non-governmental organizations, and seven comment letters from members of the public. Copies of all comment letters received during the public comment period are provided in Chapter 4, Individual Responses to Comments, of this Final EIS.

NEPA requires that a Federal lead agency consider all comments received during the review and comment period on an EIS, and provide a response to all comments that are considered substantive. For the purposes of this EIS, substantive comments include all comments that requested clarification or modification of an alternative; requested clarification, improvements or modifications to the existing analysis, methodology, or assumptions included in the EIS; questioned the accuracy of the information presented; presented new information relevant to the analysis; or provided a reasonable alternative (including mitigation) other than those presented in the EIS. Responses to all substantive comments received during the public comment and review period on the Supplemental Draft EIS are provided in Chapter 3, Master Responses, and Chapter 4, Individual Responses to Comments, of this EIS. All comments, including those that were determined not to be substantive, were reviewed and considered in preparing this document.

Public Review of the Final EIS

This Final EIS has been filed with the Environmental Protection Agency (EPA), and a Notice of Availability (NOA) has been published in the Federal Register announcing the availability of the Final EIS for public review. After a minimum 30-day waiting period, the Service will issue a Record of Decision (ROD) stating its decision. The ROD will also include a discussion of the alternatives considered, the environmentally preferable alternative, the factors considered regarding the alternatives, environmental commitments and mitigation measures to be applied to the action, and any monitoring and enforcement programs that will need to be established. The ROD will also summarize and address any significant comments on the Final EIS.

Organization of the Final EIS

The Final EIS comprises one volume, organized as follows. Revisions to the Supplemental Draft EIS based on public comments are presented in Chapter 2, Supplemental Draft EIS Errata, of this Final EIS.

- Chapter 1, Introduction,
- Chapter 2, Supplemental Draft EIS Errata,
- Chapter 3, Master Responses,
- Chapter 4, Individual Responses to Public Comment,
- Chapter 5, List of Preparers, and
- Chapter 6, References.

Chapter 2
Supplemental Draft EIS Errata

Changes, corrections, and clarifications have been made to the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) Supplemental Draft Environmental Impact Statement (EIS) based on public and agency comment and internal review. The changes were made to improve the clarity and intent of the information provided in the Supplemental Draft EIS, and to respond to comments on the conservation measures provided in the TU MSHCP. These changes, which are summarized in Table 2-1, are within the scope and analysis of the Supplemental Draft EIS and do not change the U.S. Fish and Wildlife Service's (Service's) consideration or conclusions regarding the environmental consequences of the Proposed TU MSHCP Alternative or the other alternatives.

Only substantive changes to the text or figures are described in Table 2-1; grammatical or punctuation corrections are not included in the summary. Changes reflected in **bold** in Table 2-1 represent additions to the text in the Supplemental Draft EIS; changes reflected as ~~strikethrough~~ represent deletions from the text. These edits generally reflect the following changes:

- Chapter 2, Proposed TU MSHCP and Alternatives, in the Supplemental Draft EIS was updated to reflect:
    - only eight (rather than nine) back-country cabins are located in the Covered Lands;
    - the final location of the two emergency communications towers that would be located within the Tejon Mountain Village (TMV) Planning Area Development Envelope (see revised Figure 4.1-2 at the end of this Chapter);
    - the 200-acre ground disturbance limitation associated with Plan-Wide Activities does not include existing acreage associated with developed and agricultural nonnative land covers;
    - an annual grazing level of 14,500 head of cattle is comparable to the historic average level of grazing on the ranch; and
    - the Implementing Agreement will provide TRC with the option to modify the Initial TMV Planning Area Open Space Lands to increase the acreage, subject to a conservation easement in coordination with California Department of Fish and Game (CDFG).

  In addition, typographical and minor mapping errors that affected the acreages of mitigation lands described in Chapter 2 were updated. References to the percentages of riparian/wetland modeled habitat that could be affected by Commercial and Residential Development Activities in riparian/wetland areas were removed for several species because they were misleading (i.e., the percentages were intended to specifically reflect the amount of riparian/wetland habitat that could be affected, rather than reflecting a percentage of all modeled habitat for a given species). Neither the actual conservation measures, nor the amount of modeled habitat that could be affected were modified.
- The reference to the CDFG Staff Report on Burrowing Owl Mitigation was updated to reflect the most recent iteration of that document.
- Several conservation measures were updated in response to comments, including California condor conservation measures designed to minimize the potential for habituation; conservation measures specific to completing preconstruction surveys for, and implementing buffers around, nest sites for least Bell's vireo, southwestern willow flycatcher, and western yellow-billed cuckoo; conservation measures for CDFG special-status species relocation procedures; and conservation measures regarding grazing and hunting programs at the ranch.

- Chapters 3.5 and 4.5, Cultural Resources, were revised to reflect updates to the National Historic Preservation Act (NHPA) consultation process.
- The explanation for excluding high speed rail from the list of reasonably foreseeable projects provided in the cumulative effects analysis discussion in Section 4.0.4.2 was revised with updated information.
- Minor errors in Chapter 6, List of Agencies and Organizations Consulted, and Appendix D, Habitat Suitability Criteria Methods, were updated.

In addition, several comments on the Draft EIS were inadvertently omitted from the Comments Addressed in Master Response tables located at the beginning of each master response provided in Volume II of the Supplemental Draft EIS. Table 2-2 itemizes which substantive comments were omitted from those tables, and indicates where and how those comments were considered in the Supplemental Draft EIS. Table 2-3 republishes the list of commenters that provided substantive comments on the Draft EIS to correct a misprint in the comment number sequence provided in Volume II of the document. For clarification, gaps in the numbering sequence of the Draft EIS comment letters are attributable to the receipt of form letters generally in support of or against the proposed action, for which a specific response from the Service was not provided because the comments were not considered substantive. As with the other errata provided in this chapter, these omissions and corrections do not change the Service's consideration or conclusions regarding the environmental consequences of the Proposed TU MSHCP Alternative or other alternatives.

The Supplemental Draft EIS is available for review in the project record at the Ventura Fish and Wildlife Office in Ventura, California. This Final EIS, including responses to public comments on the Supplemental Draft EIS, will be posted on the Ventura Fish and Wildlife Office's Web site during the administrative appeal period.

Table 2-1. Revisions to the Supplemental Draft EIS

Section and Page Number	Description of Change
CHAPTER 2 PROPOSED TU MSHCP AND ALTERNATIVES	
2.2.1.2, page 2-15	Livestock Grazing and Range Management Activities. Livestock grazing and range management activities include breeding; grazing; calving; livestock movement; and construction operation, and maintenance of watering facilities, feeding areas, fences, and corrals, consistent with the types and level of historic grazing and ranch management practices on the Covered Lands. **With respect to grazing levels, the Service considered historical past grazing practices to determine a baseline condition for this EIS. Under the current management scenario, the number of cattle on the ranch ranges from 8,000 to 17,000, with an average of 14,500. The historic average level of 14,500 head of cattle is used in this EIS to represent current grazing levels.**
2.2.1.2, page 2-17	Back-Country Cabins. **Eight** ~~Nine~~ back-country cabins are currently located on the Covered Lands, including two in the Condor Study Area. Use and maintenance of these cabins would continue under the No Action Alternative. Under the Ranchwide Agreement, the existing **eight** ~~nine~~ back-country cabins could be maintained, improved, repaired, replaced, or reconstructed in their existing locations, within their existing footprints and without substantial increase in height. Cabins may only be relocated to another location if such activity does not impair the conservation value of the affected land. No new cabins could be constructed unless one of the existing **eight** ~~nine~~ cabins is removed or demolished; in this case, the new cabins would be constructed in the same footprint as the old cabins or in a location that avoids impacts to Covered Species.
2.2.2.2, page 2-20	In general, up to 200 acres could be disturbed to facilitate Plan-Wide Activities associated with the Proposed TU MSHCP. **The 200 acres of permanent ground disturbance does not include impacts from Plan-Wide Activities to the existing 359 acres of developed or agricultural nonnative land covers within the Covered Lands (see Table 3.1-1 in Section 3.1, Biological Resources).**
2.2.2.2, page 2-20	Livestock Grazing and Range Management. Livestock grazing and range management activities would continue under the Proposed TU MSHCP Alternative in open space areas. Grazing levels similar to historic **average** levels (approximately 14,500 cattle) would continue on **the ranch (with yearly variation to account for rangeland conditions)**~~consistent with current practices~~.
2.2.2.2, page 2-22 / 2-23	Utilities to Serve Development: Utilities to serve development would be contained solely in the TMV Planning Area and restricted as follows: • Within the TMV Planning Area, relocation within 1,000 feet of the existing alignment of: (1) a **north/south 66kv** aboveground transmission line located within TMV Specific Plan Area 1 and 5; (2) a **66kv** aboveground transmission line in the vicinity of the Lebec Road-I-5 Interchange; (3) temporary relocation of an existing aboveground **12kv** transmission line that would run east from I-5, just north of Castac Lank, and which would be undergrounded **outside the I-5 corridor** within the TMV Planning Area after construction is complete; and (4) possible ~~temporary~~ relocation of smaller aboveground **12 kv** lines during construction **(See revised Figure 4.1-2). Additional relocated transmission or distribution lines are prohibited unless approved by the Service following review. All transmission and distribution lines built by TRC will be placed underground. The**

Section and Page Number	Description of Change
	locations of transmission lines proposed for relocation will be subject to Service review and approval, with the exception that the smaller lines identified in category (4) above may be relocated without Service review and approval, provided such smaller lines are relocated within 0.5 mile of I-5 and avoid prominent ridgelines. Any relocation of the 66kv transmission lines (categories (1) and (2) above) shall also avoid prominent ridgelines as identified in Figure 4.1-2. • In the TMV Planning Area Development Envelope, construction of two communication towers under ~~70~~ **80** feet, as required by Kern County.
2.2.2.2, page 2-23	Back-Country Cabins. Similar to the No Action Alternative, the **eight** ~~nine~~ back-country cabins in the Covered Lands could be maintained, improved, repaired, replaced, or reconstructed in their existing location, within their existing footprint and without substantial increase in height under the Proposed TU MSHCP Alternative. Expansion, construction, relocation, or removal of any of the **eight** ~~nine~~ cabins would only occur with the approval of the Service, if it is determined that such activity is consistent with the TU MSHCP, ESA, and any applicable recorded conservation easement restrictions, and provided that none of the **six** ~~seven~~ cabins currently located outside of the Condor Study Area are relocated to the Condor Study Area. No new cabins could be constructed unless one of the existing **eight** ~~nine~~ cabins within the Covered Lands is removed or demolished (the existing cabin within the TMV Specific Plan Development Envelope is considered removed).
2.2.2.2, page 2-25	A conservation easement is required to be recorded on…, which include…a ~~10,722-acre~~ **10,572-acre** portion of the TMV Planning Area Open Space prior to grading the TMV Project. **TRC, at its option, may increase the acreage of the Initial TMV Planning Area Open Space Lands to coordinate easement boundaries with CDFG.**
2.2.2.2, page 2-25	Conservation of the remaining ~~68,752 acres~~ **68,852 acres** of TU MSHCP Mitigation Lands….
Table 2-3, page 2-28	(1) Within the TMV Planning Area and Lebec/Existing Headquarters Area, design restrictions and review and approval processes ~~will be~~ **are** required for new vertical communication **towers and other similar** structures as set forth below: a. TRC may install two **emergency communication** towers (PA-2 and DF-1: one at approximately ~~68~~ **78** feet in height (including antennae), and the other at approximately ~~65~~ **70** feet in height (including antennae), at **the** two separate locations in the TMV Planning Area Development Envelope depicted **in revised Figure 4.1-2,** in order to provide suitable radio communication coverage. **The two proposed emergency communication towers will include design restrictions identified by the Service to minimize the potential for collisions. Such restrictions must be reviewed and approved by the Service, and include the following: (1) the towers will be self-supporting (i.e., no guide wires will be included as part of the design); (2) the tower facades will be primarily solid (e.g., through use of panels or other siding, wider or denser lattice work, or alternative tower solutions as approved by the Service) to increase their visibility to California condors, although microwave dishes and antennae will be exposed to provide appropriate system operations; and (3) the** towers will incorporate **Service-approved** condor anti-perching devices **on all potential landing surfaces.** ~~For the PA-2 tower, TRC will consult with the Service regarding the feasibility of locating the tower downslope (closer to trees), and agrees to do so to the extent feasible as determine by the County.~~

Section and Page Number	Description of Change
Table 2-3, page 2-28 (cont.)	(1) **b.** The placement **and maintenance** of any **other** future communication **or utility** tower **or similar structure within the TMV Planning Area and Lebec/Existing Headquarters Area, other than the two communication towers identified in (1)(a) and the smaller cell phone towers and similar structures identified in (1)(c), is generally prohibited provided, however, that TRC may request, and the Service shall review, and may approve the construction, design and location of any new communication or utility tower or similar structure**~~to meet public safety requirements on the Covered Lands is subject to Service review and approval~~. **The future placement of any new communication or utility tower or similar structure within the TMV Planning Area and Lebec/Existing Headquarters Area will trigger the need for an amendment to the TU MSHCP and ITP and further NEPA review if the placement or operation of such tower or structure would exceed the height restrictions or other conditions set for in (1)(c) below, or result in new, potentially significant effects on the environment, including but not limited to impacts on or take of ESA-listed species.** Such factors as tower **or structure** height and construction design, historic and existing condor flight patterns over the ranch, and proximity to existing towers and structures ~~shall~~**would** be considered as part of ~~this~~ **any future Service** review. **In addition, the future approval of a new tower or structure would require the tower or structure** ~~The towers shall~~ be self-supporting (i.e., no guide wires shall be included as part of the design) and **be kept clean of debris, such as cable, trash, and construction materials. Any tower or structure that provided** ~~towers that provide~~ the potential for perching ~~shall~~**would** be ~~designed~~ **required** to include **Service-approved** anti-perching devices suitable to deter condors from perching on the tower **or structure**.~~The design and location of the anti-perching devices are also subject to review and approval by the Service.~~
Table 2-3, page 2-28 (cont.)	(1) ~~b.~~ **c**. Smaller cell phone antennas, radio antennas, and other similar vertical communication structures are a permitted use within the development footprint as long as such structures/antennas adhere to the following criteria: (a) the structures shall be no higher than 10 feet above houses or buildings (taller structures shall require review and approval by the Service), assuming the height limits for houses or buildings within the TMV Specific Plan Area vary between 35 and 45 feet; (b) the structures shall be installed within the TMV Planning Area Development Envelope and/or Lebec/Existing Headquarters Area; (c) if the structure contains surfaces suitable for perching by condors, the structures shall contain **Service-approved** anti-perching devices on such surfaces to deter condors from perching; **and** (d) ~~the structures shall be visible so as to be clearly differentiated from nearby vegetation, other structures, and topography; and (e)~~ the structures shall be located closer to trees where practicable and consistent with the effective operations of communication systems. **TRC shall confer with the Service regarding the placement of the antenna and structure during preparation of tentative tract maps and corresponding grading plans.** ~~The design and location of the anti-perching devices are also subject to review and approval by the Service.~~
Table 2-3, page 2-28 (cont.)	(1) ~~c.~~ **d**. All ~~communication~~ tower **and similar structure** sites shall be kept clean of debris, such as cable, trash, and construction materials.

Section and Page Number	Description of Change
Table 2-3, page 2-29	(2) Within **the** Covered Lands, **outside of the TMV Planning Area and Lebec/Existing Headquarters Area,** construction or maintenance by TRC, or any third party under TRC's control of any new vertical communication or ~~other~~ utility **tower or similar** structure outside of existing antenna farms, excluding flexible or small antennas (e.g., whip antennas) under 20 feet in height, is **generally** prohibited; provided, however, that TRC may request and the Service shall review and may approve the **construction,** design, and location of any **new tower or similar structure** ~~such vertical communication structures~~**. The future placement of any new communication or utility structure outside of the TMV Planning Area and Lebec/Existing Headquarters Area on the Covered Lands will trigger the need for an amendment to the TU MSHCP and ITP and further NEPA review if the placement of the tower or structure would result in new, potentially significant effects on the environment, including but not limited to impacts on or take of ESA-listed species.** Such factors as tower **or structure** height and construction design, historic and existing condor flight patterns over the ranch, and proximity to existing towers and structures ~~shall~~**would** be considered as part of ~~this~~ **any future Service** review **of a proposed communication or utility tower or structure. In addition, the future approval of a new communication or utility tower or structure would require that the tower or structure** ~~The towers shall~~ be self-supporting (i.e., no guide wires shall be included as part of the design) and shall be kept clean of debris, such as cable, trash, and construction materials. **Any tower or structure** ~~Towers~~ that provide**d** the potential for perching ~~shall~~**would** be ~~designed~~ **required** to include **Service-approved** anti-perching devices suitable to deter condors from perching on tower or **structure**. ~~The design and location of the anti-perching devices is also subject to Service review and approval.~~
Table 2-3, page 2-29	(3) Within Covered Lands, no wind farms will be constructed (and TRC agrees to expand the ban to all ranch lands) during the term of the ITP. Additionally, the prohibition on wind farms shall be maintained on the TU MSHCP Mitigation Lands in perpetuity. Notwithstanding the foregoing, individual wind turbine devices, which have the primary purpose to serve electrical generation needs on site, may be constructed following review and approval by the Service, ~~if the Service determines~~ **based on the Service's determination** that the device **and any associated structures and electrical lines are** ~~is~~ of a design and in a location that would not pose a threat to condors (e.g., vertical blade designs within screened cylinders may be appropriate, but open blade designs likely to cause condor fatality in the event of a collision ~~may~~ **are** not ~~be~~ appropriate). TRC also commits in perpetuity not to amend or terminate its negative easement right prohibiting wind farms on Gorman Ranch, outside the Covered Lands.
Table 2-3, page 2-29	(4) Within the Covered Lands, no new aboveground high voltage tower ~~and~~ **or** transmission line, or similar aboveground electrical transmission structure ~~and~~ **or** line, will be built by TRC. The following existing towers and lines may be relocated within 1,000 feet of existing lines as long as the potential for injury or harm to condors will be minimized with the installation of anti-perching devices: (1) a **north south 66 kv aboveground** transmission line located within TMV Specific Plan Area 1 and 5; (2) a **66kv aboveground** transmission line in the vicinity of the Lebec Road-I-5 Interchange; (3) **temporary relocation of** an existing aboveground **12 kv** transmission line that runs east from I-5, just north of Castac Lake, which will be undergrounded **outside of the I-5 corridor**~~will be temporarily relocated during construction, and proposed for undergrounding~~ within the TMV Planning Area **after construction is complete**; and (4) **possible relocation of** smaller **aboveground** lines **during construction (see Figure 4.1-2).** ~~may be temporarily relocated during construction.~~ Additional relocated transmission or distribution lines are

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	prohibited unless approved by the Service following review. All new transmission and distribution lines built by TRC will be placed underground. **The locations of transmission lines proposed for relocation are subject to Service review and approval, with the exception that the smaller lines identified in category (4) above may be relocated without Service review and approval, provided such smaller lines are relocated within 0.5 mile of I-5 and avoid prominent ridgelines. Any relocation of the 66kv transmission lines (categories (1) and (2) above) shall also avoid prominent ridgelines as identified in Figure 4.1-2.**
Table 2-3, page 2-30	(5) Within the Covered Lands, to the extent allowed by law and applicable contracts, TRC will require new agreements with entities that have the authority to place any new aboveground power, communication towers, or other utility lines on the ranch, to place any such facilities only with the consent of TRC. Additionally, TRC will seek to enter into consensual agreements with those entities that may otherwise exercise such authority**, both currently and in the future,** without the consent of TRC. Such agreements will provide for measures to minimize the potential for injury or harm to condors, including requiring such structures to be fitted with anti-perching devices and located within existing utility corridors to the extent practicable. TRC may also encourage such entities, including entities installing underground utilities, to seek certificates of inclusion or become "lessees" under the ITP. These activities ~~are~~ **would** not **be** "Covered Activities" unless they are located on Covered Lands and are conducted by TRC or by entities **under the direct control of TRC for purposes of implementing the TU MSHCP and ITP** that have become third-party lessees as defined in the Implementing Agreement **or**~~,~~ certificate of inclusion holders, or **that** operate under required or consensual agreements written or modified to give TRC control, including authority to require compliance with all applicable TU MSHCP and ITP requirements. Failure to obtain an agreement with an entity over which TRC does not have control ~~is~~ **will** not **be** considered a violation of the TU MSHCP or the ITP.
Table 2-3, page 2-32	(15)**(a)** To minimize the potential for condor habituation within the TMV Specific Plan Area… **(b) If it is observed or otherwise determined that condors are perching on or attracted to structures located on private property within the TMV Planning Area or other Covered Lands, the Service, or other party authorized by the Service (such as the Tejon Staff Biologist), will be allowed, after coordination with the property owner, to access the property to implement avoidance (hazing) measures, including, for example, installation of passive rooftop sprinkler systems on structures to deter condors from the property, and other hazing measures deemed appropriate by the Service. This measure will be included in CC&Rs for commercial and residential development.**
Table 2-3, page 2-33	(16)(d) – Continued grazing at **approximately** the ~~current~~ **historic average** level of 14,500 head of cattle **(with yearly variation to account for rangeland conditions)**, will continue on the ranch **through the permit term** to provide a potential food source for the condor
Table 2-3, page 2-33	16(e) – Continued hunting within open space area, both within and outside the Covered Lands, will continue on the ranch **through the permit term** to provide a potential food source for the condor.

Section and Page Number	Description of Change
Table 2-3, page 2-33	(17)(a) – A conservation easement is required to be recorded on…, which include…a ~~10,722-acre~~ **10,572-acre** portion of the TMV Planning Area Open Space prior to grading the TMV Project.
Table 2-3, page 2-33	(17)(b) – Dedicated conservation easements are required to be recorded over the ~~56,523 acres~~ **56,423 acres** of Established Open Space following the schedule set forth in the Ranchwide Agreement….
Table 2-3, page 2-37	(22)(5)(b) Assist the Service with assessment and implementation methods to discourage California condors' use and visitation of human communities and dwellings on the Covered Lands. The Service-approved Tejon Ranch Staff Biologist will contact the Service immediately if habituation behavior by California condors is witnessed or reported **and will assist the Service, as necessary and as requested by the Service, by providing additional monitoring of condors determined to be exhibiting behaviors with the potential to result in habituation, and/or of areas within the Covered Lands determined to be attractive to condors**. The discouragement measures, including "hazing," will be…
Table 2-4, page 2-39 *(Tehachapi slender salamander)*	3. Construction in modeled habitat in riparian/wetland areas will be avoided to the extent practicable (generally anticipated to be limited to road crossings and culverts~~ and not anticipated to exceed 3% of modeled habitat~~).
Table 2-4, page 2-41 *(Western spadefoot)*	21. Construction in modeled habitat in riparian/wetland areas will be avoided to the extent practicable (generally anticipated to be limited to road crossings and culverts~~ and not anticipated to exceed 3% of modeled habitat~~).
Table 2-4, page 2-41 *(Western spadefoot)*	22. Surveys prior to grading will be conducted in suitable habitat. The Service-approved Tejon Ranch Staff Biologist will make reasonable efforts to capture and relocate any observed individuals to suitable habitat that is the closest distance to the Disturbance Area from where the individuals were removed. If western spadefoots are detected (including egg masses, larvae), activities will be avoided until larvae have metamorphosed. A 300-foot setback will be established from occupied areas if work must continue in or immediately adjacent to sites with egg masses and/or larvae. The Service-approved Tejon Ranch Staff Biologist may reduce the 300-foot setback at his or her discretion depending on the suitability of site conditions. **A western spadefoot toad relocation plan, which will include, at a minimum, the timing and methods for capturing and releasing adults, will be prepared prior to the initiation of grading activities. The relocation plan will be submitted to CDFG for review.**
Table 2-4, page 2-41 *(Yellow-blotched salamander)*	29. Surveys prior to grading will be conducted in suitable habitat. The Service-approved Tejon Ranch Staff Biologist will make reasonable efforts to capture and relocate any observed individuals to suitable habitat that is the closest distance to the Disturbance Area from where the individuals were removed. **A yellow-blotched salamander relocation plan, which will include, at a minimum, the timing and methods for capturing and releasing adults, will be prepared prior to the initiation of grading activities. The relocation plan will be submitted to CDFG for review.**
Table 2-4, page 2-47 *(Burrowing owl)*	59. If non-nesting burrowing owls are observed on site, construction work will proceed after owls are excavated from the site using a CDFG-approved burrow closure procedure and after alternative burrow sites have been provided in accordance with the CDFG Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game **2012** ~~1995~~). The results of the surveys and relocation efforts will be submitted to CDFG.

Section and Page Number	Description of Change
Table 2-4, page 2-50 *(Least Bell's vireo)*	74. Construction in modeled breeding/foraging habitat in riparian/wetland areas will be avoided to the extent practicable (generally anticipated to be limited to road crossings and culverts~~ and not anticipated to exceed 5% of modeled breeding/foraging habitat~~).
Table 2-4, page 2-50 *(Least Bell's vireo)*	75. **Nesting bird** ~~S~~surveys **for breeding least Bell's vireo will be conducted, pursuant to accepted protocol for this species**, prior to grading ~~for breeding least Bell's vireo will be conducted~~ for construction activities **that would occur** in or immediately adjacent to suitable breeding/foraging habitat **and that are** scheduled for the breeding season (~~April through August~~ **May 15 through September 15**) **of this species**. **The results of the surveys will be submitted to CDFG.**
Table 2-4, page 2-51 *(Least Bell's vireo)*	76. If breeding least Bell's vireos are observed on site, construction activities will be avoided during the breeding season, or, if construction must take place during the breeding season, a 500-foot **no disturbance buffer will be established around active nests. CDFG will be consulted regarding any variance to this buffer distance.** ~~setback will be provided or noise-attenuating measure(s) will be implemented,~~ **The buffer will be maintained** until young have fledged and are no longer dependent on the nest or nest territory. ~~The Service-approved Tejon Ranch Staff Biologist may reduce the 500-foot setback at his or her discretion depending on the suitability of site conditions; however, the setback may not be less than 300 feet.~~
Table 2-4, page 2-51 (*Least Bell's vireo*)	Plan-Wide Activities (Construction) - Compliance with Other Covered Species Measures 4, ~~14,~~ 15, **74,** 75, 76~~, 77~~. **The installation of infrastructure (and trails) or other permanent ground-disturbing activity in open space areas will include efforts to minimize the footprint and use BMPs for the design and installation of any such infrastructure, including nesting bird surveys prior to grading, contractor education, staking, and temporary construction fencing. Nesting bird surveys for breeding least Bell's vireo will be conducted, pursuant to accepted protocols for this species, prior to grading for construction activities that would occur in or immediately adjacent to suitable breeding/foraging habitat and that are scheduled to occur during the breeding season (May 15 through September 15) of this species. The results of the surveys will be submitted to CDFG. If breeding least Bell's vireos are observed on site, construction activities will be avoided during the breeding season, or, if construction must take place during the breeding season, a 500-foot no-disturbance buffer will be established around active nests. CDFG will be consulted regarding any variance to this buffer distance. The buffer will be maintained until young have fledged and are no longer dependent on the nest or nest territory.**
Table 2-4, page 2-51 *(Little willow flycatcher)*	79. Construction in modeled foraging/winter stopover habitat in riparian/wetland areas will be avoided to the extent practicable (generally anticipated to be limited to road crossings and culverts~~ and not anticipated to exceed 3% of modeled foraging/winter stopover habitat~~).
Table 2-4, page 2-52 (*Little willow flycatcher*)	Plan-Wide Activities (Construction) - Compliance with Other Covered Species Measures 4, 14, 15, **79**~~80~~.
Table 2-4, page 2-53 (*Purple martin*)	Plan-Wide Activities (Construction) - Compliance with Other Covered Species Measures 4, 14, 15, **82,** 83, 84~~85~~.

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Table 2-4, page 2-53 *(Southwestern willow flycatcher)*	88. Construction in modeled breeding/foraging habitat in riparian/wetland areas will be avoided to the extent practicable (generally anticipated to be limited to road crossings and culverts~~ and not anticipated to exceed 3% of modeled breeding/foraging habitat~~).
Table 2-4, page 2-53 *(Southwestern willow flycatcher)*	89. **Nesting bird** ~~S~~surveys for breeding southwestern willow flycatcher will be conducted, **pursuant to accepted protocols for this species, prior to grading** for construction activities **that would occur** in or immediately adjacent to suitable breeding/foraging habitat **and that are scheduled to occur during the breeding season (May 1 through September 15) for this species** ~~scheduled for the breeding season (May 1through August 15)~~. **The results of the surveys will be submitted to CDFG.**
Table 2-4, page 2-53 *(Southwestern willow flycatcher)*	90. If breeding southwestern willow flycatchers are observed on site, construction activities will be avoided during the breeding season, or, if construction must take place during the breeding season, a 500-foot **no- disturbance buffer will be established around active nests.** ~~setback will be provided or noise-attenuating measure(s) will be implemented,~~ **TRC will consult with CDFG regarding any variance to this buffer distance. The buffer will be maintained** until young have fledged and are no longer dependent on the nest or nest territory. ~~The Service-approved Tejon Ranch Staff Biologist may reduce the 500-foot setback at his or her discretion depending on the suitability of site conditions; however, the setback may not be less than 300 feet.~~
Table 2-4, page 2-54 *(Southwestern willow flycatcher)*	Plan-Wide Activities (Construction) - Compliance with Other Covered Species Measures 4, ~~14,~~ 15, 89, 90, and 91. **The installation of infrastructure (and trails) or other permanent ground-disturbing activity in open space areas will include efforts to minimize the footprint and use BMPs for the design and installation of any such infrastructure, including nesting bird surveys prior to grading, contractor education, staking, and temporary construction fencing. Nesting bird surveys for breeding southwestern willow flycatchers will be conducted, pursuant to accepted protocols for this species, prior to grading for construction activities that would occur in or immediately adjacent to suitable breeding/foraging habitat and that are scheduled to occur during the breeding season (May 1 through September 15) of this species. The results of the surveys will be submitted to CDFG.** **If breeding southwestern willow flycatchers are observed on site, construction activities will be avoided during the breeding season, or, if construction must take place during the breeding season, a 500-foot no-disturbance buffer will be established around active nests. CDFG will be consulted regarding any variance to this buffer distance. The buffer will be maintained until young have fledged and are no longer dependent on the nest or nest territory.**
Table 2-4, page 2-55 *(Western yellow-billed cuckoo)*	100. Construction in modeled breeding/foraging habitat in riparian/wetland areas will be avoided to the extent practicable (generally anticipated to be limited to road crossings and culverts~~ and not anticipated to exceed 3% of modeled breeding/foraging habitat~~).
Table 2-4, page 2-55 *(Western yellow-billed cuckoo)*	101. **Focused** ~~S~~surveys ~~prior to grading~~ for breeding western yellow-billed cuckoo will be conducted **prior to grading** for construction activities **that would occur** in or immediately adjacent to suitable breeding/foraging habitat **and that are** scheduled **to occur during the breeding season (May 15 through September 15) for this species.** ~~for the breeding season~~. **The results of the focused surveys will be submitted to CDFG.**

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Table 2-4, page 2-56 *(Western yellow-billed cuckoo)*	102. If breeding western yellow-billed cuckoos are observed on site, construction activities will be avoided during the breeding season, or, if construction must take place during the breeding season, a 500-foot **no-disturbance buffer will be established around active nests. CDFG will be consulted regarding any variance to this buffer distance.** ~~setback will be provided or noise-attenuating measure(s) will be implemented,~~ **The buffer will be maintained** until young have fledged and are no longer depending on the nest or nest territory. ~~The Service-approved Tejon Ranch Staff Biologist may reduce the 500-foot setback at his or her discretion depending on the suitability of site conditions; however, the setback may not be less than 300 feet.~~
Table 2-4, page 2-56 *(Western yellow-billed cuckoo)*	Plan-Wide Activities (Construction) - Compliance with Other Covered Species Measures 4, ~~14,~~ 15, 101 and 102. **The installation of infrastructure (and trails) or other permanent ground-disturbing activity within open space areas will include efforts to minimize the footprint and use BMPs for the design and installation of any such infrastructure, including nesting bird surveys prior to grading, contractor education, staking, and temporary construction fencing. Nesting bird surveys for breeding western yellow-billed cuckoo will be conducted, pursuant to accepted protocols for this species, prior to grading for construction activities that would occur in or immediately adjacent to suitable breeding/foraging habitat and that are scheduled to occur during the breeding season (May 15 through September 15) for this species. The results of the focused surveys will be submitted to CDFG.** **If breeding western yellow-billed cuckoos are observed on site, construction activities will be avoided during the breeding season, or, if construction must take place during the breeding season, a 500-foot no-disturbance buffer will be established around active nests. CDFG will be consulted regarding any variance to this buffer distance. The buffer will be maintained until young have fledged and are no longer dependent on the nest or nest territory.**
Table 2-4, page 2-55 *(White-tailed kite)*	106. Although white-tailed kites are not expected to breed on site, construction in potential breeding habitat in riparian/wetland habitat areas will be avoided to the extent practicable (generally anticipated to be limited to road crossings and culverts ~~and not anticipated to exceed 3% of riparian/wetland habitat~~).
Table 2-4, page 2-58 *(Yellow warbler)*	114. Construction in modeled breeding/foraging habitat in riparian/wetland areas will be avoided to the extent practicable (generally anticipated to be limited to road crossings and culverts ~~and not anticipated to exceed 5% of modeled breeding/foraging habitat~~).
Table 2-4, page 2-59 *(Valley elderberry longhorn beetle)*	119. Construction in modeled habitat in riparian/wetland areas will be avoided to the extent practicable (generally anticipated to be limited to road crossings and culverts ~~and not anticipated to exceed 2% of modeled habitat~~).
Table 2-4, page 2-61 (*Tehachapi pocket mouse*)	129. **1,874 acres (97%)** ~~1,071 acres (95%)~~ of modeled habitat for Tehachapi pocket mouse will be conserved within Established Open Space, TMV Planning Area Open Space, and Existing Conservation Easement Areas.
Table 2-4, page 2-62 (*Tehachapi pocket mouse*)	132. Depending on the existence of essential habitat elements, the Service-approved Tejon Ranch Staff Biologist will conduct a live-trapping program for Tehachapi pocket mouse in suitable habitat in the project disturbance zone and within 100 feet of the disturbance zone no earlier than 7 days prior to commencement of activities resulting in permanent ground disturbance. To minimize direct effects on individuals to the extent feasible, prior to grading, a

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	trapping program will be conducted for 5 nights in suitable habitat to trap and salvage as many individuals as possible from the disturbance zone and release them in suitable habitat away from the project disturbance zone (approximately 60% of the population within the disturbance zone is estimated to be salvaged based on a 5-night trapping program). **A Tehachapi pocket mouse relocation plan, which will include, at a minimum, the timing and methods for capturing and releasing adults, will be prepared prior to the initiation of grading activities. The relocation plan will be submitted to CDFG for review.**
Table 2-4, page 2-63 (*Coast horned lizard*)	141. Surveys prior to grading will be conducted in suitable habitat. The Service-approved Tejon Ranch Staff Biologist will make reasonable efforts to capture and relocate any observed individuals to suitable habitat that is the closest distance to the Disturbance Area from where the individuals were removed. **A coast horned lizard relocation plan, which will include, at a minimum, the timing and methods for capturing and releasing adults, will be prepared prior to the initiation of grading activities. The relocation plan will be submitted to CDFG for review.**
Table 2-4, page 2-64 (*Two-striped garter snake*)	147. The construction project manager will be provided two alternative options to avoid and minimize effects on two-striped garter snake individuals: **(a)** Prior to grading, the Service-approved Tejon Ranch Staff Biologist will conduct daily surveys by walking through suitable habitat to be disturbed that day to clear the area of garter snakes. The Service-approved Tejon Ranch Staff Biologist will make reasonable efforts to capture and relocate any observed individuals to suitable habitat that is the closest distance to the Disturbance Area from where the individuals were removed. **A two-striped garter snake relocation plan, which will include, at a minimum, the timing and methods for capturing and releasing adults, will be prepared prior to the initiation of grading activities. The relocation plan will be submitted to CDFG for review.** **(b)** The project construction manager will erect exclusion fencing…
2.2.2.5, page 2-73	If, as a result of ongoing monitoring by a Service-approved biologist and the Service, it is determined that California condors are regularly ingesting microtrash on the Covered Lands, engaging in behaviors in the Covered Lands where ingestion of microtrash is likely to occur, or colliding with or landing on artificial structures on the Covered Lands, an evaluation will be conducted by TRC and the Service to assess options for reducing the instances of microtrash ingestion, collisions, and habituation. Remedies can include increased education and awareness of Tejon residents, guests, staff, and workers regarding the dangers of microtrash; increased monitoring of events and activities that are potential sources of microtrash; more frequent collection of microtrash; ~~and~~ revision of guidelines regarding location of antennas and towers; **redesign of problem towers; and, if redesign is not effective, relocation of problem towers**~~, as set forth in the Implementing Agreement~~.
CHAPTER 3 AFFECTED ENVIRONMENT	
Table 3.1-1, page 3.1-6 (*Nonnative Land Covers*)	Total Nonnative Land Covers ~~1,027 acres~~**359 acres (less than 1%)**

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3.1.7.3, page 3.1-43 *(Tri-colored blackbird)*	Tri-colored blackbirds were also observed in 2005 in the northwest corner of Castac Lake and may have been nesting on site; the number of birds observed was not reported (Jones & Stokes 2006). **In 2008, a CDFG staff member also reported observing approximately 100 individual tri-colored blackbirds around Castac Lake (Connolly pers. comm.).**
3.5.2, page 3.5-5	**The Service is also required to consult with recognized Native American tribes under Section 106 of NHPA (16 USC 470(d)(6)) and to engage in a good faith effort to obtain information from individuals or organizations likely to have knowledge of possible historic properties that could be affected by the undertaking (36 CFR 800.4(a)). This consultation process was commenced in 2007 with a request to the NAHC for records in their Sacred Lands File pertaining to the site and for contacts for tribes and groups located near the site. Initial consultation to identify sites was requested in 2007 in letters to the representatives of record of the Chumash, Fernandeño, Tataviam, Kitanemuk, San Miguel Band of Mission Indians, Tubatulabal, Kawaiisu, Koso, and Yokuts.** **During the planning process associated with the TMV Project, the Kern Valley Tribal Council, Tejon Indian Tribe, Kitanemuk and Yowlumne Tejon Indians, Chumash Council of Bakersfield, Santa Rosa Rancheria, Tule River Indian Tribe, and the Tubatulabals of Kern County, were continually provided information on the progress of the TMV Project and received copies of each of the cultural resource surveys through TRC and Kern County. Additionally, Tejon Indian Tribe and Chumash representatives were involved with site archeological surveys conducted between 2005 and 2010, which formed the basis for the Service's EIS analysis. In January 2012, the Tejon Indian Tribe achieved Federal recognition, wherein the Service promptly initiated a government-to-government consultation with the tribe to provide official notice of the TU MSHCP and solicit information regarding cultural resources in the area. The Tejon Indian Tribe responded by letter dated January 29, 2012, stating the tribe had reviewed the available information and determined that it had no knowledge of any cultural resources that may be affected by the Covered Activities.** **In July 2012, the Service sent updated letters to 16 tribes to inform them of revisions and updates to the proposed action and environmental review process and to ensure that interested parties who may have special knowledge of the area had ample opportunities to review the data compiled to date and share their knowledge. This consultation was intended, in part, to ensure that any traditional cultural properties (TCPs) that could be affected were identified. The Service received no further indication from the tribes of any TCPs within the Covered Lands.**~~An additional request to the NAHC was submitted by ASM Affiliates in the context of the survey of Lebec/Existing Headquarters on December 15, 2010, for the Lebec/Existing Headquarters Area. On December 16, 2010, the NAHC responded, "Native American cultural resources were identified within 0.50 mile of the area of potential effect." The single resource listed by the NAHC had already been identified by the Phase I and Phase II studies and is preserved in Open Space.~~

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CHAPTER 4 ENVIRONMENTAL CONSEQUENCES	
4.0.4.2, page 4.0-8	The Service notes that the California High-Speed Rail Authority **has initiated planning for a high-speed rail project and has appropriated some funding to begin upgrading the existing segments around Los Angeles, Sacramento, the San Francisco Bay Area, and Madera to Bakersfield. While alignments for the Bakersfield-Palmdale segment in the vicinity of the Covered Lands are generally anticipated to follow State Route 58 (SR 58), north of the Covered Lands, environmental review has not been initiated for this segment, and the availability of funding for construction of this segment is not known, making the analysis of the high-speed rail project speculative at this time. Therefore, this potential future project is** ~~considered several alignments in its Statewide Program EIR/EIS that would have crossed Tejon Ranch. However, because these potential alignments were not carried forward for further analysis in the EIR/EIS (California High Speed Rail Authority 2005, California High-Speed Rail Authority 2010), they are~~ not considered in this cumulative effects analysis.
4.1.3.1, page 4.1-18 (*Plan-wide Activities*)	Grazing would be expected to continue on about 126,034 acres of the study area (i.e., open space), and grazing levels would be similar to historic **average** levels (approximately 14,500 cattle), **with yearly variation to account for rangeland conditions**.
4.1.3.2, page 4.1-22	Ranching would continue on the Covered Lands at **levels comparable to the historic average** ~~current grazing levels up to total~~ of 14,500 head of cattle, ~~consistent with past practices,~~ **with yearly variation to account for rangeland conditions, through the term of the ITP to provide a potential food source for condors**.
4.1.3.2, page 4.1-22	Although not a Covered Activity under the Proposed TU MSHCP Alternative, TRC would continue its established commercial hunting program and wild pig depredation on the TU MSHCP Mitigation Lands and other conserved areas of the ranch **through the term of the ITP to provide a potential food source for condors**.
4.1.3.2, page 4.1-26	Within the TMV Planning Area and Lebec/Existing Headquarters Area, the installation of two **emergency communication** towers (PA-2/DF-1) would be authorized under the Proposed TU MSHCP Alternative. These towers would be located at two separate locations in the TMV Planning Area Development Envelope to provide suitable emergency radio communication coverage (Figure 4.1-2). One of these towers would be approximately ~~68~~ **78** feet in height (including antennae) and the other would be approximately ~~65~~ **70** feet in height (including antennae). Both towers would be required to be self-supporting (i.e., no guide wires)**;** ~~and would~~ incorporate **Service-approved** anti-perching devices **on potential landing surfaces**; **and reflect a primarily solid tower façade to increase visibility for condors**. ~~For the PA-2 tower, TRC would consult with the Service regarding the feasibility of locating the tower downslope (closer to a group of large oak trees), and agrees to do so if Kern County determines the Service's proposed location would provide suitable emergency radio communications. Although there has been no documented take from collision with a tower or antennae by a condor, the risk of collision with the PA-2 tower would be further minimized if at final design and installation it can be located closer to a group of large oak trees.~~ The placement **and maintenance** of any **other** future communication **or utility** tower ~~to meet public safety requirements~~ in the study area would be subject to review and approval by the Service, **and would require amendment to the TU MSHCP or ITP and additional NEPA review if new, potentially significant effects are identified, including but not limited to impacts on or take of ESA-listed species.**

Section and Page Number	Description of Change
Table 4.1-3, page 4.1-30 (*Tehachapi pocket mouse)*	Acreage of Modeled Habitat Conserved: **1,874 acres (97%)** ~~1,071 acres (95%)~~
4.1.3.2, page 4.1-36 (*Least Bell's vireo*)	As summarized in Table 2-4, the Proposed TU MSHCP Alternative would include species-specific conservation measures to reduce potential effects on the least Bell's vireo, including preconstruction surveys in and immediately adjacent to suitable breeding/foraging habitat during the breeding season (**May 15 through September 15**~~April through August~~), and **establishment** ~~creation~~ of a 500-foot **no-disturbance** buffer around any **active** nests detected in preconstruction surveys if construction cannot be avoided entirely during the breeding season. **TRC would consult with CDFG regarding any variance to this buffer distance, and would maintain the buffer until young have fledged and are no longer dependent on the nest or nest territory.**
4.1.3.2, page 4.1-37, 4.1-38 (*Southwestern willow flycatcher*)	As summarized in Table 2-4, the Proposed TU MSHCP Alternative would include species-specific conservation measures to reduce potential effects on southwestern willow flycatcher, including preconstruction surveys in and immediately adjacent to suitable breeding/foraging habitat during the breeding season (**May 1 through September 15** ~~April through August~~), and **establishment** ~~creation~~ of a 500-foot **no-disturbance** buffer around any **active** nests detected in preconstruction surveys if construction cannot be avoided entirely during the breeding season. **TRC would consult with CDFG regarding any variance to this buffer distance, and would maintain the buffer until young have fledged and are no longer dependent on the nest or nest territory.**
4.1.3.2, page 4.1-39 (*Western yellow-billed cuckoo*)	As summarized in Table 2-4, the Proposed TU MSHCP Alternative would include species-specific conservation measures to reduce potential effects on western yellow-billed cuckoo, including preconstruction surveys in and immediately adjacent to suitable breeding/foraging habitat **during the breeding season (May 15 to September 15), and establishment of a 500-foot no-disturbance buffer around any active nests detected in preconstruction surveys if construction cannot be avoided entirely during the breeding season.** ~~prior to scheduled grading to determine if cuckoos are present. If breeding western yellow-billed cuckoos are observed on site, a 500-foot buffer would be provided around any active nests until fledglings have left and are no longer dependent on the nest or nest territory.~~ **TRC would consult with CDFG regarding any variance to this buffer distance, and would maintain the buffer until young have fledged and are no longer dependent on the nest or nest territory.**
4.1.3.2, page 4.1-42 (*Tehachapi pocket mouse*)	An estimated **1,874 acres (97%)** ~~1,071 acres (95%)~~ of modeled habitat for this species would be conserved in open space under this alternative.
4.1.7.2, page 4.1-130	From a cumulative perspective and with respect to collisions, wind farms can pose a threat to condors as rotating blades can strike a condor in flight. Wind turbines tend to be placed in areas (i.e., ridgetops, upper elevation slopes) that are attractive to condors; the same strong winds that drive the turbines are also a source of lift for these large birds. As described in the effects analysis ~~above~~ **for the proposed action alternatives**, transmission lines **generally** pose collision risks to condors in flight, as well as electrocution risks for condors that may perch on transmission poles and towers. **Although there has been no evidence of a condor colliding with a wind turbine to date, the possibility of such impacts in the future cannot be ruled out as condors continue to expand into their historical range.** While ~~detailed avian protection plans~~ **avoidance and mitigation measures** are required ~~for wind projects~~ **for these renewable energy projects through applicable Federal, state and local approval processes,**

Section and Page Number	Description of Change
	whether total avoidance can be achieved is unknown. ~~to reduce adverse effects from collisions, and would similarly be required for the Panoche Valley Solar Farm Project, some level of effect on condors is possible.~~ **Wind farms and the Panoche Valley Solar Farm Project are subject to California's fully protected species statute, which does not permit state "take." In addition, if any such project would result in Federal take of a condor, it would require its own incidental take authorization from the Service, including compliance with ESA Section 7 and additional consideration of cumulative effects. To date, the Service is not aware of any such request for authorization for take resulting from collisions or electrocution from wind farm or solar projects.**
4.1.7.2, page 4.1-130	The new emergency communication tower(s) (discussed above) would be limited in height and number to minimize effects on condors. ~~The exact locations are yet to be determined, but the general proposed locations are not on the highest ridges. Additional efforts to site these towers in areas that further~~ **Both towers have been located off ridgelines to reduce** the potential for collisions **and, in the case of PA-2, near a stand of oak trees** ~~would be implemented, considering that the final tower locations must provide suitable emergency radio communication coverage for Kern County~~. Requirements to **avoid and minimize potential effects on birds in compliance with state and local permit processes** ~~comply with aviation protection plans~~ (wind projects) and, to construct all transmission facilities, towers, poles, and lines to minimize avian electrocutions (Panoche Valley Solar Farm Project), would further reduce the potential for a cumulative effect.
4.1.7.2, page 4.1-132 to 133 (*American peregrine falcon*)	Wind projects ~~proposed~~ in the cumulative effects analysis area may also directly affect falcons if they are injured or killed by spinning turbine blades**, and the wind and Panoche Valley Solar Farm projects may include transmission lines that present collision risks**. While ~~detailed avian protection plans~~ **avoidance and mitigation measures** are required for ~~wind~~ **these renewable energy** projects **through applicable Federal, state and local approval processes** ~~to avoid such effects~~, whether full avoidance can be achieved is unknown. **Projects that could affect the peregrine falcon are subject to California's fully protected species statute, which does not permit state take. In addition, the requirements of the Migratory Bird Treaty Act (MBTA), which generally prohibits Federal take of migratory birds without authorization from the Service, would apply.**
4.1.7.2, page 4.1-133 (*Bald eagle*)	Wind projects ~~proposed~~ in the cumulative effects analysis area may also directly affect bald eagle if they are injured or killed by spinning turbine blades**, and the wind and Panoche Valley Solar Farm projects may include transmission lines that present collision risks**. While ~~detailed avian protection plans~~ **avoidance and mitigation measures** are required for ~~wind~~ **these renewable energy** projects **through applicable Federal, state and local approval processes**~~to avoid such effects~~, whether full avoidance can be achieved is unknown. **Projects that could affect the bald eagle are subject to California's fully protected species statute, which does not permit state "take". In addition, projects that may affect bald eagles would be required to obtain an eagle permit from the Service in compliance with the Bald and Golden Eagle Protection Act (BGEPA), which requires consideration of cumulative effects.**

Section and Page Number	Description of Change
4.1.7.2, page 4.1-135 (*Golden eagle*)	Similar to other bird species, golden eagles could potentially be directly affected by spinning turbine blades if flying or foraging in the same areas as active wind turbines, **and the wind and Panoche Valley Solar Farm projects may include transmission lines that present collision risks**. While ~~detailed avian protection plans~~ **avoidance and mitigation measures** are required for ~~wind~~ **these renewable energy** projects **through applicable Federal, state and local approval processes**~~to avoid such effects~~, whether full avoidance can be achieved is unknown. **Projects that could affect golden eagle are subject to California's fully protected species statute, which does not permit state take. In addition, projects that may affect golden eagles would be required to obtain an eagle permit from the Service in compliance with the BGEPA, which requires consideration of cumulative effects.**
4.1.7.2, page 4.1-137 (*White-tailed kite*)	Similar to other bird species, white-tailed kite could potentially be directly affected by spinning turbine blades if flying or foraging in the same areas as active wind turbines, **and the wind and Panoche Valley Solar Farm projects may include transmission lines that present collision risks**. While ~~detailed avian protection plans~~ **avoidance and mitigation measures** are required for ~~wind~~ **these renewable energy** projects **through applicable Federal, state and local approval processes**~~to avoid such effects~~, whether full avoidance can be achieved is unknown. **Projects that could affect white-tailed kite are subject to California's fully protected species statute, which does not permit state take. In addition, the requirements of the MBTA, which generally prohibits Federal take of migratory birds without authorization from the Service, would apply.**

4.5.1.1, page 4.5-1 through 4.5-2	The following describes the categories of cultural resources that ~~can be evaluated~~ **qualify as historic properties (resources listed on or eligible for listing on the NRHP**) under Section 106 of the National Historic Preservation Act.
	• Archaeological Properties. Archaeological properties or resources are places where the remnants of past cultures survive in a physical context that allows for the interpretation of these remains.
	• Historic Properties. Historic properties or resources are historic buildings or structures that are 50 years or older.
	• ~~Native American Resources. Native American resources are sacred sites, graves and cultural objects.~~ **Traditional Cultural Properties. Traditional Cultural Properties (TCPs) consist of properties that are significant for their association with the beliefs or practices of a living community and which are important in maintaining those beliefs or practices (National Park Service 1998:1). TCPs may qualify as historic properties if they meet three conditions:**
	  o The resource must have "integrity of relationship," meaning the resource is still important to a living community (National Park Service 1998:11).
	  o The resource must have "integrity of condition," meaning it is able to function in maintaining the relevant community's culture (National Park Service 1998:12).
	  o The resource must meet the criteria for listing on the NRHP (National Park Service 1998:12).

Section and Page Number	Description of Change
4.5.3.1, page 4.5-4	As discussed in Section 3.5, Cultural Resources, surveys have been completed for the TMV Planning Area and Lebec/Existing Headquarters Area where Commercial and Residential Development Activities would occur. Based on these surveys, no known cultural resources determined to be eligible were identified in the Lebec/Existing Headquarters Area. Within the remainder of the surveyed area, 22 sites with the potential to be eligible were found in or near areas proposed for development. Although the TMV Planning Area and the Lebec/Existing Headquarters Area were surveyed and potentially eligible sites were found, there is a low potential for inadvertent discovery of cultural resources during ground disturbance. **The Service also requested information about the presence of TCPs from potentially interested tribes and received no indication that any such resources occur in the area.**
4.5.3.1, page 4.5-6	**Although no TCPs have been identified as a result of tribal consultation or records searches, other c**~~C~~ultural and paleontological resources are either known to exist or to have the potential to exist within the study area.
CHAPTER 6 LIST OF AGENCIES AND ORGANIZATIONS CONSULTED	
6.6, page 6-2	~~6.6 California Department of Fish and Game~~ ~~Jeff Single – Environmental Program Manager 1, Central Division~~ ~~Julie Vance – Senior Environmental Scientist, Central Division~~
APPENDIX D	
California condor, page D-23	~~Other Parameters: Included vegetation communities listed above and that meet the canopy cover parameters (described below) only where these communities occur on ridgetops (i.e., within 100 feet of the centerline of the mapped ridgetops within Covered Lands) or on slopes equal to or greater than 17 degrees (or equal to or greater than 30% slopes). In addition, only vegetation communities that also have 0–10% canopy cover or 10%–40% canopy cover or grass, not-a-part, and chaparral were included in the final model due to the need for condor to forage in open habitats.~~
MASTER RESPONSE 1B, CALIFORNIA CONDOR CRITICAL HABITAT (VOLUME II)	
1B.2.4, page MR1B-12	Patterns of condor use on the ranch have increased since the Draft EIS and Draft TU MSHCP were released for public comment in ~~December 2008~~**January 2009**…

Table 2-2. Comments Omitted from Master Response Tables in the Supplemental Draft EIS and Location of Comment Response

Comment Number[1]	Response[2]	Comment Number[1]	Response[2]	Comment Number[1]	Response[2]
Commenter: U.S. Environmental Protection Agency					
G2-3a	MR10.2.3.2, SDEIS 4.2.3.2	G2-15	MR10.2.2, MR10.2.3.7	G2-30	MR9.2.1, SDEIS 2.1.2.3, SDEIS 2.2.2.2
G2-3b	MR10.2.3.2, SDEIS 4.2.3.1	G2-16	MR10.2.2, MR10.2.3.7	G2-31	SDEIS 2.1.2.3, SDEIS 2.2.2.2
G2-4	MR9.2.2	G2-21	MR1C.2.2, MR1D.2.2, MR3.2.4; MR2.2.5; and MR4.2.4, SDEIS 4.1.3.2	G2-51	SDEIS 2.1.2.3, SDEIS 2.2.2.2
G2-8	MR9.2.2.1	G2-22	MR1C.2.2, MR1D.2.2, MR2.2.5, MR3.2.4, MR4.2.4, SDEIS 4.1.3.2	G2-52	SDEIS 2.1.2.3, SDEIS 2.2.2.2
Commenter: California Native Plant Society					
O1-12	MR9.2.2.1				
Commenter: Center for Biological Diversity					
02-1	MR9.2.2	O4-108	MR1B.2.5	O4-211	MR7.2.1, MR9.2.6
02-2	MR9.2.5	O4-109A	MR1B.2.2	O4-213	MR8.3.2, SDEIS 4.1.3.2, SDEIS Table 4.1-3
02-3	MR9.2.5	O4-109B	MR1B.2.2, MR1E.2.4	O4-214	MR9.2.6
03-1	MR9.2.2.1	O4-178	MR9.2.1, SDEIS 3.1.7.3, SDEIS 4.1.3.2, SDEIS Table 4.1-3	O4-215	MR9.2.6
03-2	MR9.2.2.1	O4-179	SDEIS 2.2.2, MR8.3.2	O4-217	MR8.3.2, SDEIS 4.1.3.2, SDEIS Table 4.1-3
O4-42	MR1B.2.2, MR8.3.2; MR9.2.6	O4-182	MR9.2.1, SDEIS 3.1.7.3, SDEIS 4.1.3.2, SDEIS Table 4.1-3	O4-222	MR8.3.2
O4-43	MR1B.2.2, MR5.2.5, MR9.2.6	O4-183	SDEIS 2.2.2, MR8.3.2	O4-225	SDEIS 3.1.8.3
O4-45	MR2.3.3, SDEIS 2.2.2	O4-185	MR9.2.1, SDEIS 3.1.7.3, SDEIS 4.1.3.2, SDEIS Table 4.1-3	O4-377	MR1G.2.1, MR5.2.1
O4-46	MR6.2.3, SDEIS 2.2.2	O4-186	SDEIS 4.1.3.2, MR9.2.6	04-381	MR9.2.2
O4-47	MR4.2.1, SDEIS 2.2.2	O4-187	SDEIS 4.1.3.2, MR8.3.2	O4-407	SDEIS 4.1.3.2, MR1G.2.8
O4-48	SDEIS 2.1.2.3, SDEIS 2.2.2	O4-189	MR9.2.2, SDEIS 3.1.7.3, SDEIS 4.1.3.2, SDEIS Table 4.1-3	O4-408	SDEIS 4.1.3.2, MR1G.2.8

Comment Number[1]	Response[2]	Comment Number[1]	Response[2]	Comment Number[1]	Response[2]
O4-59	SDEIS 2.1.2.3, SDEIS 2.2.2.2	O4-190	SDEIS 4.1.3.2, MR8.3.2	O4-409	SDEIS 4.1.3.2, MR1G.2.8
O4-62	MR9.2.2.2	O4-191	SDEIS 4.1.3.2, MR8.3.2; MR15.2.1; MR17.2	O4-410	SDEIS 4.1.3.2, MR1G.2.8
O4-63	MR9.2.6	O4-193	SDEIS 3.1.7.3, SDEIS 4.1.3.2	O4-411	SDEIS 4.1.3.2, MR1G.2.8
04-65	MR1B.2.2	O4-194	MR8.3.2, MR9.2.6, MR7.2.3	O4-412	SDEIS 4.1.3.2, MR1G.2.8
04-67	MR9.2.2	O4-195	MR8.3.2, MR9.2.6	O4-413	SDEIS 4.1.3.2, MR1G.2.8
04-73	MR9.2.2, MR8.3.2	O4-197	MR8.3.2, SDEIS 4.1.3.2	O4-414	SDEIS 4.1.3.2, MR1G.2.8
O4-88B	SDEIS 2.2.2, MR1G.2.8	O4-198	MR9.2.6	O4-424	MR14.2.4
04-92	MR1B.2.2	O4-200	MR8.3.2, SDEIS 3.1.7.3, SDEIS 4.1.3.2, SDEIS Table 4.1-3	O4-481	MR9.2.6
O4-96A	MR9.2.2, MR5.2.2	O4-201	SDEIS 3.1.7.3, SDEIS 4.1.3.2, SDEIS Table 4.1-3	O4-482	MR9.2.6
O4-105A	MR1B.2.2, MR1B.2.5	O4-202	MR8.3.2, MR9.2.6	O4-483	MR9.2.6
O4-106	MR1B.2.2, MR1B.2.5	O4-210	MR8.3.2, SDEIS 4.1.3.2, SDEIS Table 4.1-3	04-513	MR9.2.6
Commenter: Defenders of Wildlife					
05-1	MR9.2.2.1	O5-13a	MR9.2.2	O5-20	SDEIS 4.1.3.2, MR1G.2.8, MR1C.2.6
O5-3a	MR1B.2.2, MR1C.2.2, MR1C.2.6, MR1G.2.3	O5-13b	MR9.2.2	O5-29	MR8.3.2.2
05-3b	MR1C.2.3, MR1G.2.3	O5-13c	MR9.2.2	05-30	MR9.2.2.1
O5-8	SDEIS 2.2.2, MR8.3.2	O5-14	MR9.2.2, MR1F	O5-31	MR9.2.2, MR1F
O5-9	SDEIS 2.2.3, MR8.3.2	05-15	MR9.2.2.1		
05-12	MR9.2.2.1	05-19	MR8.3.2		
Commenter: Kern County California Native Plant Society					
O6-2	MR8.3.2	O6-5	MR5.2.2, MR8.3.2	O6-7	SDEIS 4.1.3.2, MR8.3.2
O6-4	SDEIS 2.2.2, SDEIS 4.1.3.2, MR5.2.10	O6-6	MR8.3.2	O6-9	MR9.2.2.2

Comment Number[1]	Response[2]	Comment Number[1]	Response[2]	Comment Number[1]	Response[2]
Commenter: Santa Clarita Organization for Planning and the Environment					
O8-1c	MR13.2.10	O8-7a	MR9.2.2, MR13.2.3	O8-36	MR9.2.3
O8-1d	MR9.2.2.2	O8-8b	MR9.2.2, MR13.2.3	O8-37	MR9.2.3
O8-7	MR9.2.1, MR13.2.3	O8-28a	SDEIS 4.9, MR13.2.2		
Commenter: TriCounty Watchdogs					
O10-14	MR9.2.3.2	O10-42	MR9.2.2	O12-19	SDEIS 5.2, MR10.2.2
O10-21	MR9.2.3.2	O10-43	MR9.2.2	O12-26d	MR16.2.9, MR13.2.6
O10-33	MR9.2.3.2	O11-1	MR15.2.5, MR9.2.2	O12-26e	MR16.2.9, MR13.2.6
O10-34	MR9.2.3.2	O12-14	SDEIS5.2	O12-26f	MR16.2.9, MR13.2.6
O10-36	MR9.2.3.2	O12-16	MR10.2.2	O12-27	MR10.2.1, MR10.2.2
O10-40	MR9.2.2.2	O12-17	MR10.2.2		
O10-41	MR9.2.3.2	O12-18	MR10.2.2, MR10.2.3.3		
Commenter: Stefano Allavena					
I18-1	MR9.2.2.1	I18-2	MR10.2.3		
Commenter: Eric Roy Anderson					
I30-1	MR9.2.5				
Commenter: G. Balbona					
I73-4	MR1D.2.1	I73-5	MR1C.2.5, MR1C.2.6, MR1D.2.1, MR14.2.1, MR18.3.1		
Commenter: Ron Bottorff					
I156-1	MR9.2.5				
Commenter: John W. Burk					
I212-2	MR9.2.2.2	I212-4	MR9.2.2.2		
I212-3	MR9.2.2.2	I212-5	MR9.2.2.2		
Commenter: Eric L. Burr					
I215-1	MR11.2.7				
Commenter: Clendenen et al.					
I293-1	MR9.2.2	I293-43	MR1A.2.2, MR1E.2.2	I293-53	MR9.2.2
I293-2	MR9.2.2	I293-49	MR9.2.2	I293-54	MR9.2.2

Comment Number[1]	Response[2]	Comment Number[1]	Response[2]	Comment Number[1]	Response[2]
I293-3	MR9.2.2, MR1C.2.7	I293-50	MR9.2.2	I293-55	MR9.2.2
I293-4	MR1B.2.5, MR1E.2.5, MR1G.2.3	1293-51	MR9.2.2	I293-56	MR9.2.2
I293-28	SDEIS 4.1.3.2, MR1E.2.4	I293-52	MR9.2.2	I293-57	MR9.2.2
Commenter: Mark Duchamp					
I424-5	MR9.2.2.1	I425-4	MR9.2.2	I425-12	MR1I.2.2
I424-6	MR9.2.2.2	I425-7	SDEIS 2.2.2, MR10.2.1, MR9.2.2	I425-13	MR9.2.2
I425-1	MR9.2.2.2	I425-8	SDEIS 2.2.2, MR10.2.1, MR9.2.2	I425-14	MR9.2.2
I425-2	MR9.2.2.2	I425-9	MR1A.2.4	I425-15	MR9.2.2
I425-3	SDEIS 2.2.2	I425-11	MR9.2.2		
Commenter: John Fitzpatrick					
I494-1	MR9.2.2.1	1494-2	MR9.2.2.2		
Commenter: Peggy Forster					
I502-6	MR10.2.3	I502-8	MR10.2.3		
Commenter: Joe Francis					
I512-1	MR9.2.3				
Commenter: Kenneth B. Fry					
I527-2	MR10.2.1, MR1B.2.2, MR1C.2.6, MR1G.2.3	I527-4	MR9.2.2	I527-5	MR9.2.2
Commenter: Robert Hamber					
I626-9	MR1C.2.2, MR1C.2.6	I627-10	MR10.2.3.2, SDEIS 4.2.3	I627-38	MR9.2.2, MR10.2.1
I626-10	MR1C.2.2, MR1G.2.5	I627-29	MR9.2.2, MR10.2.1	I627-40	MR9.2.2
I626-21	MR11.2.1, MR11.2.7	I627-30	MR9.2.2, MR10.2.1	I627-41	MR9.2.2
I626-22	MR11.2.7	I627-31	MR9.2.2, MR10.2.1	I627-42	MR9.2.2
I626-23	MR11.2.7	I627-32	MR9.2.2, MR10.2.1	I627-46	MR1D.2.1, MR1C.2.2
I626-24	MR1A.2.4, MR1B.2.2, MR1B.2.3, MR1C.2.6, MR1D.2.1	I627-34	MR9.2.2, MR10.2.1	I627-48	MR1C.2.2
I627-6	MR10.2.3.2, SDEIS 4.2.3	I627-35	MR9.2.2, MR10.2.1	I627-50	MR9.2.2, MR10.2.2
I627-7	MR10.2.3.2, SDEIS 4.2.3	I627-36	MR9.2.2, MR10.2.1		
I627-8	MR10.2.3.2, SDEIS 4.2.3	I627-37	MR9.2.2, MR10.2.1		

Comment Number[1]	Response[2]	Comment Number[1]	Response[2]	Comment Number[1]	Response[2]
Commenter: Patric Hedlund					
I655-1	MR9.2.3				
Commenter: Donald Heintzelman					
I657-2	MR9.2.2.2	I657-3	MR9.2.2.1		
Commenter: Leo Mark Hinds					
I682-1	MR9.2.2.1	I682-6	MR9.2.4	I682-7	MR9.2.2.2
Commenter: James Hines					
I683-1	MR9.2.2				
Commenter: Candace Huskey					
I721-2	MR9.2.2.2	I721-4	MR9.2.2.2	1721-5	MR9.2.2.2
I721-3	MR9.2.2.2				
Commenter: Katherine C. King					
I800=1	MR9.2.5				
Commenter: Jim Lumsden					
I918-1	MR9.2.2	I919-1	MR9.2.2	I919-3	MR9.2.2
I918-2	MR9.2.2	I919-2	MR9.2.2		
Commenter: Jeffrey A. Manning					
I948-1	MR9.2.2.1	I948-3	MR9.2.2	I948-29	MR8.3.9, MR1B.2.2, MR1B.2.7
I948-2	MR9.2.2.1	I948-16	MR9.2.2.1		
I948-3	MR9.2.2	I948-18	MR1G.2.1, MR1G.2.7		
Commenter: Stan Moore					
I1054-2	MR9.2.2.2	I1055-2	MR9.2.2.2, MR1E.2.1	I1056-1	MR1G.2.6
I1054-5	SDESI 2.1.2.3, SDEIS 2.2.2, MR1C.2.2	I1055-3	MR1C.2.8	I1056-2	MR9.2.2.2
I1054-7	MR9.2.2.2	I1055-4	MR9.2.2.2, SDEIS 2.2.2	I1056-3	MR1A.2.4
I1055-1	MR9.2.2.2	I1055-5	MR1E.2.5, MR1F.2.8, MRIH.2.3, MR9.2.2.2	I1056-4	MR1G.2.6, MR9.2.2.2
Commenter: Harry Nelson					

Comment Number[1]	Response[2]	Comment Number[1]	Response[2]	Comment Number[1]	Response[2]
I1103-1	MR9.2.5				
Commenter: Jody Lee Ollava					
I1140-1	MR9.2.5				
Commenter: Bruce Palmer					
I1163-1	MR9.2.2.1	I1163-4	MR1G.2.4, MR1C.2.3	I1163-7	MR8.3.2
I1163-1	MR9.2.1.2	I1163-5	MR1B.2.2, SDEIS 4.1.3.2		
Commenter: Mar Preston					
I1231-1	MR9.2.5				
Commenter: Emil Richter					
I1292-1	MR9.2.5				
Commenter: Bob Risebrough					
I1300-1	MR9.2.2.1	I1300-10	MR9.2.2.2, MR1E.2.1, MR1B.2.2	I1301-4	MR9.2.2.2
I1300-2	MR9.2.2.1, MR1B.2.2	I1300-11	MR1E.2.1, MR1E.2.4, MR1I.2.3, MR1B.2.2	I1301-5	MR9.2.2.2
I1300-3	MR9.2.2.1	I1300-12	MR9.2.2.2	I1301-6	MR9.2.2.2, MR1B.2.2.1
I1300-4	MR9.2.2.2, MR1B.2.2	I1300-15	MR1B.2.2, MR1H.2.3, MR1E.2.1	I1301-7	MR9.2.2.2, MR11.2.7
I1300-6	MR9.2.2.1	I1300-16	MR9.2.2.2	I1301-8	MR9.2.2.2
I1300-7	MR11.2.7, MR1E.2.3	I1300-17	MR9.2.2.2	I1301-9	MR9.2.2.2
I1300-8	MR9.2.2.2	I1301-2	MR9.2.2.2		
I1300-9	MR9.2.2.2	I1301-3	MR9.2.2.2		
Commenter: Noel Snyder					
I1449-1	MR9.2.5				
Commenter: Edie Stafford					
I1462-1	MR9.2.5				
Commenter: Lynn Stafford					
I1463-1	MR9.2.2.1	I1463-3	MR9.2.5	I1463-5	MR9.2.3
I1463-2	MR9.2.2.1	I1463-4	MR9.2.3	I1464-1	MR9.2.5
Commenter: Sylvia Wallace					
I1607-2	MR8.3.3, MR1B.2.6				

Comment Number[1]	Response[2]	Comment Number[1]	Response[2]	Comment Number[1]	Response[2]
Commenter: Mario Whyte					
I1649-1	MR9.2.2.2				
Commenter: Benjamin Willer					
I1658-1	MR9.2.2, MR14.2.1, MR8.3.2				

[1]Indicates comment letter number, as provided for the 2009 Draft EIS. See Table 2-3 for a corrected list of all commenters with substantive comments on the Draft EIS.

[2] Indicates location of response, as provided in the Supplemental Draft EIS. *MR* indicates Master Response, followed by the appropriate section number within that master response. *SDEIS* indicates the section in Volume I of the Supplemental Draft EIS where a response to the comment was provided.

Table 2-3. Corrected List of Commenters with Substantive Comments on the 2009 Draft EIS

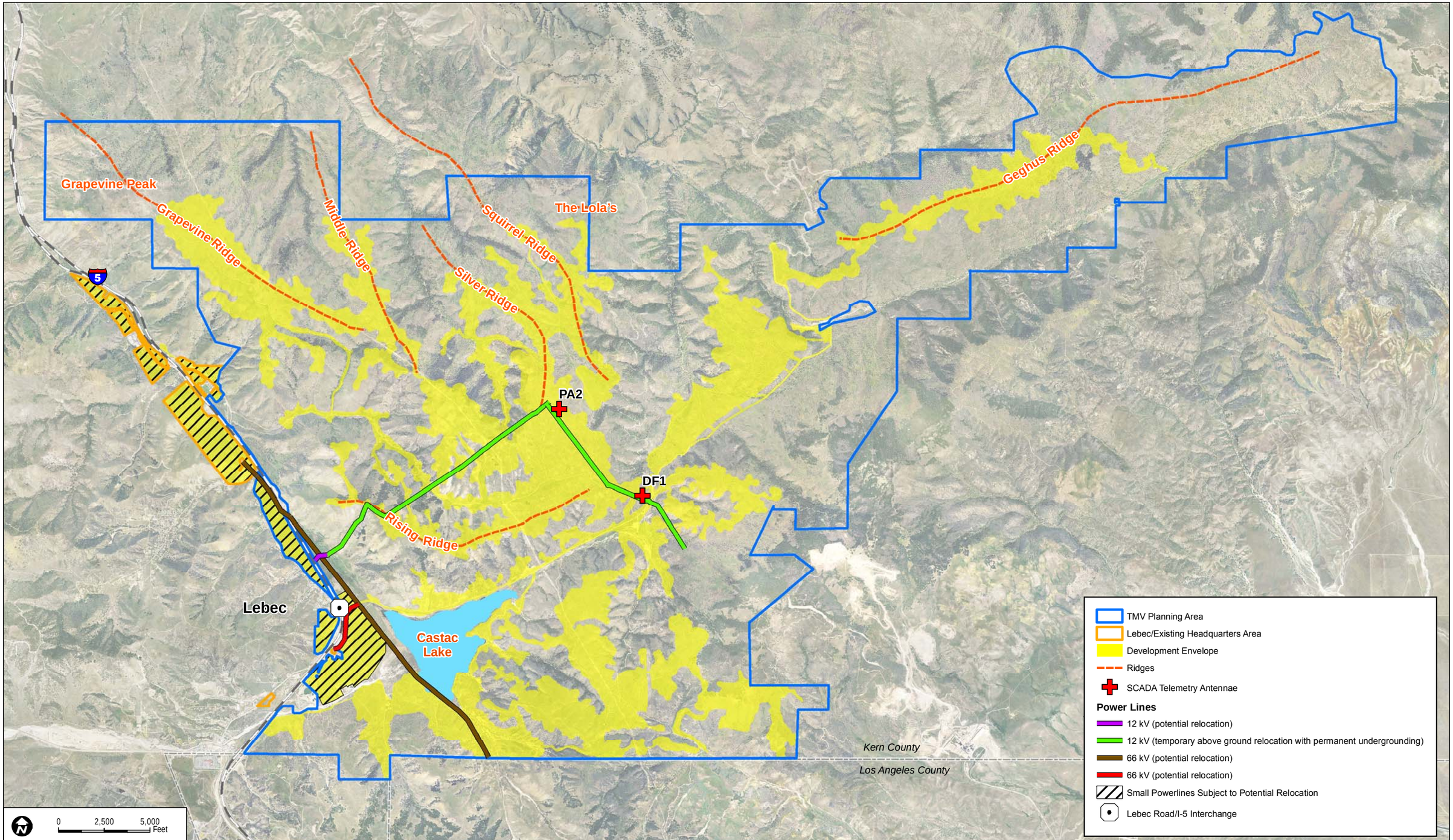
Draft EIS Comment No.	Corrected Comment No.[1]	Commenter
G1	G1	U.S. Department of Agriculture Forest Service, Randy Moore
G2	G2	U.S. Environmental Protection Agency, Kathleen Goforth
G3	--[2]	California Department of Fish and Game, Jeffrey Single
G4	G3	Kern County Planning Department, Ted James
O1	O1	California Native Plant Society, Greg Suba
O2	O2	Center for Biological Diversity, Adam Keats
O3	O3	Center for Biological Diversity, Adam Keats
O4	O4	Center for Biological Diversity, Adam Keats
O5	O5	Defenders of Wildlife, Pamela Flick
O6	O6	Kern County California Native Plant Society, Lucy Clark
O7	O7	Santa Clarita Organization for Planning and the Environment, Lynn Plambeck
O8	O8	Santa Clarita Organization for Planning and the Environment, David Lutness
O10	O10	TriCounty Watchdogs, Jan de Leeuw
O11	O11	TriCounty Watchdogs, Jan de Leeuw
O12	O12	TriCounty Watchdogs, Jan de Leeuw
I18	I18	Allavena, Stefano
I30	I30	Anderson, Eric Roy
I74	I73	Balbona, G.
I57	I56	Bottorff, Ron
I63	I62	Boyd, Ramon
I213	I212	Burk, John W.
I216	I215	Burr, Eric L.
I294	I293	Clendenen, David A., Janet A Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I314	I313	Conroy, Gerard
I375	I374	De Bries, Pamela
I425	I424	Duchamp, Mark
I426	I425	Duchamp, Mark
I427	I426	Duchamp, Mark
I495	I494	Fitzpatrick, John
I503	I502	Forster, Peggy
I513	I512	Francis, Joe
I528	I527	Fry, Kenneth B.
I625	I624	Hamber, Janet A.
I626	I625	Hamber, Robert
I627	I626	Hamber, Robert
I628	I627	Hamber, Robert

Draft EIS Comment No.	Corrected Comment No.[1]	Commenter
I647	I646	Haugen, Tom
I656	I655	Hedlund, Patric
I658	I657	Heintzelman, Donald
I683	I682	Hinds, Leo Mark
I684	I683	Hines, James
I722	I721	Huskey, Candace
I747	I746	Jay, Bonnie
I801	I800	King, Katherine C.
I905	I904	Lopez, Irene
I919	I918	Lumsden, Jim
I920	I919	Lumsden, Jim
I931	I930	MacKay, Linda
I949	I948	Manning, Jeffrey A.
I1055	I1054	Moore, Stan
I1056	I1055	Moore, Stan
I1057	I1056	Moore, Stan
I1104	I1103	Nelson, Harry
I1124	I1123	Normann, Ken
I1141	I1140	Ollava, Jody Lee
I1165	I1163	Palmer, Bruce
I1212	I1210	Pinard, John W.
I1233	I1231	Preston, Mar
I1294	I1292	Richter, Emil
I1303	I1300	Risenbrough, Bob
I1302	I1301	Risenbrough, Bob
I1352	I1350	Sachau, B.
I1451	I1449	Snyder, Noel
I1452	I1450	Snyder, Noel
I1464	I1462	Stafford, Edie
I1465	I1463	Stafford, Lynn
I1466	I1464	Stafford, Lynn
I1565	I1563	Trudell, Heidi
I1569	I1567	Tuszynski, Jacek
I1609	I1607	Wallace, Sylvia
I1651	I1649	Whyte, Mario
I1660	I1658	Willer, Benjamin
I1688	I1686	Wyatt, Tynan

Draft EIS Comment No.	Corrected Comment No.[1]	Commenter

[1] Comment No. I41 and I1146 listed in Volume II of the Supplemental Draft EIS were spam emails and were inadvertently included/listed in that document.

[2] A copy of a comment letter from the California Department of Fish and Game on the Draft Environmental Impact Report for the TMV Specific and Community Plan (SCH No 2005101018), dated July 16, 2009, was inadvertently included in Volume II of the Supplemental Draft EIS, and labeled as Comment Letter G3. Because these comments were not provided to the Service on the Draft EIS, they were not addressed in the Supplemental Draft EIS. The comment letter provided by Kern County, dated May 5, 2009, was addressed in the Supplemental Draft EIS as Comment Letter G3 (versus Comment Letter G4).



SOURCE: TRC 2007

FIGURE 4.1-2

Proposed Kern County Emergency Communication Tower Locations and Existing Transmission Lines Subject to Relocation

Chapter 3
Master Responses

As described in Chapter 1, Introduction, 14 comment letters were received during the 90-day public comment period on the Supplemental Draft Environmental Impact Statement (EIS). In reviewing the comments provided in those letters, the U.S. Fish and Wildlife Service (Service) identified several substantive topics of concern that were common to more than one letter, and that would be more efficiently addressed as a topic-based master response. Table 3-1 provides a list of master responses included in this chapter in response to comments on the Supplemental Draft EIS. Each master response includes an introductory table that identifies the individual comments to which it responds. In addition, within the responses to each individual comment letter, as provided in Chapter 4, Individual Response to Public Comments, a reference to the appropriate master response is provided where that master response is intended to respond to a specific, substantive comment.

Table 3-1. Master Responses Provided in the Final EIS

Number	Subject
Master Response 1	Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project
Master Response 2	California Condor Critical Habitat
Master Response 3	California Condor Foraging Habitat
Master Response 4	California Condor Food Availability Analysis

CEQA = California Environmental Quality Act; NEPA = National Environmental Policy Act;
TMV Project = Tejon Mountain Village Project

Master Response 1
Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project

Master Response 1 addresses comments that generally speak to the differences between the environmental analysis of the proposed action provided in this Environmental Impact Statement (EIS), and those provided by other state and local agencies for the Tejon Mountain Village Project (TMV Project), one of the proposed developments considered in the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP). This master response also describes consideration of potential effects on cultural resources in this EIS, and how that analysis relates to the analysis of the effects of the TMV Project on cultural resources in the *Tejon Mountain Village Environmental Impact Report* (TMV EIR) (Kern County 2009). Finally, this Master Response summarizes the outcome of the California Environmental Quality Act (CEQA) lawsuit specific to the TMV Project.

Table MR1-1 provides a list of commenters and a reference to the individual comment addressed by this master response. Refer to Chapter 4, Individual Responses to Public Comments, for a copy of each comment letter and responses to other substantive comments not addressed by a master response.

Table MR1-1. Comments Addressed in Master Response 1

Comment	Commenter
S-1-3	California Department of Fish and Game
S-1-4	California Department of Fish and Game
S-1-5	California Department of Fish and Game
N-2-1	Wishtoyo Foundation
N-2-2	Wishtoyo Foundation
N-2-3	Wishtoyo Foundation
N-2-4	Wishtoyo Foundation
N-2-5	Wishtoyo Foundation

Overview

As indicated in Chapter 1, Introduction, of this Final EIS, Tejon Ranchcorp (TRC) has submitted an application to the Service for an incidental take permit (ITP) pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act (ESA), as amended, for activities covered under the TU MSHCP. TRC has requested an ITP from the U.S. Fish and Wildlife Service (Service) to authorize the incidental take of 27 species, including four federally listed species and 23 other species that may become federally listed in the future (Table 1-1). Activities proposed to be covered by the ITP (Covered Activities) include most ongoing ranch operations (excluding hunting and mineral extraction), as well as limited ground-disturbing activities in Open Space areas, referred to as Plan-Wide Activities, and planned future community development in development areas, referred to as Commercial and Residential Development Activities. Commercial and Residential Development Activities would consist of land disturbance development activities on up to 5,533 acres in and adjacent to the

Interstate 5 (I-5) corridor. One of the Commercial and Residential Development Activities proposed under the TU MSHCP is the TMV Project.

Issuance of an ITP is a Federal action subject to compliance with National Environmental Policy Act (NEPA). The purpose of NEPA is to promote analysis and disclosure of the environmental issues surrounding a proposed Federal action, provide for public participation in the review process to reach a decision that reflects a careful consideration of the environmental implications of a proposed action, and help the agency make a decision on the proposed action. When a proposed action is determined to have potential significant effects on the environment, the agency is required to complete an EIS which includes a more rigorous analysis of effects. However, an EIS is not required to include the type of project details and effects analysis that are typical of a project-specific CEQA document prepared as part of the development entitlement and approval process. NEPA compliance relative to the issuance of an ITP pursuant to the ESA is generally more programmatic in scope compared to a project-specific CEQA compliance document. For example, CEQA requires the lead agency to reach significance conclusions and mitigate project effects to a less-than-significant level unless the project benefits are affirmatively found to outweigh the environmental effects. In contrast, NEPA is an informational and analytical statute requiring disclosure of potential effects on the human environment and a decision as to the environmentally preferred alternative, but does not require an agency to mitigate to achieve certain significance criteria analogous to CEQA.

On October 5, 2009, the Kern County Board of Supervisors approved the TMV Project. The County's approval was based, in part, on the environmental analysis presented in the TMV EIR (Kern County 2009). Unlike the proposed action considered in this EIS, the TMV EIR considered a specific development project, based on the approval of specific development plans. Further, the EIR only addressed the effects of the TMV Project, and did not consider the effects of the other Commercial and Residential Development Activities or Plan-Wide Activities included as Covered Activities in the TU MSHCP. The EIR was also prepared pursuant to state law (i.e., CEQA), which has different standards and scope than NEPA. Although the TMV EIR was used to supplement the setting and data information for this EIS, the TMV EIR analysis does not substitute for the EIS analysis, and the information presented in both documents is different, based on the scope and nature of the actions considered.

Cultural Resources

Several comments generally request that the Supplemental Draft EIS provide an analysis of preservation in place for archaeological sites that may be affected by the proposed action, and state that the preservation in place analysis provided in the EIS is inadequate under CEQA Guidelines Section 15064.5 (14 California Code of Regulations [CCR] Section 15064.5) and 15126.4(b)(3) (14 CCR Section 15126.4(b)(3)), as well as the recent court decision that clarifies the requirements of these sections (*Madera Oversight Coalition v. County of Madera* (2011 Cal. App. LEXIS 1187)).

Section 21080(a) of the California Public Resources Code identifies the scope of CEQA applicable to discretionary projects by public agencies. Public agencies include any state agency, board, or commission and any local or regional agency, as defined in the guidelines. It does not include agencies of the Federal government (14 CCR Section 15379). The proposed action considered in this EIS is the issuance of an ITP to TRC for activities covered under the TU MSHCP. Notably, no action by

an agency of the State of California or a local agency is identified; therefore, the Service is not expected to fulfill CEQA requirements as part of completing the EIS.

The Service is required to consult with the State Historic Preservation Officer (SHPO) under Section 106 of the National Historic Preservation Act (NHPA) to ensure the proposed action minimizes effects on cultural resources eligible for listing in the National Register of Historic Places (NRHP). To this end, as discussed in Section 3.5, Cultural Resources, in Volume I of the Supplemental Draft EIS, the Service has supplied the SHPO with technical inventories for cultural resources as well as evaluations of the eligibility of cultural resources sites within the TMV Planning Area, the Lebec/Existing Headquarters Area, and the areas previously considered for communications towers. The analysis also included proposed avoidance measures for sites within known historic or archaeological resources (i.e., methods to preserve in place). These measures were based on and consistent with the measures proposed in the TMV EIR. The Service also prepared findings of effect of the proposed action on cultural resources relative to each surveyed area, which found that the issuance of an ITP would not result in adverse effects on cultural resources. The findings of effects for the proposed action were sent to the SHPO by the Service (Clark pers. comm.).

The SHPO has concurred with the Service's determination of eligibility and the findings of no effect on cultural resources because known sites in the surveyed areas would be avoided and preserved in place (Donaldson pers. comm.). The SHPO further noted that in the event that disturbance of potentially eligible sites could not be avoided, further consultation would be required. For example, Phase III data recovery was proposed for Site CA-KER-6727 as an option for mitigation if effects on the site could not be avoided. Since that time, TRC has committed to avoid Site CA-KER-6727 (Marshall pers. comm.). Nevertheless, the Service concurred with the SHPO and stated its commitment to reinitiate consultation should data recovery be proposed in the future (Clark pers. comm.).

Mitigation provided in Section 4.5.3.2 of the Supplemental EIS also reiterates the Service's commitment to consult with the SHPO in the future if disturbance in Open Space areas has the potential to disturb cultural resources (Clark pers. comm.). Specifically, as described in Section 4.5, Cultural Resources, in Volume I of the Supplemental Draft EIS, 200 acres within Open Space areas may be affected by Plan-Wide Activities. Where Plan-Wide Activities may occur in unsurveyed areas, mitigation has been identified consistent with the Service's obligations under NEPA and the NHPA requiring that pre-ground disturbance surveys be conducted in areas that were not previously surveyed and appropriate measures be developed in consultation with the SHPO, if necessary.

For all areas of the Covered Lands, contractor employees conducting earthmoving and excavation will attend a "tailgate" session informing them of the potential for inadvertently discovering cultural resources or human remains and the protection measures to be followed to prevent destruction of any and all cultural resources, including resources not previously known, in the Covered Lands. Paleontological resource monitoring will also be conducted during excavations around Castac Lake, and all development in the Covered Lands will comply with Federal, state, and local requirements, including completion of SHPO consultation, as relevant, and compliance with CEQA and other state and local laws. Further consultation with the SHPO will occur if it is subsequently determined that currently known significant cultural resources cannot be avoided, or if additional resources are identified through future surveys. If data retrieval is necessary, specific methods will be developed in consultation with the SHPO during future consultation.

The Service is also required to consult with recognized Native American tribes under Section 106 of NHPA (16 United States Code [USC] 470(d)(6)) and to engage in a good faith effort to obtain information from individuals or organizations likely to have knowledge of possible historic properties that could be affected by the undertaking (36 CFR 800.4(a)). This consultation process began in 2007 with a request to the Native American Heritage Commission (NAHC) for records in its Sacred Lands File pertaining to the site and contacts for tribes and groups located near the site. Initial consultation to identify sites was requested in 2007 in letters to the representatives of record of the Chumash, Fernandeño, Tataviam, Kitanemuk, San Miguel Band of Mission Indians, Tubatulabal, Kawaiisu, Koso, and Yokuts.

During the planning process associated with the TMV Project, the Kern Valley Tribal Council, Tejon Indian Tribe, Kitanemuk and Yowlumne Tejon Indians, Chumash Council of Bakersfield, Santa Rosa Rancheria, Tule River Indian Tribe, and the Tubatulabals of Kern County were continually provided information on the progress of the TMV Project and received copies of each of the cultural resource surveys through TRC and Kern County. Additionally, Tejon Indian Tribe and Chumash representatives were involved with site archeological surveys conducted between 2005 and 2010, which formed the basis for the Service's analysis in the EIS. In January 2012, the Tejon Indian Tribe achieved Federal recognition, wherein the Service promptly initiated a government-to-government consultation with the tribe to provide official notice of the TU MSHCP and solicit information regarding cultural resources in the area. The Tejon Indian Tribe responded by letter dated January 29, 2012, stating the tribe had reviewed the available information and determined that it had no knowledge of any cultural resources that may be affected by the Covered Activities.

In July 2012, the Service sent updated letters to 16 tribes to inform them of revisions and updates to the proposed action and environmental review process, and to ensure that interested parties who may have special knowledge of the area had ample opportunities to review the data compiled to date and share their knowledge. This consultation was intended, in part, to ensure that any traditional cultural properties (TCPs) that could be affected were identified. The Service received no further indication of any TCPs within the Covered Lands from the tribes.

TMV Project Lawsuit

The TMV Project Approvals and TMV EIR were challenged in state court on November 12, 2009, by the Center for Biological Diversity, Wishtoyo Foundation, TriCounty Watchdogs, and the Center for Race, Poverty & the Environment ("Petitioners"). Petitioners broadly alleged violations of CEQA and the California Water Code, based on the TMV EIR's project description and analysis of environmental impacts related to air quality, climate change, water supply, water quality, biological resources, cultural resources, and wildfires. Petitioners also raised other claims in their petition, but waived those during briefing. The superior court denied the petition on December 8, 2010, finding the TMV EIR's project description and environmental analysis sufficient under CEQA and the California Water Code. Petitioners then appealed to the Fifth District Court of Appeals on February 8, 2011, challenging the superior court's judgment. In their appeal, Petitioners dropped several claims presented to the trial court, but maintained that the TMV EIR violated CEQA and the California Water Code by failing to properly describe the project and adequately analyze environmental impacts related to water supply, water quality, biological resources, cultural resources, and air quality. On April 25, 2012, the Court of Appeals denied the petition and affirmed the Superior Court's Judgment, holding that the TMV EIR was sufficient under applicable law. The

statute of limitations to petition for review to the California Supreme Court has passed with no petition filed by the Petitioners/Appellants in this case. Therefore, the TMV EIR and County approvals have been upheld on judicial review.

Master Response 2
California Condor Critical Habitat

Master Response 2 addresses comments on the potential effects of the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) on California condor critical habitat. Several commenters expressed concern that development proposed under the TU MSCHP would be incompatible with the designation of critical habitat for condors, and that such development would result in "destruction or adverse modification" of critical habitat within the meaning of the Federal Endangered Species Act (ESA). Table MR2-1 provides a list of commenters and a reference to the individual comment addressed by this master response. Refer to Chapter 4, Individual Responses to Public Comments, for a copy of each comment letter and responses to other substantive comments not addressed by a master response.

Table MR2-1. Comments Addressed in Master Response 2

Comment	Commenter
N-3-2	Center for Biological Diversity
N-3-3	Center for Biological Diversity
N-3-4	Center for Biological Diversity
N-3-5	Center for Biological Diversity
N-3-6	Center for Biological Diversity
N-3-7	Center for Biological Diversity
N-3-8	Center for Biological Diversity
N-3-18	Center for Biological Diversity
P-5-16	Snyder et al.
P-5-17	Snyder et al.
P-5-18	Snyder et al.

Overview

Under the ESA, critical habitat consists of those lands in the geographical area occupied by a listed species that contain physical or biological features essential for the conservation of the species that may require special management considerations or protection, and those lands outside the occupied geographical area that are essential for the species conservation (16 United States Code [U.S.C.] 1532(5)(A)). The U.S. Fish and Wildlife Service (Service) is required to render a formal determination of the effects of a proposed action—in this case, issuance of an incidental take permit (ITP) to Tejon Ranchcorp (TRC)—on critical habitat as part of the Service's intra-Service consultation under Section 7 of the ESA. This determination is made in a Biological Opinion that formally addresses the potential destruction or adverse modification of critical habitat. Consistent with the Ninth Circuit Court of Appeals decision in *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) (*Gifford Pinchot)*, under the Section 7 process, the Service will determine whether issuance of an ITP to TRC will result in the destruction or adverse modification of critical habitat based on an assessment of the effects the proposed action would have on the capability of critical habitat to carry out its intended function and conservation role after the proposed Federal action is implemented. This assessment will be informed by the National Environmental Policy Act (NEPA) analysis, including all comments received on the Draft and

Supplemental Draft EIS, and will be based on the statutory provisions of the ESA specific to critical habitat analyses, rather than the regulatory definition of "destruction or adverse modification of critical habitat" provided in 50 Code of Federal Regulations (CFR) 402.02. Thus, in reviewing the effects of a proposed Federal action that would eliminate or degrade the habitat value of specific lands within the boundaries of critical habitat, the Service analyzes what the effects of such habitat elimination or degradation are likely to be on the overall capability of critical habitat to perform its intended conservation role and function. The analysis is species-specific and habitat-specific, and considers the life history needs of the species and the particular role of the affected critical habitat in meeting those life history needs.

Destruction or Adverse Modification of Critical Habitat

As discussed above, the Service's application of "destruction or adverse modification" of critical habitat under Section 7 of the ESA considers whether any direct or indirect alteration to the critical habitat would appreciably diminish the capability of critical habitat to carry out its conservation function. Several commenters suggested the removal of a portion of designated critical habitat by the Tejon Mountain Village Project (TMV Project) constitutes "destruction" of critical habitat within the meaning of Section 7 of the ESA. This assertion is incorrect. As the Ninth Circuit Court of Appeals has recognized, "[a]n area of a species' critical habitat can be destroyed without appreciably diminishing the value of a critical habitat for the species' survival or recovery" *Butte Environmental Council v. U.S. Army Corps of Engineers,* 620 F.3d 936, 948 (9th Cir. 2010). Thus, the fact that a proposed action will result in removal of a particular area of critical habitat does not compel a determination by the Service that the action will destroy or adversely modify critical habitat within the meaning of Section 7. Instead, the Service must evaluate the impacts of removing a particular area of critical habitat plus any other impacts of the proposed action on the value of critical habitat for the species' survival or recovery. For instance, if a proposed action would eliminate the habitat value of particular lands through development of those lands and adversely affect the habitat value of other lands through the indirect effects of development, such as increased human activity, the Service must consider what the combined direct and indirect effects on designated critical habitat would be, and whether those combined effects are likely to appreciably diminish the capability of critical habitat to carry out its intended conservation function. If the combined effects would appreciably diminish the capability of designated critical habitat to perform its intended conservation function (i.e., result in the destruction or adverse modification of critical habitat), the Service must identify in the Biological Opinion any reasonable and prudent alternatives that would avoid "destruction or adverse modification" of critical habitat.

California Condor Critical Habitat

The Service designated critical habitat for California condor in 1976 (41 *Federal Register* [FR] 41914, September 24, 1976). It was one of the first critical habitat designations, was demarcated generally by township and range lines, and lacks the detailed discussion of essential habitat features and primary constituent elements that are characteristic of more recent designations. However, each of the nine different critical habitat units was designated because of its specific role in meeting the life history needs of the California condor (i.e., nesting, roosting, and foraging areas).

The totality of the discussion of Tejon Ranch in the 1976 final critical habitat rule is as follows:

> The Tejon Ranch, Kern County rangelands, and Tulare County rangelands, as described below, are considered critical for feeding and related activities. The Tejon Ranch is very important because it contains the only significant feeding habitat remaining in close proximity to the Sepe-Piru Condor

nesting area. In most cases Condor feeding habitat is not as restricted as nesting and roosting sites, and only certain portions of the areas described below are needed at any one time. Because, however, the location of food is directly related to both Condor distribution and reproductive success, substantial areas of open range, with adequate food, and limited development and disturbance, would have to be preserved in each delineated area in order to maintain the species.

(7) Tejon Ranch: an area of land, water and airspace in Kern County, with the following components (San Bernardino Meridian): R16W T10N, R17W T10N, R17W T11N, R18W T9N, R18W T10N, R19W T10N [41 FR 41914-41916])

The Tejon Ranch critical habitat unit encompasses 134,871 acres. Approximately 127,774 acres of the critical habitat unit are located within the Tejon Ranch boundary (excludes Not-A-Part Inholdings, or the 38,865 acres in the Covered Lands that are not owned by TRC), and 95,068 acres of the unit are located in the Covered Lands.

NEPA Analysis of Potential Effects on Critical Habitat

Under NEPA, the Service is required to analyze the effects of the proposed Federal action (i.e., issuance of an ITP) on the human environment, including potential effects on the California condor and its critical habitat. This Environmental Impact Statement (EIS) has been prepared to meet the Service's NEPA obligations, and includes a discussion of the potential effects of all alternatives on the condor and its habitat in Section 4.1, Biological Resources. The results of the EIS analysis as they relate to California condor critical habitat are summarized below.

As provided above, in the final critical habitat rule for the species, the specific conservation function of the Tejon Ranch critical habitat unit is to provide essential feeding (foraging) areas for the California condor. Although the Tejon Ranch critical habitat unit was designated as an essential foraging area, the unit also provides areas for roosting, including traditional roost sites, and habitat connectivity to other portions of their historic range outside and beyond the boundaries of Tejon Ranch.

In evaluating the effects of the TU MSHCP on condor critical habitat in this EIS, the Service considered the amount of foraging habitat that would be lost and conserved under the TU MSHCP, and the effects such loss would likely have on the potential food base in the condor's range, focusing on the portion of the range currently used by the southern California subpopulation. Potential effects on habitat connectivity between the Tejon Ranch critical habitat unit and other designated critical habitat units for the California condor were also considered.

A detailed description of the potential effects of the TU MSHCP on the estimated food base and foraging habitat on Tejon Ranch are provided in Master Response 3, California Condor Foraging Habitat, and Master Response 4, California Condor Food Availability Analysis, in this Final EIS. In summary and with respect to the loss and preservation of modeled condor foraging habitat within the Tejon Ranch critical habitat unit, the EIS analysis identified 87,400 acres of foraging habitat within the 134,871-acre Tejon Ranch critical habitat unit, 58,715 acres of which occur in the Covered Lands. Commercial and Residential Development Activities proposed under the TU MSHCP would result in direct and indirect effects on 12,015 acres of foraging habitat, including the actual loss of 4,257acres of foraging habitat in the Tejon Ranch critical habitat unit. Approximately 80,231 acres of critical habitat, encompassing 46,045 acres of foraging habitat, would be conserved in the Covered Lands. An additional 21,867 acres of critical habitat, encompassing 18,261 acres of foraging habitat, would be conserved outside the Covered Lands under the Ranchwide Agreement. In total, 102,098 acres (76%) of the 134,871 acres within the Tejon Ranch critical habitat unit, encompassing approximately 64,306 acres of foraging habitat and traditional roosting areas, would be conserved in perpetuity under the TU MSHCP and the Ranchwide Agreement. Further, the

reduction in foraging habitat for condors on Tejon Ranch is not anticipated to affect the food base for condors on the ranch because grazing would continue through the permit term on the majority of the ranch, and the amount of cattle grazed would remain comparable to the historical average grazing level of 14, 500 cattle. Additionally, hunting would continue at the same general level through the permit term, with the commercial program expected to operate under tighter oversight (see Response to Comment P-6-13). Wild pig depredation is also expected to continue at similar levels through the permit term. As a result, despite potential future declines in livestock across the condor range, the current contribution of Tejon Ranch to the condor's overall food supply would remain relatively constant over the 50-year permit term.

The Service agrees with several comments that noted that urban and suburban development generally adversely affect condor conservation. Even with the variety of measures incorporated into the TU MSHCP to protect condors and their habitat, the Service recognizes there would be a loss of foraging habitat and the potential for disturbance or habituation of condors as a result of the Covered Activities, including development. For that reason, the Service considered that suitable foraging habitat within 0.5 mile from the TMV Planning Area Development Envelope and Oso Canyon Development Envelope would be indirectly affected (i.e., would not consistently provide feeding opportunities for condors due to construction, ongoing human use, and visual and noise-related disturbance). However, the Service also expects that the areas that would be conserved and managed under the TU MSHCP and the Ranchwide Agreement would provide sufficient habitat to maintain Tejon Ranch's contribution to the foraging needs of a down-listed population of condors in California. In addition, the Service expects that implementation of the mitigation and conservation measures provided in the TU MSHCP would contribute to the overall conservation values of these preserved areas for California condors.

Considering the amount of foraging habitat that would remain on Tejon Ranch under the TU MSHCP and Ranchwide Agreement, and the food supply for condors that would be produced from cattle, pig, and native ungulate carcasses on that foraging habitat in the TU MSHCP Mitigation Lands and other conserved areas of Tejon Ranch, it is likely that the ranch would continue to function as an essential and viable foraging area for the existing and expanding condor population. In addition, the proposed permanent conservation of historically and currently used traditional roost sites on Winters Ridge, along with the permanent land use restrictions on the TU MSHCP Mitigation Lands and other rangelands in the Tejon Ranch critical habitat unit, would enable those lands to continue to provide foraging and roosting habitat essential for the conservation of condors. The continuation of ongoing ranch-wide activities, such as grazing and hunting, and limitations on the nature and extent of public access within the ranch are also expected to maintain the conservation value of the TU MSHCP Mitigation Lands and other conserved areas of the ranch to the condor.

Finally, the Service does not believe that commercial and residential development proposed under the TU MSHCP would preclude condors from reaching the remaining portion of the Tejon Ranch critical habitat unit, other critical habitat units, or other foraging habitat in the northern portions of the Tehachapi Mountains and southern Sierra Nevada portions of their historic range. Condors regularly fly over other developed areas in southern and central California, as well as Arizona. Based on geographic positioning system (GPS) data, condors currently fly over developed areas in general vicinity of the Covered Lands, including the communities of Frazier Park, Lebec, Pine Mountain Club, Stallion Springs, Big Sur, and King City. Condors also regularly travel between Hopper Mountain National Wildlife Refuge and the Sespe Condor Sanctuary south and west of Tejon Ranch, as well as through the Tehachapi Mountains into the northern portion of their historical range. Condors can fly long distances in a single day, including over developments similar in size to the proposed TMV Project. Based on these patterns, the Service does not believe that the development proposed under the TU MSHCP would restrict condor movements or affect their use of their historical range.

For these reasons, the Service does not anticipate that the development proposed under the TU MSHCP would reduce condor reproduction through loss of foraging habitat in the Covered Lands, changes in food availability, or adverse effects on condor overflight.

As noted above, the Service will make a statutory determination regarding the effects of the proposed Federal action on the California condor and its critical habitat in an intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA. In the Section 7 consultation, the Service will formally consider the direct, indirect, and cumulative effects of the proposed action on critical habitat and make a determination as to whether critical habitat will continue to serve its intended conservation role and function.

Master Response 3
California Condor Foraging Habitat

Master Response 3 addresses comments on the potential effects of the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) on California condor foraging habitat. Specifically, several comments suggested that the method used to estimate the amount of foraging habitat on Tejon Ranch are not scientifically valid and rules out large areas of Tejon Ranch, including vegetation communities where condor have been observed foraging. Other comments noted that the evaluation of the loss of foraging habitat does not consider similar losses that have occurred, or are anticipated to occur, in the general vicinity of Tejon Ranch as a result of increased development pressure. One comment noted that flaws in the analysis of effects on condor foraging habitat, such as how suitable foraging habitat is defined in the environmental impact statement (EIS), invalidate the analysis of effects on condor critical habitat, as defined under the Federal Endangered Species Act (ESA), given the reliance of the later on the former.

Table MR3-1 provides a list of commenters and a reference to the individual comment addressed by this master response. Refer to Chapter 4, Individual Responses to Public Comments, for a copy of each comment letter and responses to other substantive comments not addressed by a master response.

Table MR3-1. Comments Addressed in Master Response 3

Comment	Commenter
P-5-7	Snyder et. al.
P-5-8	Snyder et. al
P-5-9	Snyder et. al
P-5-10	Snyder et. al
P-5-11	Snyder et. al
P-5-14	Snyder et. al
N-3-10	Center for Biological Diversity

Extent of Foraging Habitat

The California condor forages opportunistically over large expanses of its range. It is a visual scavenger that may identify a food source on its own, or by following other scavenging species, such as common ravens and golden eagles, to locate carcasses. It is recognized that, by definition, an opportunistic scavenger feeds wherever it can find and access a food source.

However, despite the fact that condors are able to fly over hundreds of square miles of diverse habitat types, certain habitat types are more likely to contain food sources that are more detectable and accessible to condors. Carrion located in grasslands and oak savannah will generally be observable and accessible to condors because of the open structure of vegetation.

Historically, the characterization of condor foraging habitat has generally been based on visual observations of condors foraging and feeding. More recently, the use of global position system (GPS) technology has allowed field biologists to more easily locate and document stationary condors feeding on non-proffered carcasses, providing a better understanding of where condors are finding

food and successfully feeding. The GPS data on non-proffered feeding events indicate condors find and feed on carcasses in various areas of Tejon Ranch, in relatively open vegetation.

The U.S. Fish and Wildlife Service (Service) has characterized suitable foraging habitat in this EIS as habitat where condors are likely to consistently find and access food. To more accurately characterize suitable foraging habitat for the condor on Tejon Ranch and to quantify the amount of suitable foraging habitat that would be directly lost or indirectly affected by the TU MSHCP and alternatives, as well as the amount of suitable foraging habitat that would be conserved in the TU MSHCP Mitigation Lands, the Service used the Tejon Ranch vegetation composite geographic system (GIS) layer (Dudek 2007a) to identify vegetation communities that have consistently been associated with condor foraging, including foothill grassland and oak-savannah habitats (Snyder and Snyder 2000; U.S. Fish and Wildlife Service 1996; Wilbur 1978), for inclusion in the foraging habitat model. Additional vegetation communities identified in the vegetation GIS layer were also examined and overlaid with aerial imagery of Tejon Ranch to assess the extent of open ground throughout these vegetation communities on the ranch. The Service then conducted a field site visit to assess the density, thickness, and extent of the vegetative understory in the additional vegetation communities, and to assess the potential for condors to access food and/or facilitate escape from potential predators. The most specific vegetation community classifications (Table D-2, Appendix D of the TU MSHCP) informed the field site visit and were used for this analysis. Based on the field assessment and aerial imagery of the ranch, the Service excluded vegetation communities from the suitable foraging habitat model that included understory vegetation too dense to allow condors to feed and to escape predators. Specifically, the following vegetation communities in the Tejon Ranch vegetation composite GIS layer were excluded from the foraging habitat model for Tejon Ranch:

- Black oak woodland,
- Brewers oak scrub,
- Chaparral,
- Developed,
- Incense cedar stand,
- Intermixed conifer,
- Lake,
- Mixed oak woodland,
- Riparian scrub,
- Undetermined chaparral,
- Scrub oak,
- Wetland, and
- White fir/mixed oak.

The Service included the following vegetation communities from the Tejon Ranch vegetation composite GIS layer in the foraging habitat model for condors for Tejon Ranch:

- Agriculture,
- Alluvial scrub,
- Annual grassland,
- Black oak savannah,
- Blue oak savannah,

- Blue oak woodland,
- Canyon oak savannah,
- Canyon oak woodland,
- Conifer mixed oak,
- Desert wash riparian seeps,
- Disturbed non-native grassland,
- Grassland,
- Gray pine savannah,
- Gray pine woodland,
- Interior oak savannah,
- Interior oak woodland,
- Mixed oak savannah,
- Mojavean scrub,
- Native grassland,
- Oak savannah,
- Oak woodland,
- Pinyon pine woodland,
- Riparian woodland,
- Riparian/wetland,
- Saltbush/buckwheat scrub,
- Scrub,
- Undetermined savannah,
- Undetermined woodland,
- Wash,
- White fir stand,
- White oak savannah, and
- White oak woodland.

Several comments asserted that the exclusion of oak woodland from the model as suitable condor foraging habitat is not well justified, particularly given observations of condors feeding under closed canopy conditions within the Covered Lands and elsewhere. However, as shown in the vegetation community classification lists above, the Service did not exclude all oak woodland classifications from the model, nor did we include all oak woodland classifications. The most specific vegetation community classifications available were used to develop the model, including several sub-classifications under the more general oak woodland category. The decision to include or exclude a specific vegetation community was based on the understory vegetation observed during the site visit, as well as the aerial imagery over-laid with each vegetation type. Grasslands and savannahs are the vegetation communities that make up the majority of foraging habitat in the model.

As noted in the Supplemental Draft EIS, the Service recognizes that the structure of the vegetated understory associated with the vegetation communities excluded from the model is not entirely uniform across the Covered Lands due to the natural variation associated with localized growing conditions. The Service is aware there are areas in the vegetation communities excluded from the condor foraging habitat model where the understory vegetation structure is sparse enough to allow condors to access a carcass. When comparing the aerial imagery of the ranch with the Tejon Ranch GIS vegetation layer, it is evident that the vegetation is not uniform within each mapped polygon. The Service also acknowledges that the mapping resolution of the Tejon Ranch vegetation GIS layer is not finite enough to capture open areas within the mapped polygons of each vegetation community. Thus, even using the best available vegetation data for Tejon Ranch, the Service was unable to map and quantify every open area that could potentially provide feeding opportunities for condors.

However, in the absence of a perfect data set and following the ground-truthing field review of understory vegetation and review of aerial imagery of these areas, the Service was able to exclude specific community classifications from the model because the understory vegetation in those communities is generally too dense for condors to access. Inclusion of these areas as suitable foraging habitat would greatly overestimate the amount of habitat, both in the Tejon Mountain Village (TMV) Planning Area and in the proposed TU MSHCP Mitigation Lands and other conservation lands on the ranch, where condors are likely to be able to find and access food.

As noted previously, the use of GPS technology has allowed field biologists to more easily locate and document stationary condors feeding on non-proffered carcasses, providing a better understanding of where condors are finding food and successfully feeding. The GPS data on non-proffered feeding events indicate condors find and feed on carcasses in various areas of Tejon Ranch, primarily in relatively open vegetation. In responding to the comments received on the Supplemental Draft EIS, the Service reviewed GPS data on non-proffered carcass locations. The available data cover the timeframe from 2009–2010 (U.S. Fish and Wildlife Service unpublished data 2010), and indicate condors were associated with non-proffered carcasses on Tejon Ranch in a variety of vegetation communities, with the substantial majority located in the vegetation communities included in the model of suitable foraging habitat. A few carcasses were located in open areas within the mixed oak woodland vegetation community (a vegetation community that was excluded from the model). However, these data are consistent with the fact that the mapped polygons of vegetation communities are not small enough to identify every open area within each vegetation community that could potentially provide feeding opportunities for condors (over 182,000 acres of habitat on Tejon Ranch were modeled as suitable habitat for condors). Similarly, due to these mapping scale limitations, it is possible that, within the vegetation communities identified as suitable foraging habitat in the model, there may be areas with dense undergrowth unlikely to be accessed by condors for feeding.

As noted above, certain vegetation communities, including the mixed oak woodland community, were excluded from the model of suitable foraging habitat because, based on aerial imagery and a field assessment, the understory vegetation in these communities is generally too dense to allow access to condors. It is assumed that similar understory conditions generally characterize the excluded vegetation communities identified through GIS mapping and aerial imagery across the Covered Lands. Based on the Tejon Ranch vegetation GIS layer, mixed oak woodland is by far the largest of the vegetation communities excluded from the model. There are 30,287 acres of mixed oak woodlands across the Covered Lands. Of these, 2,132 acres of mixed oak woodlands are located in the TMV Planning Area and 28,155 acres are located in the TU MSHCP Mitigation Lands, outside of the TMV Planning Area. Of the mixed oak woodlands within the TMV Planning Area, the vast majority are located within the 0.5-mile buffer from the TMV Specific Plan and Oso Canyon Development Envelopes and are, therefore, assumed to be affected by proposed Commercial and Residential Development Activities. As such, the area within the 0.5-mile buffer would have been

excluded from the suitable foraging habitat model regardless of vegetation classification. Even assuming the mixed oak woodland vegetation community generally contains some areas that would be accessible to condors, the overwhelming majority of mixed oak woodlands (93%) would be conserved in the TU MSHCP Mitigation Lands. The conserved lands contain the majority of habitat suitable for foraging condors, including open areas potentially available to condors within otherwise unsuitable vegetation community classifications that were not specifically mapped or quantified in the habitat model due to limitations in the mapping resolution of the vegetation GIS Layer.

In summary, the foraging habitat model, combined with the field assessment of habitat conditions, provides a more effective mechanism to identify the locations and extent of suitable foraging habitat on Tejon Ranch than simply assuming that all areas within the Covered Lands are of equal value to the condor. For example, oak savannah and grasslands provide consistent feeding opportunities for condors due to the presence of both carrion and an appropriate vegetation structure that allows condors to access that carrion. As a result, these areas have consistent value to condors as foraging habitat. In contrast, a much larger amount of the woodland habitat excluded from the model would provide at best very limited opportunities for successful feeding because the vegetation structure of that woodland habitat renders it difficult and dangerous for condors to find and access food. When comparing the amount of foraging habitat directly and indirectly lost as a result of the proposed action (17,995 acres) with the amount of foraging habitat conserved under the TU MSHCP and existing Ranchwide Agreement (over 148,000 acres), the Service considers it appropriate to take into account the suitability of foraging habitat that would be lost and conserved. The Service has concluded that the appropriate characterization of suitable foraging habitat is habitat where condors are likely to consistently find and access food. This conclusion is based on the best available information—the Tejon Ranch vegetation GIS layer combined with a field survey—to quantify the vegetation communities on the ranch where condors are likely to consistently find and access food. The vegetation communities listed above are the vegetation communities on Tejon Ranch where condors are able to consistently find and access food and the areas where condors, in fact, consistently feed. These vegetation communities include several sub-classifications of oak woodland on Tejon Ranch that are characterized by a vegetative understory sparse enough to allow condors access under the tree canopy. Other sub-classifications of oak woodland, including mixed oak woodland, were excluded from the foraging habitat model because these communities on Tejon Ranch are generally characterized by a thick, dense understory that is inhospitable to, and is unlikely to be accessed by, foraging condors.

Please refer to Appendix D, Habitat Suitability Criteria Methods, in the Supplemental Draft EIS, for a more detailed discussion of the condor foraging habitat model used to inform the analysis in this EIS.

Evaluation of the Loss of Foraging Habitat

As described in Section 4.1, Biological Resources, it is estimated that 17,995 acres of suitable foraging habitat would be directly (6,656 acres) or indirectly (11,339 acres) affected by proposed development within the Covered Lands under the TU MSHCP. The following summarizes the methods used to quantify these effects in the EIS and TU MSHCP.

As noted above, the Service determined that grasslands and oak savannah vegetation communities are the primary vegetation communities on Tejon Ranch where condors are able to consistently access food, and constitute the vast majority of suitable foraging habitat on the Covered Lands. The suitable foraging habitat model identified a total of 182,614 acres of suitable condor foraging habitat on Tejon Ranch, including 84,112 acres in the Covered Lands.

For the purposes of the EIS analysis, the Service assumed that all suitable foraging habitat within the TMV Specific Plan and Oso Canyon Development Envelopes[1] would be directly affected by development activities, and that suitable foraging habitat within 0.5 mile of these development envelopes would be indirectly affected. Specifically, given the configuration of the TMV Planning Area Open Space area relative to the proposed development envelopes, the Service determined that much of the suitable foraging habitat in the TMV Planning Area Open Space would occur within 0.5 mile of proposed development areas, and therefore, would not provide consistent feeding opportunities for condors due to noise or other human disturbances. Larger blocks of suitable foraging habitat in the TMV Planning Areas Open Space (e.g., the eastern end of Geghus Ridge and the area north of Grapevine Peak) which would be located more than 0.5 mile away from development would, however, continue to function as foraging habitat. Based on these assumptions, it was estimated that Commercial and Residential Development Activities proposed within the TMV Specific Plan and Oso Canyon Development Envelopes would result in the direct loss of 6,656 acres of suitable foraging habitat, and indirect effects on 11,339 acres of suitable foraging habitat. In fact, the amount of suitable foraging habitat lost or indirectly affected under the TU MSHCP is likely to be less because the actual disturbance footprint in the TMV Planning Area would be limited to 5,533 acres.

The effect of the loss of foraging habitat from development proposed under the TU MSHCP, as characterized in the EIS, was informed by comparing the amount of suitable foraging habitat lost in the areas proposed for development with the amount conserved on the TU MSHCP Mitigation Lands and under the Ranchwide Agreement. The Service considered the amount and type of habitats that would be conserved to determine if the TU MSHCP Mitigation Lands would continue to provide sufficient foraging habitat and potential food sources (i.e., cattle, feral pigs, and native ungulates) for condors currently using the ranch, and for a recovering population of condors expected to forage on the ranch in the future, despite the loss of up to 17,995 acres of foraging habitat in the TMV Planning Area.

The Service has concluded that while up to 17,995 acres of suitable foraging habitat in the TMV Planning Area would be directly or indirectly affected by proposed development activities, the remaining Covered Lands (i.e., TU MSHCP Mitigation Lands and Existing Conservation Easement Areas) and other ranchlands conserved under the Ranchwide Agreement would continue to provide conservation value to condors in the form of foraging (and roosting) habitat (over 148,000 acres of foraging habitat would be preserved on Tejon Ranch). In addition, grazing and hunting is anticipated to continue on the ranch at levels comparable to historic, average conditions and, along with wild carrion, would provide important food resources for condors using the ranch in conserved Open Space areas through the permit term. As described in Master Response 2, California Condor Critical Habitat, and Master Response 4, California Condor Food Availability Analysis, in this Final EIS, in consideration of the large amount of foraging habitat that would be preserved on Tejon Ranch and the continuation of grazing and hunting at levels comparable to what currently occurs, the Service anticipates that there would be sufficient foraging habitat and a sufficient food base remaining on Tejon Ranch after implementation of the TU MSHCP to support the existing and expanding population of condors over a 50-year permit term.

[1] Because there is no suitable foraging habitat located in Lebec/Existing Headquarters, West of Freeway, or at the Tejon Castac Water District (TCWD) facility location, all development-related impacts on suitable foraging habitat quantified in the EIS are specific to development within the TMV Specific Plan and Oso Canyon Development Envelopes.

Other Proposed Developments in Condor Habitat

The Service is aware that historic condor foraging areas in the Simi Valley, the Santa Clara Valley, and Hathaway Ranch adjacent to the Hopper Mountain National Wildlife Refuge have been developed or converted to other land uses that are not consistent with condor foraging, as noted in some comments. These developments are reflected in the baseline environmental condition considered in the Supplemental Draft EIS. The cumulative effects analysis in Section 4.1, Biological Resources, of the EIS also addresses potential development on the ranch outside the Covered Lands, including potential development identified in the Ranchwide Agreement (e.g., the Grapevine Development, which could affect up to 6,653 acres of condor critical habitat if that project were proposed) and wind energy projects proposed in Kern County. Several additional, reasonably foreseeable projects were also considered in the cumulative effects analysis for the California condor, including the Newhall Ranch Development Project, the Panoche Valley Solar Farm Project, and proposed oil and gas lease expansion projects in the Los Padres National Forest. In summary, the cumulative effects analysis of these projects, when considered in combination with the effects of the proposed action, concluded that while some suitable grassland foraging habitat may be lost as a result of development in the Tehachapi Uplands Area (e.g., Centennial, Grapevine, and Tejon Ranch Commerce Center projects) and by wind energy projects proposed in Kern County, the acreage of suitable foraging habitat that would be preserved under the TU MSHCP and as a requirement of other development projects (approximately 137,000 acres), along with the continued availability of adequate food supplies, would reduce the potential for a substantial adverse cumulative effects on food supplies for the condor. In addition, about 5,722 acres would be preserved in open space under the Newhall Ranch Development Project, which would continue to provide suitable foraging habitat for condors in permanent conservation easements. An additional 23,300 acres would be preserved in open space under the Panoche Valley Solar Farm Project, where livestock grazing would continue to be allowed after the solar panels are installed. In summary, although cumulative effects of the TU MSHCP and other reasonably foreseeable projects considered in this EIS could result in direct and indirect effects on suitable condor foraging habitat, they are not anticipated to substantially affect the condors' ability to find food in the cumulative effects analysis area.

It is important to note that there are significant areas of condor habitat in protected Open Space areas in close proximity to the Covered Lands. To the north and east of Tejon Ranch, in the Sierra Nevada ecoregion, there are large areas of public land (mostly Bureau of Land Management and U.S. Forest Service lands, i.e., Sequoia National Forest). To the west of Interstate 5 (I-5) and south of State Route 138 (SR 138), comprising the northern extent of the Southern California Mountains ecoregion, there are both private and public Open Space lands, including the Wind Wolvers Preserve, the Los Padres National Forest, and Angeles National Forest. Ongoing management of these lands is likely to cumulatively benefit condors. In particular, the Wind Wolves Preserve, which lies immediately adjacent to and north of Tejon Ranch, includes over 95,000 acres of condor foraging and roosting habitat that is expected to continue to provide conservation value to the species, in addition to foraging habitat found on Tejon Ranch.

In addition to this National Environmental Policy Act (NEPA) analysis, and as part of the ESA Section 7 process, the Service will formally address effects on condor and their habitat, including critical habitat, in the intra-Service Biological Opinion, which will consider the cumulative effects of other non-federal projects in the action area that may affect the condor. Potential effects on foraging or critical habitat as a result of other projects would, as appropriate, be considered by the Service, through the ESA Section 7 or ESA Section 10 processes.

Suitable Foraging Habitat as it Relates to Critical Habitat

Section 4.1, Biological Resources, and Master Response 3, California Condor Critical Habitat, in the Supplemental Draft EIS describe how effects on suitable foraging habitat relate to effects on critical habitat, and in particular critical habitat within the Tejon Ranch critical habitat unit. In summary, in evaluating the effects of the TU MSHCP on condor critical habitat in this EIS, the Service considered the loss of foraging habitat and the effects such loss is likely to have on the availability of food for the condor, as well as the amount of foraging habitat that would be lost and conserved under the TU MSHCP. These considerations are based on the final critical habitat rule for the species, in which the specific conservation function of the Tejon critical habitat unit was identified as providing essential feeding (foraging) areas for the California condor. The Service concludes that even with the development proposed for the TMV Planning Area in the TMV Specific Plan and Oso Canyon Development Envelopes, which would directly and indirectly affect suitable foraging habitat, there would still be sufficient foraging habitat conserved in large blocks on the remainder of the Tejon Ranch critical habitat unit, outside of the critical habitat unit on the ranch, and in conjunction with open space conservation in existing public and private lands within the condor range, to support condors currently foraging on the ranch, as well as an expanding condor population expected to forage on the ranch in the future. The overall food availability for condors in the Tejon Ranch critical habitat unit would remain essentially unchanged because grazing and hunting consistent with past practices would continue (see Master Response 4, California Condor Food Availability Analysis, in this Final EIS for a discussion of food availability). The Service also concludes that the TMV development would not restrict condors from accessing the other critical habitat units designed for the species, or other potential habitat within the condor's historical range.

Master Response 4
California Condor Food Availability Analysis

Master Response 4 addresses comments on the approach used to assess the potential effects of the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) on food available to the California condor. Comments suggested that the analysis of future food availability for condor was flawed and overstates carrion that would be available and used by condors.

Table MR4-1 provides a list of commenters and a reference to the individual comment addressed by this master response. Refer to Chapter 4, Individual Responses to Public Comments, for a copy of each comment letter and responses to other substantive comments not addressed by a master response.

Table MR4-1. Comments Addressed in Master Response 4

Comment	Commenter
P-5-2	Snyder et al.
P-5-3	Snyder et al.
P-5-4	Snyder et al.
P-5-5	Snyder et al.
P-5-6	Snyder et al.
P-5-15	Snyder et al.

Approach to Food Availability Analysis

As noted above, comments suggested that the analysis of future food availability for the condor was flawed because it did not consider several key assumptions, including that calculated food supplies may be used by other scavenger species; that many available carcasses are not attractive as potential food for condor (i.e., adult cattle carcasses are too difficult to penetrate); and that effective condor foraging is commonly limited by specific wind conditions, topography and other factors such that only a small fraction of the overall mapped foraging range of the species on which calculations of food supply were based can actually be used by condor at any time. The following summarizes the approach used for the food availability analysis in the Supplemental Draft Environmental Impact Statement (EIS), and addresses how each of the above assumptions were considered in that analysis.

As described in Section 4.1, Biological Resources, of the Supplemental Draft EIS, the U.S. Fish and Wildlife Service (Service) estimated the number of potential livestock carcasses produced within the approximate range of the southern California subpopulation of California condor based on reported cattle and sheep numbers from Kern, Los Angeles, San Luis Obispo, Santa Barbara, Tulare, King, and Ventura Counties. Counties that are occupied by the northern California subpopulation of California condor (Monterey and San Benito Counties) contribute additional carcasses that could support one wild population of 150 condors in their historic range in California, which would constitute one of the two wild and disjunct populations needed to meet the down-listing criteria of the California Condor Recovery Plan (U.S. Fish and Wildlife Service 1996). Native ungulate carcasses, wild pig carcasses, and any other carcasses condors may feed on in the range of both the northern and southern California subpopulations, also would contribute to the overall potential food base for 150 free-flying condors in California.

The figures presented in the Supplemental Draft EIS are an estimation of the livestock carcasses produced annually; they serve as a starting point for estimating potential food availability for California condor and are not intended as an absolute quantification of the available food base for condors. These figures are based on county livestock data available to the public, as well as mortality estimates of these livestock provided by the U.S. Department of Agriculture (2011). The Service also considered that an additional, but unknown, number of carcasses would be available from native ungulate and wild pig carcasses throughout the range of condor. Unlike for livestock, there is no reliable available information on the numbers and distribution of such carcasses.

On Tejon Ranch, the Service considered specific information regarding livestock and hunting to inform the food availability analysis. Specifically, the Service considered past grazing practices, which have been conducted at a historical average level of 14,500 head of cattle. Hunting records from Tejon Ranch further indicate that from 2001 through 2011, between 100 and 200 deer were hunted annually on the ranch and between 700 and 900 pigs were harvested on an annual basis (Tejon Ranchcorp 2012).

As acknowledged in Section 4.1, Biological Resources, of the Supplemental Draft EIS, not all livestock or other carcasses within the condor's range or on the Covered Lands are found and eaten by condors. Some carcasses may be disposed of by landowners, consumed by predators or other scavengers, or simply not discovered by condors. The variability in food availability is consistent with the opportunistic scavenging and far-ranging foraging behavior characteristic of condors (U.S. Fish and Wildlife Service 1974, 1996; Wilbur 1978; Snyder and Snyder 2000). For these reasons, the Service cannot accurately predict what proportion of the estimated annual food base would actually be used by condors, nor the number of condors these available carcasses would support. Regardless, reasonable estimates, as provided in Master Response 1B, California Condor Critical Habitat, of the Supplemental Draft EIS, suggest that the overall food supply is well in excess of that needed to support a population of 150 free-flying condors in California.

The Service disagrees with the comments that state the EIS analysis was insufficient because it failed to consider that other scavengers outcompete condors for available food resources because of their relative abundance; because they may consume 100% of the available carcass biomass; or because condors are rarely the first species to arrive at a carcass and normally defer to other species. As noted by the commenter, the Service is not aware of any studies that apportion the biomass consumption of a given carcass by various scavengers other than condors, or that document such consumption as approaching 100%, whether or not other species arrive at a carcass prior to condors. Any conclusions suggesting that condors, therefore, are at a disadvantage with respect to other scavengers in terms of food availability and biomass consumption would be highly speculative. Condors have successfully competed with golden eagles, vultures, common ravens, coyotes, bears, mountain lions, and other scavenging fauna for over 40,000 years for available resources. In addition, because of their extensive wingspread and size, condors can travel large distances in a single day and, therefore, are able to search for food sources over a much larger area of land than most of their competitors. This has provided an opportunistic advantage to condors since they presumably can locate more carcasses in a given time period than their competitors. Furthermore, the recent decline of the species in the wild has been largely due to lead poisoning as a result of ingestion of lead ammunition, rather than an inability to compete with other scavengers. The Service has determined that the estimated amount of cattle and sheep carcasses (and an additional unknown number of native ungulates and wild pigs) within the range of the condor is adequate to support a recovering population of condors, despite competition with other scavengers.

Additionally, the Service disagrees that the EIS analysis should have distinguished between adult and calf carcasses as viable food sources because adult carcasses are more difficult to penetrate and, therefore, less accessible to condors. The analysis of potential food sources did not distinguish between adult cattle and calf carcasses because full-grown cattle carcasses also provide a source of food for condors. Despite the tougher hide on a full-grown cow compared to that on a calf, condors

have been observed feeding on adult cattle carcasses and penetrating the adult hides in the same fashion as they do with calves—through soft tissue orifices (Koford 1953). Numerous historical records exist of California condors feeding on full grown livestock carcasses, including cattle, deer, horse, and mule (Koford 1953; Wilbur 1978). The Service does recognize the benefits of Tejon Ranch's continuing cow and calf ranching operation in light of the historical importance of calves as food source for condors (Koford 1953; Wilbur 1978; Miller et al. 1965). The Service (1974) and Wilbur (1978)considered the cow and calf operation on Tejon Ranch to provide a crucial food source for condors. Calving on Tejon Ranch, both in the TU MSHCP Mitigation Lands and other conserved rangelands on the ranch, would continue under the TU MSHCP.

Regarding comments stating that the analysis was insufficient because it did not consider wind conditions in evaluating available foraging habitat, regardless of the availability of food supplies, the Service agrees that not all reported livestock carcasses or other potential carcasses necessarily occur in areas conducive to condor foraging, such as areas with favorable winds and associated topography. However, the Service disagrees that only a fraction of the condor's range qualifies as good foraging habitat due to adverse wind conditions (e.g., in grasslands that have low ambient wind conditions). It is important to note that the mapped range of the condor in California primarily encapsulates mountainous regions including the Central Coast Range, Transverse Range, and southern Sierra Mountains. These areas are characterized by moderate to steep topography and variable winds that condors need to move about and forage. While on any given day, conditions may be such that condors may not be able to access a particular carcass due to low winds or flat terrain (such as grasslands in a valley between ridges), such variability of winds in montane areas is consistent with the opportunistic nature of the species. As noted above, condors also have the ability to forage over vast distances in a relatively short period of time, such that if a particular carcass may not be accessible in one location, opportunities to access food in other areas with appropriate conditions may be available.

One commenter noted that critical habitat located within the TMV Planning Area provides the most consistently favorable wind conditions for condors in the region. Although the Service is aware that condors regularly occur outside the TMV Planning Area, it is not aware of any specific information or data that suggests the TMV Planning Area provides condors with more consistently favorable wind conditions than the conserved areas of the Covered Lands.

The food availability analysis in the EIS is based on the best information available to estimate livestock mortality in the range of the condor (i.e., annual county agricultural reports) and specific information on grazing and hunting from Tejon Ranch. While it is difficult to predict what proportion of the reported livestock mortality or other sources of non-proffered food would occur in areas accessible to condors, the Service can confirm that condors are currently locating and feeding on non-proffered food sources, including livestock and hunting carcasses, on Tejon Ranch and elsewhere throughout their range (U.S. Fish and Wildlife Service unpublished data 2010, 2012). Therefore, it is clear that livestock and native ungulate carcasses do occur in areas accessible to condors.

Further, and more importantly, the Service does not anticipate that the reduction in foraging habitat for condors on Tejon Ranch under the proposed TU MSHCP would decrease the food base for condors on the ranch because hunting and grazing would continue on the ranch through the permit term at levels comparable to historic, average conditions (i.e., approximately 14,500 head of cattle, with yearly variation to account for rangeland conditions). Review of geographic positioning system (GPS) observations of foraging condors on the Tejon Ranch indicate that condors use foraging habitat throughout the ranch to find food, including areas in the TU MSHCP Mitigation Lands above 2,000 feet in elevation and areas lower in elevation outside the Covered Lands but conserved under the Ranchwide Agreement. Foraging by condors on Tejon Ranch is not limited to suitable foraging habitat mapped in or adjacent to the Tejon Mountain Village (TMV) Specific Plan and Oso Canyon Development Envelopes. Available data do not indicate that the foraging habitat that would be lost

in these development envelopes is more important to condors than other areas of suitable foraging habitat that would remain available to condors on the ranch. The commenter did not provide any data to the contrary. Given that grazing and hunting on Tejon Ranch is expected to remain consistent with historic average levels through the permit term under the TU MSHCP such that food sources would be consistently available to condors throughout the ranch (in suitable foraging habitat in the TU MSHCP Mitigation Lands and other lands conserved under the Ranchwide Agreement), the Service believes that Tejon Ranch would continue to function as an essential foraging area for condors.

The Service agrees with the comment that the continued availability of reliable and consistent food sources for condors on Tejon Ranch is likely to increase in importance if the overall production of livestock in the range of the condor declines over time. However, just as condors in central California do not feed on Tejon Ranch regularly, the Service does not anticipate condors breeding and occupying other areas of their historical range would feed exclusively on Tejon Ranch. Depending on seasonal variations in the current food supplies resulting from hunting, calving seasons, lambing seasons, and other factors, use of Tejon Ranch by condors is likely to increase and decrease seasonally. Such variability in food availability is consistent with the opportunistic scavenging and far-ranging foraging behavior characteristic of California condors (U.S. Fish and Wildlife Service 1974, 1996; Wilbur 1978; Snyder and Snyder 2000). There is no evidence that the reasonably foreseeable future projects considered in the cumulative effects analysis would reduce the condors range to Tejon Ranch, Wind Wolves Preserve, Hopper Mountain National Wildlife Refuge, and the Bitter Creek National Wildlife Refuge, as stated by one commenter.

In summary, under the TU MSHCP, hunting and grazing would continue in most of the Tejon Ranch critical habitat unit, as well as in other areas of foraging habitat on Tejon Ranch. Ranching would continue through the permit term consistent with past grazing practices, which have been conducted at a historical average grazing level of 14,500 head of cattle, both in conserved areas in the Covered Lands, and areas conserved under the Ranchwide Agreement outside the Covered Lands. Thus, even with the removal of foraging habitat as a result of development in the TMV Planning Area, the overall food base for condors on Tejon Ranch is not expected to decline; rather, the important historical contribution of Tejon Ranch to the condor's food supply would continue under the TU MSHCP and remain relatively constant over the 50-year permit term.

Chapter 4
Individual Responses to Comments

This chapter provides responses to all substantive comments on the Supplemental Draft Environmental Impact Statement (EIS). A copy of each comment letter, bracketed to reflect where substantive comments were identified, is provided following the responses to the substantive comments contained in that letter. Table 4-1 provides a list of each comment letter and its unique identifying number as reflected in this Final EIS. Please refer to Chapter 3, Master Responses, where reference to a master response is provided in response to a specific comment.

As noted in Chapter 1, Introduction, all comments, including those that were determined not to be substantive, were reviewed and considered in preparing this document.

Table 4-1. Comment Letters Received on the Supplemental Draft EIS

Comment Number	Commenter
F-1	U.S. Environmental Protection Agency
S-1	California Department of Fish and Game
L-1	Supervisor Mike Maggard, Kern County
L-2	Senator Michael Rubio, California State Senate–Sixteenth District
N-1	Center for Biological Diversity
N-2	Wishtoyo Foundation
N-3	Center for Biological Diversity
P-1	Steve Schubert
P-2	Mary Ann Lockhart
P-3	Mary Ann Lockhart
P-4	Noel Snyder
P-5	Noel Snyder et al.
P-6	Arthur Unger
P-7	Bob Hamber

Response to Comment F-1-1

The U.S. Fish and Wildlife Service's (Service's) proposed action is considering approval of the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) and issuance of an incidental take permit (ITP) for the take of Covered Species incidental to otherwise lawful activities. The proposed action does not involve the approval or disapproval of any specific development; rather, those approvals fall under the jurisdiction of Kern County, as well as other Federal (i.e., U.S. Army Corps of Engineers [USACE]) and state (i.e., Regional Water Quality Control Board [RWQCB] and California Department of Fish and Game [CDFG]) agencies, to the extent development would occur in waters of the United States (U.S.) or State. Detailed development plans, including grading locations which would be used to estimate direct (fill) and indirect effects on waters of the U.S. and State for all Commercial and Residential Development Activities proposed under the TU MSHCP do not currently exist. Moreover, the project-specific analysis of potential effects on waters of the U.S. as suggested by the commenter is beyond the scope of the Service's proposed action.

Section 4.2, Water Resources, in the Supplemental Draft Environmental Impact Statement (EIS) provides an analysis of the potential effects on wetlands from approving the TU MSHCP and issuing an ITP using ground disturbance acreages as a basis for comparison. The section states that all development proposed under the TU MSHCP would be subject to project-specific approvals from Federal and state agencies, including USACE, RWQCB, and CDFG. The mitigation measures in the Supplemental Draft EIS acknowledge that project-specific approvals, including those from USACE, RWQCB, and CDFG, would be subject to the "avoidance, minimization, and mitigation" requirements enforced under the *no net loss of wetlands* policies applicable to project-specific Federal and state actions. This analytical approach, in combination with mitigation measures requiring compliance with Federal and state laws that prohibit development projects from resulting in a net loss of wetland habitat, forms a reliable and consistent basis for the analysis provided in the EIS, and demonstrates the Service's expectation that Tejon Ranchcorp (TRC) would be required by USACE and RWQCB to avoid waters of the U.S. and State to the extent possible.

Response to Comment F-1-2

Please refer to Response to Comment F-1-4.

Response to Comment F-1-3

As described in Response to Comment F-1-1, for Commercial and Residential Development Activities, the analysis in Section 4.2, Water Resources, in the Supplemental Draft EIS describes that the most substantial effects on wetlands would result from permanent fill, although water quality effects from development are also possible (see Section 4.2.3.2). Generally, the Supplemental Draft EIS uses ground-disturbance acreage assumptions as a basis for analyzing and comparing the potential effects on wetlands from the alternatives, including the Proposed TU MSHCP Alternative. Table 4.1-2 in the Supplemental Draft EIS indicates that up to 31 acres of riparian, wetland and wash communities occur in the TMV Planning Area and Lebec/Existing Headquarters Area and may be

removed by proposed Commercial and Residential Development Activities.[1] As noted in Section 4.2.3.2 of the Supplemental Draft EIS, this acreage is based on an assumption that 25% of wetlands in those areas would be affected, which is considered conservative. Moreover, this assumption does not consider the mitigation measures that require compliance with Federal and state regulations, including those implemented by USACE and RWQCB which require avoidance of these areas to the extent practicable.

To demonstrate the conservative nature of the 31-acre estimate of potential impacts on riparian, wetland, and wash communities resulting from Commercial and Residential Development Activities under the Proposed TU MSHCP Alternative, the EIS references the TMV Project as an example of how the *no net loss of wetlands* policies are implemented at a project–specific review and approval stage. Specifically, Section 4.2.3.2 notes that the RWQCB has approved the TMV Project, authorizing permanent fill of up to 1.18 acres of state-jurisdictional wetlands under the condition that TRC establish, enhance, and preserve adequate replacement habitat. The USACE approval of the TMV Project resulted in avoidance of 100% of all federally jurisdictional wetlands and 99% of waters of the U.S. in the Covered Lands, and required that permanent fill of waters of the U.S. be mitigated through establishment, enhancement, and preservation of wetland habitat at Cuddy Creeks on Tejon Ranch (Dudek 2009).

Section 4.2 also includes a general discussion of potential effects on wetlands from Plan-Wide Activities (e.g., ongoing ranching activities). For example, Section 4.2, Water Resources, identifies that ground-disturbing activities (e.g., construction or maintenance of roads, ancillary structures, or back country cabins) in or around wetland areas could introduce runoff, sediment, or debris into sensitive habitat types. Similarly, the section identifies that grazing would have the potential to contribute nutrients, bacteria, and/or pathogens to wetlands by surface water runoff, and could damage vegetation or increase erosion if cattle graze in wetland areas. Finally, construction or maintenance actions associated with Plan-Wide Activities also have the potential to result in temporary or permanent fill of wetland areas, which would be subject to Federal, state, and local permitting requirements. In addition, best management practices (BMPs) and use restrictions (as currently set forth in the Interim Ranchwide Management Plan [RWMP]) would continue to be implemented and would include provisions to minimize the effects of grazing on sensitive communities, including riparian and stream areas.

As previously noted, the Service's proposed action (issuance of an ITP) would not result in the approval or disapproval of a specific development project. The analytical approach used to assess potential effects on waters of the U.S. and State—in combination with measures acknowledging Federal and state compliance laws that require avoidance and minimization of impacts on these resources—form a reliable and consistent basis for the analysis provided in the EIS, and demonstrate the Service's expectation that TRC would be required to avoid wetlands to the extent possible and as required by Federal and state law.

Response to Comments F-1-4 and F-1-5

The Supplemental Draft EIS considers five alternatives to the proposed action at an equal level of detail, as required by the National Environmental Policy Act (NEPA). The alternatives include the No Action Alternative, Proposed TU MSHCP Alternative (Preferred Alternative), Condor Only HCP Alternative, CCH Avoidance MSHCP Alternative, and the Kern County General Plan Buildout Alternative.

[1] Not all 31 acres of these communities may be considered waters of the U.S. or State, but are represented here to inform a conservative effects analysis.

By way of background and as noted by the commenter, the CCH Avoidance MSHCP Alternative was added as a new alternative to the Supplemental Draft EIS in response to public comment on the Draft EIS. Under this alternative, no commercial and residential development would occur in critical habitat for the California condor. The Ranchwide Agreement would be implemented, and development boundaries outside critical habitat would conform to the development setbacks and general boundaries provided in that agreement. The CCH Avoidance MSCHP Alternative does not include the TMV Project, because that project extends into California condor critical habitat. Instead, the CCH Avoidance MSHCP Alternative follows the Kern County General Plan land use designations outside of critical habitat and clusters and concentrates most commercial and residential development in the southwestern portion of the Covered Lands in the portion of the TMV Planning Area nearest to Interstate 5 (I-5). Infrastructure inside critical habitat necessary to serve such development (e.g., access and water/sewer) could be constructed subject to a 200-acre disturbance area associated with Plan-Wide Activities.

The Service disagrees that the Supplemental Draft EIS does not include a commensurate level of analysis of the CCH Avoidance MSHCP Alternative relative to the Proposed TU MSHCP Alternative. For some resource areas, the analysis of the CCH Avoidance MSHCP Alternatives may be shorter; however, this is generally attributable to an effort to cross reference analyses and to avoid duplication of text. The Service used this format approach to be consistent with CEQ Guidance instructing that environmental documents use techniques to avoid redundant or repetitive discussion of issues (77 Federal Register [FR] 14473, 14476, March 12, 2012).

Specifically, the Supplemental Draft EIS attempted to minimize redundant text when it was determined that the effects of one or more alternatives would be the same (e.g., air quality analysis for the Proposed TU MSHCP Alternative and Condor Only Alternative were the same and not repeated twice). However, where substantively different, the Supplemental Draft EIS includes a comprehensive discussion of the effects of a specific alternative, including the CCH Avoidance MSHCP Alternative, and compares those effects to those associated with the No Action Alternative. In all instances, the conclusions drawn from the analysis are specific to the alternative considered.

For many resource areas, there were substantive differences between the Proposed TU MSHCP Alternative and CCH Avoidance MSHCP Alternative that warranted separate conclusions, and each alternative was discussed at a commensurate level of detail using a consistent analysis approach. For example, the Supplemental Draft EIS includes a standalone detailed assessment of the effects of the CCH Avoidance MSHCP Alternative on biological resources, including vegetation communities (Section 4.1.5,1) and wildlife and plants species (Section 4.1.5.2), that is commensurate in detail to, and substantively different than, the analysis provided for the Proposed TU MSHCP Alternative or the other alternatives. However, where the differences in the conclusions were minor (e.g., air quality analysis) to avoid repeating language, the Supplemental Draft EIS cross references the analysis provided for the Proposed TU MSHCP Alternative (or other alternative, as appropriate). For example, Section 4.3.5.1 states that, given the similarities between the CCH Avoidance MSCHP Alterative and the Proposed TU MSHCP Alternative, the analysis presented for construction-related emissions for the Proposed TU MSHCP Alternative would generally apply to the CCH Avoidance MSHCP Alternative.

Regarding other resource areas noted in the commenter's letter, the effects on California condor foraging habitat were analyzed using the same analytic approach and at similar levels of detail for both the Proposed TU MSHCP Alternative and the CCH Avoidance MSCHP Alternative. Specifically, the Supplemental Draft EIS estimates that ground disturbance under the CCH Avoidance MSCHP Alternative would result in the direct loss of all suitable foraging habitat (3,159 acres) in the development envelope and indirect effects on 3,494 acres of suitable foraging habitat, including 1,307 acres in the Tejon Ranch critical habitat unit. Approximately 77,342 acres of suitable foraging habitat would be considered functional in the remaining Open Space of the Covered Lands under this alternative. The Service does not anticipate that the reduction in foraging habitat for condors on

the ranch under the CCH Avoidance MSHCP Alternative would decrease the food base for condors because hunting and grazing would continue at levels comparable to the historic average (i.e., approximately 14,500 head of cattle) on the vast majority of the ranch, including all foraging habitat within designated critical habitat. Although this finding is similar to, and based on, the food availability analysis provided for the Proposed TU MSHCP Alternative, the finding still applies to the CCH Avoidance MSHCP Alternative, particularly given that the direct and indirect effects on foraging habitat under the CCH Avoidance MSCHP Alternative (6,653 acres) would be less than those estimated for the Proposed TU MSHCP Alternative (17,995 acres). Also, similar to the Proposed TU MSHCP Alternative, the CCH Avoidance MSHCP Alternative would conserve the historic and currently used traditional roost sites on Winters Ridge in the Condor Study Area and institute conservation measures that would further protect the condor, including the lead ban. Consequently, even with the Commercial and Residential Development Activities, and given the estimated amount of foraging habitat that would remain on Tejon Ranch and the anticipated persistence of the current food base on the ranch, it is likely that the ranch would continue to function as an essential and viable foraging area for a condor population expanding in size and range under the CCH Avoidance MSHCP Alternative. Although this conclusion is similar to that provided for the Proposed TU MSHCP Alternative, it is based on independent consideration of the design and conservation measures associated with that alternative, and is described at a commensurate level of detail in the Supplemental Draft EIS.

Regarding effects on condors from habituation, collisions with power lines and towers, and ingestion of microtrash, which the commenter also identified as having an unequal level of analysis between alternatives in the EIS, Section 4.1.5.2 identifies that the potential for these effects to occur under the CCH Avoidance Alternative would be similar to the Proposed TU MSHCP Alternative, but may be somewhat reduced because the development footprint for the CCH Avoidance Alternative is slightly smaller. Conservation measures specific to these types of considerations (such as no new above-ground transmission lines, proper disposal and management of microtrash, deterrence of California condors from human structures by a Service-approved biologist) would be the same under both alternatives and would not result in appreciably different conclusions. In general, the Service found that the potential effects of habituation, collisions with power lines and towers, and ingestion of microtrash would not result in substantial adverse effects on the condor population or their habitat, in consideration of the conservation measures that would be implemented under the CCH Avoidance MSHCP Alternative.

With respect to waters of the U.S. and State and as provided in Response to Comment F-1-1, Section 4.2, Water Resources, in the Supplemental Draft EIS provides an analysis of the potential effects of all the alternatives on wetlands using ground disturbance acreages as a basis for comparison. Similar to all alternatives, the analysis of the CCH Avoidance MSHCP Alternative states that all development would be subject to project-specific approvals from Federal and state agencies, including USACE and RWQCB, which mandate *no net loss of wetlands*. This analytical approach, in combination with measures acknowledging Federal and state compliance laws that prohibit development projects from resulting in a net loss of wetland habitat, form a reliable and consistent basis for the analysis provided in the EIS, and demonstrate the Service's expectation that TRC will be required to avoid wetlands to the extent possible and required by Federal and state law.

Response to Comment F-1-6

Comment noted. The Service will identify the environmentally preferable alternative in the Record of Decision (ROD) on the TU MSHCP EIS.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

MAY 03 2012

Mr. Roger Root
Assistant Field Supervisor
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003

Subject: Supplemental Draft Environmental Impact Statement for the Tehachapi Uplands Multiple Species Habitat Conservation Plan, Kern County, California (CEQ# 20120021)

Dear Mr. Root:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The EPA reviewed the Draft Environmental Impact Statement and provided comments to the U.S. Fish and Wildlife Service (Service) on July 14, 2009. We rated the Tehachapi Uplands Multiple Species Habitat Conservation Plan Alternative and the document as Environmental Concerns – Insufficient Information (EC-2) due to two main concerns: the potential impacts to approximately 29 acres of wetlands, riparian, and wash habitats; and the effects of covered activities on the highly sensitive population of California condor. We provided recommendations for improving the air quality analysis and the assessment and disclosure of cumulative impacts, induced growth, transportation, and visual resources. We also asked for additional information describing the proposed alternatives and conservation lands, the purpose and need for the proposed project, and the irreversible and unavoidable impacts of the covered activities.

Based on our review of the Supplemental Draft Environmental Impact Statement (SDEIS), we are rating the preferred alternative and the document as EC-2, Environmental Concerns – Insufficient Information (see enclosed EPA Rating Definitions). We commend the Service for preparing detailed responses to our comments. The responses were extensive, thoughtful, and addressed most of the issues raised in our July 14, 2009 letter. We have continuing concerns, however, regarding the potential impacts of covered activities to wetlands and riparian areas, as well as the population of California condor that reside or forage within the proposed covered lands. We recommend that the Service demonstrate avoidance of waters of the U.S. before issuing the incidental take permit, and provide additional information in the final EIS comparing the effects of the alternatives on the California condor. Our detailed comments are enclosed.

F-1-1

F-1-2

We appreciate the opportunity to review this SDEIS. If you have any questions, please contact me at (415) 972-3521, or contact Jason Gerdes, the lead reviewer for this project. Jason can be reached at (415) 947-4221 or gerdes.jason@epa.gov.

Sincerely,

Kathleen Martyn Goforth, Manager
Environmental Review Office (CED-2)

Enclosure: Summary of the EPA Rating System
Detailed Comments

cc: John Robles, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

EPA DETAILED COMMENTS ON THE SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE TEHACHAPI UPLANDS MULTIPLE SPECIES HABITAT CONSERVATION PLAN, KERN COUNTY, CA, MAY 3, 2012

Waters of the U.S.

In our comments on the DEIS, we stated that the DEIS lacked sufficient information to determine to what extent impacts to waters of the U.S. would be avoided, minimized, and mitigated as required by Section 404(b)(1) Guidelines of the Clean Water Act. We expressed concern that the development of the proposal to issue an incidental take permit (ITP) for 29 acres of potentially jurisdictional waters had not occurred in close coordination with the U.S. Army Corps of Engineers (Corps), the EPA, the Regional Water Quality Control Board (Regional Board), and the California Department of Fish and Game (CDFG). Additionally, we stated that the Tejon Ranch Corporation (TRC) had not demonstrated sufficient avoidance, minimization, and mitigation of impacts to waters.

The Supplemental Draft Environmental Impact Statement (SDEIS) includes information from the Tejon Mountain Village (TMV) environmental impact report (EIR) regarding wetlands delineated in the TMV project site, as well as the types of mitigation that would be imposed during the TMV approval process to minimize effects on wetlands. It is still unclear, however, how the full extent of HCP covered activities (not just the TMV development) would affect waters, and if TRC has demonstrated sufficient avoidance, minimization, and mitigation of impacts to such waters. F-1-3

Recommendation:
The FEIS should discuss how the HCP covered activities could affect waters, and demonstrate that all impacts to waters would be avoided and minimized to the maximum practicable extent and that unavoidable impacts would be mitigated appropriately. We recommend that U.S. Fish and Wildlife Service coordinate with the Corps, EPA, Regional Board, and CDFG on this matter.

Critical Habitat for the California Condor

Our DEIS comment letter expressed concern about potential impacts to the population of California condor that utilize proposed covered lands. The EPA, along with several other commenters, recommended that the Service and the TRC consider an alternative that excludes development within designated California condor habitat. We commend the Service for acting on this recommendation and developing the Condor Critical Habitat Avoidance MSHCP Alternative--an alternative that would reconfigure proposed development to avoid federally designated critical habitat for California condor. This alternative, however, has not been sufficiently analyzed. The SDEIS includes extensive discussion about the preferred alternative--the Tehachapi Uplands Multiple Species Habitat Conservation Plan Alternative (TU MSHCP)--and its potential direct and indirect effects on the California condor and its foraging habitat; but does not include a commensurate level of analysis for the CCH Avoidance MSHCP and other alternatives. F-1-4

Recommendation:
The FEIS should include a thorough analysis of the impacts of the Condor Critical Habitat Avoidance MSHCP Alternative. To facilitate comparison with the other alternatives, this analysis should include additional information on the impact that this alternative would have on waters, as well as on foraging habitat, the existing California condor population, and the potential for the population to expand its size and range. The FEIS should identify the environmentally preferable alternative, regardless of which alternative is selected. F-1-5 F-1-6

Response to Comment L-1-1

Comment noted. The U.S. Fish and Wildlife Service (Service) acknowledges your support of the proposed action.

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MIKE MAGGARD

SUPERVISOR - THIRD DISTRICT

April 16, 2012

Mr. Roger Root
Fish and Wildlife Service
Ventura Office
2493 Portola Road, Suite B
Ventura, CA 93003

Re: Draft Tehachapi Uplands Multi-Species Habitat Conservation Plan (MSHCP) and Draft Supplemental Environmental Impact Statement (DSEIS)

Dear Mr. Root:

I appreciate the opportunity to provide comments on the draft documents. As a Kern County Supervisor I have witnessed Tejon Ranch's commitment to environmental stewardship, performance and sustainability. The MSHCP is an extraordinarily thoughtful and comprehensive plan allowing for preservation of sensitive habitat while still allowing for limited development that will benefit California's economy. After reviewing the SDEIS and the MSHCP, I wish to express my support for the plan and urge approval of the permit.

Tejon Ranch is an area of tremendous natural beauty and diversity and warrants the comprehensive protections this MSHCP provides. I was very pleased to see so much of the property (over 90%) contained within the plan would be preserved and I was impressed by the extensive measures and procedures that Tejon Ranch will take to protect the California condor. It's evident that Tejon Ranch has spent an enormous amount of time and resources to prepare a comprehensive conservation plan to protect the condor, and an additional 26 species of plants and animals.

L-1-1

But I am especially interested in the California condor and am glad to see the extensive measures designed to ensure its ongoing recovery:

- The hiring of a biologist to monitor ranch activities to minimize the potential for contact between people and condors.
- Preserving the vast majority of high quality condor foraging area within its boundaries.
- Requiring new utility lines be placed underground.
- Land planning considerations that avoid significant ridgelines and protect the frontal slopes within a wide swath of permanently protected open space.
- A permanent ban on the use of lead ammunition in the ranch's hunting program.
- Providing GPS tracking devices that can help officials identify when birds are in trouble and where to find them.
- Establishing a 37,000-acre Condor Study Area protecting the area of historic condor activity
- Establishing a condor education program for residents and guests.

Perhaps most importantly, under no circumstances does the proposed MSCHP permit the lethal take of condors. Again, the MSHCP is an extraordinarily thoughtful and comprehensive plan allowing for

preservation of sensitive habitat while still allowing for limited development that will benefit California's economy and future growth, which we definitely need in this area and at this time.

L-1-1 cont.

Of the various alternatives proposed in the SDEIS, the MSHCP is certainly the preferred approach to preserving over 90% of this large tract of land and its native wildlife. I am impressed with Tejon's sensitivity to ecological concerns and, more importantly, to take those concerns and fashion them into a thoughtful and comprehensive plan of multiple benefit.

I urge that the FWS issue the permit as presented.

Best regards,

Mike Maggard
Supervisor 3rd District

Response to Comment L-2-1

Comment noted. The U.S. Fish and Wildlife Service (Service) acknowledges your support of the proposed action.

Comment L-2

STATE CAPITOL
SACRAMENTO, CA 95814
(916) 651-4016

DISTRICT OFFICES
2550 MARIPOSA MALL
SUITE 2016
FRESNO, CA 93721
(559) 264-3070

1122 TRUXTUN AVENUE
SUITE 100
BAKERSFIELD, CA 93301
(661) 395-2620

101 N. IRWIN, SUITE 207
HANFORD, CA 93230
(559) 582-2800

California State Senate

SENATOR
MICHAEL J. RUBIO
SIXTEENTH SENATE DISTRICT

COMMITTEES
AGRICULTURE
VICE-CHAIR
ENERGY, UTILITIES & COMMUNICATIONS
HEALTH
JOINT LEGISLATIVE AUDIT
TRANSPORTATION & HOUSING
VETERANS AFFAIRS

May 1, 2012

Mr. Roger Root
U.S. Fish and Wildlife Service
Ventura Office
2493 Portola Road, Suite B
Ventura, CA 93003

Re: Draft Tehachapi Uplands Multi-Species Habitat Conservation Plan (MSHCP) and Draft Supplemental Environmental Impact Statement (DSEIS)

Dear Mr. Root:

L-2-1

I appreciate the opportunity to provide comments on the draft documents. After reviewing the SDEIS and the MSHCP, I wish to express my support for the plan and urge approval of the permit.

Tejon Ranch is an area of tremendous natural beauty and diversity and warrants the comprehensive protections this MSHCP provides. I was very pleased that much of the property contained within the plan would be preserved and I was impressed by the extensive measures and procedures that Tejon Ranch will take to protect the California condor. It is clear that Tejon Ranch has spent an enormous amount of time and resources to prepare a comprehensive conservation plan to protect the condor, and 26 other species of plants and animals.

Perhaps most importantly, under no circumstances does the proposed MSCHP permit the lethal take of condors. I believe the MSHCP is a thoughtful and comprehensive plan allowing for preservation of sensitive habitat while still allowing for limited development that will benefit California's economy and future growth, which we definitely need in this region of our state.

Of the various alternatives proposed in the SDEIS, the MSHCP is certainly the preferred approach to preserving over 90 percent of this large tract of land and its native wildlife. I am impressed with Tejon's sensitivity to ecological concerns and, more importantly, to take those concerns and fashion them into a thoughtful and comprehensive plan of diverse benefits.

I urge that the FWS issue the permit as presented. Thank you for your consideration of this important matter. If you have any questions, please contact my office at (916) 651-4016.

Sincerely,

Michael Rubio

Michael J. Rubio
State Senator
Sixteenth District

"Radosevich, Martin" <Martin.Radosevich@sen.ca.gov>

05/02/2012 08:56 AM

To: <fw8tumshcp@fws.gov>
cc:
Subject: Support Letter to USF&WS on MSHCP

To whom it may concern,

Attached is a support letter from California State Senator Michael J. Rubio in support of the Tejon Ranch SDEIS. Thank you and let me know if you have any questions on this matter.

- Martin

Martin Radosevich
Legislative Director
Senator Michael Rubio
(916) 651-4016 (main)
(916) 327-5989 (fax)

Response to Comment N-1-1

The Service carefully considered requests to extend the public comment period on the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) and Supplemental Draft Environmental Impact Statement (EIS) and determined not to grant the request. The request for the extension was received 5 days prior to the close of the public comment period, which did not allow for the Service to publish a timely Federal Register notice extending the public comment period. As a consequence, for the Service to accommodate additional public input, the public comment period would have to be reopened, an administrative process that typically takes 2 or more months to complete, subsequently adding several months to the decision-making process.

The Service also notes that members of the public have had extensive opportunity to review and comment on the TU MSHCP, Supplemental Draft EIS, and incidental take permit (ITP) application. The 90-day public comment period on the Supplemental Draft EIS is twice the 45-day minimum duration prescribed in Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations (40 Code of Federal Regulations [CFR] 1506.10(c)). The 90-day public comment period is in addition to the 154-day public review period already provided on the original Draft EIS (February 4, 2009 through July 7, 2009), on which various members of the public, including the commenter, provided comments.

The U.S. Fish and Wildlife Service (Service) considers that the total time allotted for public review is ample for interested members of the public to review and comment on the Supplemental Draft EIS and ITP application. For these reasons, the request for a time extension is declined.

Adam Keats
<akeats@biologicaldiversity.org>

04/26/2012 03:00 PM

To: fw8tumshcp@fws.gov
cc:
Subject: Tehachapi Upland Draft MSHCP/SEIS Request for Extension on Comment Deadline

Roger Root
Assistant Field Supervisor
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Dear Mr. Root:

The Center for Biological Diversity appreciates the opportunity to comment on the Supplemental EIS for the TU MSHCP.

We have been diligently reviewing the large number of documents associated with this SEIS that were released in February and have been preparing our comments, but realize that in order for our comments to be most useful to the Service more time is necessary.

We note that the Service had nearly 3 years to prepare the SEIS and that it totals thousands of pages, and yet the public has had only 3 months, without advanced knowledge or warning, to prepare comments in response. The Center is surely not alone in experiencing hardship in clearing its schedule and allocating time and resources to reviewing this extensive document; other members of the public would therefore presumably appreciate more time to review the SEIS and the Service would greatly benefit from more complete and thoughtful comments being submitted

N-1-1 Therefore, we respectfully request that a short extension to the comment deadline, until May 31, 2012, be granted by the Service. Such an extension would not be a hardship on the Service or the applicant, especially considering the amount of time invested so far in the drafting of the EIS and the SEIS.

Sincerely,

Adam Keats

Adam Keats
Senior Counsel ◦ Urban Wildlands Program Director
CENTER *for* BIOLOGICAL DIVERSITY
351 California St., Suite 600
San Francisco, CA 94104
phone 415-436-9682 x304 ◦ *fax* 415-436-9683
akeats@biologicaldiversity.org

Response to Comment Letter N-2

Response to Comments N-2-1 and N-2-2

The U.S. Fish and Wildlife Service (Service) acknowledges the receipt of comments from the Wishtoyo Foundation on the Draft Environmental Impact Statement (EIS). All substantive comments provided on the Draft EIS were responded to in Volume II of the Supplemental Draft EIS. The joint comment letter, dated July 7, 2009, provided by the Wishtoyo Foundation, Center for Biological Diversity, and the Ventura Coastkeeper program is referenced in that document as Comment Letter 0-4. The following provides an update on the status of the consultation on the proposed action—in this case, issuance of an incidental take permit (ITP)—under the National Historic Preservation Act (NHPA) and responds to comments provided by the Wishtoyo Foundation on the Supplemental Draft EIS, in the letter dated May 1, 2012, and referenced in this document as Comment Letter N-2.

The comment requests that the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) ensure that preservation in place mitigation measures are analyzed and adopted consistent with the California Environmental Quality Act (CEQA). Section 10 of the Federal Endangered Species Act (ESA) provides a regulatory mechanism for non-Federal applicants to seek an ITP from the Service for the potential take of a federally listed species as a result of an otherwise lawful activity. Section 10(a) of the ESA provides for the issuance of an ITP when the permit applicant submits a habitat conservation plan (HCP) that satisfies ESA Section 10(a)(2)(A) and the Service determines the applicant has met the issuance criteria under Section(10)(a)(2)(B). Those issuance criteria are specific to the effects of the take on the Covered Species, and do not specifically address cultural resources. Instead, cultural resource considerations are addressed through compliance with the National Environmental Policy Act (NEPA) and the NHPA. Specifically, Section 106 of the NHPA requires the Service consult with Native American tribes to identify effects on potentially eligible properties (36 Code of Federal Regulations [CFR] 800.2), and the State Historic Preservation Officer (SHPO) to avoid, minimize, and mitigate the potential effects of the proposed action on cultural resources eligible for listing in the National Register of Historic Places (NRHP) (36 CFR 800.1). Thus, while the underlying private development (including, in part, the Tejon Mountain Village Project [TMV Project]) proposed for coverage under the ITP is subject to CEQA pursuant to the state and local approval process, the Service's consideration of whether to issue an ITP requires compliance with NEPA, not CEQA. Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS for an explanation of how potential effects on cultural resources are considered in this EIS.

Response to Comment N-2-3

Please refer to the Response to Comments N-2-1 and N-2-2. Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS also summarizes the outcome of the CEQA lawsuit specific to the TMV Project, which considered comments regarding the adequacy of the mitigation measures provided in the TMV Environmental Impact Report (EIR) (Kern County 2009) for Native American cultural resources under CEQA as well as other CEQA-related procedural concerns. The Service has evaluated potential effects on cultural resources consistent with its obligation pursuant to the NHPA and NEPA. As described in Section 4.5, Cultural Resources, in Volume I of the Supplemental Draft EIS, all development proposed under the TU MSHCP will be required to comply with applicable Federal, state, and local regulations as

carried out by the appropriate parties. Thus, in addition to NHPA consultation, which has been completed for the development areas, additional measures, if any, required under CEQA would also apply.

Response to Comment N-2-4

This comment indicates the TMV EIR analysis of mitigation for historical resources should be consistent with recent guidance by the *Madera Oversight Coalition v. County of Madera* (2011 Cal. App. LEXIS 1187). As discussed in Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, the proposed action being considered and evaluated by the Service is not subject to CEQA or, therefore, the guidance provided by this court case. Please refer to Master Response 1 for a discussion of the relationship between NEPA and CEQA and an explanation of how potential effects on cultural resources are considered in this EIS.

Response to Comment N-2-5

Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS for a discussion of the relationship between NEPA and CEQA and an explanation of how potential effects on cultural resources are considered in this EIS. Master Response 1 also summarizes the outcome of the CEQA lawsuit specific to the TMV Project, which considered comments regarding the adequacy of the mitigation measures provided in the TMV EIR (Kern County 2009) for Native American cultural resources as well as other CEQA-related procedural concerns. As noted in Master Response 1, Federal agencies are not subject to CEQA. The Service has evaluated potential effects on cultural resources consistent with its obligation under the NHPA and NEPA.

As described in Section 3.5, Cultural Resources, in Volume I of the Supplemental Draft EIS, the Service reviewed (1) the cultural resources reports for the TMV Planning Area, where eligible sites were identified and for which measures consistent with those identified for the TMV Project were proposed; and (2) additional cultural resource surveys for the Lebec/Existing Headquarters Area, where no eligible sites were identified. As discussed in Master Response 1, based on those reports and consideration of proposed mitigation measures, the Service made findings of no adverse effects. The SHPO concurred that the proposed measures were sufficient, with the exception that if avoidance or preservation in place could not be achieved, then additional consultation would be required. Ground disturbance in areas not previously surveyed also may trigger additional consultation. The Service agreed with the requirement for additional consultations, as indicated in the mitigation described in Section 4.5, Cultural Resources, in Volume I of the Supplemental Draft EIS.

Response to Comment N-2-6

This comment refers to a letter from Mati Waya, Chumash Ceremonial Elder, dated August 2, 2010, which speaks to the potential effects of the Newhall Ranch Resource Management and Development Plan and the Spineflower Conservation Plan EIR/EIS on the California condor and Native American cultures. The comment indicates there are concerns that the proposed action would similarly affect the religious and cultural practices of Native Americans as a result of adverse effects on the California condor. The commenter also includes the document, *Wings of the Spirit* by John W. Foster

(undated) summarizing how the condor was incorporated into Native American ceremonies (see also Response to Comment N-2-10).

Section 4.1, Biological Resources, in Volume I of the Supplemental Draft EIS, describes the potential effects of the proposed action on California condor and its habitat. Under the TU MSHCP, approximately 126,034 acres would be preserved in perpetuity in Open Space, including a subset of acreage that would continue to serve as foraging habitat for condors. In addition, species-specific conservation measures to reduce the potential for habituation to human structures and activities, collisions with power lines, and ingestion of microtrash would be implemented, as summarized in Table 2-3 in Chapter 2, Proposed TU MSHCP and Alternatives, of the Supplemental Draft EIS. As summarized in Master Response 2, California Condor Critical Habitat, in this Final EIS, in consideration of the open space preservation and species-specific conservation measures provided in the TU MSHCP, the Service does not anticipate that the development proposed under the TU MSHCP would substantially affect the condor through the loss of foraging habitat in the Covered Lands, changes in food availability, or adverse effects on condor overflight. The proposed ITP would also not authorize any lethal take of condors. Therefore, the Service does not agree that the TU MSHCP and proposed ITP would "drive away and kill condors" as suggested by the commenter. Rather, it is anticipated that the condor population would continue to expand in size and range with implementation of the TU MSHCP, which assures the permanent protection of important condor roosting and foraging habitat on Tejon Ranch. Thus, approval of the TU MSHCP and issuance of an ITP is not anticipated to compromise the condor in Native American culture and religious practices.

Of note, the Service cannot issue an ITP unless the following issuance criteria in Section (10)(a)(2)(B) have been met.

- The taking will be incidental to an otherwise lawful activity;
- The effects of such take will be minimized and mitigated to the maximum extent practicable;
- Adequate funding to implement the plan will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The HCP includes measures to ensure that any other necessary measures required by the Service are met, including those measure the Service believes are necessary or appropriate for the purposes of plan implementation.

As discussed in Master Response 2, California Condor Critical Habitat, in this Final EIS, the Service will also make a statutory determination regarding the effects of the proposed Federal action on the California condor and its critical habitat in an intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA. In the Section 7 consultation, the Service will formally consider the direct, indirect, and cumulative effects of the proposed action on the California condor and its critical habitat and make a determination as to whether critical habitat will continue to serve its intended conservation function and role.

The commenter also indicates the proposed action would have effects on traditional cultural properties (TCPs). The evidence presented by the commenter, however, which consists of general statements that the presence of the condor in the area is important to Chumash, do not make the ranch or the Covered Lands eligible for listing as a sacred site or a TCP. These classifications require eligibility criteria, including geographic specificity as further set forth in the National Park Service

NHPA guidance document, *Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties* (National Park Service 1998).

Finally, as discussed in Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS, the Service requested additional consultation with Native American tribes that could be affected by the proposed action. The intent of this consultation was to solicit feedback from relevant tribal representatives regarding identified resources and to better understand Native American practices, including any TCPs, that may be affected by the proposed action. No Native American resources, including TCPs, were identified as a result of that consultation process.

Response to Comment N-2-7

Please refer to the Response to Comment N-2-6 for a discussion of the potential effects of the proposed action on California condor and its habitat, and a summary of the criteria the Service must consider prior to issuing an ITP.

The commenter also asserts that the proposed action would result in harm to cultural resources in the Covered Lands and should not be approved. As noted in Response to Comment N-2-6, the information presented by the commenter does not provide evidence that resources within the Covered Lands are sacred sites or that portions of the Covered Lands are eligible for listing as a TCP.

Further, as indicated in the Response to Comment N-2-1, the Service is required to evaluate potential effects on cultural resources consistent with the NHPA and NEPA. To that end, the Service has evaluated potential cultural sites identified in the surveys of the development areas and determined that there would be no adverse effect on identified eligible resources, as discussed in Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS. As further discussed in Master Response 1, the Service has continued consultation with Native American tribes, as well as other Native American groups, that may be affected by the proposed action and with the SHPO on cultural resources potentially eligible for listing in the NRHP. To date, no TCPs eligible for protection under the NHPA have been identified.

Response to Comments N-2-8 through N-2-10

These comments assert that the California condor should be evaluated as a TCP under the NHPA. The primary authority the commenter relies on to support the proposition that the California condor should be considered a cultural resource is the unpublished Federal district court decision *Okinawa Dugong v. Rumsfeld* (2005 WL 522106, N. District of California). Specifically, in the *Okinawa Dugong* case, the court held that the dugong, a marine mammal, should be considered a cultural resource for purposes of compliance with the NHPA with respect to the relocation of a U.S. Marine Corps base in Okinawa, Japan.

Two legal rules are relevant to the application of this case to the proposed action. First, under the relevant court rules, unpublished Federal decisions have no precedential value generally (Ninth Circuit Rule 36-3). Second, in the *Okinawa Dugong* decision, the court applied the requirements of the NHPA for Federal agency actions overseas (16 U.S. Code [U.S.C] 470a-2). This section differs from the relevant section of the NHPA that governs Federal agency actions in the United States (16 U.S.C. 470f, commonly referred to as Section 106). Notably, Section 470a-2 (the section governing overseas Federal agency actions) requires the Federal agency to consider the effects of

the undertaking on any *property* listed in the foreign country's equivalent of the NRHP. The dugong is listed in the Japanese Law for the Protection of Cultural Properties. Accordingly, in the *Okinawa Dugong* decision, the court determined that the dugong was a property subject to review under 16 U.S.C. 470a-2. In contrast, the present undertaking is governed by Section 106 of the NHPA (16 U.S.C. 470f) and not the more permissive standards applicable to Federal agency actions under 16 U.S.C. 470a-2 that were applied in *Okinawa Dugong.*

Section 106 of the NHPA requires that Federal agencies consider the effects of their undertakings on resources included in or eligible to be included in the NRHP (16 U.S.C. 470f). Accordingly, consideration of the California condor as a cultural resource must be performed within the scope and limitations of Section 106 and associated regulatory guidance. The NRHP lists historic properties which may be composed of "districts, sites, buildings, structures, and objects" (16 U.S.C. 470a). The California condor is indisputably not a district, site, building, or structure. The remaining question is whether or not the California condor may qualify as an "object" eligible for listing in the NRHP.

Objects are defined in the NRHP regulations as a "material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or *environment*" (emphasis added) (36 CFR Section 60.j). In the *Okinawa Dugong* case, the court found the dugong was an object subject to Section 470a-2 because it was included on Japan's equivalent of the NRHP, not that it was an object eligible for listing in the NRHP. The National Park Service guidance on evaluating resources for the NRHP provides that while objects may be small and movable, they should be associated with a specific setting or environment (National Park Service 1995:5). The guidance specifically stipulates that small objects not designed for a specific location are not typically eligible because they are not associated with a discrete place (National Park Service 1995:5). Nothing in the guidance or law governing application of the NHPA to domestic Federal actions suggests that free-roaming animals are covered by the NHPA or were intended to be covered by Congress. To the contrary, the absence of association with a fixed and discrete location indicates that animals cannot be NRHP-eligible objects within the meaning of the NHPA. Secondary sources echo this analysis: "By its plain language, the [NHPA] appears to preclude any listing of animals because wildlife are not 'districts,' 'buildings,' or 'structures.' Even if animals are classified as 'objects,' they do not possess 'integrity of location'" (12 Hasting W-NW Journal of Environmental Law and Policy 147, 2006).

Accordingly, the California condor, in and of itself, is not a cultural resource subject to evaluation under the NHPA because animals by themselves cannot be historic properties. The Service, therefore, declines the commenter's request that the California condor be evaluated as a TCP. A TCP is a discrete location that is significant in the ongoing cultural or religious life of particular people. The National Park Service provides a framework for evaluating TCPs as historic properties, and specifically identifies that TCPs must meet the criteria for listing in the NRHP (National Park Service 1998:12). Because the California condor cannot qualify as a historic property, it is not subject to evaluation as a TCP.

The Service acknowledges the information provided in the comment letter with respect to various testimonies provided by tribal representatives and recognizes the condor's sacred standing among Native American tribes, but concludes that the information submitted does not overcome the fact that the condor is not a historic property eligible for listing in the NRHP within the meaning of the NHPA. While the Advisory Council on Historic Preservation guidelines on consulting with Indian tribes provide that "plant and animal communities" must be considered when evaluating the

potential effects of an undertaking, it is nevertheless the "place" or the "community" that potentially qualifies for listing in the NRHP, not the animal itself (see the Advisory Council on Historic Preservation's (2008) *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook*). California condors are highly mobile and may move into and out of geographical locations over time. The NRHP is limited to objects with fixed geographic locations, discernible histories, and precise physical descriptions. Thus, unlike the example of the "Friendship Oak" in *Hatmaker v. Georgia Dept. of Transp.,* 973 F. Supp. 1047 (M.D. Ga. 1995) (a particular oak tree associated with particular historical events), which was found to be an eligible property, the California condor is not one object tied to one location and event, and the species does not meet the eligibility criteria for listing in the NRHP.

The potential effects of the proposed action on the California condor are discussed in detail in Section 4.1, Biological Resources, in Volume I of the Supplemental Draft EIS. Prior to issuing an ITP to Tejon Ranchcorp (TRC), the Service must conclude that the TU MSHCP minimizes and mitigates the effects of the proposed nonlethal take of condors to the maximum extent practicable, and that issuance of an ITP would not result in jeopardy to the condor or adverse modification of condor critical habitat. While the Service has not completed the formal evaluation of the proposed ITP under Sections 7 and 10 of the ESA, the Supplemental Draft EIS indicates that condors should continue to forage and roost on Tejon Ranch and should continue to expand their numbers and geographic range with implementation of the TU MSHCP. Thus, the condor should continue to serve its traditional cultural and religious role for Native American tribes.

Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS for a discussion of ongoing consultation with Native American tribes.

Response to Comment N-2-11

This comment reiterates the request that the HCP and EIS contain an analysis and adoption of preservation in place mitigation measures consistent with the requirements of CEQA. Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS for a discussion of the relationship between NEPA and CEQA and an explanation of how potential effects on cultural resources are considered in this EIS.

Response to Comment N-2-12

This comment asserts that the TU MSHCP and EIS cannot be adopted unless the potential localized and regional effects on Native Americans associated with the localized and regional effects on the California condor are reduced. As described in Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS, the Service has addressed the potential effects of the proposed action on cultural resources consistent with the requirements of the NHPA and NEPA. In addition, as indicated in Response to Comment N-2-6, the Service has evaluated the potential effects of the proposed action on the California condor and has determined there would be no substantial adverse effects on Native American religious or cultural practices.

Wishtoyo

May 1, 2012

VIA E-MAIL

Roger Root
Assistant Field Supervisor
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003
fw8tumshcp@fws.gov

Re: Comments on Draft Tehachapi Upland Multiple Species Habitat Conservation Plan, Draft SEIS.

Dear Mr. Root:

Thank you for the opportunity to comment on the Draft Tehachapi Uplands Multiple Species Habitat Conservation Plan ("HCP") and its Draft SEIS.

Wishtoyo Foundation ("Wishtoyo") is a 501 (c) (3) non-profit organization with over 700 members composed of Chumash Native Americans, Native Americans that reside in and around the TMV project area, Ventura County residents, Los Angeles County residents, Santa Barbara County residents, and San Luis Obispo County residents. Wishtoyo's mission is to preserve, protect, and restore Chumash culture, the culture of all communities, and the environment. Wishtoyo also shares traditional Chumash beliefs, cultural practices, songs, dances, stories, and value with the public to instill environmental awareness and responsibility for sustaining the health of our land, air, and water for the benefit of future generations.

I. Need for Legally Adequate Preservation In Place Analysis and Adoption of Legally Adequate Preservation in Place Mitigation Measures

N-2-1 In addition to reiterating our concerns expressed in our July 7, 2009 DEIS letter, Wishtoyo requests that the HCP ensures that preservation in place mitigation measures for Chumash, Kitanemuk, Yowlumne Yokuts, Kawaiisu, and Tataviam Native American burial sites, sacred sites, archeological sites, and village sites are analyzed and adopted as required by the California Environmental Quality Act ("CEQA").

Wishtoyo Foundation
3875-A Telegraph Road, #423 • Ventura, CA 93003
Phone 805.658.1120 • Fax 805.258.5135 • www.wishtoyo.org

Jason Weiner
<jweiner.venturacoastkeeper@wishtoyo.org>

05/01/2012 07:18 PM

To: fw8tumshcp@fws.gov
cc: Mati Waiya <matiwaiya@wishtoyo.org>, Luhuiisha <luhuiisha@wishtoyo.org>
Subject: Wishtoyo Foundation Tehachapi Upland Draft MSHCP/SEIS Comments

To whom it may concern,

Attached are Wishtoyo Foundation's Tehachapi Upland Draft MSHCP/SEIS comments.

Please verify receipt.

Best of Regards,

Jason

--
Jason A. Weiner, M.E.M.
Associate Director & Staff Attorney
Wishtoyo Foundation's Ventura Coastkeeper Program

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N-2-2

Page MR14-5 of the January 2012 SDEIS Tehachapi Uplands Multiple Species HCP response to Wishtoyo's, Ventura Coastkeeper's, and Center Biological Diversity's July 7, 2009 DEIS letter, states:

> As clarified in Section 4.5, Cultural Resources, in Volume I of this Supplemental Draft EIS, mitigation would include compliance with applicable Federal, state, and local regulations. For example, Kern County's approval of the TMV Project includes extensive site analysis and mitigation to protect against any potential cultural resources effects. Thorough site surveys were required and 44 mitigation measures were developed to reduce the effects of the TMV Project on cultural resources (Appendix J, Specific and Community Plan Mitigation Monitoring and Reporting Program).

Accordingly, this HCP must ensure that that preservation in place mitigation measures for impacts to local Native American cultural resources are analyzed and adopted as required by CEQA.

N-2-3

Page MR14-4 of the January 2012 SDEIS Tehachapi Uplands Multiple Species HCP response to Wishtoyo's, Ventura Coastkeeper's, and Center Biological Diversity's July 7, 2009 DEIS letter, states:

> Review of the TMV EIR (Kern County 2009) supports the finding that the mitigation measure is sufficient with respect to development. For example, for the TMV Project, Kern County required identification of all potential cultural resources that could be effected by the project and applied 44 mitigation measures, resulting in requirements to preserve in-place known resources through avoidance or capping (for one site, Phase III data recovery may be necessary) and staking and monitoring during grubbing and topsoil grading.

Contrary to the responses' conclusion, 1.) the TMV EIR's analysis of mitigation measures that would achieve preservation in place fails to adhere to CEQA's legal requirements; 2.) the TMV EIR does not adopt mitigation measures that achieve preservation in place for all significant impacts to Native American cultural resources; and 3.) the TMV EIR also does not comply with CEQA's procedural requirements because it impermissibly allows (at the developers discretion in lieu of preservation in place) for Phase III data recovery as a mitigation measure for significant impacts to a historic cultural site without setting forth a determination that mitigation in place would be technically or economically infeasible.

N-2-4

Madera Oversight Coalition v. County of Madera (2011) 199 Cal.App.4th 48 at 85-87, clearly provides that the TMV EIR's discussion of mitigation measures for the Development's/Project's forecasted adverse impacts to historical resources of an archeological nature - which in this case is 22 significant Native American burials, villages, sacred sites, and remains, must include preservation in place, and the discussion of preservation in place must discuss 4 things:

Wishtoyo Foundation
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One: the discussion of preservation in place must include, but is not limited to, **all** of the four methods that may achieve preservation in place listed in CEQA Guidelines §15126.4(b)(3)(B):

The 4 methods include:

(1) Planning construction to avoid archeological sites
(2) Incorporation of sites within parks, green space, or other open space
(3) Covering the archeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on site
(4) Deeding the site to a permanent conservation easement

Not only is the *Madera Oversight* holding clear that all 4 methods must be discussed for their ability to achieve preservation in place, but so is the recent holding in *Balona Wetlands Land Trust v. City of LA* (2011) 201 Cal.App.4th 455, 134 Cal.Rptr.3d 194 at 205.

Two: The EIR's discussion of preservation in place must state whether the methods of preservation in place listed in CEQA Guidelines §15126.4(b)(3)(B) are feasible and the reasons for that determination of feasibility.

N-2-4 cont.

Three: When more than one of the methods of preservation in place referenced in Guidelines section 15126.4 (b)(3) is available to mitigate an impact, the EIR's discussion should include, "the basis for selecting a particular measure" §15126.4 (a)(1)(B)

Four: The forth discussion of preservation in place, that must be had in the EIR, as apparent by the plain language of §15126.4(b)(3)(B) and the Court's holding in *Madera Oversight* is that: The EIR must discuss whether each of the 4 methods in Guidelines §15126.4(b)(3)(B) *may* - that is *may* - achieve preservation in place. The Guidelines don't say each of the 4 methods achieve preservation in place. "May be accomplished by " is not "is accomplished by" - in other words, the guidelines don't read "preservation in place is accomplished by, but is not limited to any of the following four methods. In addition, *Madera Oversight* decision further supports our position that the EIR must discuss whether each of the 4 methods *may* achieve preservation in place - as it does not make sense to require discussion of each of the 4 methods of preservation in place if each of the methods automatically achieves preservation in place. And furthermore, because whether a particular method achieves preservation in place is based on a case by case analysis given the cultural historic resource at issue, an analysis of whether a particular measure achieves preservation in place, and if so to what degree, is necessary for the EIR to: "provide the basis for the particular measure", which the *Madera Oversight* decision held as a requirement for the EIR's discussion of preservation in place.

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N-2-4 cont.

In addition, *Madera Oversight* clarified, that the Guidelines makes preservation in place mandatory when feasible, and thus that data recovery can only be set forth in the EIR as a mitigation measure or provided as an option for a mitigation measure when a method of preservation in place is not feasible.

N-2-5

The CEQA violations are numerous and extensive in the TMV EIR's six page preservation in place mitigation analysis for forecasted adverse impacts to over 22 significant Native American historic resources. Here are the violations:

1. For forecasted significant adverse impacts to 1 site, CA- KER 6727, the EIR does not commit to adopting feasible preservation in place measures to mitigate impacts to historical resources, but instead allows for the adoption of data recovery in the absence of a lead agency determination that another form of mitigation is available and provides superior mitigation of the impact.

2. For forecasted significant adverse impacts to 10 sites, CA-KER 127, 265, 4011, 6705, 6709H, 6716, 6720, 6722, 6725, and 6727 the EIR does not discuss each of the four mitigation measures that may achieve preservation in place.

3. For forecasted significant adverse impacts to 10 sites, CA-KER 127, 265, 4011, 6705, 6709H, 6716, 6720, 6722, 6725, and 6727 the EIR sets forth a measure or measures(s) that may achieve preservation in place, but no discussion of whether any of the 4 methods *will actually* achieve preservation in place is present.

4. For forecasted significant adverse impacts to 7 sites, CA- 265, 6705, 6709H, 6716, 6722, 6725, and 6727 the EIR lists measure(s) that may achieve preservation in place, but no discussion of "the basis for selecting a particular measure" over the other is provided.

II. Need to Adequately Protect Native American Religious Practices and Historic Cultural Sites from Localized and Regional Impacts to the California Condor

Mati Waiya, Chumash Ceremonial Elder, set forth the religious and cultural significance of the Condor to Chumash People in his 8/2/2010 Newhall Ranch Resource Management and Development Plan and the Spineflower Conservation Plan Final EIR/EIS comments (see attached) as follows:

Cultural Impacts from Project's effect on the California Condor ("Condor") in the Project Area

I am also concerned about the impact of the Project on Chumash and Tataviam culture, and religious and spiritual practices due to localized impacts of the project on the California Condor. For Chumash people the condor is a symbol of our continuance as a people. To see the condor feeding, foraging, roosting, and laying eggs in the Project area connects

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Chumash people to their ancestors that lived there and utilized the area. The presence of the Condor is also vital to our religious and spiritual practices. We have a condor dance that we continue to practice in our ceremonies, and many tribes as well as ours honor the condor. For the Chumash, the condor has always played a big role in the passing of our loved ones, as the condor cleans the land and cleans our souls after we die. The Chumash often offer a condor feather to the deceased as their last rite of passage because we believe the condor feather raises the spirit to the upper world.

The condor's presence in the Project area, whether it be flying overhead, foraging for food, roosting in a tree, or cleaning itself near the river, or the knowledge that the condor is living and thriving in the Project Area, is thus an integral part of the sacredness of our ceremonies, cultural sites, prayers, and burial sites that take place or that will take place in the Project area. Anytime we are in a place where the memory of our people exists, we acknowledge the spirit of our ancestors with prayers and offerings. This holds true whether we are harvesting cultural resources from the rivers where our ancestors have been before, honoring our ancestors at a sacred or burial site, standing at a peak looking at our cultural landscape, or walking through a valley or grove of oak trees and see grinding stones. The absence of the condor from Chumash cultural landscape in the Project area from development related impacts will diminish our connection with our ancestors and our culture, and take away from our ceremonial and religious practices that take place or that will take place in and around the Project area. The Chumash people also collect Condor feathers for ceremonial offerings and to use in ceremonial regalia when they fall to the ground after Condors forage, clean themselves, and roost. I thus also fear that the Project as proposed with its bright lights, power lines, and other urban hazards that will drive away and kill condors in the Project area, will thus deprive Chumash people of religious and cultural practices and spirituality, while also depriving Chumash people of a place to harvest and find condor feathers.

N-2-6

The localized presence of the condor in the TMV project area plays the same cultural and religious role for the Chumash Peoples as does the presence of the condor in the Newhall Project area as described by Mati Waiya above. Thus the TMV project's localized impacts to the California condor will affect the religious practices, culture, and historic cultural resources of the Chumash people as described by Mati Waiya in his 8/2/2010 letter. Furthermore, the TMV project's regional impacts on the condor's total population impacts Chumash and other Native American's culture, cultural/historic resources, and religious practices in their historic territories that contain or have historically contained condors.

N-2-7

Wishtoyo thus requests that Draft HCP is not approved due to the Project's adverse local and regional impacts to the California Condor that will 1.) not only harm the ability of the

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N-2-7 cont.

local Native Americans and the Chumash to exercise religious practices in the Project area and throughout the current and historic range of the condor, but 2.) that will also significantly impact the historic and cultural integrity the local Native American's burial, sacred, and village sites in the TMV Project/HCP area.

Furthermore, Wishtoyo requests that the USFWS evaluate the California Condor under the National Historic Preservation Act as a traditional Native American cultural property, and thus that the USFWS conduct a NHPA Section 106 Consultation with all of the local and affected Native American tribes as required by law.

Section 106 of the National Historic Preservation Act ("NHPA") requires any federal agency that has direct or indirect jurisdiction over a federal or federally assisted undertaking, or any federal department or agency that has authority to license an undertaking, to take into account the effect of the undertaking on any site that is included or eligible for listing on the National Register.[1] The federal agency must afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the effect(s) the undertaking might have on cultural properties.

N-2-8

Any Project carried out by a federal agency or that requires a federal permit, is considered an "undertaking" for purposes of the NHPA. A site on the area where the Permit is issued does not have to be listed on the National Register to trigger Section 106 review by the federal agency and the Advisory Council – it only has to be eligible for listing. Thus, any site associated with the cultural practices or beliefs of an Indian community that are rooted in the community's history and important in maintaining the continuing cultural identity of the community must trigger this review.

Section 800.4(b)(1) of the NHPA, 16 U.S.C. § 800.4(b)(1), requires federal agencies to make a reasonable and good faith effort to carry out appropriate identification of historic properties. The appropriate level of effort includes taking into account past planning, research and studies, examining the magnitude and nature of the undertaking and the degree of federal involvement, the nature and extent of potential effects on historic properties and the likely nature and location of historic properties within the area of potential effects. Appropriate identification may include background research, consultation, oral history interviews, sample field investigation, and field survey.

Amendments to the NHPA in 1980 directed the Secretary of the Interior to "preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage."[2] As a result of this directive, the NPS issued *Guidelines for*

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[1] An "undertaking" includes any Project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including (a) those carried out by or on behalf of an agency; (b) those carried out with federal financial assistance; (c) those requiring a federal permit, license, or approval; and (d) those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency. 16 U.S.C. § 470(w)(7).

[2] NHPA 502; 16 U.S.C. 470a

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Evaluating and Nominating Traditional Cultural Properties, to assist federal agencies when considering eligibility for the Register as part of the review process prescribed under Section 106 of the NHPA. According to the Guidelines, traditional cultural places are often difficult to recognize by non-group members and, "may not necessarily come to light through the conduct of archaeological, historical, or architectural surveys. **The existence and significance of such locations often can be ascertained only through interviews with knowledgeable users of the area**, or through other forms of ethnographic research."[3]

Recent case law has moved toward greater inclusiveness of cultural preservation, including the district court's acceptance that wildlife may be protected under the National Historic Preservation Act. This acceptance has been confirmed with the ruling in *Okinawa Dugong v. Rumsfelds*, 2005 U.S. Dist. LEXIS 3123 N.D. Cal., Mar. 1 (2005). In *Okinawa Dugong v. Rumsfeld*, a number of conservation organizations from both the U.S. and Japan, along with several individual Japanese citizens, filed suit in the Northern District of California alleging that the U.S. government failed to comply with the NHPA by neglecting to take into account the presence of the dugong before beginning construction of the new military base in northeast Okinawa. The dugong, a herbivorous marine mammal that has one of the smallest known populations in the waters off the eastern coast of Okinawa, feeds on the few remaining sea grass beds in the area. *Id.* at 7.
N-2-8 The animal is central to the creation mythology, folklore, and rituals of traditional Okinawan culture. *Id.* The district court dismissed the defendant's motion to dismiss and motion for summary judgment on the issue of the applicability of the NHPA to the dugong affected by the proposed military base. The court considered among other issues, whether the dugong could be considered "property" as defined by the NHPA. The court concluded that that property is simply a "district, site, building, structure or object." An object is defined as "a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, moveable yet related to a specific setting or environment." The court held that the plaintiffs demonstrated that the dugong could be classified as property because the dugong is indisputably a "material thing," as opposed to something of a spiritual or intellectual nature...the dugong possesses "functional, aesthetic, cultural, historical or scientific value," particularly of special cultural significance in Okinawa...and there can be no dispute that the Okinawan dugong is "movable yet related to a specific setting or environment," namely Heneko Bay. *Id.* at 34-35. The Court dismissed the defendant's contentions that dugong are not property because of the Ninth Circuit's ruling in *Christy v. Hodel* that state and federal government cannot "own" wild animals. *Id.* at 35. The court found that whether the government owns the property is irrelevant to a determination of eligibility for the National Register. *Id.* The court found the case to be analogous to *Hatmaker v. Georgia Department of Transportation*, which held that an unaltered oak tree of significance in Native American history was potentially eligible for the National Register. *Id.* at 34.

[3] U.S. Department of the Interior, National Park Service, National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties. Emphasis added.

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N-2-9 Here, as expressed by Dee Dominguez, Chairwoman of the Kitanemuk and Yowlumne Yokut Tribe in written comment and in oral testimony during for the TMV EIR, and as expressed by Chumash members of the Wishtoyo Foundation, the Condor population that resides in and around the TMV Project area is a culturally significant species to the local Native American's and Chumash way of life. The loss of the local Condor population in the TMV Project area would not only deprive local Native Americans and Chumash Peoples of religious and cultural practices and spirituality, but would also deprive them of a place to harvest and find condor feathers for ceremonial regalia. Accordingly, like the dugong habitat in southeast Okinawa, here, the Condor habitat within the TMV project area should be protected to ensure the survival of this species vital to the cultural preservation of the local Native American Peoples, and also to the cultural preservation of Native American's that currently and historically reside in the historic range of California Condors.

N-2-10 In regards to documentation of the historic importance of the California Condor to Chumash Peoples, Mati Waiya is a Chumash Ceremonial leader of the Turtle Clan (The Turtle Clan is from the present day region named Saticoy along the Santa Clara River) who has studied with Chumash elders for twenty three years and is as an expert in matters relating to Chumash cultural practices and history, much of which has only been passed down orally (and safeguarded) from generation to generation of Chumash. In addition to Mr. Waiya's account of the importance of the California Condor to the Chumash culture and Peoples that he shares in his August 2, 2010 letter for the Newhall FEIS/FEIR (attached), below is more information about the importance of the California Condor not only to the Chumash, but to other California tribes affected by the TMV Project, from John W. Foster, a Senior State of California Archaeologist:

From the California State Parks Website: http://www.parks.ca.gov/?page_id=23527 (Last Visited May 1, 2012) (see next page):

Wings of the Spirit: California Condor

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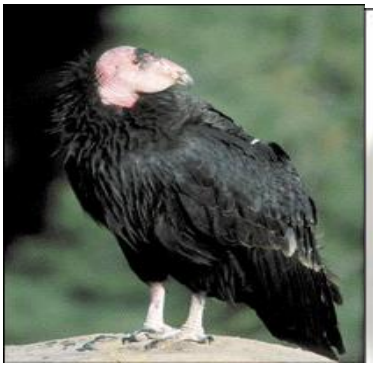

Wings of the Spirit: The Place of the California Condor Among Native Peoples of the Californias

John W. Foster
Senior State Archaeologist

Introduction

In June 1579 a small sailing vessel made its way cautiously along the California coast. Francis Drake, destined to become one of the world's legendary sea captains, was looking for a place to careen his leaky vessel -- the Golden Hind. He had come halfway around the world, and was to complete his voyage by sailing across the Pacific and to England, but he desperately needed a place to make repairs.

As he approached the shore of this land never before seen by European eyes (assuming it was northern California), Drake's crew was surprised to see several canoes venturing out from shore. The descriptions of this event are sketchy, but it seems clear that the native in one canoe made a statement, perhaps a blessing, and then threw a black-feathered bundle onto the deck of Drake's ship. From its description, the feathers were probably from the California condor. Drake's reaction to this event is not recorded except that it's clear the Englishmen felt they were being worshiped as gods. In fact, they may have been perceived as ghosts, coming from the land of the dead. The first gift from native Californians was probably the feathers of a California condor, and a sign of mourning ritual.

This paper briefly summarizes how the California condor was incorporated into the cultures of the peoples of ancient California by considering archaeological remains, ceremonial activities and rock art depictions. I will present selected examples from southern California and the border region where possible, with the admittance that this treatment is very cursory at this point.

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The California Condor
Who amongst us has not dreamed of soaring effortlessly over the landscape seeing everything in the daily lives of lowly earthbound pedestrians? With scarcely a wing flap, condors soar over the deserts to the seacoast, cresting the highest peaks and spanning the most foreboding terrain. Such is the perspective of the California condor and perhaps the key to its special place in many native cultures across the Californias.

The California condor *(Gymnogyps californianus)* is North America's largest bird. With a wingspan of nearly 10 feet and a weight of 20-22 pounds, it commands the skies. The genus, Gymnogyps, means "naked vulture," referring to the bird's bare head and neck. The name "condor" is derived from the Quechua "cuntur", a name for the Andean condor of South America (Snyder and Rea 1998:32). Adult California Condors have a yellow-orange head, black plumage set with brown on the back, and a white triangle patch under each wing. A whitish wing bar is also found on the upper surface of the wing. As juveniles, they have black heads and light neck ring.

Condors are carrion eaters. They lack the strong talons and beaks of hawks and eagles, and depend on finding carcasses for food. They have never been known to attack a living animal. They will commonly gorge themselves when feeding on a carcass and may go days without eating. Their keen eyesight helps them locate food. They sometimes travel up to 140 miles per day in search of a meal. They are also keen observers of other scavengers like Turkey Vultures and Golden Eagles, and Common Ravens.

In Pleistocene times, California condors were found across much of North America. In a fossil context, the remains of condors are absent after about 11,000 years ago. This corresponds to the decline in large Pleistocene fauna on which they presumably fed. In historic times, the birds ranged from British Columbia to Baja California Sur, but by 1940, they were seen only in southern California. By 1977, approximately 45 birds were known to exist in the wild and by 1985, only 9 birds remained. On April 19, 1987 the last free-flying California condor was captured from the wild and placed in captivity. At that time, only 27 condors remained alive, all in zoos. Successful captive breeding programs have increased the number so that reintroductions to three different sites in southern California and the Grand Canyon have been started. The world's population has been increased to approximately 200 birds.

Condor Reintroduction to Baja California
In October of 2002, six pioneer condors raised at the Los Angeles Zoo were flown to Baja California to begin the process of reintroduction. This project is an extraordinary collaboration among the Instituto

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Nacional de Ecologia, the Comisión Nacional de Áreas Naturales Protegidas, the Centro de Investigación Científica y de Educación Superior de Ensenada (CICESE), the Zoological Society of San Diego, the US Fish and Wildlife Service, and the World Center for Birds of Prey in Boise, Idaho. Five young birds, under 3 years of age, were accompanied by "Xewe" an 11 year-old mentor bird who had known wild condor life. The five will be kept in a "condorminium" located in the Sierra San Pedro Mártir National Park and gradually habituated to wild living in the forests and canyons of Baja California. This marks the first time since 1930 that condors have been seen on the peninsula. It is hoped that the reintroduction of the California condor will spark an interest in bi-national conservation efforts within a proposed Biosphere Reserve.

Condors may have once been a common sight on the peninsula. Nelson's biological survey of 1906 observed a dozen condors feeding on a donkey carcass in the San Pedro Mártir range and noted they appeared "rather common" in the mountains (Nelson 1922:22). Within a decade, however, the population seriously declined throughout southern California and the peninsula. Invading gold minors apparently took a heavy toll. Condors were shot for their quills, which because of their lightness and unbreakable texture, were used to hold gold dust. These quills, worn around the neck, sold for $1.00 each (Snyder and Snyder 2000:47).

The California condor has long been a symbol of a wilderness heritage. It is surely the most impressive and majestic flying bird in North America and has figured prominently in the cultures of many North American natives. Perhaps its rebirth will signal a new understanding of the Native cultures that have known and revered it for centuries.

Flutes made from the wing bones of the California Condor have been found in central California archaeological sites. These are incised with intricate designs.

Condor Remains in an Archaeological Context

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Simons (1983) has summarized the occurrence of Pacific coast condor remains in an archaeological context. He reports on 13 sites between Oregon and California spanning a time range between approximately 10,000 years ago and early historic times (1983:470). The greatest number of individual California condor bones has been recovered at the "Five Mile Rapids" site in Oregon. There the unmodified remains of 63 birds were present.

In the delta and San Francisco bay region of California, a concentration of sites have yielded bones of the California condor. These include condor bone tube/whistles fashioned from the wing bones. Some have delicate incisement. In several cases these were recovered with human burials (Simons 1983:474). One site near Sacramento revealed the remains of a condor cape buried in a human grave. In several sites the condors themselves appear to have been intentionally buried. At the West Berkeley shell mound there was the suggestion of ritual condor burial.

Ceremonial Importance

There is scattered evidence of the ritual use of California condors through much of the Californias. The sacrifice of these birds seems to have been widespread. In general, this served to transfer the power of the bird sacrificed to those engaged in its ritual killing. Possibly the condor's association with the dead (being a carrion eater), led to its incorporation into mourning activities and renewal ceremonies. It may be noted that a similar ritual sacrifice of an Andean condor was observed in 1970 in Peru. Here a captured bird was ritually dispatched in public ceremony blending Inca and early Spanish traditions (Snyder and Snyder 2000:30-32).

California condor ceremonies have been lost in the mists of time, but there are adequate verbal accounts to provide some basis for understanding them. The first recorded account comes from October 8, 1769 when Fr. Juan Crespi observed a large stuffed condor in an Ohlone village near the present day Watsonville.

Many ceremonies throughout California involved dancers dressed in capes of condor skins or condor feather bands. The oldest extant example was collected by the Russian Illya Voznesenski in central California. It is preserved in the Museum of Anthropology and Ethnography in St. Petersburg. Condor ceremony took many forms. Central Miwok shamen acquired powers from condors that allowed them to suck supernatural poisons from their patients. Among the Maidu, condor capes were used by Moki or Kuksuyu dancers. These capes were sometimes combined with Golden Eagle feathers to exaggerate the wearer's height.

Perhaps the most detailed description of condor ceremony in southern California comes from the Panes (or bird) festival of the Luiseño. It was described by Friar Boscana of Mission San Juan Capistrano and by Friar Peyri of Mission San Luis Rey in the early 19th century. Similar ceremonies were held by the Gabrilieño, Cahuilla, Kumeyaay and Cupeño (Kroeber 1907; 2002).

The Panes (clearly a California condor from its description) is brought to the festival and placed upon an altar constructed for the purpose. The bird had been captured as a nestling, with condor nest sites being owned by the village. It was raised with great care until fully grown and selected for the sacrifice. Slowly, along with much crying and grimaces, the captive birds are killed by strangulation or pressing the heart. The bird's skin was removed in one piece and the flesh thrown on a fire. Skins and feathers were used to decorate venerated objects for the annual mourning ceremony. California condor skins were also used to make skirts that were retained as important ritual objects by their native owners (Bates et.al. 1993:41; Bates 1982). It should be noted that eagles were also sacrificed and some have argued (Geiger and Meighan 1976) that it was the Golden Eagle that was most powerful. Most experts have concluded that California condors held a unique place in the ceremonial life of California natives, and that eagles were used more commonly during the historic period as condor populations declined (Simons 1983, Bates et.al. 1993).

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California condors could infuse humans with special powers. Vultures and condors, with their keen eyesight, were considered expert at finding lost objects. Among the Western Mono and Yokuts tribes, "money finders" wore full-length cloaks of condor feathers that reputedly enabled them to find lost valuables (Snyder and Snyder 2000:38). This power was extended to finding missing persons among condor shamen of the Chumash.

California condors also played a part in cosmic events. Among the Chumash, condors or eagles were sacrificed based on which celestial body was prominently visible at the time of the ceremony. Eagles were selected for rituals concerned with the Evening Star (Venus), while condors were chosen for rituals associated with the planet Mars (Hudson and Underhay 1978:88; Simons 1983).

**Condor Cave near Santa Barbara features a spectacular condor in flight.
It is painted over a bear-paw petroglyph. (Bill Hyder photo)
The site has been identified as a probable winter solstice observatory
from its orientation and designs (Hudson and Underhay 1978).**

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Other painted sites within Chumash territory have also produced avian images thought to be condors (Grant 1965). At Pool Rock, for example, a winged design is centrally placed among white, red and black elements. At Chumash Painted Cave, the winged design is mixed among other symbols in a complex panel. Nearby in the Carrizo Plain exists a natural sandstone outcrop sculpted into a shape resembling a condor's head. It is joined by the head of Coyote. The feature is embellished with red designs, which have survived only in the protected niches. The site was recently identified as a sacred condor site by a Chumash elder (Carl Bjork, personal communication). Red designs decorate the condor's neck. This has been identified as a sacred site. (Carl Bjork photo)

Several Chumash sites may show winged figures with anthropomorphic traits. These have been interpreted at Ven-195 as humans in condor or eagle dance regalia. Similar designs at Burro Flats may also be a blend of bird and human form within the context of shamanism and ritual (Gibson and Singer 1978, Hyder and Lee 1994, Lee and Horne 1978).

In Yokuts territory, a distinctive condor image has been recorded. It comes from Exeter Rocky Hill (CA-Tul-83) in Tulare County. In a shallow granite shelter formed from huge boulders, a giant figure is painted on the ceiling. It measures almost six feet in length and features well-defined feet and black and white patterned design in the outstretched wings.

One of the more common forms of depicting large birds in painted rock art is with "raked" wings. This shows the wings extended with feathers down. Although not an exclusive habit, living California condors often adopt this pose when warming or drying their wings, thus it is possible to imagine it as a view born from actual observation.

Almost lost among the giant painted images of Cueva La Pintada in the Sierra de San Francisco, Baja

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California Sur are several black images with raked wings. Perhaps these represent the former aerial masters of these desert canyons and their feeding on the carcasses of other animals so prominently depicted. Recent studies imply that California condors may have derived much of their food from scavenging sea mammal remains along the coast. This may have made Baja California a favored land for these birds. Another rock art site called "La Pintada" is situated in the rugged coastal volcanic canyons between Guaymas and Hermosillo in Sonora. On a protected face within a narrow canyon, is a pictograph display in red, black and white. (Pictured below) Most of the images take a geometric form with shields, or perhaps turtle-designs being prominent.

Below, these black avian figures with "raked" wings may be cormorants, or perhaps condors. In the center is a familiar black image with raked wings. It is strikingly similar to other painted designs across the former range of the California condor.

Another rock art site called "La Pintada" is situated in the rugged coastal volcanic canyons between Guaymas and Hermosillo in Sonora. On a protected face within a narrow canyon, is a pictograph display in red, black and white.

Summary and Conclusions

In this paper we have soared briefly across the cultural landscape of the California condor, its archaeology, ceremonial significance and painted imagery. It is apparent that California condors held a special place in the lives and ceremonies of California natives. It was a revered creature, a master of the spirit, who gave power to humans for a variety of world renewal and cosmic purposes. It was associated with death and mourning as well as rebirth and renewal.

So as we enter a new century, the fate of the California condor hangs in the balance. Perhaps the condor colonizers of Baja California will help insure the continuation of the species. But, why should we care about the condor's survival? As the noted biologist Ken Brower pointed out, "When the Vultures watching your civilization begin dropping dead...it is time to pause and wonder" (Erlich et.al. 1988). Amen.

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Luhui Isha, Wishtoyo's Cultural Resources and Education Director of Barbareño Chumash decent also affirms Mati Waiya's account of the importance of the Condor to the Chumash Peoples and their culture in Mr. Waiya's August 2, 2010 Newhall FEIS/FEIR letter (attached).

N-2-11 Thank you for your time and consideration in reviewing these comments. Please feel free to contact us with any questions. The HCP cannot be approved, and the SEIS cannot be adopted until a legally adequate preservation in place analysis for impacts to the Chumash, Kitanemuk, Yowlumne Yokuts, Kawaiisu, and Tataviam burial sites, villages, sacred sites, and cultural remains is conducted in accordance with CEQA, and until preservation in place mitigation measures are adopted for impacts to these Native American's cultural resources as required by CEQA.

N-2-12 Furthermore, the HCP cannot be approved, and the SEIS cannot be adopted unless the localized and regional impacts to affected Native Americans from the TMV Project's localized and regional impacts to the California Condor are mitigated to a less than significant impact.

Sincerely,

Jason Weiner
Staff Attorney
Wishtoyo Foundation

cc: Mati Waiya, Executive Director Wishtoyo Foundation, Chumash Ceremonial Elder
mati.waiya@wishtoyo.org;

Luhui Isha, Wishtoyo Foundation Cultural Resources and Education Director;
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August 2, 2010

VIA E-MAIL

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Newhall Ranch EIS/EIR Project Comments
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Re: Impacts to Chumash Cultural Resources / Newhall Ranch Resource Management and Development Plan and the Spineflower Conservation Plan Final EIR/EIS

To Whom It May Concern:

I am writing in the capacity of a Chumash Native American with Chumash ancestral ties to the Santa Clara River watershed, a Chumash ceremonial elder, and as the founder and Executive Director of the Wishtoyo Foundation to ask that the Newhall Ranch Resource Management and Development Plan and the Spineflower Conservation Plan ("Project") Final Environmental Impact Statement/Environmental Impact Report ("FEIS/FEIR") identifies, analyzes, and adequately avoids or mitigates the Project's impacts to Chumash cultural resources .

My family comes out of the Santa Clara River village of Saticoy. My ancestors came down from the Piru and Fillmore area and would often travel along the Santa Clara River to visit one village after another. My knowledge of Chumash cultural resources in the Newhall Ranch project area comes from the oral history passed down from my elders and ancestors through gatherings and storytelling. These stories of my ancestors traveling up and down the river, burying our loved ones along and near the river, and utilizing the abundance of food and supplies along the river have been passed down generation after generation.

According to my ancestors' passed down oral history, many Chumash men intermarried with Tataviam women in the Newhall Project area, and lived in the Project Area with the Tataviam woman's families. These Chumash men continued Chumash cultural practices in Tataviam territory and were buried in Tataviam territory with and alongside the Tataviam People. The Newhall Ranch Project area was also a place where many tribes traded with the Tataviam, and as such, was a historical trading area for the

Chumash. Thus many remnants of Chumash material culture were present in the Project area, and likely are buried there with or near Chumash burials.

I am concerned that the footprint of this project will be devastating to Chumash burial sites, cultural artifacts, ceremonial sites and sacred places, cultural resources such as the California Condor, and our cultural landscape. I thus ask that the FEIS/FEIR identifies impacts to these Chumash cultural resources, and sets forth mitigation measures to lessen these impacts to a less than significant effect.

Impacts to Burial Sites and Cultural Resources

The number of Native American burials sites and sites with cultural resources identified in the FEIS/FEIR seems very small in relation to the magnitude of the Project area, as the Tataviam people occupied and or culturally utilized much of the Project Area, which lies in their territory. Page 219 of the " Ethnographic Overview of the Los Padres National Forest"[1] places the Tataviam village center of Tacuyam in the center of the Project Area, the village center of Camulus just downstream of the Project Area around the Santa Clara River (The FEIS/FEIR 4.10-.12 indicates this Native American village center was a mixed Chumash-Tataviam population), and indicates that an even bigger village center of Tochonanga lies just outside the Project Area.

Of the 11,999 acre Newhall Project area, the FEIS/FEIR only identifies eight Native American cultural resource sites, and of those sites only two, CA-LAN-2233 and CA-LAN2235, have been identified as containing Native American burials. Further, it appears from analysis in the FEIS/FEIR that these sites were only discovered because portions of these sites were unearthed by Cal Trans during the widening of Highway 126 in 1999. During the Cal Trans widening of Highway 126 completed in 1999 alone, which I believe encompassed a significantly smaller project area, there were 45 Native American burials unearthed, most of which were during project construction operations (FEIS/FEIR pg 4.10-7). I imagine that there will be hundreds upon hundreds of Tataviam and Chumash burials and cultural resources (such as beads, art, tools, musical instruments, jewelry, ect.) unearthed during construction of the Project that were not identified in the FEIS/FEIR. The problem with not identifying Native American Cultural resources in studies conducted as part of the FEIS/FEIR is that if all these cultural resources were identified in archeological studies, then the resources could be preserved in place. Even if the Project FEIS/FEIR called for moving the cultural resources and burials instead of preservation in place, the cultural resources could be carefully removed with screens and archeological tools. As is with the current identification of cultural resources as presented in the FEIS/FEIR, I fear that excavators will destroy burials (our ancestors, their spirits, our culture, and our history) when digging through the earth, and that many bones and or other cultural resources will be destroyed or unnoticed when the powerful machines rip through the ground. Any burial site, archaeological site, or village site is a sacred place. To the Chumash, any area with historic value has a deep sacred

[1] " Ethnographic Overview of the Los Padres National Forest", Prepared for U.S. Department of Agriculture Southern California Province Angeles National Forest Arcadia, CA 91006 By Northwest Economic Associates, Gary S. Breschini and Trudy Haversat, Chester King, and Randall Milliken in February 6, 2004

significance. Accordingly, adequate protection of these sites is imperative to our culture and way of life, and I request that adequate and more extensive surveys for Chumash and Tataviam burial sites and cultural resources is conducted.

Sufficient and reasonably diligent field surveys are necessary to identify the impacts to Native American cultural and historic resources, and to prevent significant impacts to our resources and culture from occurring. It should be noted that in the Newhall Landmark Village DEIR, W&S Consultants, the firm conducting the surveys, found that The Tataviam Tribe is extinct. Likewise, W&S Consultants seem to be responsible for the FEIS/FEIR's irresponsible omission of any mention of Chumash burials and cultural resources in the Project area. Entrusting a consulting firm who could make such an erroneous and culturally devastating oversight, with the archeological surveys referenced in the FEIS/FEIR to locate and identify Tataviam and Chumash burials is concerning. As mentioned previously, the only burial sites identified in the DEIS/DEIR are adjacent to burials already discovered by Cal Trans during their widening of Highway 126 in 1999. I fear that if the Project is approved and the FEIS/FEIR is certified, as is, without sufficiently extensive archeological surveys, it will result in another "Play Vista", where in 1993 developers refused to stop excavating land near Centinela Creek when workers uncovered a 200-year-old Gabrieliño-Tongva Native American cemetery containing the remains of at least 160 tribal people. The discovery of this cemetery that without identification and thus mitigation measures set forth in the EIR, resulted in many Native American burials being bulldozed and the cemetery being removed instead of remaining in place. (available at: http://www.nathpo.org/News/NAGPRA/News-NAGPRA46.html, last visited 8/3/2010).

Cultural Impacts from Project's effect on the California Condor ("Condor") in the Project Area

I am also concerned about the impact of the Project on Chumash and Tataviam culture, and religious and spiritual practices due to localized impacts of the project on the California Condor. For Chumash people the condor is a symbol of our continuance as a people. To see the condor feeding, foraging, roosting, and laying eggs in the Project area connects Chumash people to their ancestors that lived there and utilized the area. The presence of the Condor is also vital to our religious and spiritual practices. We have a condor dance that we continue to practice in our ceremonies, and many tribes as well as ours honor the condor. For the Chumash, the condor has always played a big role in the passing of our loved ones, as the condor cleans the land and cleans our souls after we die. The Chumash often offer a condor feather to the deceased as their last rite of passage because we believe the condor feather raises the spirit to the upper world.

The condor's presence in the Project area, whether it be flying overhead, foraging for food, roosting in a tree, or cleaning itself near the river, or the knowledge that the condor is living and thriving in the Project Area, is thus an integral part of the sacredness of our ceremonies, cultural sites, prayers, and burial sites that take place or that will take place in the Project area. Anytime we are in a place where the memory of our people exists, we acknowledge the spirit of our ancestors with prayers and offerings. This holds true whether we are harvesting cultural resources from the rivers where our ancestors have been before, honoring our ancestors at a sacred or burial site, standing at a peak

looking at our cultural landscape, or walking through a valley or grove of oak trees and see grinding stones. The absence of the condor from Chumash cultural landscape in the Project area from development related impacts will diminish our connection with our ancestors and our culture, and take away from our ceremonial and religious practices that take place or that will take place in and around the Project area. The Chumash people also collect Condor feathers for ceremonial offerings and to use in ceremonial regalia when they fall to the ground after Condors forage, clean themselves, and roost. I thus also fear that the Project as proposed with its bright lights, power lines, and other urban hazards that will drive away and kill condors in the Project area, will thus deprive Chumash people of religious and cultural practices and spirituality, while also depriving Chumash people of a place to harvest and find condor feathers.

Impacts to Chumash Cultural Landscape

In modern times, when Chumash access the Santa Clara River upper watershed to honor our ancestors and to harvest: willow for traditional dwelling units (aps); soap stones for ceremonial beads, pipes and bowls; river rocks for ceremonial sweats, and white sage from the riverbanks for ceremonial blessings, we immerse ourselves in our cultural landscape, which must remain in tact to preserve our culture. Our cultural landscape, the land that our ancestors were buried in, prayed in, and utilized, contains all the wildlife in the Santa Clara watershed, undeveloped hillsides, the Santa Clara River, small creeks, mountains, valleys, and our ancestor's remains. The Project, which not only will eliminate the condor from the area, reduce other wildlife populations our ancestors regarded as spiritual and cultural resources, and unearth and destroy our burials and cultural resources, will also line the hills, river banks, mountains, and valleys of our ancestors with buildings, power lines, and pavement, and thus will, in effect, destroy our cultural landscape that our current and future generations depend on to sustain our culture.

When I look at the river, I recall the years of going up and down the river with my uncle, cousin, and mother. It is one of the last wild rivers and holds deer, coyote, various natural and cultural resources, and our ancestors. It is hard to imagine destroying the Project area with concrete, buildings, noise, lights and trash pollution. Not only does this disturb the whole natural system, but also disturbs the spirits of our ancestors.

About five years ago, we participated in the 5K Peace and Dignity Run. It started in Alaska and finished in Tierra de Fuego. The Chumash picked it up from the Coast, ran up the Santa Clara River, and crossed over by Magic Mountain in Santa Clarita. It was an honor to be a part of the run and to carry the medicine of the condor and the eagle feathers on the land in which our ancestors lived. We stopped and performed an offering ceremony to remember our ancestors in the midst of the Project area overlooking the Santa Clara River and our People's cultural landscape. I can't image the same prayer being performed with the same effect overlooking thousands of houses, and without undeveloped natural areas and our cultural landscape surrounding us.

I fear that this development will also foster unwanted access to Native American cave paintings and sacred burial sites due to off-roading and hiking. Furthermore, the

project, through dredging of the Santa Clara River floodplain, will also eliminate sacred harvesting locations for white sage, soap stones, river rock, and willow.

I am shocked and disturbed that the FEIS/FEIR does not identify any Chumash Native American Cultural resources or even acknowledge the Chumash People's presence and role in the Project area, which lies in Tataviam territory. The Chumash Peoples' historical presence, cultural utilization, and important role in this area via their interaction with the Tataviam has been well documented by Chester King and other historians, and has passed down orally from one Chumash family and community to the next for thousands of years. Please modify the FEIS/FEIR to ensure that the FEIS/FEIR identifies, and provides sufficient mitigation measures to avoid, all significant impacts to Chumash and all Native American burial sites, our cultural landscape, sacred places, and cultural resources, including the localized impacts to the California Condor and wildlife that are essential to maintaining our cultural, spiritual, and religious practices and our connection with our ancestors.

Sincerely,

Mati Waiya
Chumash Ceremonial Elder

Upon completion of the Phase II analysis, 11 of the 33 tested sites proved to lack integrity and significance and/or Phase II fieldwork resulted in recovery of all extant resources. There is the potential, however, that additional resources could be located in the vicinity of these sites; if any unidentified resources were disturbed during construction, additional impacts could occur. Monitoring of these sites during grubbing and topsoil clearing is the only mitigation that would be required to address these potential impacts. With incorporation of mitigation, these impacts would be less than significant. Table 4.5-3 is a listing of these 11 sites.

Table 4.5-3. Archaeological Sites Addressed in Phase II Testing

Site Trinomial	Potential Impact
CA-KER-4010	Phase II testing found that the site had been destroyed by natural erosional processes, now lacks integrity, and is not significant or unique; however, additional remains may be uncovered or disturbed during development.
CA-KER-4389	Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.
CA-KER-4391	Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.
CA-KER-6710	Phase II test excavations found no archaeological remains of any kind; however, remains may be uncovered or disturbed during development.
CA-KER-6712	Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.
CA-KER-6718	Phase II test excavations collected an isolated artifact; however, additional remains may be uncovered or disturbed during development.
CA-KER-6719	Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.
CA-KER-6721	Phase I survey collected an isolated artifact; however, additional remains may be uncovered or disturbed during development.
CA-KER-6728	Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.
CA-KER-6733H	Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.
CA-KER-6743	Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.

The remaining 22 archaeological tested sites were found to be significant, and the proposed development of the Tejon Mountain Village project would have the potential to result in adverse impacts. Table 4.5-4 is a listing of the 22 sites that had a Phase II analysis performed but additional mitigation is required, with a brief discussion of the results and proposed mitigation. With implementation of the proposed mitigation, impacts are considered less than significant.

Table 4.5-4. Archaeological Sites with Potential Adverse Impacts

Site Trinomial	Potential Impact	Proposed Mitigation
CA-KER-127	Potential disturbance during construction or maintenance along existing roadway.	Preserve in place by staking and monitoring during grubbing and topsoil grading.
CA-KER-265	Potential disturbance during construction or maintenance of roadway.	Preserve in place by shifting road location to avoid or capping, staking, and monitoring during grubbing and topsoil grading.
CA-KER-307	Previously preserved by capping, but grubbing or topsoil grading could disturb cap.	Preserve in place by monitoring during grubbing and topsoil grading.
CA-KER-4009	Potentially affected by development.	Preserve in place by deed restrictions or conservation easements.
CA-KER-4011	Potential disturbance by residential development and/or road building.	Preserve in place by deed restrictions or conservation easements, capping, staking, and monitoring during grubbing and topsoil grading.
CA-KER-4390	Immediately outside of development envelope, but may be affected by adjacent development.	Preserve in place by staking and monitoring during grubbing and topsoil grading.
CA-KER-6704	Immediately outside of development envelope, but may be affected by adjacent development.	Preserve in place by staking and monitoring during grubbing and topsoil grading.
CA-KER-6705	Potential disturbance during construction or maintenance along existing roadway.	Preserve in place by capping, staking, and monitoring during grubbing and topsoil grading.
CA-KER-6709H	Potential disturbance during construction or maintenance along existing roadway.	Preserve in place by avoidance or capping, staking, and monitoring during grubbing and topsoil grading.
CA-KER-6711	Potential disturbance by residential development.	Preserve in place by deed restrictions or conservation easements.
CA-KER-6716	Potential disturbance during construction or maintenance along existing roadway.	Preserve in place by avoidance or capping, staking, and monitoring during grubbing and topsoil grading.
CA-KER-6720	In a nondevelopment area, but potential disturbance from adjacent construction.	Preserve in place by staking and monitoring during grubbing and topsoil grading.
CA-KER-6722	Potential disturbance during construction or maintenance along existing roadway.	Preserve in place by avoidance, staking, and monitoring during grubbing and topsoil grading.
CA-KER-6725	Immediately outside development envelope, but may be affected by adjacent development or roadway construction.	Preserve in place by avoidance or capping, staking, and monitoring during grubbing and topsoil grading.
CA-KER-6726	Except for one small outlying feature, outside the development envelope, but this feature could be affected by development.	Preserve in place by avoidance, staking, and monitoring during grubbing and topsoil grading.

Site Trinomial	Potential Impact	Proposed Mitigation
CA-KER-6727	Potentially affected by development.	Preserve in place by staking and monitoring during grubbing and topsoil grading, or conduct Phase III data recovery.
CA-KER-6731	Potentially affected by residential development.	Preserve in place by deed restrictions or conservation easements.
CA-KER-6737	Potentially affected by residential development.	Preserve in place by staking and monitoring during grubbing and topsoil grading.
CA-KER-6739	Potentially affected by development.	Preserve in place by staking and monitoring during grubbing and topsoil grading.
CA-KER-6742	Potentially affected by development.	Preserve in place by staking and monitoring during grubbing and topsoil grading.
CA-KER-6744	Potentially affected by development.	Preserve in place by staking and monitoring during grubbing and topsoil grading.
CA-KER-6745	Potentially affected by residential development.	Preserve in place by deed restrictions or conservation easements.

Native American Consultations

During the Phase II testing of the 33 sites on the project site, Gloria Montes Morgan and Kathy Van Meter, representing the Tejon Indian Tribe, and Richard Angulo, representing the California Indian Council Foundation – Chumash, served as Native American monitors and liaisons.

During geologic surveys of the project site, a buried site was identified 3 meters deep (CA-KER-6704) that included human remains. At that time, the project archaeologists consulted with the Native American Heritage Commission and Dee Dominguez, who the Commission designated as the Most Likely Descendant for the Tejon Ranch area. This consultation is described further in Impact 4.5.3 later in this section.

Mitigation Measures

Mitigation Measure 4.5-1: The project proponent shall provide the Kern County Planning Department with a map indicating the location of each of the identified archaeological sites. This map will be kept in confidentiality by the Kern County Planning Department.

Mitigation Measure 4.5-2: Prior to the submittal of any building, grading, or construction application to Kern County, the project proponent shall request that the Tejon Mountain Village Design Review Committee provide a letter indicating whether the proposed activity is located within 2,500 feet of a archaeological site. This letter will be submitted to Kern County with the building, grading, or construction application. If the proposed activity is located

within 2,500 feet of an archaeological site, County Staff shall make sure the appropriate mitigation measures listed below are observed.

Mitigation Measure 4.5-3: Prior to ground disturbing activities, all earth-moving and excavation contractor employees shall attend a "tailgate" session informing them of the potential for inadvertently discovered cultural resources and/or human remains, and protection measures to be followed to prevent destruction of any and all cultural resources discovered on site. The applicant's designated project construction manager, a qualified archaeologist, and a qualified cultural resource manager/monitor from a local California Native American tribe shall conduct the orientation. The orientation will include information regarding the potential for objects to occur on site, a summary of applicable environmental law, procedures to follow if potential cultural resources are found, and the measures to be taken if cultural resources and/or human remains are unearthed as part of the project. Within 14 days of the session, the project construction manager shall submit to the Kern County Planning Department a summary report that includes the following information:

a. When and where the session took place;

b. Topics discussed in the session; and

c. A session attendance roster signed by the employees at the tailgate session.

A copy of the report will be provided to the Southern San Joaquin Valley Information Center and maintained on site.

Mitigation Measure 4.5-4: Site CA-KER-4010, a bedrock mortar station, has been destroyed by natural erosional processes, lacks integrity, and is not significant or unique. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-5: Site CA-KER-4389, a bedrock mortar station, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-6: Site CA-KER-4391, a bedrock mortar station, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-7: Based on Phase II test excavations, no archaeological site was present at CA-KER-6710. To ensure that additional

remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-8: Site CA-KER-6712, a bedrock mortar station, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-9: Site CA-KER-6718 was recorded during Phase II testing. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-10: Site CA-KER-6719, a bedrock mortar station, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-11: Site CA-KER-6721 was recorded during Phase II testing. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-12: Site CA-KER-6728 was subject to Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-13: Site CA-KER-6733H, which is an historical cairn, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-14: Site C CA-KER-6743, a bedrock mortar station, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site

and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-15: Site CA-KER-127 is a village site immediately adjacent to the existing Lake Drive. This site shall be preserved in place and capped with geotextile matting and fill. Prior to any construction of grading within 100 meters of the site, the site and a 25-meter buffer (where feasible) shall be staked to prevent disturbance, with archaeological and/or Native American monitors present during grubbing and topsoil grading work in this area.

Mitigation Measure 4.5-16: Site CA-KER-265 is a prehistoric camp. This site shall be preserved in place. Locus A of this site is adjacent to the existing Bear Trap Ranch Road, and it shall be capped with a geotextile matting and fill. The route of Bear Trap Ranch Road will either be shifted north, beyond the site boundary, or the improved roadbed will be placed within but not through the fill capping. Utilities that may overlie the areas capped with geotextile matting and fill will be embedded within the fill cap, above the geotextile mat, or routed north of the site boundary.

Locus B, which is on a nearby but separate and isolated landform, shall be passively preserved intact. Prior to any construction or grading within 100 meters of Locus B, the site and a 25-meter buffer (where feasible) shall be staked to prevent disturbance, with archeological and/or Native American monitors present during any grubbing or topsoil grading in this 100-meter area.

Mitigation Measure 4.5-17: Site CA-KER-307, the historical village of Kashtiq, is preserved under existing geotextile matting and capping fill, under Lake Drive. Archaeological and/or Native American monitors shall be present during any grubbing or topsoils grading within 100 meters of the preserved site area.

Mitigation Measure 4.5-18: Site CA-KER-4009, a prehistoric camp, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement.

Mitigation Measure 4.5-19: Site CA-KER-4011, a large camp, shall be preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area. If the construction requires encroachment on the bedrock mortars on the south side of the site and upslope of the archaeological deposit, these shall be covered with geotextile matting and fill and preserved in place prior to construction.

Mitigation Measure 4.6-20: Site CA-KER-4390, a prehistoric camp, is outside the development envelope and shall be passively preserved in place. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100

meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-21: Site CA-KER-6704 is a camp with human burials that are covered by approximately 2 meters of natural soil located outside the development envelope. The site and a 25-meter buffer will be passively preserved in place. The site and the 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-22: Site CA-KER-6705 is a prehistoric campsite located near the existing Lake Drive. If Lake Drive is expanded in a manner that would encroach on CA-KER-6705, the site shall be preserved under geotextile matting and capping fill. Utilities that may overlie the geotextile matting and fill will be embedded within the fill cap, above the geotextile mat, or routed southeast of the site.

Prior to any construction or grading within 100 feet of the site, the site and a 25-meter buffer shall be staked to prevent disturbance, with archaeological and/or Native American monitors present during any grubbing or topsoil grading in the 100-meter area.

Mitigation Measure 4.5-23: Site CA-KER-6709H is a historical site adjacent to Rising Canyon Road that shall either be avoided and passively preserved in place or capped with geotextile matting and fill. Utilities that may overlie the geotextile matting and fill will be embedded within the fill cap, above the geotextile mat, or routed northeast of the site.

Mitigation Measure 4.5-24: Site CA-KER-6711, a rock ring site, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement.

Mitigation Measure 4.5-25: Site CA-KER-6716 is a village site located near a road and shall either be avoided and passively preserved in place or capped with geotextile matting and fill. Utilities that may overlie the geotextile matting and fill will be embedded within the fill cap, above the geotextile mat, or routed southeast of the site. Prior to any construction or grading within 100 meters of the site, the site area and a 25-meter buffer shall be staked to prevent disturbance, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in this 100-meter area.

Mitigation Measure 4.5-26: Site CA-KER-6720, a rock ring site, shall be preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area. If the construction requires encroachment on the bedrock mortars on the south side of the site and upslope of

the archaeological deposit, these shall be covered with geotextile matting and fill and preserved in place prior to construction.

Mitigation Measure 4.5-27: Site CA-KER-6722 is a campsite located near the existing Lake Drive. Prior to any construction or grading within 100 meters of the site, the site area and a 25-meter buffer shall be staked to prevent disturbance, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in this 100-meter area. Any expansion of Lake Drive to the northwest into the site area shall require preservation of the affected site area under geotextile matting and capping fill. Utilities that may overlie the geotextile matting and fill will be embedded within the fill cap, above the geotextile mat, or routed southeast of the site.

Mitigation Measure 4.5-28: Site CA-KER-6725, a prehistoric camp, is outside the development envelope and shall be preserved in place by avoidance or by coverage with geotextile matting and fill. Utilities that may overlie covered areas of the site will be embedded within the fill cap, above the geotextile mat, or routed east of the road and site area. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-29: Site CA-KER-6726 is a large campsite outside the development envelope that shall be passively preserved in place. A small rock ring associated with the site shall be staked with a 5-meter buffer prior to construction, and shall be preserved in place in a nondevelopment area subject to an easement or deed restriction.

Mitigation Measure 4.5-30: Site CA-KER-6727, a prehistoric campsite, shall either be passively preserved in place or subject to Phase III data recovery. If the site area is preserved, it shall be staked prior to any construction or grading within 100 meters, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in this 100-meter area.

Mitigation Measure 4.5-31: Site CA-KER-6731, a bedrock mortar station, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement.

Mitigation Measure 4.5-32: Site CA-KER-6737, a bedrock mortar station, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-33: Site CA-KER-6739, a series of small rock rings, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100

meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-34: Site CA-KER-6742, a campsite, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-35: Site CA-KER-6744, a prehistoric camp, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-36: Site CA-KER-6745, a prehistoric camp, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement.

Mitigation Measure 4.5-37: Archaeological and Native American monitors shall be present during any grubbing or topsoil grading work required to complete the water system improvements to the existing California Aqueduct turnout described in Section 3.5.3.2 and Figure 4.16.2 of this Draft EIR.

Level of Significance after Mitigation

Impacts would be less than significant.

Impact 4.5-2: Directly or Indirectly Destroy a Unique Paleontological Resource or Site or Unique Geologic Feature

Direct and indirect impacts to paleontological resources could result from ground-disturbing activities related to residential, commercial, and recreational construction; construction of the water distribution system, the wastewater system, and water tanks; construction of dry utilities infrastructure; construction of hiking and riding trails; implementation of design features as outlined in the Tejon Mountain Village Specific Plan and in Chapter 3, "Project Description"; and modifications to roadways. Direct adverse impacts primarily concern the destruction of paleontological resources and the loss of information associated with paleontological resources.

As described above in the Methodology section, paleontological sensitivity is defined as the potential for a geologic unit to produce scientifically significant fossils, with high sensitivity identified with sedimentary units. The majority of the site is composed of crystalline rocks, including granite, diorite, and quartz monzonite, estimated to be of Jurassic or Cretaceous age. These are volcanic in

BAKERSFIELD, CALIFORNIA

BOARD OF SUPERVISORS MEETING

OCTOBER 5, 2009
A.M. SESSION

TEJON MOUNTAIN VILLAGE PROJECT

VOLUME I
PAGES 1-100

1 for the profit of a greedy few. The destruction would
2 be permanent. It will never come back, and death is so
3 final. God has given you the opportunity to preserve
4 this part of His creation.
5 SUPERVISOR McQUISTON: Thank you, Mr. Fry.
6 I want to make a comment here. There was
7 remarks early in the record about two of the
8 supervisors not being here during the testimony. I'd
9 like to note for the record that if we have to go to
10 the men's room or into this area here, the live
11 proceedings are broadcast, and we are hearing the
12 discussion even though we may not be physically
13 present. Supervisor Maben says, "We can run, but we
14 can't hide."
15 Welcome.
16 MS. DOMINGUEZ: Hello. Good morning.
17 My name is Dee Dominguez, and my cultural
18 affiliation is Kitanemuk and Yowlumne Yokuts and
19 Ventureno Chumash. I am a member and chairwoman of the
20 Kitanemuk and Yowlumne Tejon Indians. And our family
21 members are descendents and the survivors of the people
22 who lived on the Tejon Ranch lands from time in
23 memorial.
24 I brought for you a picture of a Condor.
25 I want you to look this beautiful, beautiful bird. We

are very fortunate to have this bird live in our community. I heard earlier that this bird also goes to the San Gabriel Valley. I have a home in San Gabriel, and I have one in Bakersfield. I have never seen the Condor land in Bakersfield, and I have never seen it land in the San Gabriel Valley. I know that it probably flies over the San Gabriel Mountains, which is the Los Padres National Forest. This bird is a national treasure. We are so lucky to have this Condor in our midst.

I want to remind you about one that was killed on Tejon Ranch. That was an adult Condor Number 8. She was shot and left to die in a tree. What happened to Adult Condor Number 8? She's a treasure to this county. She's gone. Our tribe tried for two years and a half to have her brought back here, but we were not able to do that. We had worked with the U.S. Fish and Wildlife for two and a half years with five different tribes as a consortium to bring her back. She is very important to the Indian people, and she lived on Tejon Ranch. She was from here, and she should have been brought back.

I urge you to review that report from the biologist. It is very important. They work with the Condors every day. They are specialists. They know --

1 they have the information that you need to know about
2 the Condors. They need this area to survive.
3 You have heard that there is an incidental
4 take license that is still on the table with the Fish
5 and Wildlife. It's not granted to Tejon Ranch. Why
6 hasn't it been given to them? If it had been okay, it
7 would have been granted to them long ago, but it has
8 not. Think about that, people. Think about that.
9 This legacy of this ranch to this bird is
10 terrible. Look at the legacy. There was a time when
11 there were Condors in great numbers. And in the '80s
12 they almost were pushed into extinction, and this was
13 done by ranchers and farmers that -- when they first
14 came to this country in the 1850s, that thought the
15 Condors would kill their cattle; so they shot them and
16 killed them and killed them until, in our century, they
17 were almost driven to extinction.
18 They are not the only animal that was driven
19 to extinction. The white wolf -- there was a beautiful
20 white wolf that lived in our area in the southern
21 valley. Our tribe was named for that white wolf, the
22 Yowlumne Yokuts people. We are the white wolf people.
23 I don't want to see the Condors go through that same
24 death that the white wolf did. We have the power to
25 prevent that. You have the power. I hope that you

1 would read the report from the biologists.
2 Cultural and sacred sites. I am very
3 concerned about that. On the Tejon Ranch, that's where
4 I was called to go and see -- I am on the list of the
5 most likely descendents for the State of California
6 Native Americans Heritage Commission -- when I received
7 a call from the Native American Heritage Commission,
8 they told me that a grave had been disturbed; when, in
9 fact, I arrived there, an entire cemetery had been torn
10 to bits, and there were remains laying all over the
11 ground. How many of you here would like to see that
12 done to your families in their cemeteries? What if
13 that happened to Greenlawn here and all their families
14 were called to come and pick all the pieces of your
15 families?
16 And now I'm hearing that those sites are
17 going to be concreted. Well, are we going to concrete
18 Greenlawn and Union Cemetery so that people don't go
19 and vandalize them? There has to be a better way. We
20 must go back to the drawing table on that. Tejon Ranch
21 didn't talk to me about concreting those areas.
22 I would never say that, and I suspect that neither of
23 you here would do that either.
24 I saw those grinding rocks at the
25 headquarters. I did not know they were there until

1 I saw them on the photo before the Planning Commission.
2 I want to know where those came from. Was that site
3 destroyed? Was it severely damaged? Has it been
4 recorded? Was it eligible for inclusion into the
5 National Register of Historic Places?
6 Those are the things we're looking at,
7 people. Destruction. Complete destruction means that
8 you just put it back together, just like a cemetery.
9 Once you tear it up, you can't put it back together.
10 The destruction is final, and I urge all of you -- some
11 places should not be developed, and this is one of
12 those places.
13 Thank you.
14 SUPERVISOR McQUISTON: Thank you.
15 MS. NELSON: Good morning.
16 SUPERVISOR McQUISTON: Good morning.
17 MS. NELSON: I would like to continue,
18 actually, in the vein that Dr. Catherine King did
19 earlier regarding the land use and ranch-wide
20 agreements.
21 SUPERVISOR McQUISTON: May we have your name
22 for the record.
23 MS. NELSON: I'm sorry. Gitta Nelson. I
24 live in Pine Mountain Club.
25 Other commenters have been told that comments

Comment Letter 47

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July 12, 2009

Delia 'Dee' Dominguez
115 Radio St
Bakersfield, CA 93305

Craig M. Murphy
Kern County Planning Department
Public Services Building
2700 "M" Street, Suite 100
Bakersfield, CA 93301-237

Mr. Murphy:

I am writing to express my concerns with the Kern County Tejón Mountain Village and Frazier Park Estates Draft Environmental Impact Reports. I am writing in the capacity of a concerned citizen with strong ties to the Tejón Ranch property, a Most Likely Descendent (MLD) for Kitanemuk & Yowlumne Yokuts Indian Tribes, and as the Chairwoman of the Kitanemuk & Yowlumne Tejón Indians. 47-A

The TMV-DEIR does not adequately consider the indigenous settlements for the entire Tejón Ranch area, and in particular the "CEQA Development Envelope" around Castac Lake, despite the presence of well-documented sacred sites of important cultural significance to the indigenous people. 47-B 47-C

The DEIR does identify a few sites, but does so incoherently. Instead of identifying villages by their name and addressing their individual significance, every "archaeological site" is grouped together and their identity is hidden by use of a number code. See pp. 4.5-22 through 28. Using numeric identifiers makes it simply impossible to know if the many villages and sacred sites around the Castac Lake site are the ones identified in the DEIR. This is a critical problem with the DEIR that renders the protection of cultural resources a guessing game at best and a clear disrespect for the sacred sites as well. Relying on numbers of the sites also allows for random mis-classifying Indian settlements as "prehistoric camps" or "bedrock mortar station" when there is no means to verify the actual contents of that site. I object, however, to calling villages, settlements, and/or burial sites "prehistoric camps" since they were clearly of greater significance than camps and require additional protection as such. In determining the true significance, then, we are forced to rely on the word of the Ranch, the very ranch that kicked the Indian People off in the first place. 47-D 47-E

Even the few sites that the DEIR identifies are provided with insufficient mitigation measures. In particular, the use of textile matting and fill in order to build *over* sacred sites is particularly troublesome; this practice is noted repeatedly in the DEIR. Without independent analysis of these sites beyond the fictional group used by the Ranch, 47-F 47-G

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Delia Dominguez
TMV-DEIR Comments
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there is no way of knowing if the mitigation suggested is either appropriate or actually practiced. 47-G cont.

Indian Settlements

My ancestors lived in long-established settlements in many of the canyons surrounding Castac Lake, and evidence of their settlements remain throughout the area. Generally speaking, Chumash Indians lived in the vicinity of Kashtiq (now underwater because of Castac Lake expansion), while the Kitanemuk and Yowlumne tribes lived in the canyons east and north of the lake. General Beale forced all of these tribes to move to present-day Tejón Canyon, which made it the last Indian settlement on the property. The U S Government actually sued Tejón Ranch for this forced removal of Kitanemuk, Yowlumne and Chumash. 47-H 47-I 47-J 47-K

Because Tejón Ranch has historically blocked access to the property by MLD's such as myself, many of these settlements have not been officially identified. However, in my research in preparing a petition to the Bureau of Indian Affairs for Federal Recognition, I have reviewed the depositions taken by archaeologist (and translator) J. P. Harrington in 1922, on behalf of the U. S. Government, in its suit against Tejón Ranch for the forced removal of the Indians. The depositions are from Indians who were they themselves moved from the canyons on the Westside of the Tejón Ranch property to the canyons to the East of the valley floor. The final removal was to the last canyon at the end of the canyon floor- Tejón Canyon/ Creek. They were 70, 80, 90, and over 100 years old. Each one of them spoke of where they were born, where their parents were born, where they hunted, fished, gathered acorns, berries, pinenuts, described the elk drives on the plain all the way to Kern Lake, and many other things and places they named in their native languages, Kitanemuk, Yowlumne, Chumash, including Castec Chumash. These included Eugenia Mendez, who was my Great, Great, Great Aunt who lived on Paso Creek at the Huerta de Arriba, as did my Great, Great Grandmother Magdalena Olivas, my Great Great Step- Grandfather Jose Juan Olivas, my Great, Great Uncle Juan Dionisio who described our travel to Cuddy's Ranch, Frazier Mountain, and Pinos Mountain to gather pine nuts, my Great, Great Step Grandmother Maria Chololo, Juan Coluco, a member of the Kitanemuk Tribe, and many others. All of them aware of the land surrounding Castac Lake. 47-L 47-M 47-N

The presence of Indian villiages and sacred sites in the Castac Lake area are likewise documented in sources outside of these depositions, in such older works as the pioneering and well-preserved archaeology studies of J.P. Harrington (also the translator for the above depositions), as well as in Frank Latta's period biography of Jorge Jesus Lopéz. Newer works documenting thse sites include in the local "Ridge Route" chronicles of Bonnie Ketterl Kane (see, e.g., Volume 1, page 8), and the archaeology as those of Jennings and John Johnson's 1978 article, The Trail to Kashtiq. Johnson's Kashtiq article in particular notes the "pattern of placement" of the villages, and that archaeologist Kroeber (1953) determined that the canyons surrounding the lake were named after villages in the mouth of those canyons. 47-O 47-P 47-Q 47-R 47-S

Comment Letter 47, Cont.

archaeologist Kroeber (1953) determined that the canyons surrounding the lake were named after villages in the mouth of those canyons. 47-T

Sacred Burial Sites

I am very familiar with Castac Lake. Currently I am 58 years old, and was born and raised in Bakersfield, California. As an adult I lived in and around Covina, California for about 25 years, and traveled home to Bakersfield 2-3 times every month to visit my mother, father and relatives driving over the ridge to arrive to Bakersfield. In doing so, I observed the lake often in every season of the year, Spring, Summer, Fall and Winter. The lake had water after the winter snow melt, and the water gradually disappeared by summertime, leaving only a white circle where the water had pooled. A few years ago, I observed the lake getting bigger and bigger with more water in it than I had seen in my lifetime. I knew it was not a normal occurrence and came to learn that the Tejón Ranch had artificially filled the lake beyond its normal capacity and beyond its natural shoreline. When I had been called to visit the Tejón Ranch property in September 2001, I was advised by the Ranch representatives that the original road from Hwy 5/99 on the north shore of Castac Lake was underwater due to the enlargement of the lake. 47-U 47-V 47-W 47-X

Since the Indian Village of Kashtiq is on the north shore, it too is underwater. How this has happened in an environmentally sensitive area affecting all surrounding communities must be adequately investigated and satisfactorily resolved. This is particularly so since a village like Kashtiq would have necessarily had a sacred burial site nearby, which has also been presumably flooded, in clear violation of state and federal laws. 47-Y 47-Z

Problems With Tejón Ranch Treatment of Sacred Burial Sites

As an MLD on the list with the State of California, Native American Heritage Commission, I was called upon by Rob Wood of the NAHC to visit the Tejón Ranch property in September 2001 when the ranch had damaged a single burial during their excavating activities for seismic testing. The location was ½ mile east of Castac Lake. The archaeologist of record was Dave Whitley, and the Chumash on site monitor was Richard Angulo, from Ventura. 47-A2 47-B2

On arrival, I observed a trench 75 yards long, and 20 feet deep. The burial referred to was actually 2 burials in the eastern wall with a burn area referred to as a hearth estimated to be 2,000 years old. The graves were 6 to 9 feet from the top of the trench, and were close together in proximity. In addition were bones scattered inside the trench and bones scattered over the top of the trench where the bulldozer had dropped the soil excavated from both sides of the trench. 47-C2

I have several concerns regarding this specific site.

1) Due to the large number of bones widely dispersed, was this an actual cemetery? 47-D2

2) If it was a cemetery, it had been plundered prior to my visit; 47-E2

Comment Letter 47, Cont.

3) Or, it was a dumping site for isolated burials or cemeteries found elsewhere on the Tejón Ranchlands. 47-F2

4) I had been advised at that time that an archaeologist and an on-site monitor had been at the excavation site at the time of the excavation. If this was true, this should not have happened. At the moment a burial is encountered, all work should have stopped, the State of California, Native American Heritage Commission and the Kern County Coronor should have been notified immediately. 47-G2 47-H2

From my observation, not a single funerary item was scattered with these bones. This is not normal. Indian people like any other people bury their family member with momentos, special items of the deceased, and in that time period, clam shell beads, and if a person holding a high position, they were buried in special regalia. I observed none of these. The day the trench was filled in, I told Andrew Daymude to add an additional cover of soil over the site, and not to build a house or any other building on the site, which means 'complete avoidance'. 47-I2 47-J2 47-K2

Misuse of "Tejón Indian" To Verify Practices 47-L2

The DEIR repeatedly references Tejón Ranch's reliance on the 'Tejón Indians' as Indian monitors. As any Tejón Indian will tell you, though, the 'Tejón Indian' term is in fact purely geographic and does not refer to a specific tribe. For example, I have already described at minimum three such tribes on Ranch property, including Chumash, Kitanemuk and Yowlumne. All of these tribes would be considered "Tejón Indian" yet as a most likely descendant (MLD) for two of these tribes it would seem like I would naturally be a "Tejón Indian." But in the sense that the Ranch uses the term, I am not. It is even unclear whether the Tejón Indians as a responsible group is not the pure invention of the Ranch. Worse, the use of "Tejón Indians" is not only vague, it is troublesome as there have been reports of a business relationship between Tejón Ranch and this so-called "tribe," calling for the eventual placement of a casino on Ranch property. Until these relationships are made transparent, the Ranch should not be allowed to rely on made-up tribes to cover their actions. 47-M2 47-N2 47-O2 47-P2 47-Q2 47-R2

CULTURAL AND CEREMONIAL CONCERNS 47-S2

For Indian people the Condor hold a very special place in our universe. It is as highly regarded as the Eagle. My Great Great Grandmother Magdalena Olivas has said that the Condor traveled the world. The condor is the largest bird in North America. Part of its habitat is on the Tejón Ranchlands and has been since time immemorial. There was a time, when condors were in abundance as was the white wolf from whom part of my heritage is named- Yowlumne. Yowlits the white wolf inhabited the southern end of the San Joaquin Valley, and as such, our people were named since we occupied the same geographical region. Yowlits, the white wolf is extinct. The Condor, almost suffered the same fate until some very well educated biologists who could see into the future came together to stop this unimaginable fate of extinction caused by man. Together they collaborated with the Los Angeles Zoo, San Diego Zoo, and the Peregrine Fund for a captive breeding program, and today the Condors have a fighting chance. 47-T2 47-U2 47-V2 47-W2 47-X2 47-Y2

Comment Letter 47, Cont.

Delia Dominguez

biologists again came together to determine how to resolve the delinquent condor teenagers. They decided to release AC8 (Adult Condor #8) in the hopes that she could mentor these condor teenagers. She has been considered as the matriarch of the Condors, having been born in the wild and been part of the breeding program. Sadly within 2 years she was killed on the Tejón Ranchlands by 2 hunters. One drove the truck, and the other got off the truck and shot AC8 while she was sitting a tree waiting for the sun to come out to warm up and fly off. They were on the Tejón Ranch property with a permit for pig hunting. Our Tribe attended the sentencing hearing at the Federal Courthouse in Fresno where no one was allowed to make any comment. We did submit a written statement through the Federal Attorney where we asked for a maximum sentencing for such an atrocity of callously killing a magnificent bird protected under the Endangered Species Act. Subsequently we attended a public meeting near Frazier Park where Tejón Ranch was seeking a 'take permit' against the Condor. At the meeting we encountered Andrew Daymude, and Dennis Mullins, Ranch attorney, where we advised them both we did not support their request for the 'take permit'. Andrew Daymude acknowledged our position. 47-Z2 47-A3 47-B3 47-C3 47-D3 47-E3 47-F3 47-G3 47-H3 47-I3

Conclusion

Condors inhabited all of California, Washington, Oregon, Baja California, Mexico, Central America, South America, Arizona, and their remains have been found in Florida. Many tribes as well as ours honor animals as well as the Condor, and have a Condor dance that we practice in our ceremonies. When Europeans came to our lands, they considered the Condor vermin, erroneously thinking the condors would kill their cattle, and shot them in such numbers that they became fewer and fewer. This has caused an inability to practice this specific religious ceremony due to the scarity of condor feathers needed for the necessary regalia. The DEIR should address the failure of Tejón Ranch to do more to protect these sacred animals for generations to come. 47-J3 47-K3 47-L3 47-M3 47-N3

In addition, the DEIR virtually ignores many of the sacred sites in the Castac Lake area, and those that it does identify are numerically coded so as to hide their true use and identity. My understanding of CEQA is that the cultural resources I have identified around the lake must be identified as cultural resources and protected as such. CEQA requires that this protection go beyond mere identification and use of covering materials or 'passive' protections. I hope the Ranch will consult with other, non-biased Natives when conducting their research in the future. 47-O3 47-P3 47-Q3 47-R3

Sincerely,

Delia Dominguez
Kitanemuk & Yowlumne Tejon Indians

Response to Comment N-3-1

The U.S. Fish and Wildlife Service (Service) acknowledges the receipt of the comments provided by the Center for Biological Diversity, other nongovernment organizations, and condor researchers on the Draft Environmental Impact Statement (EIS). All substantive comments provided on the Draft EIS were responded to in Volume II of the Supplemental Draft EIS. These letters include but are not limited to Comment Letters O-2, O-3, and O-4 (Center for Biological Diversity); Comment Letter O-5 (Defenders of Wildlife); and Comment Letter I-293 (Clendenen et al.). The following sections respond to additional substantive comments on the Supplemental Draft EIS provided in the Center for Biological Diversity's letter of May 3, 2012, referenced in this document as Comment Letter N-3.

Response to Comment N-3-2

As noted by the commenter, the designation of critical habitat does not preclude development or other lawful uses of critical habitat lands. Please refer to Master Response 2, California Condor Critical Habitat, for a discussion of how effects on condor critical habitat are considered in the EIS and the evaluation the Service will provide in their intra-Service Biological Opinion prepared in accordance with Section 7 of the Federal Endangered Species Act (ESA).

Response to Comment N-3-3

Please refer to Master Response 2, California Condor Critical Habitat, for a discussion of how effects associated with urban and suburban development are considered in the EIS and how they will be evaluated in the intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA.

Response to Comments N-3-4 and N-3-5

Please refer to Master Response 2, California Condor Critical Habitat, for a discussion of the Service's application of "destruction or adverse modification" of critical habitat under ESA Section 7.

Response to Comment N-3-6

The concern that all projects allowed in designated critical habitat would, by definition, impair the overall capability of critical habitat to perform its conservation function is misplaced. The effects of past Federal actions on critical habitat are fully considered during consultation under Section 7 of the ESA. Those effects are taken into account as part of the environmental baseline for any future Section 7 consultations within or affecting designated critical habitat. Any future Federal action likely to affect critical habitat would be evaluated in light of the baseline condition of the critical habitat. This analytical approach precludes the "death-by-a-thousand-cuts" phenomenon suggested by the commenter because the Service takes into account the current status of critical habitat in determining whether the new Federal action is likely to result in the destruction or adverse

modification of critical habitat. Please refer to Master Response 2, California Condor Critical Habitat, for a more detailed discussion of how effects on California condor critical habitat are considered in this EIS and how they will be evaluated in the intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA.

Response to Comment N-3-7

The commenter asserts that effects on critical habitat as a result of the proposed action would "effectively and improperly de-designate this specific critical habitat" because it would destroy a specific area of critical habitat. This assertion is incorrect. As explained in Master Response 2, California Condor Critical Habitat, and recognized by the Ninth Circuit Court of Appeals in *Butte Environmental Council v. U.S. Army Corps of Engineers,* 620 F.3d 936, 948 (9th Cir. 2010), the removal of a portion of critical habitat does not automatically equate to "destruction or adverse modification of critical habitat" under Section 7 of the ESA. Rather, the Service must conduct a project-specific analysis of the impacts of the proposed action, i.e., the issuance of an incidental take permit (ITP) to Tejon Ranchcorp (TRC) supported by the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP), to determine whether the removal of a portion of designated critical habitat would appreciably diminish the overall capability of designated critical habitat to serve its intended conservation role and function. The Service is not aware of any proposal to alter the final, official critical habitat designation for California condor (41 *Federal Register* [FR] 41914, September 24, 1976), and is not considering such a change. As described in Master Response 2, California Condor Critical Habitat, the Service will make a statutory determination on the effects of the proposed action on California condor and its critical habitat in an intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA.

Response to Comment N-3-8

Comment noted. Please refer to Master Response 2, California Condor Critical Habitat, for a response to this comment.

Response to Comment N-3-9

The commenter is correct in stating that the Tejon Critical Habitat Unit encompasses 134,871 acres of which 95,068 acres are in the Covered Lands and 19,091 acres are in the TMV Planning Area. As stated in both the Supplemental Draft EIS and TU MSHCP, approximately 13,718 acres (16%) of condor modeled foraging habitat in the Tejon Ranch Critical Habitat Unit occurs in the TMV Planning Area. The TU MSHCP would result in direct *and* indirect[1] effects on a total of 14,837 acres of critical habitat in the TMV Planning Area[2].

As the commenter noted, the 96% figure representing the amount of critical habitat being preserved in the Tejon Ranch Critical Habitat Unit was contained in the earlier draft version of the TU MSHCP.

[1] The Service determined that all modeled habitat within 0.5 mile of the TMV Planning Area and Oso Canyon Development Envelopes would be indirectly affected (i.e., would not consistently provide feeding opportunities for condors due to construction, ongoing human use, visual and noise-related disturbances, etc.).

[2] For the purposes of the EIS analysis, the entire TMV Planning Area was assumed to be directly and indirectly affected by proposed Commercial and Residential Development Activities, although the actual area of effect is expected to be less given that the disturbance area in the TMV Planning Area would be limited to a total of 5,533 acres.

The revised habitat model provided in the Supplemental Draft EIS indicates that a larger acreage of critical habitat (14,837 acres, representing 11% of the Tejon Ranch Critical Habitat Unit) would potentially be directly or indirectly affected by proposed development in the TMV Planning Area. This revised acreage is the acreage considered in the Service's current assessment of potential effects on California condor and its habitat and replaces prior figures provided in older versions of the EIS or TU MSHCP.

Response to Comment N-3-10

Please refer to Master Response 3, California Condor Foraging Habitat, for a discussion of the vegetation communities included in the California condor foraging habitat model, as well as a discussion of the relationship between suitable foraging habitat and critical habitat considered in this EIS.

Response to Comments N-3-11 and N-3-12

Under NEPA, a Federal agency is required to identify a *preferred alternative* that reflects the alternative it believes will best fulfill the purpose and need of the proposed action. This determination should give consideration to the statutory mission and responsibilities of the Federal agency, and consider relevant economic, environmental, technical, and social factors. From a process perspective, the preferred alternative may or may not be different than the *environmentally preferable alternative*, which NEPA defines as the alternative that best promotes NEPA's goals, results in the least damage to the environment, and best protects natural and cultural resources.

The Proposed TU MSHCP Alternative is identified as the Service's preferred alternative in the Supplemental Draft EIS. Since 1999, the Service has provided technical assistance to TRC regarding the development of an HCP for California condor. The Proposed TU MSHCP Alternative has been informed both by the technical assistance provided by the Service, and by input provided by the public during the NEPA process (i.e., during the 2004 public scoping period on the original California Condor HCP and during the 2009 public comment period on the Draft EIS). Each of the different iterations of the TU MSHCP—including the 2004 California Condor HCP, the 2009 TU MSHCP, and the 2011 Revised Draft TU MSHCP—represents a different alternative considered by the Service in developing the EIS, and in identifying the preferred alternative to the proposed action. The Service acknowledges the commenter's request that the No Action Alternative or the CCH Avoidance MSHCP Alternative be selected in lieu of the Proposed TU MSHCP Alternative. Consistent with Council on Environmental Quality (CEQ) guidance, Section 40 CFG 1505.2(b), a final determination will be made in the record of decision (ROD) for the EIS and the Service's ESA Section 10 findings.

Response to Comments N-3-13 and N-3-14

The commenter is correct in noting that the TU MSHCP would allow for construction of two new emergency communication towers (PA-2 and DF-1) in the TMV Planning Area. Since publication of the Supplemental Draft EIS, TRC has determined that the proposed location of the PA-2 tower can be moved 400 feet southeast and 12 feet downslope, adjacent to a stand of oak trees, to minimize the potential for condors to collide with the structure. This location, which is depicted in revised Figure 4.1-2 provided in Chapter 2, Supplemental Draft EIS Errata, of this Final EIS, is consistent with the location proposed by the Service in the Supplemental Draft EIS to reduce the potential for adverse effects on condors.

To achieve adequate radio coverage in this new location, the antennae would need to extend to 78 feet in height (versus 68 feet described in the Supplemental Draft EIS) (Motorola 2012). In addition, tower DF-1 would need to be moved 180 feet northeast and its antenna extended to 70 feet in height (versus 65 feet described in the Supplemental Draft EIS) to provide adequate communication coverage. The Service has reviewed and approved the final locations and heights of both towers. Additionally, in response to comments, the Service has augmented the design conservation measures in the TU MSHCP so that, in addition to requiring that the towers be self-supporting and incorporate Service-approved anti-perching devices, the towers must also be designed so that the facades are primarily solid to improve visibility. Construction drawings and materials need not be finalized at this time, because the final engineering of the towers must adhere to these key design parameters (e.g., no guy wires, anti-perching devices installed, and structure built primarily of solid surfaces). Changes to the location, height, and design of these emergency communication towers are reflected in Chapter 2, Supplemental Draft EIS Errata, of this Final EIS.

Of note, the TU MSCHP also includes adaptive management measures in the event that condors land on artificial structures on the Covered Lands, such as communication towers. Under those circumstances, TRC would work with the Service to assess and implement options to reduce the potential for condors to perch on structures. Options could include revisions to the guidelines regarding location of antennas and towers, as set forth in the TU MSHCP, Section 4.6, Adaptive Management, and implementing Condor Recovery Program recommendations to reduce or eliminate collision risk factors at problem towers (including, but not limited to, potentially redesigning or, if redesign is not effective, relocating problem towers).

Response to Comments N-3-15

As provided in the Response to Comments N-3-13 and N-3-14, the TU MSHCP provides for two emergency communication towers that would be approximately 70 to 78 feet in height, including antennae. These towers are required to be self-supporting (i.e., not supported by guy wires), must include Service-approved anti-perching devices on all landing surfaces, and must be constructed primarily of solid materials to improve visibility. Although not anticipated, any further proposed changes to the design, height, or location of these towers would be subject to review and approval by the Service. If such proposed changes were to result in significant impacts on the condor, potential take of a condor, or other significant effects on the environment, additional NEPA analysis and a permit amendment would be required, which would require additional public review of the proposed action.

Response to Comments N-3-16 and N-3-17

Neither the Supplemental Draft EIS nor the TU MSHCP provide for more than the two communication towers in the TMV Specific Plan Development Envelope. Rather, both documents state that the proposed placement of any future communication towers to meet public safety requirements in the Covered Lands would be subject to review and approval by the Service. Inherent to that process, the Service would have the authority to ensure that the design and location of additional proposed towers are consistent with the TU MSHCP, ESA, and any applicable recorded conservation easement restriction on the Covered Lands *prior* to approving their construction, if construction is approved at all. Further, if the proposed placement of a new tower were to result in potentially significant impacts on the condor, potential take of a condor, or other significant impacts on the environment, additional NEPA analysis and a permit amendment would be required, which would require additional public review of the proposed action.

TRC does not anticipate the need for additional communication towers at this time. However, the Service requested that the above language be included in the TU MSHCP to emphasize that Service review and approval of any additional tower, including its location and design, would be required before the tower could be constructed. These modifications are reflected in Chapter 2, Supplemental Draft EIS Errata, of this Final EIS.

Response to Comment N-3-18

Contrary to the commenter's assertion, direct collisions with stationary transmission or communication towers have not been documented in historical condor populations, or with condors reintroduced into the wild (see Section 4.1.3.2 in the Supplemental Draft EIS). However, as indicated by the commenter, condors have been affected by collisions with power lines and high-voltage transmission lines, and any new above-ground transmission lines, transmission and communication towers, or similar vertical structures installed as a result of development would increase the potential for collision. This is particularly a threat if such towers and lines are located on or near prominent ridgelines or slopes used by condors.

All new power lines would be underground and TRC would remove some existing overhead power lines in the TMV Planning Area Development Envelope in association with the TMV Project, which would reduce the potential for condors to collide with power lines. Further, the design of the two emergency communication towers that would be located in the TMV Planning Area (see Response to Comment sN-3-13 and N-3-14) include features to minimize the potential for condors to collide with those towers or associated infrastructure. Although these towers would be located close to ridgelines to allow for effective emergency communications, since publication of the Supplemental Draft EIS, TRC has determined that they can be relocated downslope, further from the ridgeline, consistent with the Service's recommendations reflected in the Supplemental Draft EIS. In addition, both towers would be required to be free-standing (no guy wires), would include Service-approved anti-perching devices, and would be designed primarily of solid materials to increase visibility. In addition, there would not be any power or transmission lines associated with the communication towers.

As described in Master Response 2, California Condor Critical Habitat, the Service will make a statutory determination on the effects of the proposed Federal action, including the placement of communication towers, on the California condor and its critical habitat in an intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA.

Response to Comment N-3-19

An HCP does not have a statutory requirement to set goals and objectives at landscape, regional, natural community, and ecosystem levels. The HCP Handbook Addendum or Five-Point Policy adopted jointly by the Service and NMFS in 2000 states, "the biological goals and objectives of an HCP are commensurate with the specific impacts and duration of the applicant's proposed action." Section 7 of the TU MSHCP provides conservation goals and objectives (including habitat protection and management) in the context of the Covered Species (e.g., acres of modeled habitat, documented occurrences). For some species, the conservation goals and objectives for modeled habitat provide for landscape, regional, natural community, and ecosystem levels of protection through the establishment of large areas of open space. For example, for golden eagle, 107,120 acres of modeled primary breeding, breeding/foraging, and foraging habitat would be conserved in Open Space, or 93% of the modeled habitat in the Covered Lands. Similarly, 90,735 acres of modeled habitat for ringtail (91% of modeled habitat in the Covered Lands) and 81,015 acres of modeled habitat for

purple martin (93% of modeled habitat in the Covered Lands) would be conserved in Open Space. Because these habitats occur at such a broad scale, their protection and management would necessarily provide protection and management at the landscape, regional, natural community, and ecosystem levels.

The large scale and high certainty of habitat protection also makes specific goals and objectives at the landscape, regional, natural community, and ecosystem levels somewhat redundant and unnecessary. Typically, goals and objectives at these broader scales are important if there is some uncertainty about where, when, and how much conservation would occur, particularly if there are rare or unique communities in a plan area (e.g., some rare plant community or vernal pools). These concerns do not apply to the proposed TU MSHCP, which specifies an absolute minimum amount, location, and timeline for habitat conservation. Under the worst-case impact scenario (i.e., assuming the entire TMV Specific Plan Development Envelope were affected), 129,318 acres (91%) of the Covered Lands would be conserved in Open Space (Table 2-5 in the Supplemental Draft EIS). The lowest conservation percentage for a vegetation community in the Covered Lands under the TU MSHCP would be about 90% of grasslands, which excludes grassland that would be preserved in Open Space in the TMV Specific Plan Development Envelope (Table 4.1-2 in the Supplemental Draft EIS). For Covered Species, the lowest conservation percentage would be 42% of modeled wintering habitat for bald eagle; for the remaining 25 Other Covered Species, the conservation percentages would range from 69% of modeled breeding habitat for tricolored blackbird to 99% of modeled habitat for several Covered Species (Table 4.1-3 in the Supplemental Draft EIS). The conservation strategy includes a "hardline" boundary for the Established Open Space, TMV Planning Area Open Space, and the Existing Conservation Easement Areas, so the vast majority of conservation areas are already established. Additional Open Space (i.e., approximately 3,300 acres in the TMV Specific Plan Development Envelope) would be identified when the final development plan is proposed. Therefore, other than stating the actual proposed conservation levels (i.e., acreage retained in Open Space), there is no need to state specific goals and objectives for conservation of natural communities or habitats (as might occur where a reserve system is assembled over time based on specific objectives and criteria in a programmatic HCP). The current large-scale conservation approach subsumes all of proposed conservation levels, so separate goals would be superfluous.

With regard to adaptive management goals and objectives and how they relate to the landscape, regional, natural community, and ecosystem levels, the TU MSHCP states on page 7-104 that:

> The overriding management goal of this TU MSHCP is to establish and maintain a self-sustaining conservation area that focuses on achieving the measurable goals and objectives identified for the Covered Species in Sections 4 and 7 of this TU MSHCP. Ecosystems are dynamic environments of interacting processes and biotic and abiotic components, and ecological processes are not linear. They may function at different spatial and temporal scales. Consequently, adaptive management of ecosystems, landscapes, and associated species requires a flexible, inductive approach where ecological theory and field experimentation are combined to monitor the status of the system and respond to the unexpected. The adaptive management plan for this TU MSHCP encourages such a "learning by doing" approach.

The approximately 140,000 acres of TU MSHCP Covered Lands comprise the biologically distinct Tehachapi Uplands landscape. This portion of Tejon Ranch supports highly diverse natural physical features, including uplands ranging from approximately 2,000 feet to approximately 7,000 feet, complex topography with numerous ridgelines and valleys, varied geology and soils, and different microclimates and microhabitats, which together have resulted in a large richness and diversity of plant and animals species. The Tehachapi Uplands landscape is biologically distinct from the surrounding landscapes of the San Joaquin Valley and Antelope Valley floors to the north and south, the southern Sierra Nevada to the northeast, and the Coastal and Transverse Ranges to the west and south. The Tehachapi Uplands area therefore represents a distinct physiography with a distinct suite of species characteristic of the Tehachapi Uplands landscape. For these reasons, the Covered Lands

comprise a natural landscape-level planning area, as recognized during establishment of the Covered Lands boundary (TU MSHCP Section 1.3, Permit Boundary and Covered Lands).

The vast majority of the Covered Lands would remain in Open Space (91%) and would be part of the 240,000-acre ranchwide open space system conserved through the Ranchwide Agreement, which includes the other lower-elevation, biologically distinct landscapes. The main focus of the management program would be to continue the historical practices that maintain high habitat quality in the Tehachapi Uplands landscape, document and likely improve management of the species habitat through additional measures required for grazing (e.g., fencing of riparian areas in accordance with the Grazing Management Plan), and avoid and minimize threats to Covered Species that may result from increased human presence in or immediately adjacent to conserved Open Space. The management measures, conducted under the TU MSHCP, including invasive species management and grazing management consistent with the goals and objectives, would be coordinated with the RWMP for the larger open space system, as appropriate. The RWMP will be subject to review and approval by the Service to ensure that it is consistent with the ESA, the ITP, and the Implementing Agreement.

Response to Comment N-3-20

The vegetation map used for the conservation analysis in the TU MSHCP is based on the best available data for the Covered Lands. Generation of the vegetation map is described in Section 3.1.3.1, Mapping Methods, in Volume I of the Supplemental Draft EIS and Appendix D of the TU MSHCP. The vegetation map is an amalgamation of the Tejon ranchwide vegetation composite data layer, which primarily reflects the more general classification system outlined in the Preliminary Descriptions of the Terrestrial Natural Communities of California (Holland 1986), and which preceded the classification scheme outlined in the List of California Terrestrial Natural Communities (California Department of Fish and Game 2003) that was used for the TMV Planning Area during site-specific studies in 2007. Because the two vegetation data layers used different classification systems and because the mapping was more detailed for the TMV Planning Area (i.e., project-level mapping at the alliance and association levels), a “crosswalk” was needed to create a comprehensive vegetation layer for the entire Covered Lands. This crosswalk is described in Appendix D of the TU MSHCP.

The TU MSHCP does not include a vegetation map showing the finest scale of vegetation data used in the conservation analysis for practical reasons. The crosswalk between the Tejon ranchwide vegetation composite map and the TMV Planning Area vegetation map resulted in 49 different vegetation types, including 9 different types of savannah and 11 different types of woodland vegetation communities (Table 4.1-2 in the Supplemental Draft EIS). At the scale of the maps presented in the Supplemental Draft EIS and TU MSHCP, a vegetation map with this many specific types of vegetation would have been unreadable. Therefore, the specific vegetation types were collapsed into the more general habitat types (e.g., scrub chaparral, woodland) for the purpose of visual presentation (Figure 3.1-2 in the Supplemental Draft EIS and Figure 5-1 in the TU MSHCP). Further, the focus of the conservation analysis was on impacts and conservation of modeled habitat for the Covered Species, for which separate maps are provided for each of the Covered Species (Figures 3.1-8 through 3.1-34 in the Supplemental Draft EIS). The species habitat models used the specific vegetation data, which are highly detailed. For example, the habitat model for purple martin used five types of conifers, two types of riparian woodland, nine types of savannah, and 11 types of woodland vegetation communities, as listed in the model vegetation input parameters on page D-30 of Appendix D to the TU MSHCP.

In addition, development in the TMV Planning Area Development Envelope accounts for approximately 89% of the effects on vegetation communities considered in the Supplemental Draft

EIS and TU MSHCP, or 7,860 acres of the total 8,817 acres in that area (Table 2-1, Generalized TU MSHCP Land Use Summary, in the TU MSHCP). As noted above, vegetation in the TMV Planning Area was mapped for the most part at the alliance and association levels per CDFG (2003), and the TMV Specific Plan EIR analyzed impacts at these levels. Therefore, the large majority of natural community impacts under the TU MSHCP have been analyzed at the alliance and association levels.

Response to Comment N-3-21

As discussed in the Response to Comment N-3-19, the Service's Five-Point Policy requires that the biological goals and objectives in an HCP be commensurate with the specific impacts and duration of the applicant's proposed action. As described in the TU MSHCP, the major strategy of the TU MSHCP is to conserve and protect Covered Species populations in the Covered Lands through the preservation of modeled habitat in open space. Given the scope of the proposed action and the conservation approach provided in the TU MSHCP, for the reasons provided in Response to Comment N-3-19, the goals and objectives identified in the TU MSHCP appropriately focus on conservation and protection of Covered Species, avoidance and minimization measures, monitoring and, to the extent practicable, management. Note that the Five-Point Policy does not prescribe the details of the objectives, such as what biological or ecological variables should be measured (e.g., a population estimate, population growth rate, age structure).

Response to Comment N-3-22 and N-3-23

An HCP does not have a statutory requirement to consider species recovery goals and/or plans, or attempt to achieve or promote these goals. However, the Service's Five-Point Policy does require the listing of biological goals and objectives, the purpose of which is "to ensure that the operating conservation program in each habitat conservation plan is consistent with the conservation and recovery goals established for the species." Further, the HCP Handbook states that "applicants should be encouraged to develop HCPs that produce a net positive effect for the species or contribute to recovery plan objectives" (p. 3-20 of HCP Handbook).

With this in mind, four of the Covered Species included in the TU MSHCP have recovery plans: California condor, least Bell's vireo, southwestern willow flycatcher, and valley elderberry longhorn beetle.

With respect to California condor, in general, the purpose of the California Condor Recovery Program is, through captive breeding and reintroduction back into the wild, to establish at least two non-captive, self-sustaining breeding populations within the historical range of the species. Specific objectives to obtain this goal include minimizing mortality factors for the species, managing suitable foraging habitat for use by the recovering condor population, and implementing California condor information and education programs to the public. The TU MSHCP goals for the condor (listed in Section 4.3 of the TU MSHCP and summarized in Table 2-3 in the Supplemental Draft EIS) would promote conservation and recovery of the condor in the wild by maintaining and enforcing a permanent ban on lead ammunition on Tejon Ranch, banning the development of wind farms on the ranch, committing to maintaining a negative easement right prohibiting wind farms on Gorman Ranch, maintaining and promoting condor use of the Ranch through preservation of foraging and traditional roosting habitat in the TU MSHCP Mitigation Lands, and maintaining existing grazing and hunting practices that support condor use of the ranch over the term of the permit. In addition, the TU MSHCP provides for establishment and management by the Service of a trap and release site in the Condor Study Area to support recovery efforts, if deemed necessary by the Service. The TU MSHCP also includes a number of measures to aid in the conservation and recovery of condors, such

as provisions to provide funding to install GPS transmitters on condors not carrying such transmitters, as well as conservation measures aimed at public outreach, such as development and implementation of condor educational materials for residents, staff, visitors, and workers associated with development on Tejon Ranch. For these reasons, the Service considers the conservation measures provided in the TU MSHCP to be consistent with and supportive of the goals and objectives provided in the California Condor Recovery Plan.

Regarding least Bell's vireo, southwestern willow flycatcher, and valley elderberry longhorn beetle, the TU MSHCP Covered Lands and immediate vicinity are not identified in the recovery plans for the least Bell's vireo (U.S. Fish and Wildlife Service 1998), southwestern willow flycatcher (U.S. Fish and Wildlife Service 2002), or valley elderberry longhorn beetle (U.S. Fish and Wildlife Service 1984), so there are no site-specific recovery objectives or actions for these species specifically relevant to TU MSHCP. However, the conservation measures provided in the TU MSHCP, including the preservation of large, interconnected blocks of habitat in open space, generally support the recovery plan goals and objectives for these species. For example, the recovery actions for both the least Bell's vireo and southwestern willow flycatcher include control of nonnative species, which would be addressed in the TU MSHCP through grazing management and invasive species control measures identified in the species goals and objectives. A recovery action for southwestern willow flycatcher is to manage livestock grazing to restore desired processes and increase habitat quality and quantity. Grazing management measures in the TU MSHCP provide for light to moderate grazing levels that would control exotic grasses and prevent overgrazing in southwestern willow flycatcher suitable habitat. Grazing management under the TU MSHCP may also include exclusion fencing in riparian areas. Although grazing management is not identified as a specific recovery action for least Bell's vireo in its recovery plan, these measures would protect and enhance riparian habitat values for this species. The TU MSHCP also requires that invasive plant and animal species be controlled in boundary areas adjacent to proposed development, such as management of Argentine ants that may prey on vireo and willow flycatcher nestlings (see the Response to Comment N-3-33 for details on measures to control Argentine ants). In addition, the TU MSHCP provides for an integrated pest management plan (IPMP) that would include measures to control other invasive species such as bullfrogs (whose prey are small birds and other animals), and would restrict the use of insecticides or herbicides which may have direct or indirect deleterious effects on the vireo and willow flycatcher and/or their prey. Of note, the Service would be provided an opportunity to review and comment on the IPMP under the TU MSHCP, but the use of insecticides or herbicides is not proposed for take coverage under the TU MSHCP.

Response to Comment N-3-24

The commenter is incorrect in asserting the habitat models must incorporate climate change scenarios to accurately evaluate impacts on Covered Species. The approach used for habitat modeling in the TU MSHCP is a standard, well-accepted method used in large-scale habitat conservation planning in California that has met the data standards for federally approved HCPs, such as the San Diego County Multiple Species Habitat Conservation Program (San Diego County 1997), Western Riverside County Multiple Species Conservation Plan (Riverside County 2007), Orange County Southern Subregional Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan (Orange County 2006), and the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan (Coachella Valley Association of Governments 2007) (see Master Response 5, Habitat Suitability Model, in Volume II of the Supplemental Draft EIS for a more detailed discussion of the habitat models used in the TU MSHCP and EIS).

Moreover, the exact relationship between climate change and biological resources is not well understood. Although some studies, including the example provided by the commenter, have attempted to determine species' responses to climate change under a given emission and climate response scenario, there are multiple emission scenarios and various scale-dependent climate responses for each scenario. The Service does not expect that introducing the uncertainty of climate predictions, including potential species and habitat reactions to climate change, into a model for a specific species on the scale of the TU MSHCP would provide clarity and better inform the analysis of effects.

Regardless, the Service agrees that climate change should be considered, including effects on species' habitat. To that end, the Supplemental Draft EIS includes substantial information regarding the potential for climate change to affect Covered Species, to the extent it is understood, and how the various alternatives would respond to the potential for climate change to affect Covered Species. Section 4.9, Climate Change and Greenhouse Gasses, in Volume I of the Supplemental Draft EIS, analyzes the effects of climate change for each alternative, including potential effects on Covered Species, and explains how each alternative would respond to threats posed by climate change, concluding that the Proposed TU MSHCP Alternative would best satisfy the management prescriptions identified by Halpin (1997) to respond to climate change. Appendix C to the Supplemental Draft EIS includes a detailed analysis of the relative vulnerability of each Covered Species to the effects of climate change, which is based on methodology introduced by the U.S. Environmental Protection Agency (EPA) in *A Framework for Categorizing the Relative Vulnerability of Threatened and Endangered Species to Climate Change* (Environmental Protection Agency 2009). In addition, Master Response 13, Climate Change, responds to all comments regarding climate change made on the Draft EIS, including many by the commenter about the adequacy of the EIS's discussion of the effects of climate change on the Covered Species, and how these effects might interact with effects from the proposed action.

The Supplemental Draft EIS also specifically recognizes the effects that climate change would have on species movement. For example, Appendix C to the Supplemental Draft EIS describes several anticipated effects of climate change in California, including the extension of species' ranges poleward or upward in elevation, and other shifts in species' ranges. Section 4.9 of the Supplemental Draft EIS also describes how climate change is expected to affect the movement patterns of various species, as well as the distribution of vegetation communities. For example, Section 4.9.3.2 explains that the oak community is expected to shift its range northward and generally decline in California in the future, although the blue oak woodland community may expand into the Tehachapi Mountains. Moreover, Appendix C to the Supplemental Draft EIS describes how climate change is affecting species' movement at both a general, taxonomic level and at an individual level regarding each Covered Species.

The Service expects that climate change effects on biological resources would occur with or without implementation of the proposed action. Under the TU MSHCP, more than 129,000 acres of the Covered Lands would be preserved, thereby protecting the vast majority of habitat expected to be affected by climate change. Preserving large blocks of habitat in the Covered Lands would secure space to accommodate shifts in a Covered Species' range in response to climate change. In addition, the TU MSHCP provides flexible buffers and landscape connectivity in the Covered Lands; design features to reduce the effects of stressors on the Covered Species and their habitat, thereby counteracting stress from climate change; and provisions to allow a flexible response to climate change effects such as drought and wildfire. These measures would satisfy the management prescriptive for habitat maintenance in response to climate change identified in Halpin (1997).

Response to Comment N-3-25

The plant and wildlife species surveys of the TMV Planning Area were not intended to determine the exact usage patterns of the Covered Species on the Covered Lands; rather, these data were considered in developing the species-specific habitat models that largely informed development of the TU MSHCP conservation strategy and the effects analysis provided in the Supplemental Draft EIS. Please refer to Response to Comment N-3-27 for a more detailed discussion of the use of species-specific surveys in developing the habitat models.

As summarized in Table 2-4 of the Supplemental Draft EIS, the TU MSHCP includes provisions for completing preconstruction or preactivity species-specific surveys for all of the Covered Species prior to ground disturbing activities (with the exception of valley elderberry longhorn beetle, where construction in modeled habitat in riparian and wetland areas—the likely location of the beetle's host plant, the elderberry shrub—would be avoided to the extent practicable). The timely implementation of these species-specific surveys will be used to inform the necessary avoidance or minimization measures provided in the TU MSHCP to reduce effects on Covered Species.

The Service will consider these conservation measures and potential effects on modeled habitat when assessing the potential direct and indirect effects of the Covered Activities on the Covered Species in the intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA.

Response to Comment N-3-26

Figure D.1-4, Special-Status Riparian Bird Surveys, in Appendix D1 of the TU MSHCP shows the four survey areas for willow flycatchers. As stated in Section 5.2.2.6.3 of the TU MSHCP, foraging observations of willow flycatchers were made in willow-dominated riparian areas adjacent to Castac Lake, near Cuddy Creek, in Beartrap Canyon, in Rising Canyon, and along Grapevine Creek. As shown in Figure D.1-4, Rising Canyon and Grapevine Creek were included as the same general survey area (the area shown in red in the figure). The 2007 surveys for willow flycatchers and least Bell's vireo were conducted in suitable riparian habitat in the TMV Planning Area and immediately adjacent areas, as identified by permitted biologists during field reconnaissance surveys, comprising approximately 87 acres. The 2007 surveys followed the southwestern willow flycatcher survey protocol in place at the time, as provided in Sogge et al. 1997. The willow flycatcher habitat model, which applies to the entire Covered Lands, was developed after the field surveys were conducted as an analytic tool for the TU MSHCP and EIS analyses (i.e., not to direct where surveys would be conducted). In the TMV Planning Area, the four areas surveyed in 2007 generally align with the modeled habitat, as can be seen by comparing the modeled habitat in Figure 5-13 of the TU MSHCP with the four survey areas shown in Figure D.1-4. The exception is two patches of riparian habitat east of Grapevine Peak and Ridge shown in Figure 5-13 that were not included in the 2007 survey areas. The riparian zones shown along the southeastern boundary of the Covered Lands in Figure 5-13 are outside of the TMV Planning Area and, therefore, were not surveyed in 2007.

The Beartrap Turnout Improvement Project study area was not a subset of the four areas surveyed in 2007. The surveys conducted in 2011 in the Beartrap Turnout Improvement Project study area followed the current survey protocol for southwestern willow flycatcher, as provided in Sogge et al. 2010, and approved by the Service.

It is important to understand that the species occurrence data considered in the TU MSHCP and Supplemental Draft EIS, including the protocol surveys for willow flycatcher, are not based on a single snapshot in time. For each of the Covered Species, both the EIS and TU MSHCP summarize and cite all available information from the various field studies conducted between 1999 and 2011. For

example, willow flycatchers were observed several times during surveys by Jones & Stokes biologists in 2005, Impact Sciences biologists in 2003, and Dudek biologists in 2007 and 2011.

Please refer to Response to Comment N-3-25 for a discussion of how survey data were considered in the effects analysis provided in the Supplemental Draft EIS.

Response to Comment N-3-27

The plant and wildlife species surveys conducted in support of the TU MSHCP are consistent with the approach used to complete other large-scale HCPs. For such plans, it is common for a permit applicant to retain a qualified biological consultant to conduct surveys on a representative portion of the lands that would be covered by an ITP to obtain species occurrence information. Typically, surveys are completed within the area that would be affected by the proposed action, as well as a representative area that would be conserved. Accordingly, TRC completed surveys of the 28,253-acre TMV Planning Area, which included areas that would be affected by development and areas of conserved open space. Requiring surveys on the additional 113,633 acres of the Covered Lands, of which all would be conserved as permanently protected open space, would impose an unreasonable burden beyond that of comparable conservation planning efforts.

In addition, typical presence/absence surveys, which also provide information for the likely distribution of a species on a site, are not adequate for estimating population sizes or densities. Despite the desirability of precise population size and density estimates for conducting take assessments, it is often not feasible to conduct the kinds of field studies required to produce precise estimate of impacts on individuals. This limitation applies to the species where impact numbers were stated in the TU MSHCP to be indeterminable, including Tehachapi slender salamander, yellow-blotched salamander, coast horned lizard, and two-striped garter snake. Another consideration is that surveys for certain species (e.g. salamanders) require invasive sample methods (e.g., disturbing refugia, excavations), and the impacts on the species need to be weighed against the benefits of the survey results.

The TU MSHCP includes species-specific conservation measures, including requirements for preconstruction surveys, capture and relocation of observed individuals to suitable habitat, and establishment of buffers around occupied sites, to minimize potential effects on Covered Species. These measures provide the flexibility to accommodate existing conditions at the time construction activities are initiated, and likely better inform the long-term management of the Covered Lands for the Covered Species than would baseline surveys conducted at a discrete point in time. The Service will consider these conservation measures, and potential effects on modeled habitat, when assessing the potential direct and indirect effects of the Covered Activities on the Covered Species in the intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA. Revised, species-specific conservation measures, provided primarily in response to comments on the Supplemental Draft EIS, are described in Chapter 2, Supplemental Draft EIS Errata, of this Final EIS and further discussed in Response to Comment N-3-35.

Response to Comment N-3-28

Please refer to Response to Comment N-3-27 for a discussion of the use of species-specific surveys in developing the TU MSHCP and informing the NEPA effects analysis. Please refer to Response to Comment N-3-41 for a discussion of potential effects on, and conservation of, round-leaved filaree on Covered Lands.

The number of plants in a population can vary greatly from year to year depending on a variety of biotic and abiotic factors. Therefore, knowing the exact number of individuals prior to the initial habitat disturbance does not necessarily facilitate better conservation than knowing the general location of a population.

The Service disagrees with the commenter's statement that the applicant's proposal to incorporate any new occurrences of round-leave filaree into open space protected areas is indicative of inadequate surveys. The TU MSHCP would be implemented over a period of years and over a large area; some populations of plants within the TMV Planning Area may not have expressed or may not have been observed during surveys. Incorporating future occurrences of rare species into a conservation plan is an appropriate way to account for uncertainty in a species' location and provide for conservation of an expanding species distribution.

After considering that round-leaved filaree was confirmed present in modeled habitat in the TMV Planning Area and that 91% of modeled habitat for the species would be conserved in Open Space, the implementation of the species-specific conservation measures summarized in Table 2-4 of the Supplemental Draft EIS, and the potential impacts on the species in Covered Lands, the Supplemental Draft EIS acknowledged that the Covered Activities would have a moderate effect on round-leaved filaree on Covered Lands, and a minor effect on the population rangewide. The Service will consider the conservation measures and potential effects on modeled habitat when assessing the effects of the Covered Activities on round-leaved filaree in the intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA.

Response to Comment N-3-29

The commenter appears to refer to the conservation commitments contained in the Ranchwide Agreement entered into between TRC and several major environmental organizations, and suggests that the Covered Lands have been inappropriately defined to take advantage of these commitments. The relationship between the Ranchwide Agreement and the Covered Lands is discussed in detail in Section 2.1.2.3 of the Supplemental Draft EIS. In summary, the Ranchwide Agreement covers the entirety of the ranch, whereas the Covered Lands, which generally constitute the Tehachapi Uplands portion of the ranch, encompass 141,886 acres and represent the area where activities associated with the alternatives considered in the Supplemental Draft EIS would occur. Thus, while the protections of the Ranchwide Agreement apply to the Covered Lands—and, indeed necessarily apply to any portion of land on the Ranch—the boundaries covered by the Ranchwide Agreement and the TU MSHCP are independent of one another.

Moreover, although entered into with private parties and broader than just the Covered Lands, the Ranchwide Agreement was developed in furtherance of the TU MSHCP. The habitat conservation planning process has spanned more than 10 years, during which time the boundaries and focus of the HCP have changed. Meanwhile, TRC has made more specific development plans. While still pursuing an HCP with the Service that would cover a portion of the ranch, TRC worked with Audubon California, the Endangered Habitats League, Natural Resources Defense Council, Planning and Conservation League, and Sierra Club (together, "Resource Groups"), as well as the newly formed nonprofit Tejon Ranch Conservancy, to establish a broad conservation agreement, the Ranchwide Agreement, that would provide for permanent protection, through a combination of dedicated conservation easements and designated open space areas, of up to approximately 90% of the 270,000-acre Tejon Ranch in exchange for certain development on the ranch, including the TMV Project (consistent with the development scenario included in the TU MSHCP) and the Centennial and Grapevine projects. The stated goals of the Ranchwide Agreement are consistent with the purpose and need of the proposed action, and the Ranchwide Agreement specifically contemplates the TU MSHCP. The Ranchwide Agreement's land conservation requirements form much of the basis

for the TU MSHCP Mitigation Lands, and the conservation provided under the Ranchwide Agreement is appropriately credited as mitigation under the TU MSHCP. Failing to credit this conservation as mitigation would discourage landowners from proactively entering into separate conservation agreements during the HCP development process.

The EIS does recognize that the Ranchwide Agreement is a private agreement that the Service is not a party to, and has no contractual standing under. While the Service considers the likelihood that the Ranchwide Agreement would be terminated remote, for purposes of comprehensive NEPA analysis, the Kern County General Plan Buildout Alternative does not assume continuation of the Ranchwide Agreement except for the permanent protection of the already-recorded conservation easements on the Existing Conservation Easement Areas.

Response to Comment N-3-30

Response to Comment N-3-25 summarizes how surveys of the TMV Planning Area completed in 2007 were considered in developing the habitat models for the Covered Species. Systematic surveys generally were not conducted on Covered Lands outside of the TMV Planning Area, which the Service acknowledges only encompasses a fraction (19%) of the Covered Lands. However, the surveys conducted in the TMV Planning Area do provide representative data for the Covered Lands. Section 3.1.7.1 in the Supplemental Draft EIS describes the appropriate use of the habitat models, and explains that because of the general nature of the data and model parameters, it was not possible to incorporate microhabitat features into the models that may be important for selection and patterns of habitat use for many of the Covered Species. Therefore, the Service considers the habitat models to be conservative and likely overestimate the amount of habitat actually occupied by a Covered Species. Therefore, the habitat models are considered a general analytic tool for completing the effects analysis provided in the Supplemental Draft EIS and the conservation analysis in the TU MSHCP.

This application of habitat-based models to conservation and effects analyses is an accepted method in the absence of detailed species-specific distribution and occupation information. In the discussion of the collection and synthesis of biological data, the HCP Handbook states that HCPs may be habitat-based whereby a particular species can be assumed to be present by the presence of its habitat type (p. 3-12). In particular, this approach can be used for HCPs that address a broader range of species where distributional information is limited, but the HCP planning area is large enough to ensure long-term viability of species populations. The HCP Handbook also states that if the habitat type is addressed in the HCP and included in the mitigation program, additional distribution studies may not be necessary.

The surveys conducted in the TMV Planning Area detected many of the Covered Species in the habitats used for the models. As part of the Tehachapi Uplands, the TMV Planning Area has landscape and physiographic features common with the remainder of the Covered Lands (e.g., an elevation range up to 5,400 feet and diverse topography). Also, the distribution of the different vegetation communities is similar between the TMV Planning Area and Covered Lands. For example, savannahs and woodlands make up about 61% of both areas, with grassland accounting for about 23% of the TMV Planning Area and 18% of the Covered Lands and shrubland (scrubs and chaparrals) accounting for about 15% of the TMV Planning Area and 16% of the Covered Lands. Reflecting the higher elevation areas of the Covered Lands, conifer forests are somewhat more common on the Covered Lands compared to the TMV Planning Area, at about 3% versus 1%. The similarities in vegetation communities not only reflect common physical conditions, but also the common historical grazing practices throughout the Covered Lands that have helped shape the habitat conditions. Given the common overall environmental characteristics (e.g., elevation range, topography, and vegetation communities) of the Covered Lands and the TMV Planning Area, the

Service believes that extrapolating modeled habitat to the remainder of the Covered Lands is an acceptable method for preparing the TU MSHCP.

Similar approaches using habitat-based methods for larger-scale conservation planning have been applied in southern and central California. For example, the conservation analysis for the Western Riverside Multiple Species Habitat Conservation Plan (Riverside County 2007) was based in large part on modeling suitable habitats for more than 150 species, as well as their known or likely occurrence in identified bioregions (e.g., Riverside Lowlands, San Jacinto Mountains), which are analogous in concept to the Tehachapi Uplands. Similarly, the conservation analysis for the Coachella Valley Multispecies Habitat Conservation Plan (Coachella Valley Association of Governments 2007) relied on species habitat models using parameters such as natural communities, elevation ranges, landform data, and soils data for conservation planning.

Response to Comment N-3-31

The Service disagrees with this comment. With the exception of round-leaved filaree, the TU MSHCP includes conservation measures for conserving all currently documented occurrences of Covered Species. Specifically, all currently documented occurrences of Tehachapi slender salamander, yellow-blotched salamander, golden eagle (active nest sites), coast horned lizard, two-striped garter snake, Fort Tejon woolly sunflower, Kusche's sandwort, striped adobe lily, and Tehachapi buckwheat in the Covered Lands would be either conserved in Open Space or otherwise protected (e.g., through establishment of buffers) under the TU MSHCP. In addition, all Tehachapi pocket mouse modeled habitat would be avoided, or all known locations (two occurrences located in the Oso Canyon area) would be subject to avoidance (as defined in consultation with the Service). The conservation measures in the TU MSHCP also include avoidance measures for Covered Species that have not been previously documented on Covered Lands or where site-specific critical resources have not been identified, including for western spadefoot, peregrine falcon (active nest sites), bald eagle (preferred diurnal perches and roosting areas), and breeding burrowing owls. Several other birds may nest on site, but nest sites have not been documented (and specific nest site locations would be expected to change over time in any case), including least Bell's vireo, purple martin, southwestern willow flycatcher, yellow warbler, and western yellow-billed cuckoo. Tricolored blackbirds have been observed to nest on site at Castac Lake, but nesting colonies are transient so avoidance measures provided in the TU MSHCP are flexible to accommodate existing conditions at the time construction activities are initiated. Preconstruction surveys would be conducted for these bird species during the breeding season, all active nests would be avoided, and appropriate setbacks established to avoid and minimize potential indirect effects.

With respect to round-leaved filaree, eight of the 11 known occurrences of this species in the Covered Lands would be directly affected by development activities. The conservation measures in the TU MSHCP provide that known or future detected populations of this species be conserved in one of two ways: 1) three of the 11 known occurrences, totaling approximately 220 to 420 individuals, would be conserved in TMV Planning Area Open Space; or 2) at least three occurrences would be conserved in TMV Planning Area Open Space, including two known occurrences, representing approximately 120 to 220 individuals, and any new occurrence(s)documented in the TMV Planning Area Open Space prior to development, such that the new occurrence(s) would total at least 100 individuals. In addition, 91% of modeled habitat would be conserved in Open Space, preconstruction surveys in suitable habitat within 150 feet of a disturbance zone would be completed, and known locations not affected by development activities would be marked with a protective barrier.

The commenter may also be suggesting that any new documented occurrences of Covered Species during preconstruction and other preactivity surveys (e.g., fuel management, grazing operations) be

avoided to prevent extirpation of a species on site. This general prescription is unnecessary. Several surveys have been conducted in the area subject to the vast majority of the direct permanent impacts (i.e., the TMV Specific Plan Area) and it is unlikely that discrete sites that are critical for maintaining a particular Covered Species would not have been detected or that modeled habitat would not include such sites. In addition, avoidance and minimization measures are required to be implemented for any species detected during preconstruction and other preactivity surveys, so even if occupied sites are not currently known (e.g., western spadefoot), impacts on these sites would be avoided and minimized to the extent practicable. As part of the intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA, the Service will evaluate the impacts of the proposed action, including the loss of modeled habitat, which could support additional occurrences of the Covered Species within the TMV Planning Area, in determining whether the proposed action is likely to result in jeopardy to any Covered Species, and will not issue the permit if it is determined the TU MSHCP would appreciably reduce the likelihood of the survival and recovery of any of the Covered Species in the wild.

Finally, the purpose of Section 10 of the ESA is to provide a regulatory mechanism to permit the incidental take of federally listed fish and wildlife species by state, local, or other private parties during lawful activities, provided the impacts of such take are minimized and mitigated to the maximum extent practicable and such take will not jeopardize the listed species. If all impacts on Covered Species were avoided, an HCP and Section 10 ITP would not be needed. The fact that modeled habitat for the Covered Species would be permanently lost assumes that there could be some take of individuals of the Covered Species; all avoidance of Covered Species is not an element of the TU MSHCP.

Response to Comment N-3-32

The TU MSHCP acknowledges the threats rodenticides may pose for some of the Covered Species (Sections 5.2.2.3, 5.2.2.4, and 5.2.4.2 in the TU MSHCP) and requires that use of rodenticides be "avoided to the maximum extent practicable" (p. 7-91). This approach acknowledges the different needs and levels of threats in different areas (i.e., development areas versus open space) in the Covered Lands. To manage such threats from rodenticides, the TU MSHCP requires that an IPMP be developed that meets species-specific goals and objectives. For example, Objective 8.1 for Tehachapi pocket mouse states that to the extent rodenticides are needed, they must be stored in secure containers and stored in rodent proof facilities. This measure would also benefit other special-status species which prey on mice and rodents.

It should also be noted that the TMV EIR prohibits the use of anticoagulant rodenticides by, or at the direction of, property owners in the TMV Planning Area. TMV EIR Mitigation Measure 4.4-14 states, “Covenants, conditions, and restrictions that will be recorded to inform future property owners of applicable requirements shall include language that prohibits the use of anticoagulants (used for rodent control) at Tejon Mountain Village. The Property Owners’ Association, in coordination with the Project Biologist, shall also supply educational information to residents on compliance with federal and state laws governing the use of pesticide products.”

Notwithstanding the measures incorporated into the TU MSHCP, given the lack of adequate data and studies about the specific effects of rodenticides and herbicides on the Covered Species, the Service does not intend to include rodenticide or herbicide use as a Covered Activity if an ITP is issued to TRC; as such, the application of rodenticides and herbicides by TRC would not be insulated from liability for take of the Covered Species. Despite the lack of take coverage for use of rodenticides and herbicides, the Service would be provided an opportunity to review and comment on the IPMP.

Response to Comment N-3-33

The TU MSHCP requires that management controls to avoid and minimize the introduction of exotic species such as Argentine ant into the Covered Lands be incorporated into the IPMP, and would include (1) providing "dry zones" between development activities and species habitat; (2) ensuring that dry zone container plants are ant-free prior to installation; (3) maintaining natural hydrologic conditions; and (4) using drought-resistant plants in fuel modification zones to minimize irrigation requirements (e.g., see Objective 4.2 for Tehachapi buckwheat in the TU MSHCP). The IPMP will define the specific locations of concern and the covenants, conditions, and restrictions (CC&Rs) will require conformance and enforcement of the IPMP.

It should also be noted that Mitigation Measure 4.4-16 in the TMV EIR includes inspection of container plants by the Service-approved biologist immediately prior to installation for the presence of disease, weeds, and pests, including Argentine ants. Plants with pests, weeds, or diseases will be rejected. Irrigation within 100 feet of these areas will be designed to avoid the spread of water from irrigated land into designated open space. Further, this measure includes CC&Rs that require property owners to operate and maintain a year-round low-moisture regime within 100 feet of open space and avoid the spread of water from irrigated land into project open space. These two requirements will minimize the introduction of exotic plant and animal species, such as Argentine ant, from landscape areas into designated open space.

Response to Comment N-3-34

The habitat model for the Tehachapi slender salamander recognizes that it does not uniquely capture the microhabitat features such as rock talus and the litter matrix—these features are not contained in the available spatial data. However, the modeled vegetation communities (including riparian woodlands and the canopy cover parameters used in the model) and north-facing slopes are important components of habitat for the species in the Tehachapi Mountains. Under the existing model, 96% of modeled habitat would be conserved in Open Space. However, just considering the vegetation communities associated with the species alone (i.e., without canopy density, aspect, and distance from blueline streams factored in), approximately 95% of suitable habitat for the species would be conserved. As such, revisions to the model using existing data are not likely to significantly alter the effects analysis.

Furthermore, the construction-related conservation measures for Tehachapi slender salamander were developed in recognition that the habitat model may not capture all of the potential talus and litter matrix habitat features. Through additional surveys or investigation, the Service-approved biologist may find that some areas of modeled habitat are not actually suitable for the species, while other areas of unmodeled habitat may potentially support the salamander (e.g., a talus slope that extends beyond the boundary of modeled habitat). Objective 4.1 was written to account for this uncertainty and states that surveys prior to grading will be conducted in suitable habitat. The Service-approved biologist will make reasonable efforts to capture and relocate any observed individuals to suitable habitat (e.g., on north-facing slopes containing talus) that is the closest distance to the disturbance area from where the individuals were removed. That is, the preconstruction surveys would not be limited to just modeled habitat, but would be conducted in all habitat areas in the disturbance area that the biologist determines to be suitable for Tehachapi slender salamander. The conservation measure also requires that the Service-approved biologist have a scientific collecting permit and a Memorandum of Understanding or letter permit from CDFG to carry out these activities.

Response to Comment N-3-35

The commenter references their prior comment that, for species where a mitigation strategy of relocation or translocation or moving is proposed, the scientific literature indicates that these efforts generally result in failure, citing various sources, including Fischer (2000; note: should be Fischer and Lindenmayer 2000), Wolf (1996; note: should be Wolf et al. 1996) and Dodd and Siegel (1991). The commenter stated that if this experimental strategy is to be implemented, it should be recognized to be experimental, and therefore not a mitigation or minimization measure. Further, in the current letter, the commenter states that the TU MSHCP does not show how the relocation will benefit the salamander.

Preconstruction surveys, trapping and removal would be conducted for Tehachapi slender salamander, and several other Covered Species, as a best management practice (BMP) during construction to try to avoid any unnecessary harm to individuals. The construction-related conservation measure requires that individuals be relocated to the nearest suitable habitat, and that relocations be done with the appropriate Service/CDFG authorizations (see Response to Comment S-1-32). Relocation activities, if any, would be documented in the annual compliance reports, as described in Section 7.3.1, Compliance Monitoring, of the TU MSHCP.

It is important to understand that the intent of the proposed relocation of species detected during preconstruction surveys, as an avoidance and minimization measure, is quite different from the purpose of most of the relocation studies described in the literature cited by the commenter. Wolf et al. (1996) addressed bird and mammalian translocations, which they broadly define as "intentional release of a captive-propagated and/or wild-caught animal into the wild for the purpose of establishing a new population, reestablishing an extirpated population, or augmenting a critically small population…" (p. 1143). The Fischer and Lindenmayer (2000) study focused on reintroductions, supplementations, and translocations at a much larger scale than the relocation effort proposed under the TU MSHCP. It is not the intent of the TU MSHCP to translocate or reintroduce individuals as defined by Wolf et al. (1996) and Fischer and Lindenmayer (2000). Only the Dodd and Siegel (1991) study cited by the commenter examines some relocations similar to the measures proposed in the TU MSHCP. Dodd and Siegel (1991) define the release of individuals into an area normally or currently occupied by the species as *repatriation*. This type of relocation is similar to the proposed relocation of moving a few individuals out of harm's way to the nearest suitable habitat, which has become a fairly standard BMP for many types of development projects. However, Dodd and Siegel (1991) generally refer to moving populations and define success as establishing a viable, self-sustaining population. Such a large-scale relocation program is not the intent of the proposed construction-related relocation measures, especially given the relatively small proportions of modeled habitat that would be affected. The intent of the TU MSHCP is to make a reasonable effort to avoid unnecessarily killing and injuring individual animals.

The primary conservation strategy for the Covered Species is preservation of an open space system large enough to support self-sustaining populations in protected open space. The success of the conservation strategy does not depend on construction-related salvage and relocation of individuals.

Response to Comment N-3-36

The 0.25-mile setback in Objective 4.2 (Section 7.1.1.2.1) of the TU MSHCP is for construction activities related to development (e.g., mass grading), while the 1,000-foot setback in Objective 6.2 relates to long-term operational activities such as recreation and grazing operations, which would not be expected to have the same level of potential indirect effect on peregrine falcons (e.g., loud

noise, levels of human activity). Having different buffer setbacks for these very different types of potential indirect effects is appropriate.

The commenter requests that the Service reconsider prior comments on the inadequacies of small buffers and related issues, as previously provided in their comment letter on the Draft EIS. In response to that request, the following text has been provided to reiterate the Service's response to comments on the Draft EIS that suggested that proposed setback buffers and viewsheds for raptors in the TU MSHCP were inadequate, not based on the best available science, and would adversely affect raptor behavior, including reproduction. This response was originally provided in Master Response 3, Raptors, Section 3.2.1, Buffers and Viewsheds, in Volume II of the Supplemental Draft EIS. Where appropriate, and as indicated by underline, the text has been revised to clarify species use of the Covered Lands (i.e., peregrine falcon), or the guidelines that were considered in determining species-specific buffers (i.e., burrowing owl).

Buffers and Viewsheds

There are five raptor species covered in the TU MSHCP and analyzed in Section 4.1, Biological Reources, of the Supplemental Draft EIS: American peregrine falcon, bald eagle, burrowing owl, golden eagle, and white-tailed kite. Section 7.1.1.2, Birds, in the Draft TU MSHCP describes the species-specific conservation measures that would be implemented to minimize effects on raptors, including implementation of buffers and viewshed protections between raptor nesting, roosting, and perching sites and construction and long-term operational activities. These measures are also summarized in Table 2-4 in Volume I of the Supplemental Draft EIS. This response summarizes the likely habitat present for each species and the corresponding setback and buffer to protect nesting, roosting, and perching sites.

The occurrence and suitable habitat information regarding the five raptor species on Covered Lands is described in Section 3.1, Biological Resources, in Volume I of the Supplemental Draft EIS, and Section 5.2.2, Birds, of the TU MSHCP. Golden eagles nest and forage on the Covered Lands, with three active nests observed in the TMV Planning Area in 2007. The American peregrine falcon, bald eagle, burrowing owl, and white-tailed kite have been observed to use portions of the Covered Lands during the winter for foraging, but none of these species has been documented to nest on the Covered Lands. However, there is modeled nesting habitat on the Covered Lands for peregrine falcon, burrowing owl, and white-tailed kite, and these species are considered to have at least some potential to breed on site because the Covered Lands are within their known breeding range. The bald eagle is expected only to winter and forage on Covered Lands in the vicinity of Castac Lake; it is not expected to nest on site.

Nesting golden eagles are sensitive to human disturbance (Remsen 1978:32; Thelander 1974:11). The TU MSHCP proposes several measures that would avoid, minimize, and mitigate effects on nesting golden eagles. As stated in Objective 6.1, surveys would be conducted for active nests in modeled primary breeding and breeding/foraging habitat during the breeding season (January through August) prior to approval of the grading plan for each phase of development. The results of these surveys would be used during site development and would take into consideration viewshed and distance factors to protect nest sites. For golden eagle, Objective 6.2 of the TU MSHCP includes several criteria to protect active (primary and/or alternate) nest sites from disturbance. No development, new trails or recreational activities would be allowed within 0.25 mile of an active nest site, within or outside the viewshed, and no development would be allowed in the viewshed that is also within 0.5 mile of an active nest. Development would be restricted to low-density development in the viewshed up to 1 mile from the active nest. For development within 0.5 to 1 mile of an active nest site, siting and design criteria would be established to avoid and minimize effects on modeled foraging habitat, primarily through clustering of development. Objective 9.2 states that trail use would be restricted between 0.25 and 0.5 mile within the viewshed of an active nest site

during the primary nesting season (generally February 1 through July 30), when birds would be sensitive to human activities, unless a qualified, Service-approved biologist determines that the nest site has become inactive and the activities would not affect nesting golden eagles.

A commenter expressed concern that the buffers and setbacks are not based on the best available science and that viewsheds for both nesting and hunting habitats should have been calculated using a three-dimensional geographic information system (GIS) tool. Spatial and temporal buffer zones have been suggested as a means to minimize the effects of recreational and other human activities on breeding raptors. In particular, a zone defined by a 0.2-mile (333-meter) radius has been suggested for golden eagles when birds are rearing young and exposed to various human activities (Suter and Jones 1981). Other recommendations include establishing spatial nest buffers from 0.13 to 1.0 mile depending on the terrain and nest location (Richardson and Miller 1997). However, a viewshed approach has been suggested as a more realistic application to buffering active nest sites because flushing distances (from nests, perches, roosts) of adult eagles can be reduced when eagles are visually shielded (by vegetation and/or topographical features) from human activities. A viewshed approach to managing disturbances may require less protected area than standardized buffer zones (Camp et al. 1997).

For golden eagles, a three-dimensional viewshed analysis using GIS was conducted for active golden eagle nests in the TMV Planning Area. This is the only raptor Covered Species documented to nest in proximity to development areas. The analysis took into consideration topography, vegetation cover and height, elevation, distance from the nest tree, and nest height. The analysis included distances measured at 0.25, 0.5, and 1 mile from the nest. A maximum distance of 1 mile was used because that is the outer range of buffer zones listed in the literature as appropriate for golden eagles (Richardson and Miller 1997).The results of this analysis were considered in determining the TMV Development Envelope boundary and would be incorporated into the final site development plans for the TMV Project. In addition, and, as discussed previously, the viewshed guidelines (summarized above) would apply to any future golden eagle nests that are discovered during surveys that would be conducted prior to ground disturbance activities in the TMV Specific Plan Development Envelope. However, the viewshed tool is not practical for use in foraging habitat because hunting by most raptors is carried out on such a broad scale and opportunistically in relation to food sources. For example, the size of golden eagle foraging territories is related to prey density and is quite variable. In southern California, estimated territories are approximately 23,000 acres, and, in northern California, they are approximately 30,700 acres (Zeiner et al. 1990:142).

For the other raptors with some potential to breed on site (American peregrine falcon, white-tailed kite, and burrowing owl), because there are no known nest sites, surveys prior to construction would be conducted, as discussed below, and appropriate measures set forth in Section 7.1.1.2 of the TU MSHCP would be undertaken. Specifically, prior to Commericial and Residential Development Activities, preconstuction surveys in breeding habitat would be conducted. If any of these species are found nesting in proximity to Disturbance Areas prior to construction, setbacks from active nests would be established during the nesting period as follows.

- An 0.25-mile protection zone would be established around each active peregrine falcon nest (Objective 4.2 of Section 7.1.1.2.1, American Peregrine Falcon, in the TU MSHCP). This setback distance is based on the variable response of nesting peregrine falcons to human activities. Birds that nest in urban areas or highly visited areas become habituated to close human activities, while birds nesting in isolated areas tend to be more sensitive to disturbance (White et al. 2002:1). In addition, there is very limited potential nesting habitat for the peregrine falcon on the Covered Lands, it is only expected to forage on site during the winter, and the Covered Lands are not considered to be important breeding habitat for this species. <u>Since the American peregrine falcon is not known to nest on Tejon Ranch, any birds that are attracted to and attempt to nest on the ranch most likely would be individuals more habituated to human activity, such as ongoing ranch activities. Comrack and Logsdon (2008) note that many</u>

peregrines at least attempt to nest in urban settings, but that nesting success is more limited by nest site structure than direct human disturbance. Also, White et al. (2002:1) indicate that human disturbance of nesting sites does not appear to be a significant factor in population declines of the peregrine falcon.

- For the white-tailed kite and the burrowing owl, a setback of 500 feet and 300 feet, respectively, would be established around each active nest site (Objective 4.3 of Section 7.1.1.2.3, Burrowing Owl, and Objective 4.3 of Section 7.1.1.2.11, White-Tailed Kite, of the TU MSHCP, respectively). Once construction activities have been initiated, nesting attempts by the burrowing owl within 300 feet of construction activities would not be subject to the 300-foot setback, although no nests would be directly disturbed. These setbacks may be reduced at the discretion of the Service-approved biologist depending on site conditions (e.g., viewshed or natural noise barriers resulting from topography).

  The adequacy of a 500-foot setback guideline for the white-tailed kite is supported by empirical data. A recent study of white-tailed kite nesting and roosting behavior in Santa Barbara County (Rincon Consultants 2010:5) indicates that individuals of this species are tolerant of urban development and other human activities within 500 feet of nests and roost sites. However, it is likely that white-tailed kites, like peregrine falcons and many other raptor species, exhibit individual tolerances or habituation to urban settings and human activities. Rincon Consultants (2010:5) examined historical nest site locations in Goleta Valley in relation to different types of disturbances, including development (roads, fencing, walls, and fuel management zone), active nonmotorized recreational uses such as equestrian and bicycling, and passive recreation such as walking and bird watching. The data used for the analysis were based on 2008 and 2009 surveys on More Mesa and historical nests and roosts dating back to 1963, backgound literature, and consultation with local experts. Of 42 nest sites, 17 occurred within 500 feet of some type of urban disturbance, indicating some level of tolerance by individuals of this species to human activities. White-tailed kites generally were more tolerant of nonstructural human activities (e.g., recreation), with 9 of the 17 nest sites located within 140 feet of a structure (Rincon 2010:5). Thirteen of the 17 nest sites were within 125 feet of a road, yard, agricultural field, trail, or other nonstructural type of human disturbance. Based on this analysis, Rincon (2010:6) developed the following nest and roosting buffer guidelines:

  - 1 to 125 feet: minimum area of no human activity
  - 125 to 200 feet: passive recreation (walking and bird watching)
  - 200 to 265 feet: active recreation (equestrian, bicycling; no motorized vehicles)
  - 265 to 340 feet: roads, fencing, walls, lawns, 100-foot fuel management zone
  - 340 to 525 feet: structures

  For the burrowing owl, the proposed 300-foot buffer to protect nesting sites is consistent with the guidelines set forth by CDFG's Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game 2012), which suggests incorporating site-specific criteria (topography, level/history of disturbance, visual line-of-site, and other site characteristics) to inform appropriate avoidance setbacks and buffers.

  Preactivity surveys related to the long-term effects of Plan-Wide Activities, such as recreation, would also be conducted during the breeding season of the American peregrine falcon and the white-tailed kite. Commenters requested that preactivity surveys be required for fuel management involving tilling or disking. Although tilling and disking is not anticipated in conjunction with fuel management activites, preactivity surveys would be conducted in the 1,773 acres of development-related fuel management activities in open space areas. Setbacks would be established from active nest sites (1,000 feet for the peregrine falcon [Objective 6.2] and 500 feet for the white-tailed kite for passive recreation activities [Objective 7.2]) until all

young have fledged and are no longer dependent on the nest for survival. The commenter specifically questioned the 1,000-foot setback for the American peregrine falcon, recommending that a site-specific analysis be done and that the setback be increased beyond 1,000 feet if needed. The sufficiency of the 1,000-foot setback is discussed above. As noted, peregrine falcons have successfully bred in urban areas.

For the bald eagle (which has not been documented to breed in the Covered Lands), measures would be implemented to reduce effects on overwintering individuals that may perch, roost, and forage on the Covered Lands. Objective 3.2 in the TU MSHCP requires preconstruction surveys for wintering individuals and mapping of preferred diurnal perches and roosting sites if present. Preferred diurnal perches and roosting sites would be conserved according to the protocol described in Objective 3.2, including a consideration of tree size (larger trees are better) and distance from Castac Lake, replacement of affected large trees near Castac Lake, and girdling of some trees to create snags for perching. Objective 3.4 for the bald eagle requires adequate setbacks from preserve roosting areas. These would be determined by a qualified Service-approved biologist based on focused surveys for wintering bald eagles conducted prior to approval of the grading plan for each phase of development within 1 mile of Castac Lake. Objective 3.4 specifies that uses in the roost area and setback would be limited to those approved by the qualified Service-approved biologist in the bald eagle wintering period between October 15 and March 16. Recreational uses would be excluded from the roosting and setback area. Objective 7.3 for the bald eagle specifies that the minumum setback during this period would be 300 feet, but the setback may be adjusted by the qualified Service-approved biologist based on site conditions (e.g., topography). In addition, as stated in Objective 4.1 for the bald eagle, construction-related ground disturbances in wetland habitat associated with Castac Lake and woodland habitat within 1 mile of Castac Lake would be avoided from October through March.

A commenter stated that measures to minimize effects on bald eagle are vague and that Section 7, Conservation Plan for Other Covered Species, of the Draft TU MSHCP refers to a 300-foot setback, while Section 6, Potential Biological Impacts/Take Assessment, of the Draft TU MSHCP refers to a 500-foot setback. The commenter suggested that the setback should be 250 to 400 meters (820 to 1,312 feet), citing Stalmaster and Newman (1978) and Craig (2002). The commenter suggests a management zone of 1,360 to 1,400 meters (4,462 feet to 4,593 feet), citing Buehler et al. (1991).

The reference to 500 feet in Section 6.2.2.2.2, Analysis of Potential Impacts on Bald Eagle, of the Draft TU MSHCP was an error that has been corrected to reflect a setback distance of 300 feet. The TU MSHCP provides a management zone of 1 mile and a minimum setback of 300 feet, which is generally consistent with Stalmaster and Newman's recommendation for bald eagle wintering grounds in disturbance areas. However, the setback can be increased by a Service-approved biologist, consistent with alternate scenarios and buffer recommendations described by Stalmaster and Newman (1978), depending on site-specific considerations. As described in Section 5.2.2.2.3, Occurrence in the Covered Lands, of the TU MSHCP, bald eagle observations at Castac Lake are infrequent and in only one winter has the number of eagles exceeded one. Therefore, bald eagle presence on site is not considered to be a wintering congregation.

The Stalmaster and Newman (1978:506–513) study focused on the response of bald eagle wintering populations to simulated disturbances in three land covers (vegetation zone, riverbank, and river channel). In vegetation buffer zones, the observer was visible to the bald eagles at between 75 and 100 meters (247 to 329 feet). In the riverbank zones, the bald eagles flushed when the observer was within 251 to 300 meters (826 to 987 feet). In the river channel zones, the bald eagles flushed when the observer was within approximately 300 meters (987 feet). For vegetated wintering grounds where disturbances are common, Stalmaster and Newman (1978:512) recommend a buffer of 75 to 100 meters (247 to 329 feet). In open areas,

the authors recommend a larger buffer of 250 meters (820 feet) to protect a congregating bald eagle wintering population; a combination of buffer and vegetation being preferable. The Stalmaster and Newman (1978:512) study also noted that bald eagles can adjust to routine human activities.

Craig (2002) provides recommendations for buffer zones and seasonal restrictions for Colorado raptors, including buffers and setbacks for nesting, roosting, and/or perching raptors, including the bald eagle. Craig (2002:2) recommends a buffer of 0.25 mile (400 meters, 1,320 feet) for winter night roosts between November 15 and March 15. Craig (2002:1) also states that buffer zones can be adjusted depending on vegetation screens and terrain that obscure the activity. Craig (2002:2) also recommends protection of diurnal perches in association with foraging areas and notes that he is aware of two management plans that recommend zones ranging from 0.13 mile (200 meters, 660 feet) to 0.25 mile (400 meters, 1,320 feet).

Regarding the proposed management of lakeside vegetation for the benefit of wintering bald eagles, Buehler et al. (1991:279) recommends management in communal roosting forest stands of 190 hectares (470 acres). The 190 hectares exceeds the minimum communal roost forest stand size of 110 hectares (272 acres) (Buehler et al. 1991:279). The management recommendation was proposed for Chesapeake Bay undeveloped shoreline forest stands extending a minimum of 1,400 meters (4,606 feet, 0.87 mile) inland, with a minimum of 1,360 meters of shoreline edge. Buehler et al. (1991:279) recommended protection of existing tall, large-diameter trees and the promotion of stands of trees where lacking. The TU MSHCP would include the conservation of 795 acres (55%) of wintering habitat for the bald eagle in the Covered Lands, which greatly exceeds the Buehler et al. (1991:279) minimum communal roosting acreage of 272 acres. In addition, the Covered Lands do not support a communal roosting site for the bald eagle; this species is an infrequent winter visitor. Section 7.1.1.2.2, Bald Eagle, of the TU MSHCP includes conservation of preferred diurnal perches and high-quality roost trees for the bald eagle within 1 mile of Castac Lake and the promotion of stands of trees within 100 feet of Castac Lake; this exceeds the Buehler et al. (1991) recommended management zone of 1,400 meters (4,606 feet, 0.87 mile). Thus, the proposed bald eagle Goal 3 and associated objectives would protect diurnal perches and roosts, and would exceed the Buehler et al. (1991:279) minimum communal roosting acreage and management zone recommendations.

Response to Comment N-3-37

The commenter is correct in noting that the removal of 58% of the modeled winter roosting habitat under the TU MSHCP would represent a substantial amount of the existing woodland habitat available to the bald eagle in the Covered Lands. While foraging at Castac Lake would remain largely undisturbed, bald eagle use of aquatic foraging habitat is in part a function of the availability of roosting and perching trees in the vicinity of aquatic foraging habitat. The TU MSHCP includes conservation measures to protect roosting and perching trees, including a prohibition on removal of preferred diurnal perches and high quality roost trees from fuel modification zones within 1 mile of Castac Lake. In addition, snags and large trees would be avoided within 100 feet of the shoreline of Castac Lake, where possible, and an adequate setback from preferred roosting areas would be established by a Service-approved biologist. Finally, affected trees would be replaced with new, large trees (defined in bald eagle Objective 3.2 in the TU MSHCP as trees at least 12-inches in diameter at breast height) at a 1:1 ratio within 100 feet of Castac Lake to preserve and enhance wintering habitat.

As described in Supplemental Draft EIS and TU MSHCP, bald eagles have a widespread distribution in North America, wintering from Alaska eastward to Newfoundland and southward

locally to Baja California, Sonora, Texas, and Florida. In California, breeding populations are more limited and restricted primarily to the northern Sierra Nevada. As noted by the commenter, at least six bald eagles were observed on the Covered Lands in winter 2007, and the loss of 58% of modeled winter roosting habitat would likely reduce the use of Castac Lake by wintering bald eagles. However, the bald eagle is not known to breed on the Covered Lands and surveys indicate that a large wintering population does not occur on the Covered Lands. Because it is unknown from which breeding population in the western United States (or Canada) the eagles that occasionally winter at Castac Lake derive, and without additional long-term data regarding the consistent use of this habitat by wintering eagles, it would be speculative to suggest that the wintering habitat at Tejon Ranch is important to the ability of bald eagle populations in North America to remain self-sustaining. In consideration of the extensive range of the species and the conservation measures that would be implemented to protect the remaining modeled foraging and wintering habitat on the Covered Lands, the Service believes the TU MSHCP would have a moderate effect on the bald eagle in the Covered Lands, and a minor effect on the population rangewide.

Response to Comment N-3-38

While there is overlap between bald eagle modeled wintering habitat (i.e., savannah, woodland, and riparian woodland habitats within 1 mile of Castac Lake that provide perching and roosting sites for wintering bald eagles foraging at Castac Lake) and modeled habitat for a number of other Covered Species, the only overlap in the bald eagle modeled wintering habitat and tricolored blackbird modeled foraging habitat is riparian woodland, of which 92% would be conserved in Open Space under the TU MSHCP. Further, riparian woodlands account for only 59 acres of the 18,553 acres (0.3%) of modeled foraging habitat for tricolored blackbird. Therefore, the loss of modeled foraging habitat for tricolored blackbird in the context of modeled wintering habitat for bald eagle is insignificant.

Response to Comment N-3-39

The Service agrees and the TU MSHCP requires that direct impacts on golden eagle active primary and alternate nests be avoided (Goal 6) (TU MSHCP Section 7.1.1.2.4). To that end, surveys for active primary golden eagle nests and active alternate nests would be conducted during the breeding season prior to approval of the backbone infrastructure grading plan (so as to assist in the constraints planning effort for potential development sites) for each phase of development in modeled primary breeding and breeding/foraging habitat (Objective 6.1).

Response to Comment N-3-40

The comment that 32% of primary breeding habitat for tricolored blackbird would be eliminated is incorrect. The percentages of modeled primary breeding habitat that would be lost and conserved under the TU MSHCP only sum to 77% (69% of modeled primary breeding habitat conserved in Open Space and 8% permanently lost due to development), as indicated in Section 7 of the TU MSHCP and Table 4.1-3 in the Supplemental Draft EIS. This is attributable to the assumptions in the habitat model specific to riparian areas (i.e., 75% of riparian/wetlands are assumed avoided in development areas, but avoided areas are not included in the Open Space acreages) and assumptions specific to future uses of the Lebec/Existing Headquarters Areas (i.e., 145 acres in the Lebec/Existing Headquarters Area are assumed not developed, but are also not included in Open

Space. Kern County land use designations in the Lebec/Existing Headquarters Area would only allow a portion of that land to be developed). Therefore, the impacts on these avoided and undeveloped areas are more analogous to those in Open Space areas than to areas lost to development, and it would not be accurate to treat these areas as "eliminated."

Nevertheless, the net loss of 23 acres (8%) of modeled primary breeding habitat for tricolored blackbird under the TU MSHCP could affect nesting tricolored blackbird colonies in the Covered Lands. Development would surround a significant portion of Castac Lake, which is the largest body of water in the Covered Lands and is also the primary location where tricolored blackbirds have historically been observed. Managing open space to provide appropriate nesting habitat for the species, where possible, along with implementation of the TU MSHCP conservation measures specific to this species (i.e., preconstruction surveys in and immediately adjacent to suitable breeding habitat during the breeding season, creation of a 500-foot buffer around any nesting colony if construction cannot be avoided entirely during the breeding season) would reduce adverse effects on the species.

Response to Comment N-3-41

In general, the ESA does not prohibit the take of federally listed plant species; therefore, incidental take of plant species is not conferred by an ITP. TRC incorporated measures into the TU MSHCP intended to conserve listed plant species in the Covered Lands and requested the Service include these plant species on the ITP in recognition of the conservation benefits provided to these species under the plan, and to receive assurances for them under the Service's No Surprises rule codified at 50 CFR 17.22(b)(5) and 17.32(b)(5). With respect to round-leaved filaree, this species is not currently federally listed (it is included on the California Rare Plant Rank list in California); however, the analysis provided in the EIS and TU MSHCP treat round-leaved filaree as if it were a federally listed species to assess if the conservation measures provided in the TU MSHCP would be adequate to avoid jeopardy if the plant were listed in the future.

As described in Section 5.3.3 of the TU MSHCP and Section 3.1 of the Supplemental Draft EIS, the range of round-leaved filaree extends from northern Mexico to Oregon and southern Utah. Although round-leaved filaree is considered to be rare in southern California, it is broadly distributed in central and northern California and has been documented in 27 counties from Lassen County to San Diego County. Gillespie (2003) determined that 105 unique populations have been reported, with most on the eastern side of the California Coast Ranges. The Jepson Online Interchange for California Floristics (Jepson Flora Project 2011) lists the Sacramento Valley, northern San Joaquin Valley, central western California, South Coast, northern Channel Islands (i.e., Santa Cruz Island), western Transverse Range, and the Peninsular Ranges as the geographic regions in which round-leaved filaree occurs. The California National Diversity Database (CNDDB) currently contains 142 records for the species, of which 12 are documented from Kern County (none on the Covered Lands) (California Department of Fish and Game 2011). Based on occurrence records in the CNDDB that include counts or estimates of individual plants across their range, occupied sites have been observed to support from a few individuals (three or four) to an estimated 16,000 individuals among five colonies at a site on BLM lands (on Payne Ranch in Colusa County).

Presence/absence surveys were conducted for round-leaved filaree in 2007 in the TMV Planning Area. Round-leaved filaree plants were observed in the southeast portion of the TMV Planning Area, in 11 areas that supported approximately 430 to 730 individuals (Dudek 2007b). It is also considered to have potential to occur elsewhere in modeled habitat on unsurveyed portions of the Covered Lands. The commenter is correct in stating that a maximum of 58% of the documented population of round-leaved filaree (up to 420 documented individuals) would be conserved under the scenario described for Objective 2.1.a in Section 7 of the TU MSHCP; i.e., at least 42% of the

currently known population (an estimated range of 205 to 305 documented individuals) would be permanently lost. However, the TU MSHCP would include conservation of 53,076 acres (91%) of modeled habitat for this species in Open Space. Further, as described below, the loss of up to 420 document individuals would represent a small percentage (0.2% to 0.6%) of the population in California.

In response to this comment, an analysis of recent CNDDB records was conducted for round-leaved filaree to examine the status of the documented population on the Covered Lands in the context of the documented populations in California. *Recent* occurrence records are defined as sites where the round-leaved filaree was last seen in the period between 1990 and 2010 (2010 is the most current *Last Seen* date in the CNDDB for the species). Only sites judged to be *Presumed Extant* in the CNDDB occurrence record and only sites for which a numerical population size was reported are included in the analysis; therefore, the estimated populations reported in this analysis are conservative. A total of 59 of the 142 CNDDB occurrence records met these three criteria. Population sizes for each of the 59 occurrences were assigned a low and high value depending on the information in the occurrence record. Where a single estimate was made for a single observation date, the numerical value was included as both the high and low value. Where estimates were made over more than one observation date, the lowest and highest estimates were used. Where an observation was made on a single date, but a population range was reported (e.g., 100 to 200 individuals), the low and high values were used. Several of the records report populations of "at least" or "more than" a certain number of individuals; e.g., the population characterized at least 1,000 individuals. In these cases, the lower end of the estimate was used for both the low and high values to provide the most conservative estimate of the population size.

Based on this analysis, a low of 54,846 individuals (median = 100; mean = 930; range = 0 to 16,000) and a high of 85,857 individuals (median = 135; mean = 1,435; range = 4 to 16,000) of round-leaved filaree are reported in the CNDDB for observations between 1990 and 2010. The documented population on the Covered Lands therefore represents a range of approximately 0.5% (430 of 85,857 individuals) to 1.3% (730 of 54,846 individuals) of the estimated population in documented occurrence locations in California. The actual percentages would be lower because many of the documented occurrences did not report population sizes. The permanent loss of 205 to 305 individuals therefore would represent an effect on 0.2% (205 of 85,857 individuals) to 0.6% (305 of 54,846 individuals) of the estimated population in documented occurrence locations in California. Relative to other documented occurrences, the documented population on the Covered Lands is of moderate size and lower than the mean size of both the low (930 individuals) and high (1,435 individuals) population estimates.

The Supplemental Draft EIS concluded that the TU MSHCP would have a moderate effect on local species abundance, but that the effect on the population rangewide would be minor and that the TU MSHCP would not substantially affect the species. This conclusion is supported by the analysis provided in this response showing that the TU MSHCP would affect a very small percentage of round-leaved filaree in California. Also, there is no reason to believe that the local round-leaved filaree population would be extirpated as a result of loss of 42% of the currently documented population. To the contrary, because a significant threat to round-leaved filaree is competition with exotic grasses and forbs (Gillespie 2003), the goals and objectives requiring grazing management of the TU MSHCP Mitigation Lands at light-to-moderate levels would control the levels of exotic grasses and may benefit existing populations of round-leaved filaree on the Covered Lands.

The Service will formally evaluate the impacts of the TU MSHCP on the survival and recovery of the round-leaved filaree in the intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA on TRC's permit application,

Response to Comment N-3-42

The initial grazing management, integrated pest management, and public access plans approved by the Tejon Ranch Conservancy and by Kern County (as part of the certified TMV EIR), as well as the public access plan adopted by the Tejon Ranch Conservancy, are attached to the TU MSHCP as part of the Interim RWMP (Tejon Ranch Company 2009)(Appendix F to the TU MSHCP). If the Service issues an ITP for the TU MSHCP Covered Activities, the grazing management and public access plans would be revised as necessary to conform to the ITP and the final TU MSHCP, and would be reviewed and approved by the Service as set forth in the Implementing Agreement Sections 5.1.1(d) and 5.2.4. The Service would also review and comment on the IPMP.

The Service believes that the existing management plans attached to the TU MSHCP, combined with the detailed requirements contained in the TU MSHCP for future management plans and revisions to current plans, provide ample information to the public and to the Service for review of the TU MSHCP.

Response to Comments N-3-43 through N-3-45

Section 4.0.4, Methods for Assessing Cumulative Effects, in the Supplemental Draft EIS describes the approach for considering cumulative effects in the EIS, defines the cumulative effects analysis area, and summarizes the reasonably foreseeable actions considered in the assessment. In summary, the analysis of cumulative effects in the Supplemental Draft EIS involves identification of past, present, and future lands uses planning efforts or large-scale projects in a cumulative effects analysis area (broadly defined to encompass the Tehachapi Uplands portion of the Southern California Mountain ecoregion, and the valley and foothill areas outside of the Tehachapi Uplands) that could contribute to the cumulative effects of the alternatives. In determining the present and reasonably foreseeable actions that have the potential, when combined with the effects of the alternatives, to result in cumulative effects, the Service considered other planning effects and large-scale projects that would be likely to result in effects that could interact cumulatively with those of the alternatives. NEPA does not require that cumulative effects be discussed if they are speculative.

Section 4.0.4.2, Other Reasonably Foreseeable Actions, in Volume I of the Supplemental Draft EIS considered whether to include the California High-Speed Rail Project as a reasonably foreseeable project in the cumulative effects analysis of the proposed action, but determined the project was too speculative because the precise timing and details of the project were not known, and because potential alignments that would have crossed Tejon Ranch were not considered in the project EIR/EIS (California High Speed Rail Authority 2005, 2010). However, in response to comments, the Service revisited the status of the high speed rail project to determine if it should be considered in the Final EIS. Although the California High Speed Rail Authority has continued planning for the project and has appropriated some funding (approximately $8 billion dollars) to begin upgrading the existing segments around Los Angeles, Sacramento, the San Francisco Bay Area, and Madera to Bakersfield, the full project has been estimated to require at least $68 billion dollars to construct, and the bulk of that funding has not yet been identified (California High Speed Rail Peer Review Group 2012). According to the California High Speed Rail Peer Review Group (2012), significant planning, managerial, and financial hurdles remain in building this project. Further, all of the proposed programmatic alignments follow SR 58, outside of the Covered Lands, and no specific alternative analyses, biological surveys, or other environmental studies have been conducted for the Bakersfield-Palmdale segment, the segment that would occur in the vicinity of Tejon Ranch. As a result, a meaningful evaluation of the high speed rail project and its potential effects on the Covered Species in the TU MSHCP is not possible and would be considered speculative. Therefore, the Service

has reaffirmed that this project is not adequately defined to be evaluated in this EIS as a reasonably foreseeable action.

Regarding the Desert Renewable Energy Conservation Plan, as of September 2012, only preliminary framework and planning documents have been released for public review. As a result, a meaningful evaluation of the covered activities under that plan and their potential effects on the Covered Species in the TU MSHCP is not possible and would be considered speculative. For the purposes of the cumulative effects analysis in the EIS, the Desert Renewable Energy Conservation Plan is not considered a reasonably foreseeable action.

With respect to the analysis of wind projects in Kern County, Section 4.1.7, Cumulative Effects, in the Supplemental Draft EIS, broadly considered the effects of 16 different wind energy projects in the Tehachapi Wind Resource Area, noting that four of the projects had been approved. Since publication of the Supplemental Draft EIS, the Kern County Board of Supervisors referred the Kern County Wind Resource Area maps back to Kern County planning staff for further refinement. A revised map, depicting approved and proposed wind energy projects in Eastern Kern County, which approximates the previous scope of the Tehachapi Wind Resource Area considered in the Supplemental Draft EIS, has been made available to the public on the County's website (Kern County 2012). This map and associated summary table indicate that, as of December 12, 2011, 12 wind projects had been approved by the County. Table N3-1 provides a summary of the latest data provided by Kern County on wind resource projects in eastern Kern County.

Table N3-1. Approved and Proposed Wind Energy Projects in Eastern Kern County

Project Name	Applicant	Acreage	MWs	Kern County Application Status
Approved Projects				
Alta	Terra-Gen Power, LLC	9,175	800	Approved (2010)
Alta Addendum II	Terra-Gen Power LLC	4,610	330	Approved (2010)
Alta Infill II	Terra-Gen Power, LLC	5,185	530	Approved (2011)
Catalina	enXco	7,440	200	Approved (2011)
Jawbone	Phil Rudnick	640	39	Approved (2011)
Morgan Hills	Terra-Gen Power, LLC	3,604	230	Approved (2011)
North Sky River	NextEra Energy Resources	12,781	300	Approved (2011)
Pacific Wind	enXco	8,300	151	Approved (2010)
PdV	Manzana Energy	5,820	300	Approved (2008)
Windstar	Western Wind Energy	1,007	65	Approved (2009)
	Coram Energy Group	70	3	Approved (2010)
	Coram Energy Group	60	3	Approved (2010)
Proposed Projects				
Avalon	enXco	10,000	255	Pending. Application complete July 13, 2010.
Alta East	Terra-Gen Power, LLC	3,600	300	Pending. Application complete August 30, 2010.
Rising Tree	Horizon Wind Energy	4,019	350	Pending. Application complete July 16, 2010.
Source: Kern County 2012				

Despite these revisions, the Service believes the analysis of cumulative effects on the Covered Species resulting from the combined effect of the proposed action and wind resource projects in Kern County is still accurate. Section 4.1.7.2, Wildlife and Plant Species, in the Supplemental Draft EIS, discloses the following cumulative effects on the Covered Species as a result of wind resources projects, with minor clarifications provided as underlined text:

- Regarding the California condor, the Supplemental Draft EIS states that wind energy projects would be located in areas considered suitable for condor foraging or general flyover movements, but would not be anticipated to substantially affect condors' ability to find food in the cumulative effects analysis area given the ongoing availability of open space and food resources in public and private lands within the historical range of condor. With respect to collisions, the EIS states that wind farms can pose a threat to condors as rotating blades can strike a condor in flight, although there has been no evidence of condors colliding with a wind turbine to date. Avoidance and mitigation measures associated with applicable Federal, state, and local processes would be required for operation of these farms, and would reduce adverse effects from collisions.
- Regarding the American peregrine falcon, bald eagle, golden eagle, and white-tailed kite, the Supplemental Draft EIS states that these species may be directly affected by wind projects if they are injured or killed by spinning turbine blades. While avoidance and mitigation measures are required for these projects through applicable Federal, state, and local approval processes, whether full avoidance can be achieved is unknown. Wind projects would not be expected to result in a substantial loss of foraging habitat for these species, however, because of the small footprint of wind turbines on the landscape.
- Regarding the burrowing owl, the Supplemental Draft EIS states that because of their use of ground burrows as nest sites, the construction and installation of wind turbines could affect existing active owl burrows. Once active, spinning turbine blades could also directly affect owls that may be flying in the same areas. However, potential effects on either nest burrows or individual owls would depend on the habitat in which the turbines are sited. Avoidance and minimization measures for burrowing owls have been identified in the CEQA documents for several wind projects, and would be expected to reduce project-specific effects on this species.

In addition to acknowledging the potential impacts on these species in this EIS, it is important to note that California condor and bald eagle are protected under the California Endangered Species Act (CESA), and that all of these species are subject to California's fully protected species statute, which does not permit state "take." In addition, the requirements of the Migratory Bird Treaty Act (MBTA), which generally prohibits Federal take of migratory birds without authorization from the Service, would apply to each of the five species, and an eagle permit, in accordance with the Bald and Golden Eagle Protection Act (BGEPA), would be required for projects that may affect bald or golden eagles. Avoidance, minimization, and mitigation measures prescribed under these various statutes would further reduce cumulative effects on these species from wind projects.

The "rule of reason" test determines whether the discussion of cumulative effects is reasonably thorough and would allow a decision maker to make an informed decision. The Service believes the consideration of the effects of wind resource projects in Kern County in the Supplemental Draft EIS is thorough enough to assess the potential cumulative effects of their proposed action—issuance of an ITP. The direct and indirect effects of the proposed action on the Covered Species, along with the cumulative effects of other reasonably foreseeable, non-federal activities within the action area of the TU MSHCP on the Covered Species, will be further evaluated in the intra-Service Biological Opinion prepared by the Service.

CENTER *for* BIOLOGICAL DIVERSITY *Because life is good.*

protecting and restoring natural ecosystems and imperiled species through science, education, policy, and environmental law

Via Electronic Mail and USPS

May 3, 2012

Roger Root, Assistant Field Supervisor,
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RE: **TU MSHCP Comments on Draft Supplemental EIS and HCP**

Dear Assistant Field Supervisor Root,

The Center for Biological Diversity is pleased to be able to offer comments on the Tehachapi Uplands Multiple Species Habitat Conservation Plan (Draft HCP) and its associated Supplemental Draft Environmental Impact Statement (SEIS). The Center is a nonprofit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 320,000 members and supporters, including members interested in the California condor and some presently and historically active with the condor reintroduction program conducted by the Fish and Wildlife Service (FWS). Our members, staff and supporters are also interested in strong conservation for the suite of other rare species that occur on Tejon Ranch lands and are proposed as covered species in the Draft HCP.

The Center appreciates the effort made by FWS in the SEIS and Draft HCP and appreciates the opportunity to offer additional comments. In general, however, we are concerned and disappointed that although some of the details of the analysis have been updated, the conclusions and results of the previous documents have not. The fact is that the previous iterations of the EIS and HCP were of extremely poor quality, repeatedly utilizing flawed methodologies, inaccurate assumptions, and poor data to rubber-stamp an economically- and politically-powerful landowner's desires and plans. The SEIS and updated Draft HCP appear at first to be improvements on the earlier drafts, but a close inspection reveals significant deficiencies that undermine the documents' conclusions. Sadly, these conclusions are again apparently result-driven, with the authors seemingly working backwards from the desired result to craft a document in support. Regardless of the apparent vigor of the analysis, it has been all for naught, for the sanctity of Tejon Ranch's development plans has yet again not been disturbed and the grave impacts of the project again given the green light.

N-3-1 It is not clear if by rewriting the EIS and the HCP the earlier comments are meant to now be discarded or disregarded; but as the vast majority of the critical comments offered on the earlier drafts, including those by the Center, other environmental groups, and by several important condor scientists (e.g., Clendenen et al. and Palmer) remain relevant, they are all hereby incorporated by reference and their concerns, particularly with the impacts to be caused by the Tejon Mountain Village project (and thus by the approval of the HCP) raised here again. This letter will not endeavor to repeat every concern raised earlier, but rather will supplement those concerns with some specific concerns with the revised documents.

I. California Condor

Condor Critical Habitat:

N-3-2 The SEIS and Draft HCP both repeatedly observe that designated critical habitat is not a wildlife refuge or preserve designation, and that development is not automatically precluded in critical habitat. MR1B-15. Although technically accurate, rather than providing helpful information to the reader these statements instead serve to confuse the issue concerning the development of critical habitat on Tejon Ranch. The vast majority, if not all, of the earlier comments on this issue never claimed that the designation of critical habitat necessarily prevented all forms of development. Rather, what was expressed was a concern that *this type* of development, of houses, commercial spaces, golf courses and the like, is incompatible with the designation of critical habitat for the condor. The land is certainly not a preserve (despite many wishes that it were), and the law permits Tejon Ranch to use the land in many ways that are not incompatible with the designation of critical habitat for the condor—ranching and hunting being among them. But a resort development is not one of those compatible uses. Indeed, FWS admits this, stating that "urban and suburban development generally adversely affect condor conservation." MR1B-16.

N-3-3 If urban and suburban development generally adversely affects condor conservation, how can Tejon Mountain Village's urban/suburban development of 14,837 acres of designated critical habitat not be considered "destruction or adverse modification" of critical habitat within the meaning of the law? According to comments by condor scientists, this development "will appreciably diminish the capability of the critical habitat to satisfy essential requirements of the species" including foraging.[1] Based on the premise that because the project is not destroying *all* of the designated critical habitat for the species and that the remaining critical habitat for the species will continue to perform some of its function and conservation role for the species, the destruction of *these specific acres* of critical habitat is not considered destruction or adverse modification at all. This is a cramped and disingenuous reading of both the spirit and letter of the ESA, improperly avoiding the harsh reality that the Tejon Mountain Village project will

N-3-4

N-3-5

N-3-4 cont. [1] Quoting Joint Endangered Species Consultation Handbook (1998) at 4-34. "Appreciably diminish the value" is defined as "to considerably reduce the capability of designated or proposed critical habitat to satisfy requirements essential to both the survival and recovery of a listed species." In light of *Gifford Pinchot Task Force v. FWS*, 378 F.3d 1059 (9th Cir. 2004), the last clause must be read as "essential to either the survival or recovery of a listed species."

N-3-5 cont. destroy and adversely modify designated critical habitat and therefore the HCP that permits it cannot be approved.

N-3-6 This interpretation of the ESA improperly confers no special status on designated critical habitat, so long as any single act of destruction of critical habitat is limited just enough so as to leave at least some critical habitat that still performs its critical habitat function. The inevitable consequence would be "death-by-a-thousand-cuts" of designated critical habitat; each instance of destruction, of 10% here and 10% there, would likely never individually be enough destruction to meet the destruction or adverse modification standard as interpreted by FWS. Such an interpretation guts the law by fiat.

N-3-7 By determining that it is acceptable in this instance to destroy critical habitat (since remaining critical habitat will supposedly continue to perform its function and since critical habitat overall for the species will supposedly continue to perform its function), FWS has effectively and improperly de-designated this specific critical habitat.[2] Under the ESA, de-designation, accomplished by formal rulemaking and legitimate notice-and-comment, is the only mechanism available to authorize an action that would have the effect of destroying and/or adversely modifying critical habitat (apart from the extraordinary grant of an exemption through the Endangered Species Committee process).

N-3-9 According to the SEIS and Draft HCP, the Tejon Critical Habitat Unit totals 134,871 acres, of which 95,068 acres are within the Covered Lands and 19,091 acres are within the TMV Planning Area. Of this, 14,837 acres will be destroyed by the TMV development project, or 11% of the Tejon Critical Habitat Unit, 15.6% of the critical habitat within the Covered Lands, and 77.7% of the critical habitat within the TMV planning area. Draft HCP p. 4-54. These numbers stand in stark contrast to the conclusion widely repeated in the earlier draft HCP that "96% of the critical habitat unit on Tejon Ranch" would be preserved; a conclusion demonstrably false and yet confusingly repeated (but not directly contradicted) in the latest iteration of the Draft HCP. Draft HCP p. 4-65.

N-3-10 Further confusing the issue is the SEIS's and Draft HCP's use of "suitable foraging habitat" throughout their analyses. Although the new drafts are substantial improvements over their earlier drafts in many ways, an essential criticism of the earlier drafts remains valid: "suitable" condor foraging habitat is improperly constrained. The SEIS acknowledges an absence of "information in the published literature, or elsewhere, that suggests a specific amount of canopy cover that would restrict condors from foraging and feeding," and acknowledges that condors are "able to locate carrion and feed under the canopy of trees." MR1E-4. The fact that condors feed under tree cover, and in fact have been observed feeding under tree cover in the

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N-3-8 [2] The Center is aware that a destruction/adverse modification assessment has not yet formally taken place, as it will be part of the Biological Opinion issued by FWS as part of its Section 7 consultation. But this is almost certainly a distinction in time only, as FWS alone is making all of the mandated assessments and consultations under NEPA, Section 10, and Section 7 and the SEIS was accordingly prepared by FWS. In the absence of an opportunity to comment on the impending Biological Opinion, these comments should be considered applicable to all of FWS's assessments and consultations.

N-3-10 cont.

Tejon Mountain Village site, was specifically raised in the joint letter by a number of condor scientists commenting on the earlier drafts (Clendenen, et al., 2009). And yet the SEIS continues to unreasonably exclude wooded vegetation communities (e.g., oak woodland, conifer, scrub, chaparral) from its definition of "suitable foraging habitat" for the condor. This unsupportable conclusion undermines the SEIS's and Draft HCP's discussions of the Project's impacts on condor foraging habitat, and because this "suitable foraging habitat" concept is interspersed throughout the SEIS's and Draft HCP's analyses of the Project's impacts to critical habitat, undermines those as well.

N-3-11

Based on the unsupportable conclusions regarding foraging habitat, the only sensible and justifiable decision by FWS is to accept the "No Project" alternative and reject the others. Given that FWS appears committed to permitting some amount of the TMV development to go forward,

N-3-12

it should at the minimum prevent the destruction of critical habitat and select the "CCH Avoidance MSHCP Alternative."

Communications Towers:

The SEIS and Draft HCP authorize two communications towers, one approximately 68 feet in height and one approximately 65 feet in height, to be built on or very near ridgelines in the heart of designated condor critical habitat. Figure 4.1-2. As the SEIS acknowledges, communication and radio towers have the potential to be very harmful for condors, as well as other bird species. In an effort to ameliorate these potential impacts, the SEIS requires these two towers to be self-supporting and include anti-perching devices. While these are important features of any tower in condor habitat, for several reasons they are insufficient to adequately prevent harm and take of condors.

N-3-13

First, while two approximate locations are described in Figure 4.1-2 along with their approximate heights, the actual location, size, materials and design are not included in the SEIS or Draft HCP, as they are all to be determined later "subject to review and approval" by FWS. SEIS p. 2-28. But these are crucial facts needed prior to approval of the project. The most important facts needed to be known now are exactly where the towers will be located and exactly how high they will be, especially in relationship to the height of the neighboring tree canopy. Furthermore, the Center is not an expert in radio tower design but a quick review of commercially available communications towers indicates that there is a huge range of design and material features that affect wind tolerance, strength, attractiveness to birds (i.e., "perchability"), and visibility (i.e., avoidability).

N-3-14

The fact that FWS will review and approve these features in the future is not legally sufficient, as the lack of information in the SEIS and Draft HCP prevents a full and accurate analysis prior to project approval of the towers' potential impacts. Each of these important features needs to be disclosed and described in the SEIS, with enforceable mitigation measures in place to ensure that whenever the towers are built they perform as promised and do not harm or cause take of condors. Ultimately, there is no excuse for this information not being presented in the SEIS or Draft HCP; all of the information related to these towers, including their location and design features, should be easily discernable at the present time.

N-3-15 Second, the approximate locations indicated in the SEIS are known to be extremely windy locations, especially if they are at or near the tops of ridgelines, a fact that will greatly restrict the materials and design decisions and could even require towers in the 65-70 foot height range to be guyed out with wires, use materials that make detection by condors difficult, or designed in a way that encourages perching. The SEIS needs to discuss these important considerations in light of each of their impacts on condors; assuming that they are solvable and requiring only later review and approval by FWS is not sufficient.

N-3-16 Finally, although the SEIS discloses approximate locations for two towers, the SEIS and Draft HCP actually authorize more, provided that additional towers are similarly reviewed and approved by FWS. The placement of any future towers needs just as much forethought and analysis as the placement of the two expected towers; it is not sufficient for the SEIS to defer the analysis of the impacts of such towers until a later date.

N-3-17 Given that the placement of additional towers appears to be, at this time, purely a contingency and not something that is planned, such a future action should require amendment of the HCP and further environmental review when details of the additional towers become known.

N-3-18 Ultimately, communications towers placed in the heart of condor critical habitat is potentially an extremely significant impact, being (along with normally-associated power lines) one of the most significant causes of condor mortality and harm to date.

II. HCP Fails to Address A Comprehensive Framework of Goals and Objectives for Conservation Planning

N-3-19 Basic tenets of habitat conservation planning incorporate not just species level planning, as the approach in the Draft HCP, but additional levels of ecological integrity. The Draft HCP lacks any recognition of planning at the Landscape –Regional Level and the Community and Ecosystem Level planning goals and objectives[3]. Goals and objectives need to be developed for these levels. These levels of conservation planning become particularly important over the long-term as a framework for adaptive management. Examples of goals and objectives issues that need to be addressed at the Landscape- Regional Level include:

- Identification of the structural measure of patch characteristics, including:
    - Patch size frequency distribution for each community type and seral stage and across all size stages/types
    - Size frequency distribution of each type (minus edges)
    - Total amount of each community/type
    - Total amount of patch perimeter and edge zone (including patch: perimeter area ratios,
    - Patch shape indices

- Identification of the structural measures of patch dispersion, including:
    - Patch density
    - Fragmentation and connectivity indices
    - Interpatch distances

[3] Noss et al. 1997

    - Juxtaposition measures (i.e. percentage of area within a defined distance from patch occupied by different habitat types, length of patch border adjacent to different habitat types;
    - Structural contrast

- Identification of access, flow and disturbance indicators, including:
    - Frequency, return interval or rotational period of fire & other natural or anthropogenic disturbances
    - Road density for different classes of roads & all roads combined
    - Miles of roads constructed, reconstructed, improved and closed each decade
    - Amount of roads restored through effective closures and revegetation

N-3-20 At the Community-Ecosystem Level, we could not find a vegetation map identified at the alliance level of vegetation mapping in the Draft HCP. Absent an evaluation of the plant communities (habitat types) present on site, many essential issues are also therefore absent in the Draft HCP. Key issues that must have goals and objectives developed for them include, but are not limited to:

- Structural measures, including:
    - Frequency distribution of age classes for each community
    - Ratio of area of natural habitat to anthropogenically-disturbed habitat
    - Abundance/density of key structural features (ex. Snags or trees in riparian areas)
    - Spatial dispersion of structural features/patches
    - Canopy density and size & dispersion (example - oak woodlands)

- Compositional measures, including:
    - Identity, relative abundance, frequency & richness of species/guilds in various habitats
    - Ratio of exotic species to native in community

- Functional measures, including:
    - Frequency, return interval or rotational period of fire & other natural or anthropogenic disturbances
    - Areal extent of each disturbance event
    - Intensity/severity of disturbance events
    - Seasonality/periodicity of disturbance
    - Predictability or variability of disturbance
    - Invasion rates of weedy/opportunistic species
    - Human intrusion rates/intensities

N-3-21 While the Draft HCP does identify goals and objectives at the Species Level, it still fails to actually identify numerous key biological issues including:

- Measures of demographic integrity, including:
    - Abundance, density or cover
    - Fertility or recruitment rate

- Survivorship or mortality rate
- Sex ration and age distribution
- Health parameters (fecundity, growth rate [individual], body mass, stress hormone levels)
- Population growth and fluctuation trends
- Distribution and dispersion of subpopulations or individual home ranges across the region (for some species this was included in vague unquantified ways)
- Trends in habitat components (varies by species)
- Trends in threats to species (depends on life history and sensitivity of species)

It is only with comprehensive goals and objectives can conservation at the landscape, community and species level can truly be assured.

III. HCP Fails to Include Recovery Standards for Species

N-3-22 The Draft HCP needs to consider condor recovery goals and the condor recovery plan and include those metrics into the HCP. For all covered species that have recovery plans, the
N-3-23 HCP needs to discuss their individual recovery goals and discuss how the plan achieves or promotes these goals.

IV. HCP Modeling and Surveys Are Inadequate

The Draft HCP relies heavily on habitat modeling to estimate individual species habitat and subsequently to determine the impact of the proposed action. The proposed permit term for the HCP is for 50 years, and the HCP additionally provides "no surprises" assurances, essentially locking in the permittee's conservation commitments for the duration of the permit. The species habitat models do not appear to incorporate climate change scenarios. It is inevitable that during
N-3-24 the proposed permit timeline of 50 years that climate change will affect the distribution and densities of covered species in the project area. Modeling for climate change based on documented species movements have been done for a number species[4], and therefore is feasible and must be incorporated into the species habitat modeling efforts to accurately evaluate the impact to species.

N-3-25 The evaluation of occurrences and occupied habitat for the covered species is based on a small subset of studies and appears to be inconsistently applied. For example, a single year of protocol level surveys were done in the proposed project area for willow flycatchers "in four survey areas" (Draft HCP at 5-81), yet it is unclear where these four "survey areas" were, and
N-3-26 ultimately, they were observed at five locations. Then in 2011, a much smaller area – the Beartrap Turnout Improvement Project study area was surveyed for willow flycatchers (Draft HCP at 5-81). It is unclear if protocol level surveys were implemented. It is unclear if all the modeled habitat was surveyed by protocol surveys in 2007. It is unclear if the Beartrap Turnout Improvement Project study area is a subset of the four "survey areas" that had been previously
N-3-25 cont. surveyed in 2007. Single-season surveys are a "snapshot in time" of resource use by rare species,

[4] http://birds.audubon.org/sites/default/files/documents/birds_and_climate_report.pdf http://data.prbo.org/apps/bssc/

N-3-25 cont. and to use them to determine impacts for the next 50 years while the permittee is afforded "no surprises" assurances is biologically untenable..

N-3-27 The potential inadequacy in the surveys used to document species on the project site leads to the problematic issue of the Draft HCP's estimates of species "take" that can not be determined. For example, the Tehachapi slender salamander's analysis states that "The expected loss of Tehachapi slender salamander would be a small but indeterminable number." (Draft HCP at 6-6). Indeed four of the covered species have an indeterminable number of individuals that will be impacted by the covered activities. Adequate surveys would have improved and still can improve the ability to estimate the number of individuals likely to be affected by the covered activities.

N-3-28 The inadequacy of surveys is also apparent for rare plant species that are proposed as covered species. For example, the perennial round-leaved filaree (*Erodium macrophyllum*) population documented in the "covered lands" is 11 occurrences totaling between 430-730 – a magnitude of difference in the number of individuals. Here too, adequate surveys would have refined the number of individuals in each occurrence. In addition, the conservation scenario re-enforces the inadequacy of the surveys by specifically providing a mechanism in one of the conservation scenarios to incorporate "any new occurrence(s)" (Draft HCP at 6-60). Adequate surveys for this very rare plant in southern California would have minimized the potential for new occurrences to be found in the future.

N-3-29 The "covered lands" still appear to be arbitrarily defined to capitalize on existing conservation investments (see Center for Biological Diversity's comments dated 7-7-09). Much of the "covered lands" are in fact already set aside as conserved areas as part of an agreement between the Tejon Ranch Company and various environmental groups. Including these lands as "covered lands" and as part of the analysis of impacts from the "covered activities", obfuscates the localized impacts from the proposed project level activities.

N-3-30 Additionally, despite the fact that much of the "covered lands" have modeled habitat for covered species, it is unclear if these already conserved lands have had surveys on them to verify if, in fact, the species are present. It appears that actual surveys of modeled habitat have been implemented on a subset of the covered lands and mostly on lands that would be affected by the "covered activities". This approach then assumes that the unsurveyed modeled habitat lands are occupied habitat, when in fact they may not be. Therefore the presumption that unsurveyed lands provide occupied habitat for "covered species" so that the impact of the covered activities will be negligent (as is presumed for ALL of the "covered species") is seriously flawed. The HCP needs to be based on adequately implemented surveys of all modeled habitat in order to evaluate individual species occurrences on the impact areas and the already conserved lands.

V. Species Specific Conservation Is Inadequate

In addition to the issues identified above, there are numerous species-specific biological goals and objectives that suggest a thorough review of species needs are not being adequately considered.

N-3-31 While we support the conservation of appropriately modeled habitat, most species lack objectives for maintaining documented occurrences of these rare species. The HCP could

N-3-31 cont. conserve all the modeled habitat and still conceivably allow for extirpation of all local populations – certainly not achieving goals for conservation. Therefore goals and objectives must include conservation of existing populations for each species, where species have been identified on the project site.

N-3-32 Because rodenticides are a direct threat to numerous "covered species", the Draft HCP still fails to analyze or incorporate a ban on all rodenticide use on the "covered lands".

N-3-33 A number of the species' objectives include "avoid and minimize the introduction of exotic plant and animal species, such as Argentine ant (*Linepithema humile*)". Please explain how this would actually be successfully implemented.

Tehachapi Slender Salamander

N-3-34 Objective 3.1 may not provide conservation to the Tehachapi slender salamander because as the species description identifies, it does not actually live in riparian/wetland areas, but instead in rock talus and litter matrix typical of Tehachapi slender salamander microhabitat. (Draft HCP at 5-11).

N-3-35 The Draft HCP fails to provide documentation that Objective 4.1 (The project biologist will make reasonable efforts to capture and relocate any observed individuals to suitable habitat (e.g., on north-facing slopes containing talus) that is the closest distance to the disturbance area from where the individuals were removed) actually will benefit the Tehachapi slender salamander over the long-term. Please see our comments on translocation issues from our 7-7-09 letter.

American Peregrine Falcon

N-3-36 Inconsistencies occur between the protection zones for peregrine falcon nests between the Objective 4.2 (0.25 miles) and Objective 6.2 (1000 feet). Please explain. Please see our comments on the inadequacies of small buffers and related issues from our 7-7-09 letter.

Bald Eagle

N-3-37 The proposal of the elimination of 58% of modeled wintering habitat for bald eagle is still excessive, especially in light of the limited amount of wintering habitat on the "covered lands" and the fact that the wintering bald eagle population increased from 1 in 2007 to 6 eagles in 2008, including juveniles (Draft HCP at 5-48). Bald eagle recovery is a proven success of the Endangered Species Act, however, the population must remain self-sustaining and therefore additional wintering habitat for this species needs to be assured through this habitat conservation plan. These same resources will also be used by other "covered species" such as tricolored blackbirds (see comments below).

N-3-38

Golden Eagle

N-3-39 While Goal 4 states that "All active golden eagle nest sites will be conserved", golden eagles typically have numerous nests within a single breeding territory but may not make use of them every

N-3-39 cont. year. In order to assure that over the long term golden eagle territories are protected, all nests will need to be conserved.

Tricolored Blackbird

N-3-40 As with the bald eagle, the elimination of 32% of the primary breeding habitat for tricolored blackbird is still excessive, especially in light of the limited amount of wintering habitat on the "covered lands".

Round-leafed Filaree

N-3-41 Neither of the two conservation scenarios in Objective 2.1 are adequate to protect the occurrences of the round-leaved filaree, based on the fact that at its most conservative the scenario a. would conserve a maximum of only 58% of this very rare plant, particularly here in southern California.

VI. Key Plans Need to Be Included in the Draft HCP

N-3-42 Many of the conservation activities rely on plans for "covered activities". In order for the public and decision makers to be able to evaluate the efficacy of these plans, they need to be provided as part of the public review process for the Draft HCP. The plans that are referenced in the Draft HCP, but are not available for review include:

- Grazing Plan (Draft HCP at 7-91)
- Integrated Pest Management Plan (Draft HCP at 7-92)
- Public Access Plan (Draft HCP at 7-86)

VII. Cumulative Impact Analysis is Inadequate

N-3-43 The cumulative impacts analysis especially on avian species is inadequate because it only generalizes impacts from the sixteen wind farm projects that are currently proposed in Kern County. For example, the Draft EIS (at 4.1-130) evaluates the impact to California condors from these projects as "some level of effect on condors is possible".

N-3-44 The cumulative impact analysis also fails to include the Desert Renewable Energy Conservation Plan[5], an HCP/NCCP that is being developed for the desert regions of California

N-3-45 including lands directly adjacent to the Tejon Ranch. It also fails to include the proposed High Speed Rail project[6].

VIII. Conclusion

While improvements have been made in the Draft HCP and SEIS and proposed IA from the previous drafts, they remain fatally flawed and still violate the ESA, NEPA, and other applicable statutes and regulations. There are plenty of viable and economically fruitful uses of

[5] www.drecp.org /
[6] www.cahighspeedrail.ca.gov /

Tejon Ranch that would actually serve to conserve the many endangered, threatened, and sensitive species that are found on the Ranch. The development of Tejon Mountain Village, as proposed, is still not one.

Thank you for your time and consideration in reviewing these comments.

Sincerely,

/s/
Adam Keats, Senior Counsel and Urban Wildlands Program Director
Ileene Anderson, Staff Biologist
Center for Biological Diversity

Reference:

Noss, R.F., M. A. O'Connell and D.D. Murphy. 1997. The Science of Conservation Planning: Habitat Conservation under the Endangered Species Act. Island Press, Washington, DC. Pgs. 246.

Response to Comment S-1-1

The U.S. Fish and Wildlife Service (Service) acknowledges there are state-listed species, including fully protected species, analyzed in the Supplemental Draft Environmental Impact Statement (EIS) and Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) (see list of Covered Species and their legal designations in Table 1-1, Volume 1 of the Supplemental Draft EIS). The Service further acknowledges that the California Department of Fish and Game (CDFG) has jurisdiction to implement the California Endangered Species Act (CESA) and other provisions of the California Fish and Game Code (FGC). In general, it is the responsibility of an applicant to comply with state law, including CESA and fully protected species statutes provided in the FGC. The Service is not responsible for interpreting or administering state laws, and the issuance of a Federal incidental take permit (ITP) does not insulate an applicant from the requirements of state law.

The Service appreciates any additional opportunity to collaborate with CDFG and ensure that both ESA and CESA permitting requirements are met.

Response to Comments S-1-2 and S-1-3

In response to the comment, the Service has removed the reference in Chapter 6, List of Agencies and Organizations Consulted, that CDFG was consulted during preparation of the Supplemental Draft EIS. This change is reflected in the errata sheet provided in Chapter 2 of the Final EIS.

The Notice of Availability (NOA) of the Supplemental Draft EIS and TU MSHCP was published in the Federal Register (FR) on February 3, 2012 (5564 FR 7.23). An electronic copy of the Supplemental Draft EIS and TU MSHCP were provided on the Ventura Fish and Wildlife Office's website (www.fws.gov/ventura), and hard copies were available at both the Ventura Fish and Wildlife Office and the Kern County Library in Frazier Park, California. Copies of all documents were available through the 90-day public comment period which closed on May 3, 2012.

Response to Comment S-1-4

The *Tejon Mountain Village Environmental Impact Report* (TMV EIR) was a project-specific analysis and addressed only the Tejon Mountain Village Project (TMV Project) in the Tejon Mountain Village (TMV) Specific Plan Area (26,417 acres). The TU MSHCP and the associated analysis provided in the Supplemental Draft EIS considers a long-term HCP that encompasses a larger area (141,866 acres) and additional development envelopes beyond the TMV Project, including additional possible future development in West of Freeway, Lebec/Existing Headquarters, and Oso Canyon. As a result, the acreage of habitat loss associated with the TMV Project, as provided in the TMV EIR, is representative of only one of the development-related Covered Activities considered in the TU MSHCP. Of note, Plan-wide Activities, which are generally representative of continued uses on the Covered Lands, are also analyzed in the TU MSHCP, but no specific species habitat losses are attributed to those activities. Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, for additional information on the

differences between the proposed action considered in this EIS and the TMV Project considered in the TMV EIR (Kern County 2009).

Response to Comment S-1-5

Please refer to Response to Comment S-1-4. The TU MSHCP and Supplemental Draft EIS considered a Development Envelope of 8,817 acres to assess potential effects on biological resources, which included the Development Envelopes associated with TMV Planning Area (including the TMV Specific Plan Area, West of Freeway, and Oso Canyon) and the Lebec/Existing Headquarters Area. These envelopes are slightly larger than the development envelope (7,860 acres) used by Kern County to assess the effects of the TMV Project, which was limited to the TMV Specific Plan Area. The additional acres of modeled habitat for Tehachapi slender salamander lost under the TU MSHCP are attributable to these different development envelopes. Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, for additional information on the differences between the proposed action considered in this EIS and the TMV Project considered in the TMV EIR (Kern County 2009).

For clarification, the TU MSHCP would result in the loss of 143 acres (4%) of modeled habitat for Tehachapi slender salamander in the Covered Lands (see Table 4.1-3 in Volume I of the Supplemental Draft EIS). As provided in Appendix D of the TU MSHCP, modeled habitat for Tehachapi slender salamander includes broad-leafed upland tree-dominated communities, coniferous upland forest and woodland, scrub, chaparral, and scrub oak communities with a canopy greater than 40% that also meets the following criteria:

- within 150 feet on either side of a blue line stream,
- on north-facing slopes, and
- at elevations up to 5,000 feet.

The scrub and chaparral communities are included in the model because they may include yucca.

Response to Comment S-1-6

Please refer to Response to Comment S-1-5 regarding the differing Development Envelopes considered under the TU MSHCP and TMV Project. The additional acres of modeled habitat for willow flycatcher, least Bell's vireo, and western yellow-billed cuckoo lost under the TU MSHCP are attributable to these different development envelopes. Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, for additional information on the differences between the proposed action considered in this EIS and the TMV Project considered in the TMV EIR (Kern County 2009).

For clarification, the TU MSHCP would result in the loss of 8 acres (1%) of modeled breeding and foraging habitat for willow flycatcher, least Bell's vireo, and western yellow-billed cuckoo in the Covered Lands (see Table 4.1-3 in Volume I of the Supplemental Draft EIS).

Response to Comment S-1-7

Please refer to Response to Comments S-1-5 and S-1-6 for an explanation of the difference in impacts on suitable habitat from development considered in the TU MSHCP, as compared to the TMV EIR. As noted in Response to Comment S-1-1, it is the responsibility of the applicant to comply

with state law, including CESA and fully protected species statutes provided in the FGC. The Service is not responsible for interpreting or administering state laws and the issuance of a Federal ITP does not insulate an applicant from the requirements of state law.

Response to Comment S-1-8

Graphics illustrating the location and extent of modeled habitat for each of the TU MSHCP Other Covered Species are provided as Figure 3.1-9 through 3.1-34 in Section 3.1, Biological Resources, in Volume I of the Supplemental Draft EIS. Table 4.1-3 in Section 4.1, Biological Resources, in Volume I of the Supplemental Draft EIS, indicates the acres of modeled habitat that would be lost and conserved in the Covered Lands under the Proposed TU MSHCP Alternative. In preparing the Supplemental Draft EIS, the Service was guided by CEQ guidance that instructs agencies to prepare concise, meaningful documents (Council on Environmental Quality 2012). Including maps showing where these acreages of impacts would occur in the Covered Lands would have repeated information already provided in the Supplemental Draft EIS, and would have resulted in the addition of approximately 104 new figures (i.e., 26 Other Covered Species multiplied by four action alternatives). While the comparison of the provided maps and tables in the EIS may require additional review by a reader, the Service believes that the potential impacts of the proposed action and their respective locations have been fully disclosed.

Response to Comment S-1-9

As described in the Supplemental Draft EIS, "take" of condors, as contemplated under the TU MSHCP, would be in the form of habituation, that is, the circumstances where a condor becomes attracted to development or other human activity and becomes unresponsive to measures incorporated into the plan to deter such condor/human interaction such that its "normal behavioral patterns are disrupted", thereby creating a "likelihood of injury" to an individual bird.

The process for determining the amount of take anticipated to occur over the permit term evolved over the course of discussions with Tejon Ranch, spanning approximately 12 years. In general, the number was derived from the Service's experience with previous undesirable interactions between humans and condors, and included anticipated increases in the free-flying condor population over the duration of the proposed 50-year ITP term.

Response to Comment S-1-10

The anticipated take of four condors is not related to the number of condors known to use the Covered Lands, nor is it related to the number of condors that were captive-reared. Substantially more than four condors regularly use the Covered Lands; often nearly all of the southern California subpopulation uses Tejon Ranch at a given time. As discussed in Response to Comment S-1-9, the Service determined that four is a reasonable number of condors that could become habituated and require temporary or permanent removal from the wild over the proposed 50-year ITP.

The Service is not aware of evidence to suggest that captive-reared condors are more likely to become habituated than parent-reared condors. Captive-reared, parent-reared, and wild-fledged condors have engaged in activity with the potential to result in habituation. In the earlier years of the reintroduction program, when there were no adult birds in the wild, groups of juvenile condors exhibited significant behavioral problems, including habituation to humans and human structures. These behaviors, although not absent from the current groups of condors in the wild, have generally

diminished. The Service attributes the general change in condor behavior to the varying age classes of condors in the wild, particularly the existence of breeding adults. Recently released juveniles seem more likely to engage in behaviors leading to habituation than adults. However, variables such as food reward in association with humans (positive reinforcement) or use of effective hazing (negative reinforcement) has a profound impact on whether or not a condor becomes habituated (and needs to be removed from the wild).

Response to Comment S-1-11

The removal of up to four condors from the wild over 50 years is not anticipated to negatively affect the overall recovery strategy for the California condor. Please refer to Master Response 1C, California Condor Take and Habituation, in Volume II of the Supplemental Draft EIS, for a discussion of the potential effects of habituation on the condor population.

Response to Comment S-1-12

As stated in Response to Comment S-1-10, captive-reared condors have not proven to be more prone to habitation than other condors. At this time, the continuation of the captive breeding program is necessary to increase the wild condor populations because the mortality rate in the wild is exceeding the natural population growth rate. Releases of captive-reared condors are a regular part of the recovery program and, mainly because of the increase of adult condors in the wild that can serve as mentors to young birds, examples of condors removed from the wild as a result of habituation are no longer common.

Additionally, condors removed from the wild are not necessary for captive breeding. All condor founder genes are represented in all wild and captive populations. Four habituated condors could be removed temporarily from the wild and released at a later date, or they could exhibit such severely damaging behavior that they would be removed permanently. It is not possible, however, to determine today whether or not a condor removed from the wild in the future would be fit for subsequent release.

Response to Comment S-1-13

The Service considers the potential for the permanent removal of a condor from the wild as a result of habituation to be low. Permanent removal of a condor from the wild would occur only in the most extreme circumstances when aversion training to eliminate negative behaviors is not successful. Relatively few condors have needed to be permanently removed from the wild in recent years due to the increased use and effectiveness of hazing techniques in potential habituation situations, as well as the growing presence of mature adult birds in the wild that are less likely to engage in undesirable behaviors and can serve as models for juvenile birds. The TU MSHCP has numerous avoidance, minimization, and mitigation measures to reduce the potential for habituation to occur.

Nevertheless, Section 8.1, Funding of Mitigation, in the Implementing Agreement, provides that in the event the permittee receives notice from the Service that a California condor nonlethal incidental take has occurred, the permittee shall pay the estimated costs of capture, care and translocation of that condor. The objective of imposing these costs is to ensure that the applicant, Tejon Ranchcorp (TRC), remains responsible for the consequential costs related to any such action. Such costs will be guaranteed by a rolling letter of credit, as provided for in Section 9 of the TU

MSHCP. This mitigation includes all costs related to temporary treatments and any permanent care costs, if necessary.

Where a condor is permanently removed from the wild, there is no viable "replacement" in terms of condors that could be released but otherwise would not be. However, the Service has determined that take of up to four condors due to habituation over a 50-year time span is a reasonable but conservative assumption, given the expanding condor population and the Service's experience with previous undesirable interactions between humans and condors, as well as the minimization and avoidance measures proposed in the TU MSHCP. As described in Response to Comment S-1-11 is not anticipated that removing four condors from the wild over 50 years would have a substantial effect on the population, particularly if the removal is temporary.

Response to Comment S-1-14

It is not the intent of the measure providing funding for the purchase of additional global positioning system (GPS) transmitters to "offset" the take of condors as a result of habituation. Rather, and as stated in Section 4.4.3 of the TU MSHCP, this measure is intended to "contribute to the conservation and recovery of the California condor." Specifically, this measure will allow for the continuous, real-time monitoring of the location of wild, free-flying California condors in southern California so that the recovering population can be better managed to meet recovery goals. At current prices, the $150,000 that would be provided prior to the issuance of any grading permits affecting suitable condor foraging or roosting habitat (Section 4.4.3.4 of the TU MSHCP) would provide for the purchase of approximately 36 transmitters. As noted in the TU MSHCP, an additional $25,000 per year, for 10 years, would be provided to assist in transmitter operations, maintenance, and/or replacement.

Response to Comment S-1-15

All free-flying condors wear radio transmitters (many with GPS features), which allows for the tracking of foraging, roosting, and feeding locations. The Service does not currently have plans to alter this practice and will assess the feasibility and need to maintain the transmitters purchased by TRC as the end of the 10-year monitoring period nears.

Response to Comment S-1-16

As summarized in Table 2-3in Volume I of the Supplemental Draft EIS, TRC would provide funding to install additional GPS satellite tracking transmitters on condors currently not carrying such devices. These additional transmitters would be used to monitor condors known to use the Covered Lands. Similar to condors currently carrying transmitters, the Service expects these condors to use the Covered Lands, Tejon Ranch, and many other areas of the condor's range in southern California.

Response to Comment S-1-17

As noted in Response to Comment S-1-1, it is the responsibility of an applicant to comply with state law, and to ensure that any proposed mitigation is compatible with CESA permitting requirements.

In developing the EIS and TU MSHCP, the Service specifically considered how continued grazing on the ranch at levels comparable to the yearly historic average (approximately 14,500 head of cattle)

could increase grazing density and the potential for overgrazing, given that some acreage of land would be removed from grazing to allow for development activities. Section 3.4 of the TU MSHCP states that livestock grazing occurs ranch-wide on approximately 259,000 of the 270,000 acres associated with Tejon Ranch. Under the current management scenario, the number of cattle on the ranch ranges from 8,000 to 17,000, with a yearly average of 14,500 head. Section 7.2.1 of the TU MSHCP states that grazing would continue at light-to-moderate levels and that the maximum allowable stocking level would be 14,500 head of cattle. TRC determined that this historic average would represent the maximum stocking level and current condition proposed in the TU MSHCP to account for the loss of some grazing acreage to development. Specifically, development of 5,533 acres under the TU MSHCP represents a 2.1% reduction in available grazing land (259,000 acres); limiting the number of cattle allowed to graze on the ranch to 14,500 head represents an approximate 15% reduction from historical highs (17,000 head). When considering the potential loss of 11,680 acres within the Centennial Specific Plan Area (on the ranch but outside the Covered Lands) as a result of the Centennial Project, and assuming conservatively that the full plan area is grazing habitat and would be developed, the total combined loss of 17,213 acres (i.e., TU MSHCP and Centennial Project) would represent a cumulative 6.6% reduction in available grazing land in the ranch. Under these assumptions, it is not anticipated that the loss of 6.6% of available grazing land would reduce the ability for the ranch to support a grazing program with a stocking level 15% lower than historic highs.

Additionally, the TU MSHCP requires that the grazing management plan meet the Covered Species goals and objectives, which include preserving Covered Species suitable habitat. Finally, Section 7.3.2 in the TU MSHCP states:

> …principles to be incorporated in the grazing management plan include assurance that grazing continues to occur at existing or reduced levels and incorporation of grazing management techniques that have been shown to be consistent with high levels of biological diversity and robust species populations. The grazing management plan will incorporate monitoring requirements to ensure that these principles are carried out.

Therefore, the grazing management plan could allow for lower stocking levels on the Covered Lands portion of the ranch, changes in seasonal rotation and pasture management, and establishment of selective cattle exclusions, as necessary to protect and manage biological resources. As stated previously, the Service generally considers that the continued grazing of 14,500 head of cattle would not result in overgrazing (acknowledging that stocking levels may vary year to year because of rainfall or other rangeland conditions), and is appropriate to maintain currently available livestock food sources for condors. A permanent drop in this level that is substantially below the historic average would not be consistent with current practices or TRC's commitments under the TU MSHCP. This drop could also reduce the available food sources for condors and, therefore, trigger reevaluation of the permit by the Service.

Response to Comment S-1-18

As provided in Response to Comment S-1-7, it is the responsibility of the applicant to comply with state law, and to ensure that any proposed mitigation is compatible with CESA permitting requirements. In general, however, the TU MSHCP requires that the TU MSHCP Mitigation Lands be protected in perpetuity consistent with the species goals and objectives provided in the plan. In general, it is anticipated that the TU MSHCP conservation measures would result in improved habitat quality for Covered Species through practices such as fencing of riparian areas and seasonal exclusions and rotation.

To the extent that CDFG imposes additional requirements on the TU MSHCP Mitigation Lands, then the more stringent requirements would prevail, so long as any enhancement measures proposed by

CDFG are also compatible with the Federal Endangered Species Act (ESA), the ITP, and any applicable recorded conservation easement restrictions.

Response to Comment S-1-19

Comment noted. The Service appreciates any additional opportunity to collaborate with CDFG and ensure that both ESA and CESA permitting requirements are met.

Response to Comment S-1-20

The Service disagrees that management of the TU MSHCP Mitigation Lands would be deferred. The Interim Ranchwide Management Plan (RWMP) (Appendix B to the TU MSHCP), is currently in place and governs management of the TU MSHCP Mitigation Lands until the final RWMP is in place. Under the terms of the TU MSHCP, the RWMP must be reviewed and approved by the Service during the permit term to assure that the measures it contains—which could also include enhancement proposed by the Conservancy—are consistent with the ITP, the terms of the TU MSHCP, and the provisions of all recorded conservation easements over the Covered Lands. In addition, the public access plan, another component of the RWMP, must continue to be provided to the Service for review and approval even after the permit term, for as long as the Service requests, to ensure the plan is consistent with the ESA and the terms of all recorded conservation easements over the Covered Lands.

While the aspiration behind the TU MSHCP broadly is to support the recovery of the Covered Species to the greatest extent practicable, active restoration is not a requirement of the TU MSHCP. The issuance criteria for a HCP under the ESA require that the issuance of the ITP does not "appreciably reduce the likelihood of survival and recovery of the species in the wild" and that mitigation should be commensurate with the impacts (HCP Handbook:3-19–3-20). More than 90% of the Covered Lands would be conserved in Open Space under the TU MSHCP. Further, with the exception of modeled wintering habitat for bald eagle, the ratios of land that would be preserved in Open Space relative to land affected by proposed development activities are very high, ranging from 4:1 (white-tailed kite modeled foraging habitat) to 160:1 (Tehachapi buckwheat modeled habitat), with an average ratio of 42:1 and median (mid-point) ratio of 17:1. In addition, many of the conservation measures provided in the TU MSHCP are expected to result in enhanced suitable habitat. For example, implementation of the grazing management plan would likely result in enhancement of riparian and wetlands habitat and Tehachapi slender salamander habitat because exclusion fencing in riparian areas would be part of the management approach (TU MSHCP Section 7.2.1).The Service will formally evaluate the adequacy of the mitigation provided under the TU MSHCP in light of the permit issuance criteria under Section 10(a)(2)(B) of the ESA when it makes a decision on TRC's permit application.

Response to Comment S-1-21

For HCPs, the Service may only allow impacts to occur prior to the actual implementation of the mitigation if the HCP provides legal or financial assurances that the permittee will fulfill the HCP's obligations. The HCP Handbook, page 3-22, states, "Sometimes, the HCP applicant may need to conduct activities prior to the time when replacement habitats can be provided. This is acceptable so long as the HCP provides legal or financial assurances that the permittee will fulfill the HCP's obligations." The key factor is not the timing of mitigation so much as the assurance of the

mitigation. *Sierra Club v. Marsh*, 816 F.2d 1376, 1385 (9th Cir. 1987). However, the Service must take into account any additional impacts from a delay in implementing mitigation in evaluating whether an HCP will minimize and mitigate the impacts of take to the maximum extent practicable under Section (10)(a)(2)(b)(ii) of the ESA prior to reaching a permit decision.

Pursuant to the Implementing Agreement, conservation easements over the 47,871 acres of Initial Mitigation Lands will be required prior to initiation of construction of the TMV Project, and easements covering the 56,523 acres of Established Open Space within the Remaining Mitigation Lands shall be recorded in accordance with the schedule for execution and recordation of conservation easements contained in the Ranchwide Agreement, but in no event shall the recording of easements be extended beyond the permit term. Additionally, the Service has revised the Implementing Agreement to allow TRC to increase the amount of Initial TMV Planning Area Open Space land to coordinate the conservation easement with CDFG, if needed (see Chapter 2, Supplemental Draft EIS Errata, of this Final EIS). As discussed in Section 9 of the TU MSHCP, TRC will develop a tracking system to record all additions to the TU MSHCP Mitigation Lands, including placement of conservation easements on open space lands, and will provide separate, segregated financial assurance that is adequate to fund all mitigation measures related to incidental take, including the tracking and reporting requirements. The 12,229 acres of TMV Planning Area Open Space Lands within the Remaining Mitigation Lands shall be preserved in perpetuity as open space through an easement or other appropriately restricted conveyance prior to expiration of the permit term. Preservation of these areas will occur in phases concurrent with proposed development as the actual boundaries of the development area and open space are finally determined. Conservation easements ensuring the permanent conservation of 47,871 acres of Initial Mitigation Lands will be in place prior to construction of the TMV Project, which would directly and indirectly (within 0.5 mile of the development envelope) affect 5,082 acres within the TMV Specific Plan Area. The TMV Project constitutes the vast majority of land-disturbing activity under the TU MSHCP.

Response to Comment S-1-22

Please refer to Response to Comment S-1-21. As explained in that response, impacts may occur prior to the implementation of mitigation, as long as the HCP provides legal or financial assurances that the permittee will fulfill the HCP's obligations. However, the TU MSHCP does include annual monitoring requirements that will provide information about both development impacts and the amount of land added to the open space system. Section 7.3.1 of the TU MSHCP describes the compliance monitoring requirements intended to track the status of TU MSCHP implementation. These requirements include, inter alia, monitoring both impacts to the Covered Lands and modeled habitat as a result of Covered Activities that occurred during the prior year and the status of lands added to the open space system. Such information must be included in an annual monitoring report. The TU MSHCP also requires effectiveness monitoring that will assess biological conditions in the open space system resulting from implementation of the conservation plan for Other Covered Species and provide information needed to implement the adaptive management strategy (see Section 7.3.2 in the TU MSHCP), and specific compliance and effectiveness monitoring requirements related to the California condor (see Sections 4.5.1 and 4.5.2 in the TU MSHCP).

Section 9.1 of the Implementing Agreement recognizes these commitments and specifies that, each year, TRC must submit two annual monitoring reports (or one combined report) consistent with the requirements of Sections 4.5 and 7.3 of the TU MSHCP.

Response to Comment S-1-23

Under the ESA, prior to approval of an HCP, the Service must make findings to ensure that funding sources and levels proposed by the applicant are reliable and will meet the purposes of the HCP, and that measures to deal with unforeseen circumstances are adequately addressed. As discussed in Section 9 of the TU MSHCP, TRC will provide separate, segregated financial assurances that are adequate to fund all mitigation measures related to incidental take that require out-of-pocket funding and a tracking system to record all additions to the open space preserve, including placement of conservation easements on TMV Planning Area Open Space Lands.

Consistent with the Service's obligations to ensure adequate funding, Section 8.2, Funding Security, of the Implementing Agreement provides the following:

> Permittee shall, not later than 30 days prior to the initiation of the construction of the TMV Project, provide for financial assurance as described in Section 9 of the TU MSHCP in a form acceptable to the Service as a written guarantee of its performance of all take minimization and take mitigation measures requiring the expenditure of funds for the California condor and Other Covered Species.

Moreover, the Implementing Agreement provides the following.

> In addition to the specific guarantee for California condor mitigation as provided above, execution of the Permit by Permittee will be authorized by a resolution of both Permittee and its parent company, Tejon Ranch Co., a Delaware corporation. These resolutions will acknowledge Permittee's responsibility for and duty to expend all sums contemplated and necessary to implement Permittee's obligations under the TU MSHCP. The resolutions will also provide for annual certifications by TRC's Chief Financial Officer, or equivalent officer, to the effect that such funds have been budgeted and approved by all necessary corporate action.

The Implementing Agreement further requires TRC to provide an annual budget and scope of work outlining all components of the TU MSHCP to be implemented during the fiscal year accompanied by a certification that funds required of the Permittee to perform duties under the TU MSHCP have been authorized and are available. Failure to implement all of its duties under the TU MSHCP for any reason, funding considerations or otherwise, could result in violation of the ITP; enforcement action, including penalties under ESA Section 9 and Section 11; and suspension or revocation of the ITP. The Service believes the funding source and assurances are sufficient to ensure that the mitigation requirements are met, including the recording of the conservation easements.

TRC and the easement holders will be responsible for adhering to the terms of the conservation easements in perpetuity. The Service understands that the Ranchwide Agreement includes a funding mechanism for the Conservancy to oversee the land that would become subject to the easements. As set forth in the Ranchwide Agreement, there is initial money for Conservancy operations and long-term funding will be provided by transfer fees from sales in the development areas. However, the TU MSHCP does not require active management of conserved lands beyond the measures provided for during the permit term. Therefore, a permanent funding source for perpetual management of the TU MSHCP Mitigation Lands is not a part of the TU MSHCP.

Response to Comment S-1-24

Please refer to Response to Comment S-1-17 above. The TU MSHCP requires that the TU MSHCP Mitigation Lands be protected in perpetuity, consistent with the special goals and objectives, many of which will not only protect, but also enhance the TU MSHCP Mitigation Lands. In addition, as discussed in Response to Comment S-1-23, the Service must make findings regarding the funding

levels and sources proposed by the applicant, and the TU MSHCP and Implementing Agreement provide various financial assurances.

The following is per the HCP Handbook (page 3-20) and case law (e.g., *Spirit of the Sage Council et al. v Kempthorne*, 511 F. Supp. 2d 31 (D.D.C. 2007); *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Service*, 202 F. Supp 2d 594 (W.D. Tex. 2002)),

> Issuance of a section 10 permit must not "appreciably reduce" the likelihood of the survival and recovery of the species in the wild. Note that this does not explicitly require an HCP to recover listed species, or contribute to their recovery objectives outlined in a recovery plan. This reflects the fact that HCPs were designed by Congress to authorize incidental take, not to be mandatory recovery tools.

Thus, while the TU MSHCP does protect a high proportion of the Covered Lands to meet this standard, it is not required to take the additional steps, such as implementing active recovery programs or measures, to meet this standard. Thus, funding for recovery program measures is not included in the TU MSHCP.

Response to Comment S-1-25

Section 15.2 of the Implementing Agreement provides that TRC may not transfer ownership or control of TU MSHCP Mitigation Lands to a third party (other than another Federal agency, if the Service determines, in writing, that transfer to another Federal agency would not compromise the effectiveness of the TU MSHCP) unless a conservation easement, in a form approved by the Service, is recorded on the land pursuant to Section 5.1.1(e) of the Implementing Agreement. Section 5.1.1(e) provides that conservation easements include management and reporting requirements. Thus, any transfer of the TU MSHCP Mitigation Lands to a third party would carry with it the same management responsibilities as are currently required of TRC. As discussed in Response to Comment S-1-23, such responsibilities include the provision of adequate funding to support management activities.

Similarly, Section 5.1.5 of the Implementing Agreement specifies that TRC may propose to transfer to another party ownership of a portion of the Covered Lands and/or responsibility for the Covered Activities on it, along with the associated take authority. Such a transfer application would be reviewed, and approved or denied, by the Service. Any transfer of Covered Lands or responsibility for Covered Activities must also be subject to the TU MSHCP and ITP terms, including financial assurances.

Response to Comment S-1-26

The objectives for setbacks for golden eagles were developed cooperatively between the TU MSHCP consultant team and Service staff, with assistance from Dr. Peter Bloom, PhD, who has extensive experience with golden eagles in southern California and the effects of such activities on the behaviors of nesting eagles. Available scientific literature on the issue of nest setbacks was also reviewed. Spatial and temporal buffer zones are typically suggested as a means to minimize the effects of recreational and other human activities on breeding raptors. Recommendations range from 0.13 to 1.0 mile depending on the terrain and nest location (Richardson and Miller 1997). However, a viewshed approach has been suggested as a more realistic application to buffering active nest sites since flushing distances (from nests, perches, roosts) of adult eagles can be reduced when the eagles are visually shielded (by vegetation and/or topographical features) from human

activities. A viewshed approach to managing disturbances may require less protected area than standardized buffer zones (Camp et al. 1997).

For the TU MSHCP, such a viewshed approach to addressing potential development-related disturbances on nesting eagles was used. An analysis was conducted within the relevant development area for all active nests to determine the viewshed of an adult eagle that was incubating, brooding, or otherwise roosting or perching on or near the nest tree. The analysis conducted using geographic information system (GIS) technology took into consideration topography; vegetation cover; height, elevation, and distance from the nest tree; and nest height. The analysis included distances measured at 0.25, 0.5, and 1.0 mile from the nest. A maximum of 1.0 mile was used since that is the outer range of buffer zones listed in the literature as appropriate for golden eagles (Richardson and Miller 1997).

The resulting setbacks used for the TU MSHCP include a required viewshed analysis such that no development within the viewshed of a nest shall occur within 0.5 mile of the nest (Section 7.1.1.2.4, Objective 6.2). This is consistent with the recommendation by CDFG, and would attenuate noise and vibration from development activities. Between 0.5 and 1.0 mile of an active nest, development within a nest viewshed must be low-density development (e.g., mountain residential), and homes must be sited to minimize visibility to golden eagle nests. Objective 9.2 states that trail use will be restricted from between 0.25 and 0.5 mile from an active eagle nest during the nesting season. While it was determined that trails can be developed and recreational activities can occur beyond 0.25 mile of an active nest, activities and use will not occur between 0.25 and 0.5 mile during the nesting season, whether or not such activities are within the nest viewshed, ultimately providing a 0.5-mile setback from the active nest. This is consistent with the 0.5-mile setback distance suggested by CDFG.

The commenter is incorrect that the TUMSHCP assumes nesting eagles would only be affected by Covered Activities while on a nest or in line of sight of a Covered Activity. Section 7.1.1.2.4 of the TUMSHCP describes measures that would be implemented to avoid direct impacts on golden eagles and nests and minimize indirect impacts on golden eagles. These measures address preservation of large blocks of modeled breeding/foraging habitat including habitat surrounding known golden eagle nests, disturbance buffers around nests, potential impacts on individuals, and the integrity of territories. These measures account for a variety of golden eagle habitat use beyond the immediate vicinity of a nest, and encompass the areas in which golden eagles would be expected to be in transit and perching.

Response to Comment S-1-27

The 0.25-mile setback for peregrine falcons in Objective 4.2 (Section 7.1.1.2.1 in the TU MSHCP) is for construction activities related to development (e.g., mass grading) while the 1,000-foot setback in Objective 6.2 relates to long-term operational activities such as recreational activities, which would not be expected to have the same level of potential indirect effect (e.g., loud noise, levels of human activity). Having different buffer setbacks for these very different types of potential indirect effects is appropriate.

The 0.5-mile buffer for peregrine falcon recommended by the commenter is not based on any empirical data that can be applied to peregrines as a whole. Comrack and Logsdon (2008) note that many peregrines at least attempt to nest in urban settings but that nesting success is more limited by nest site structure than direct human disturbance. Peregrines in remote settings are more reactive to human disturbance (Comrack and Logsdon 2008).

Since peregrine nesting on Tejon Ranch has not been documented, any new birds that are attracted to and attempt to nest on site most likely would be individuals more habituated to human activities

such as ongoing ranch activities. There is evidence that peregrine falcons tend to select nest sites based on past experience. Tordoff et al. (2003) report that peregrines tend to select nest sites similar to their fledge site (e.g., smokestacks and buildings compared to cliffs), although males and females differ on their tendency to do so, with males more likely to show similarities. Also, as the peregrine population has grown, this tendency to select similar sites has become less pronounced (Tordoff et al. 2003).

Response to Comment S-1-28

In response to this comment, TRC has revised the conservation measures for southwestern willow flycatcher, least Bell's vireo, and western yellow-billed cuckoo. Specifically, for development-related construction activities and other Covered Activities involving permanent ground disturbances (e.g., grading for infrastructure and trails), protocol-level surveys will be conducted for least Bell's vireo, and southwestern willow flycatcher, and focused surveys will be conducted for western yellow-billed cuckoo during the breeding season prior to any construction activities, and survey results will be submitted to CDFG. If active nests of any of these species are detected, TRC will consult with CDFG regarding the appropriate buffer. Such consultation would allow for a determination whether authorization will be needed under CESA. Regarding other Covered Activities, such as grazing management and public recreation, no direct impacts on active nests of these species are anticipated. Preactivity surveys for these activities are not proposed under the TU MSHCP. All changes to these conservation measures are reflected Chapter 2, Supplemental Draft EIS Errata, of this Final EIS.

Response to Comment S-1-29

This comment suggests the Service assume that a colony size of as many as 150 tri-colored blackbirds may occur on Covered lands. This recommendation is based in part on observations presented by a DFG staff member in May 2008, in which approximately 100 individual tri-colored blackbirds were observed around Castac Lake (Connolly pers. comm.).

As noted by the commenter, the Supplemental Draft EIS indicates that a small colony of adult individuals (approximately 15) was observed nesting and foraging around Castac Lake during field surveys in May 2007. Small numbers of tri-colored blackbird were also observed in 1999, 2000, 2001, 2003, and 2004 around the lake and once in a marshy area at the upper end of Rising Canyon (Impact Sciences, Inc. 2004). Tri-colored blackbirds were also observed nesting in 2005 in the northwest corner of Castac Lake (Jones and Stokes 2006). Although the numbers provided in the Supplemental Draft EIS represent a smaller population than observed by DFG staff in 2008, the Service believes the overall conclusion of the effects analysis in Section 4.1, Biological Resources, in Volume I of the Supplemental Draft EIS and Section 6 of the TU MSHCP remain unchanged. The population of tri-colored blackbirds in California was estimated at 357,000 birds in 2011 (UC Davis 2011), so even assuming a loss of a nesting population of 150 individuals (an order of magnitude greater that the 15 nesting individuals observed in 2007), the loss would affect only 0.04% of the California population. It is unlikely that the entire nesting population would be lost on the Covered Lands because 68% (198 acres) of modeled primary nesting habitat and 94% (17,373 acres) of modeled foraging habitat would be conserved in Open Space.

Response to Comments S-1-30 and S-1-31

The TU MSHCP and Supplemental Draft EIS have been updated to reflect that eviction of a burrowing owl during the nonbreeding season will be completed in accordance with the CDFG Staff Report on Burrowing Owl Mitigation dated March 7, 2012, rather than the prior report dated October 17, 1995. This change is reflected in t Chapter 2, Supplemental Draft EIS Errata, of this Final EIS, as well as Objective 4.2 of the TU MSHCP.

As provided in the TU MSHCP conservation measures, alternative burrow sites would be provided for this species, in accordance with the CDFG protocol, prior to evacuation of burrows in areas where burrowing owls have been observed.

Response to Comment S-1-32

The commenter is correct in noting that conservation measures for several species in the TU MSHCP allow for capture and relocation of individuals that may be affected by Commercial and Residential Development Activities. These species include Tehachapi slender salamander, western spade-foot, yellow-blotched salamander, Tehachapi pocket mouse, coast horned lizard, and two-striped garter snake. For those special status species, TRC has agreed to submit a salvage plan prior to grading for review and approval by CDFG, and has revised the TU MSHCP conservation measures to reflect the same. Changes to these conservation measures are reflected in Chapter 2, Supplemental Draft EIS Errata, of this Final EIS.

As noted in Response to Comment S-1-1, it is the responsibility of the applicant to comply with all state laws, including CESA and fully protected species statutes provided in FGC.

DEPARTMENT OF FISH AND GAME
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
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CHARLTON H. BONHAM, Director

Comment Letter S-1

May 3, 2012

Roger Root
Assistant Field Supervisor
United States Fish and
Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003

Subject: Tehachapi Upland Draft Multiple Species Habitat Conservation Plan and Supplemental Draft Environmental Impact Statement FWS–R8–2011–N270; FF08E00000–FXES11120800000F2–112

Dear Mr. Root:

The Department of Fish and Game has reviewed the of Supplemental Draft Environmental Impact Statement (SEIS) for the Tejon Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) announced by the United States Fish and Wildlife Service (USFWS) in a Notice of Availability the Federal Register on February 3, 2012. The TU MSHCP is proposed by Tejon Ranchcorp (TRC), a landowning subsidiary of the Tejon Ranch Company, to obtain incidental "take" coverage for a 50-year duration through the Federal Endangered Species Act Section 10 for 27 Covered Species. "Take" would occur as a result of the development of approximately 5,533 acres within the Tejon Mountain Village (TMV) project area in addition to certain ongoing ranch activities, within the Tehachapi Uplands portion of the Tejon Ranch. TU MSHCP Covered Lands encompass 141,886 acres of the 270,365 acre Tejon Ranch, located in southern Kern County approximately 30 miles south of Bakersfield and 60 miles north of Los Angeles.

The TU MSHCP Covered Species include eight State-listed species and six fully protected species, including the State endangered and fully protected California condor (*Gymnogyps californianus*) and bald eagle (*Haliaeetus leucocephalus*); State endangered least Bell's vireo (*Vireo bellii pusillus*), willow flycatcher (*Empidonax traillii* – all subspecies), and Western yellow-billed cuckoo (*Coccyzus americanus occidentalus*); State threatened Tehachapi slender salamander (*Batrachoseps stebbinsi*) and striped abode lily (*Fritillaria striata*); and the fully protected ringtail (*Bassariscus astutus*), golden eagle (*Aquila chrysaetos*), American peregrine falcon (*Falco peregrinus anatum*), and white-tailed kite (*Elanus leucurus*). The TU MSHCP also proposes the "take" of ten State Species of Special Concern. The Department has questions regarding the

proposed impacts to Covered Species and the measures described to avoid, minimize, and mitigate for the "take" authorized through the TU MSHCP. We also have recommendations for additional measures to reduce impacts to species over which the Department also has jurisdiction.

Department Jurisdiction

Fully Protected Species: The Department has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. "Take" of any fully protected species is prohibited and the Department cannot authorize their "take", with limited exceptions for research purposes. Several fully protected species are included in the TU MSHCP Covered Species list. "Take" is not limited to lethal means; "take" is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, kill," or any attempt to do so.

State Incidental Take Permit: The Department can issue an Incidental Take Permit (ITP), pursuant to Section 2081 of the Fish and Game Code, for project-related take of listed species, but not for fully protected species. We are working on the terms of an ITP for the TMV development covering Tehachapi slender salamander, willow flycatcher, least Bell's vireo, and Western yellow-billed cuckoo. Any impacts resulting in the "take" of these species outside the defined TMV development area would not have "take" coverage under the California Endangered Species Act (CESA); likewise, "take" of any listed species not covered by an ITP would be unlawful pursuant to CESA. Because 2081 permits must demonstrate compliance with the "fully mitigate" standard, they often add requirements beyond those routinely included in HCPs.

Department Communication

S-1-1 The Department would like to provide clarification regarding our previous communications with USFWS related to the TU MSHCP. We disagree with information provided in SEIS Chapter 6, which states that Department staff was consulted, presumably in preparation of the TU MSHCP and EIS/SEIS. Beginning with the protective order requested by TRC associated with their lawsuit against USFWS, the Department was not consulted and was therefore not aware of the content of the 2009 draft TU MSHCP until it was available to the public. Due to the concurrent release of both the TMV draft Environmental Impact Report (EIR) and nearby Frazier Park Estates draft EIR we were unable to provide comments to USFWS during the review period. The Department has not been consulted since that time to discuss TU MSHCP treatment of State-listed, fully protected, and other sensitive species that are proposed Covered Species. As a result, this letter represents our first written correspondence

S-1-1 cont. since commenting on the Notice of Intent (letter dated April 25, 2008) and is our first opportunity to provide specific comments and recommendations regarding Project impacts and proposed avoidance, minimization, and mitigation measures. The Department would also like to note that we were not notified of the availability of the current draft TU MSHCP for public review. Our comments below are based on our efforts to review the considerable amount of information contained in the TU MSHCP, SEIS, and Implementation Agreement during a substantially abbreviated review period, and may not constitute the entirety of our eventual comments.

S-1-2

Project Impacts

S-1-3 The acreages of Covered Species impacts in the TU MSHCP don't match the acreages disclosed in the TMV Environmental Impact Report (EIR) certified by Kern County, and it is therefore not clear where all anticipated permanent habitat loss will occur, specifically for species to be covered by the Department-issued ITP for TMV. The Department would appreciate additional clarification to understand this discrepancy.

S-1-4 The TU MSHCP states that 143 acres of suitable habitat for Tehachapi slender salamander would be permanently lost, while the TMV EIR disclosed only 108 acres of permanent habitat loss, which the Department understands was since increased to 114 acres with the inclusion of chaparral (including yucca) habitat. Also for willow flycatcher, least Bell's vireo, and Western yellow-billed cuckoo, the TU MSHCP states

S-1-5 that 8 acres each of suitable habitat would be permanently lost, while the TMV EIR disclosed only 6 acres of permanent habitat loss for those species. It is not clear what activities contribute to the additional acreages and where those activities would be

S-1-6 located. If the loss of suitable habitat exceeds what is permitted by the Department for TMV, or if those additional areas are outside of TMV, it is possible that unauthorized "take" under CESA could result. The Department does not currently have sufficient information to determine whether that potential take could be avoided.

S-1-7 Maps showing where acreages of impacts would occur relative to the Covered Species suitable habitat would help illustrate and facilitate understanding of the many acreages presented and calculations described in the text. It is not clear how the Department can thoroughly evaluate the effects of activities whose locations are not currently disclosed.

Condor Recovery Measures

S-1-8 The TU MSHCP does not explain the process of determining for how many condors "take" would be approved. It is unclear what the significance of four condors is and

S-1-9 whether this number is related either to the number of condors known to use the Covered Area or an assessment of those that were captive-reared and presumed more

S-1-10 likely to become habituated to human activity. It is also not clear how the removal of

S-1-10 cont. four individuals from the wild fits into the context of species recovery. While the Department supports efforts to prevent the conflict caused by habituation of condors to humans, the potential for captivity of four wild condors would necessitate that their

S-1-11 continued genetic contribution would be through captive breeding. Because captive bred condors are more likely to become habituated to humans, this proposal appears counterintuitive and a more thorough discussion of this proposal seems warranted.

S-1-12 It is not clear whether the objectives of condor mitigation measures are intended to include the replacement of individuals potentially removed from the wild or any compensation for the value of the efforts that allowed those individuals to be released initially. Calculated mitigation costs that are identified as the responsibility of TRC appear to be limited to those associated with the proposed taking of condors. In addition it is not clear what precisely is offset, relative to the "take" that could result from

S-1-13 the TU MSHCP proposed 50-year term, by TRC providing $156,000 for the purchase of supplemental GPS transmitters. It would help to know how many transmitters could be purchased with that amount and how many additional condors would therefore be outfitted and contribute to the ongoing collection of positional and behavioral data; further, it is not clear whether those individuals could continue to be monitored following

S-1-14 the 10-year transmitter replacement period for which TRC would provide $26,000 annually, or if those individuals would only be temporarily monitored. Finally, it is not clear whether the additional transmitters would be used to monitor condors known to

S-1-15 use the TU MSHCP Covered Area, specifically the TMV project site, such that behavioral changes and other development-related impacts to those individuals could be more immediately detected.

Mitigation Lands

For areas in the TU MSHCP Mitigation Lands where mitigation for the ITP issued by the Department could occur, we are concerned that the proposed management of the Mitigation Lands could potentially be incompatible with CESA permitting requirements for full mitigation. For example, the TU MSHCP states that grazing will continue at a

S-1-16 level of 14,500 head of cattle over Tejon Ranch. This amount presumably would remain the same following the permanent loss of a stated 5,533 acres in the Covered Area, and potentially (though it is not clear) also following development and permanent habitat loss within the overall 11,680-acre proposed Centennial Specific Plan area. The TU MSHCP does not address the resulting presumed increase in grazing density, potential for overgrazing impacts, and need for measures to ensure that remaining habitats that are preserved as mitigation are grazed appropriately. Any open space

S-1-17 lands approved as mitigation for the Department's ITP will need to be managed such that existing habitats for ITP Covered Species are not only protected but enhanced in

S-1-18 perpetuity. The Department has previously recommended coordination between

S-1-18 cont. agencies to help ensure that both ESA and CESA permitting requirements can be met, and we remain available to address these concerns.

S-1-19 Details regarding management of the Mitigation Lands are effectively deferred until the creation and approval of the Tejon Ranch's Ranch Wide Management Plan (RWMP). It is not clear whether or to what extent the RWMP would enhance the Mitigation Lands for TU MSHCP Covered Species, and whether Mitigation Lands could therefore be managed only according to current practices. The TU MSHCP tends to refer to preservation of lands and maintaining current stewardship, and does not indicate whether recovery goals associated with the management of Mitigation Lands include species population increases, range expansions, enhanced connectivity of habitats or subpopulations, or other measurable results based on management primarily for the benefit of the Covered Species. It appears that the proposed management of the Mitigation Lands could be based solely on the value of protecting large blocks of land without enhancement, replacement, or compensation to mitigate for species "take."

S-1-20 It is also not clear whether the proposed plan for placing conservation easements over Mitigation Lands would guarantee that mitigation occurs in advance of "take." The TU MSHCP identifies 47,871 acres of initial mitigation acreage to be placed under easement prior to initiating Covered Activities, with the remainder 56,423 acres placed under easement prior to the end of the 50-year TU MSHCP term. Within this framework it is not clear whether the placement of the remainder of Mitigation Lands under easement could be delayed until near the end of the TU MSHCP term, after "take" has exceeded that mitigated by the initial.

S-1-21 The annual tracking of development impact acreages and easement acreages could be used to ensure and demonstrate that mitigation acreage, as demonstrated through land protection and management, is keeping up with the amount of "take," as approximated by acreages lost or disturbed due to Covered Activities.

S-1-22 The mechanism described to provide funding for mitigation requirements under the TU MSHCP requires annual spending approval from TRC's board of directors. Because the conservation easements would be permanent and therefore require funding in perpetuity for their management, it is not clear that funding would necessarily be guaranteed each year and for the long term. While the TU MSHCP demonstrates that TRC's current financial assets and liabilities allow ample funding opportunity, the in-perpetuity management of Mitigation Lands requires that ample funds are available beyond the predictable future.

S-1-23 The estimated costs in the TU MSHCP don't describe management actions intended to enhance and increase populations of the 27 Covered Species as part of a recovery effort, and it is not known how the cost estimates would

S-1-24 increase after factoring in those management actions. Also, in the potential future event

S-1-24 cont. that any Mitigation Land area changes ownership, it is not clear whether the responsibility for management funding would become uncertain.

Other Species Impacts and Mitigation

S-1-25 **Fully Protected Raptors:** The Department has recommendations to enhance the avoidance measures proposed for nesting golden eagles and peregrine falcons. The Department doesn't agree that impacts to nesting golden eagles can necessarily be avoided using a 0.25 buffer of the viewshed of the nest. This measure appears to assume that nesting eagles would only be affected by Covered Activity disturbances while on the nest and if an eagle is within the activity line of sight. It does not take into account impacts to eagles in transit or perched in the territory but not on the nest. The TU MSHCP also does not appear to have evaluated the impacts of noise and vibration disturbance. The Department recommends a 0.5 mile no-disturbance buffer around golden eagle nests, with the potential for increasing the buffer if nesting eagles show signs of agitation.

S-1-26 The TU MSHCP appears to contain conflicting measures to avoid impacts to peregrine falcon nests, stating first that nests will be buffered by 0.25 miles and then later at 1,000 feet. It is not clear what avoidance is intended, but the Department recommends a 0.5-mile no-disturbance buffer if a peregrine falcon nest is found.

S-1-27 **State Listed Songbirds:** The Department anticipates issuance of an ITP for TMV that would cover willow flycatcher, least Bell's vireo, and Western yellow-billed cuckoo. The TU MSHCP describes an initial 500-foot buffer around any nests of these species. For areas covered by our ITP, any variance from that buffer distance would be allowed according to specific ITP conditions. If any nests of those listed species are detected outside the area covered by our ITP, the Department recommends maintaining a minimum 500 foot no-disturbance buffer around each nest. The Department does not recommend reducing that buffer; instead, we recommend consultation regarding the potential need for ITP coverage under CESA. Prior to a TU MSHCP Covered Activity that is not covered by the Department's ITP, we recommend that pre-construction surveys are protocol level in nature and that survey results are submitted to the Department.

S-1-28 **Tricolored Blackbird Colony:** The Department does not concur with the means of estimating the number of tricolored blackbirds that would be lost if Covered Activities resulted in the loss of the Castac Lake nesting colony. The TU MSHCP reports that 15 individuals were detected during surveys in 2007. Colony sizes fluctuate within-year and among years, according to on-site and off-site breeding habitat and environmental conditions. The Department is aware of a larger number of tricolored blackbirds

S-1-28 cont. composing the colony around Castac Lake, and recommends that an estimated number of at least an order of magnitude larger than the current estimate be used.

S-1-29 **Burrowing Owl:** The Department agrees with measures proposed to avoid burrowing owl nests. In the event that an occupied burrow during the non-breeding season cannot be avoided, eviction of the owl(s) could proceed; the Department recommends referring to our 2012 Staff Report of Burrowing Owl Mitigation (http://www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf) for a survey protocol, burrow exclusion information, and mitigation measures.

S-1-30 Because eviction of owls from an occupied burrow is an impact, opportunities to help mitigate the permanent loss of owls from the site, for example the installation of artificial burrows if warranted, should be identified.

S-1-31 **Salvage:** As an avoidance measure for several species, the TU MSHCP prescribes removing individuals from the area of Covered Activity. For State-listed species covered by a State ITP, salvage activities would be required along with defined minimization measures. Without State "take" coverage, these salvage activities would be unpermitted "take"; for State Species of Special Concern, authorization from the Department is also necessary. A biologist's Scientific Collecting Permit specifically does not authorize moving animals out of harm's way, but the Department's regional office can review a proposal to salvage species of concern and approve those actions. Such a proposal would describe any trapping or capture methods, recipient site information, release strategy, and any temporary housing of salvaged animals.

If you have any questions regarding these comments, please contact Linda Connolly, Staff Environmental Scientist, at the address provided on this letterhead or by telephone at (559) 243-4014, extension 242.

Sincerely,

for

Jeffrey R Single, Ph.D.
Regional Manager

cc: Kathy Perkinson
Tejon Ranch Company
Post Office Box 1000, 4436 Lebec Road
Lebec, California 93243

ec: Linda Connolly
California Department of Fish and Game

FACSIMILIE LEADER PAGE

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INFO (559) 243-4017 FAX (559) 243-3004

DATE: 5/3/12 PAGE 1 OF 8

TO: Roger Root, Assistant Field Supervisor

USFWS

FAX: (805) 644-3958 PHONE:

FROM: Linda Connolly

INSTRUCTIONS: Attention: Tehachapi Upland Draft MSHCP/SEIS Comments

Original to follow by mail.

Response to Comment P-1-1

The Proposed Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) Alternative is identified as the U.S. Fish and Wildlife Service's (Service's) preferred alternative in the Supplemental Draft Environmental Impact Statement (EIS). Since 1999, the Service has provided technical assistance to Tejon Ranchcorp (TRC) to facilitate development of a habitat conservation plan (HCP) for California condors. The Proposed TU MSHCP Alternative has been informed both by the technical assistance provided by the Service, as well as input provided by the public during the National Environmental Policy Act (NEPA) process (i.e., during the 2004 public scoping period on the original California Condor HCP and during the 2009 public comment period on the Draft EIS). Each iteration of the TU MSHCP—including the 2004 California Condor HCP, the 2009 TU MSHCP, and the 2011 Revised Draft TU MSHCP—represents a different alternative considered by the Service in developing the EIS, and in identifying the preferred alternative to the proposed action.

The Service acknowledges the commenter's request that the CCH Avoidance MSHCP Alternative be selected as the preferred alternative to the proposed action. A final determination on the preferred alternative will be made in the Record of Decision (ROD) for the EIS.

----- Forwarded by Roger Root/VFWO/R1/FWS/DOI on 02/21/2012 04:52 PM -----

"steve schubert" [redacted]

02/12/2012 08:15 PM

To: <fw8tumshcp@fws.gov>
cc:
Subject: Tejon Ranch

P-1-1

Regarding the SDEIS and MSHCP for the Tejon Ranch, I strongly encourage the Condor Critical Habitat Avoidance Alternative,
recommending that proposed development areas should be reconfigured to avoid federally designated critical habitat for the California condor.

Sincerely,
Steve Schubert

[redacted]

Response to Comment P-2-1

The U.S. Fish and Wildlife Service (Service) assumes the commenter is referring to the fine paid related to the mountain lion shootings at Tejon Ranch in 2011. Please refer to Response to Comment P-6-13 for a discussion of the Service's consideration of this situation.

Response to Comment P-2-2

Please refer to Response to Comment P-2-1.

Response to Comment P-2-3

It is unclear to what increase the commenter is referring. The Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) provides a variety of monitoring commitments specific to California condors, including monitoring of areas used by humans for microtrash; enforcement of the ranchwide ban on lead ammunition; and monitoring of the Condor Study Area by the Tejon Ranch staff biologist to ensure that allowed uses do not compromise the conservation value of the Covered Lands for the California condor, among others. These measures are summarized in Table 2-3 in the Supplemental Draft Environmental Impact Statement (EIS), and Chapter 4, California Condor, in the TU MSHCP. Moreover, Tejon Ranchcorp (TRC) has committed to provide funding for installing additional global positioning system (GPS) satellite tracking transmitters on condors to allow for continuous, real-time monitoring of wild, free-flying condors currently not carrying such transmitters. Specifically, $156,000 will be provided to purchase GPS transmitters prior to the issuance of any grading permits affecting suitable condor foraging or roosting habitat. An additional $26,000 will be provided to assist in funding operations, maintenance, and/or replacement every year afterward for a total of 10 years. This system will enable the immediate location of birds that are not moving relative to the ground, which usually indicates that an injury or illness has occurred. The prompt retrieval of injured or sick birds will allow for the rapid implementation of appropriate medical care or rehabilitation, actions that have saved the life of several condors in the past.

Response to Comment P-2-4

As described in the Supplemental Draft EIS, the California condor has been the focus of an intense recovery program to restore healthy populations to the wild. Between late 1985 and 1987, the Service and California Department of Fish and Game (CDFG) captured the remaining free-flying California condors to conduct a managed breeding program to stabilize and increase the population. Captive rearing was determined to be necessary to increase the stock of remaining California condors and to maximize genetic diversity among the population. The first two releases of captive-bred California condors took place in the Sespe-Piru California condor critical habitat unit in 1992. Soon after, captive-reared condors were also released into the species' historical range near

the Grand Canyon of Arizona as an experimental nonessential population. By 1998, there were over 50 California condors in the wild.

At the time of the approval of the Tejon Ranch Conservation and Land Use Agreement in June 2008, the number of condors in the wild in California totaled approximately 75, 30 of which occurred in southern California and could potentially utilize Tejon Ranch. As of May 31, 2011, there were 416 California condors in the world population, including 180 in captivity and 236 in the wild (U.S. Fish and Wildlife Service 2012). The wild population includes 113 in central and southern California, of which approximately 40 currently inhabit southern California and have the potential to visit Tejon Ranch. Due to a combination of captive breeding and release and wild nest reproduction, this population is steadily increasing and is expected to continue to increase, barring stochastic catastrophes (Grantham 2007). However, mortality in the wild, primarily as a result of lead poisoning, is currently exceeding natural reproduction (U.S. Fish and Wildlife Service unpublished data; Finkelstein et al. 2012), requiring ongoing captive breeding and release to supplement the wild population.

Marcotte, Kimberley

From: Roger_Root@fws.gov
Sent: Tuesday, February 21, 2012 4:53 PM
To: Zohn, April
Cc: Marcotte, Kimberley
Subject: Fw: TEJON MULTISPECIES DRAFTS

----- Forwarded by Roger Root/VFWO/R1/FWS/DOI on 02/21/2012 04:53 PM -----

Mary Ann Lockhart [redacted]

02/13/2012 09:45 AM

To: fw8tumshcp@fws.gov
cc:
Subject: TEJON MULTISPECIES DRAFTS

QUESTIONS FROM MARY ANN LOCKHART, PINE MOUNTAIN CLUB CONCERNING TEJON MULTIPECIES,ETC

P-2-1 1. Does the situation for which Tejon Corporation was fined in any way change the latest proposed multispecies plan? Will the Ranch be required to do more to protect the Condors? Will they be required to pay for more monitoring by your agency? Will fines be increased?

P-2-2 2. Will the permit to build Tejon Mountain Village be denied because of their "bad behavior?" about the lions?

P-2-3 3. Did TEjon provide the pledged- for- increase of condor monitoring ? Has there been any difference recorded between the number of condors and their locations on the ranch land from the time

P-2-4 of the agreement with environmental groups with the ranch to the present day?

Thank you for your attention to these questions.

Most sincerely..

Mary Ann Lockhart

[redacted]

Response to Comment P-3-1

Funding of management and monitoring provided in the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) is the responsibility of the permittee, Tejon Ranchcorp (TRC), with funding assurances and cost assumptions provided in Section 9 of the TU MSHCP. TRC is responsible for providing manpower to carry out these activities, including annual funding for the U.S. Fish and Wildlife Service (Service) to provide technical assistance related to management of condors on the Covered Lands (see TU MSHCP Table 9-2); any future budgetary restrictions the Service may experience would not affect the Service's responsibility or ability to implement and fund mitigation, monitoring, and management activities. Section 8 of the Implementing Agreement also makes it clear that the "permittee shall pay all costs related to implementation of other California condor-related provisions and implementation of all other take minimization and mitigation measures specified in the MSHCP for the other Covered Species." Among these obligations is a commitment in the TU MSHCP that TRC will "deliver certification to the Service that the funds required of TRC to perform its duties under this TU MSHCP have been authorized and are available."

The Service will assess the permittee's compliance with the TU MSHCP through review of annual reports and will take enforcement actions, as required. It is expected that staffing would be available to fulfill this role.

Response to Comment P-3-2

Section 9.4 of the Implementing Agreement ensures the Service access to the Covered Lands for the purposes of monitoring and enforcing the conservation measures provided in the TU MSHCP. Specifically, that section states:

> Pursuant to 50 CFR Section 13.21(e)(2), by accepting the Permit, Permittee consents to and will allow entry to the Covered Lands by agents and employees of the USFWS engaged in and for the purpose of ensuring compliance with the Permit, and laws and regulations applicable to the Permit, and/or undertaking any activities that are necessary to protect the Covered Species and/or are identified in the TU MSHCP. Except where specified below, such entry will occur under the following conditions: (1) at reasonable hours; (2) in a manner consistent with the purpose of the entry, that minimizes any disruption of the Covered Activities or any other operation of Permittee or ay holder of a Certificate of Inclusion; (3) after provision of advance notice to Permittee; and (4) with the opportunity for an agent or employee of Permittee to accompany the USFWS's agent or employee. These conditions on entry will not apply in the following circumstances: (1) when the USFWS has reason to believe a Covered Species is at risk of injury or death and an immediate response is necessary; or (2) when the USFWS has reason to believe a violation of the Permit, or laws or regulations applicable to the Permit has occurred or may be occurring which, in the USFWS's good-faith judgment, warrants immediate or noticeless access; or (3) entry, without consent, is otherwise for law enforcement purposes consistent with the Fourth Amendment of the Constitution. Access to the Covered Lands by USFWS agents or employees and California Condor Recovery Team members solely to establish and operate a trap and release/supplemental feeding site, if deemed necessary by USFWS in accordance with TU MSHCP Section 4.4.3.2, shall not be governed by this Section 9.4, but shall be allowed in accordance with the provisions of the TU MSHCP.

Section 5.1.1(e)(2) through (4) of the Implementing Agreement also provides that the conservation easements conveyed on the Covered Lands, which would be conveyed in perpetuity, "…name the Service as a third party beneficiary with access rights and the right to enforce the terms of the conservation easement."

Response to Comment P-3-3

No features of the TU MSHCP would alter any existing Federal protections for whistle blowers.

Response to Comment P-3-4

As provided in 50 Code of Federal Regulations (CFR) 17.32, the Service considers several factors in determining the duration of an incidental take permit (ITP), including the duration of the activities proposed under the TU MSHCP, and the expected positive and negative effects on the Covered Species over the proposed term of the permit, including the extent to which the conservation plan will increase the survivability of the covered species and/or enhance their habitat. The Service also considers the extent of scientific and commercial data underlying the proposed plan, the length of time necessary to implement and achieve the benefits of the conservation plan, and the extent to which the program incorporates adaptive management strategies. TRC has requested the Service consider an ITP with a 50-year term. The Service will consider the above factors in determining the appropriate duration of the ITP for the TU MSHCP, should one be issued.

Section 12.2 of the Implementing Agreement, which is included as Appendix C to the TU MSHCP, includes provisions for the Service to suspend or revoke the ITP, in whole or in part, for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. Federal Endangered Species Act (ESA) regulations also provide that an ITP may be revoked if continuation of the permitted activities would appreciably reduce the likelihood of survival and recovery of the species in the wild (17 CFR 17.22(b)(8), upheld in *Spirit of Sage Council v. Kempthorne*, 511 F. Supp. 2d 31, 46 (D.D.C. 2007)). Outside of those circumstances, the "No Surprises" regulations in 50 CFR 17.22(b)(5) and (6) and 17.32(b)(5) and (6) provide that, as long as the TU MSHCP, Implementing Agreement, and ITP are being properly implemented, the Service shall not require additional conservation and mitigation measures that involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the TU MSHCP without the consent of the permittee.

Section 13 of the Implementing Agreement addresses modifications and amendments to the ITP and allows amendments in accordance with the applicable ESA regulations and National Environmental Policy Act (NEPA) requirements. If an amendment is pursued, TRC must provide a statement of reasons for the amendment and an initial analysis of the environmental effects (see Appendix C to the TU MSHCP, Section 13.2, Implementing Agreement,).

Response to Comment P-3-5

The commenter is correct in stating that Kern County will have final approval over the design and location of structures within the Tejon Mountain Village (TMV) Planning Area. Other Federal and state agencies, such as the U.S. Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), and California Department of Fish and Game (CDFG), may also influence the

location and design of structures, particularly where they are proposed to occur in sensitive communities, such as wetlands or riparian areas.

With respect to the Service's role in the design of developed infrastructure, the *Habitat Conservation Planning Handbook* (U.S. Fish and Wildlife Service 1996) provides that the "purpose of the habitat conservation planning process and subsequent issuance of incidental take permits is to authorize the incidental take of threatened or endangered species, not to authorize the underlying activities that result in take." Here, the proposed action is approval of the TU MSHCP and issuance of an ITP. Any development that would occur on the Covered Lands would be subject to a separate approval process under the jurisdiction of Kern County, and other local, state and Federal regulatory agencies, as noted above.

Nonetheless, the TU MSHCP does include conservation measures designed to deter condors from being attracted to human activities and structures on the Covered Lands. These measures, which are provided in Section 4 of the TU MSHCP and summarized in Table 2-3 in Volume I of the Supplemental Draft Environmental Impact Statement (EIS), include provisions requiring covenants, conditions, and restrictions (CC&Rs) on the development area that, among other things, limit the type of development to low density and limit the heights of the buildings to 35 to 45 feet above finished grade, as well as provisions to avoid or clean up microtrash (which can attract condors) at work sites, filming sites, and recreation areas. The Service-approved biologist would also be required to conduct educational programs and disseminate education materials concerning the California condor to contractors, home buyers and visitors. Such materials would be reviewed and approved by the Service and would provide guidance on proper behavior by persons who construct or buy real estate or visit the Covered Lands. In addition, anti-perching devices would be required on all new vertical communication towers. These conservation measures would be enforceable under the TU MSHCP, ESA, and the Implementing Agreement.

Response to Comment P-3-6

As required by NEPA, the magnitude and incremental effects (qualitative or quantitative) of each alternative are disclosed and compared in this EIS. NEPA regulations require that this evaluation discuss the context and intensity of each potential effect (40 CFR 1508.27); a significance conclusion is not legally required. However, to provide the public with a meaningful understanding of how potential effects were considered in the EIS, each section in Chapter 4, Environmental Consequences, of the Supplemental Draft EIS describes the general criteria (quantitative and/or qualitative) by which the effects are evaluated. These criteria are considered in assessing the relative magnitude of the potential direct, indirect, and cumulative effects of each alternative, including, where appropriate, determining if the effects are anticipated to be minor (i.e., minimal or hardly noticeable), moderate (i.e., above negligible), or substantial.

As discussed in Section 4.0.5, Method for Assessing Relative Magnitude of Effects, in Volume I of the Supplemental Draft EIS, the consideration of effects is based on the criteria listed in the methods section of each resource section of Chapter 4, Environmental Consequences. For example, regarding biological resources, Section 4.1.1.2 in the Supplemental Draft EIS states the magnitude of effects was considered in terms of whether an alternative would substantially reduce the number of acres or substantially degrade habitat for special-status species and unique or sensitive habitats, or if it would exceed a standard or criterion provided by another Federal, state or local statute specific to biological resources, such as the California Fish and Game Code (FGC) or Federal Clean Water Act (CWA). Quantitative measures and standards were identified and used in the individual analyses where possible.

The Service acknowledges that the assessment of the relative magnitude of effects is subjective, but has included such determinations to provide a basis for comparing the relative effects of each of the five alternatives considered in the Supplemental Draft EIS.

Response to Comment P-3-7

Where applicable, the Supplemental Draft EIS analysis identified the measures or practices that would be implemented in the Covered Lands, to the extent practicable, to avoid, minimize, or mitigate the effects of the proposed action. For example, in Section 4.2, Water Resources, it is noted that construction in waters of the U.S. and State would be avoided to the extent practicable with the exception of road crossings and culverts. Practicable mitigation measures are those considered to be possible given the constraints of implementation in the context of the physical environmental and operational feasibility. The Record of Decision (ROD) must also state whether all practicable mitigation measures have been adopted and if not, why not (Section 1505.2[c]).

Response to Comment P-3-8

The criteria for assessing the relative magnitude of direct, indirect, or cumulative effects depend on the resource in question, the specific effect mechanism being considered, and the context for each effect (i.e., the environmental baseline; applicable timeframe; and cumulative scenario). As indicated in Response to Comment P-3-6, the Service acknowledges the determinations of the relative magnitude of effects (minor, moderate, or substantial) provided in the Supplemental Draft EIS are subjective, but are provided as a basis of comparison of the relative effects of the five alternatives considered in the EIS. With respect to air quality effects, Section 4.3, Air Quality, indicates the analysis of the effects and magnitude of the direct, indirect, and cumulative effects on air quality are considered in terms of whether each alternative would contribute to an exceedance of any applicable air quality thresholds, as a result of construction, operations, or both; expose sensitive receptors to unacceptable levels of risk from exposure to toxic air contaminants (TACs) or carbon monoxide (CO) hotspots; or expose people to an unmitigable objectionable odor.

Response to Comment P-3-9

Comment noted. Education materials regarding acceptable activities in open space areas, pet restrictions, and wildlife restrictions are intended to provide guidance on proper behavior by persons who buy real estate, recreate, or otherwise visit the Covered Lands. Conservation measures to protect the Covered Species would be monitored and enforced by TRC, including the Tejon staff biologist, and the Service and subject to compliance reporting. Land managers (e.g., homeowners associations and conservation easement holders) would also be authorized and required to take action to prevent any activity that would pose a threat to the Covered Species, including enforcement of the project CC&Rs, as implemented through rules and regulations promulgated by the land manager. These rules must be no less stringent than the conservation measures provided in the TU MSHCP. Furthermore, TRC, as the permittee, would retain primary responsibility for enforcing all ITP conservation requirements.

Enforcement of such rules can rely on a much broader range of tools than eviction, including fines, legal action, and other mechanisms. CC&Rs, for example, are legally binding contracts and are enforceable through prescribed notices and hearings, and ultimately through civil courts. In all cases, however, TRC would be required to demonstrate compliance with the ESA and the ITP,

including applicable take avoidance, minimization, and mitigation measures for Covered Species identified in the TU MSHCP, and the terms of any conservation easement recorded on the Covered Lands.

Finally, violations of the ESA, including unauthorized take of a federally listed species, are punishable under civil and criminal enforcement mechanisms in Sections 9 and 11 of the ESA; nothing in the Section 10 process removes that authority. The ITP does not shield third parties from liability under the ESA for take of Covered Species, or limit the authority of the state or Federal government to enforce endangered species laws.

Response to Comment P-3-10

Comment noted. The Service believes the information provided in the TU MSHCP and EIS, including data on status and distribution, habitat characteristics and use, and occurrence on the Covered Lands of the Covered Species, is based on the best scientific information available. In addition, the analysis of the alternatives considered in the Supplemental Draft EIS, including the Proposed TU MSHCP Alternative, was completed by the Service, independent of TRC. Assembly and participation of an independent scientific advisory committee or group of biologists in the HCP planning process is not a requirement of the ESA, nor required to inform a legally adequate NEPA analysis. The public review process provides the opportunity for independent review.

Marcotte, Kimberley

From: Roger_Root@fws.gov
Sent: Tuesday, May 01, 2012 9:38 AM
To: Zohn, April; Marcotte, Kimberley
Cc: Robles, John; Mary_Grim@fws.gov; Kirkland, Steve; David_Simmons@fws.gov
Subject: Fw: response to multispecies plan for tejon ranch

----- Forwarded by Roger Root/VFWO/R1/FWS/DOI on 05/01/2012 09:33 AM -----

Mary Ann Lockhart [redacted]

05/01/2012 08:32 AM

To: fw8tumshcp@fws.gov
cc:
Subject: response to multispecies plan for tejon ranch

May 1, 2012

Thank you for the opportunity to respond to the proposed multispecies habitat conservation plan for Tejon Ranch.

First I want to state that the following questions and comments I wish to make are strictly my own and do not represent any of the environmental groups that I am associated with.

Concerns :

P-3-1 Monitoring of the proposed plan: Tejon's holdings are very large and varied. Is there really enough manpower to monitor all the activities going on, given the cutbacks everywhere in the government?

P-3-2 Will Fish and Wildlife Service be able to inspect unannounced any area of concern covered by this agreement?

P-3-3 Would a whistleblower be protected if s/he might provide information that appeared valid to the point that it would trigger such an unannounced visit?

P-3-4 Fifty year plan? Once and if accepted could Congress interfere with the plan, changing requirements, etc.

P-3-5 As I understand it, Kern County Planning Department will be in the center of planning and design of the proposed homes. Will Fish and Wildlife have any rights to determine the siting of proposed houses? Will F@W have any say in design of homes in terms of making homes unattractive for condors?

P-3-6 Here are some suggestions to make the protection efforts more effective;
1. Close up the too-many loopholes in the wording of the plan, loopholes mainly caused by lack of specificity.
Examples:…
the phrase: *but effects would remain minor* How is minor defined? Removing 20 trees or 5 trees?

P-3-7 *if practicable*…. If it is not practicable, what should be done? Does it mean that you can go ahead no matter what the impact may be? or does it mean, give up that plan and try to figure out another way to achieve what is needed to be done without negative impact or what?

P-3-8 *would not contribute substantially* …re .air pollution. Now there are some standards about which one could argue but at least there is something more definitive to discuss but to begin with *how do you define substantially?*

P-3-9 2. One has to question the effectiveness of developing informational papers in regards to having the privilege to build and occupy a million dollar home on the property without having effective means of enforcing those rules. Example: Dogs cannot run free in the woods . Could you really evict someone from a million dollar home s/he built if s/he absolutely refused to obey the rules s/he agreed to follow?

P-3-10 3. There is a need to assemble a body of biologists that have no connection with Tejon Ranch and Fish and Wildlife Service or the State of California to provide neutral information in regards to interpretation of impacts of proposed activities on the Condor and other protected and threatened species, etc. Taxpayer money should be used for reimbursement.
These persons should be free of obligation to support any one position of the parties involved in regards to the proposed developments.

Finally, I compliment the efforts of the staff that put the presentation of comments by the public in a form that made it much easier to understand and far less time consuming for the reader to absorb the main points of concern in regard to this project.

Sincerely yours,

Mary Ann Lockhart

Response to Comment P-4-1

The U.S. Fish and Wildlife Service (Service) carefully considered requests to extend the public comment period on the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) and Supplemental Draft Environmental Impact Statement (EIS) and determined not to grant the request. The request for the extension was received 5 days prior to the close of the public comment period, which did not allow for the Service to publish a timely Federal Register notice extending the public comment period. As a consequence, for the Service to accommodate additional public input, the public comment period would have to be reopened, an administrative process that typically takes 2 or more months to complete, subsequently adding several months to the decision-making process.

The Service also notes that members of the public have had extensive opportunity to review and comment on the TU MSHCP, Supplemental Draft EIS, and incidental take permit (ITP) application. The 90-day public comment period on the Supplemental Draft EIS is twice the 45-day minimum duration prescribed in the Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations (40 Code of Federal Regulations [CFR] 1506.10(c)). The 90-day public comment period is in addition to the 154-day public review period already provided on the original Draft EIS (February 4, 2009 through July 7, 2009), on which various members of the public, including the commenter, provided comments.

The Service considers that the total time allotted for public review is ample for interested members of the public to review and comment on the Supplemental Draft EIS and accompanying permit application. For these reasons, the request for a time extension is declined.

Noel Snyder [redacted]

04/30/2012 03:32 PM

To: fw8tumshcp@fws.gov
cc:
Subject: Comments on Tejon plan

Roger
Root

Assistant Field Supervisor
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Dear Mr. Root,

P-4-1 Several of us alumni of the condor program would like to provide input on the TU MSHCP, and we have been preparing a joint response, but because of our scattered locations and many other obligations, we have been delayed in getting a comment letter together and fear we may not be able to meet your deadline. Is there any chance that the deadline could be modestly delayed so we could get our best thoughts together and provide the most useful input? It would be much appreciated.

Noel Snyder
Apr 30, 2012
[redacted]

Response to Comment P-5-1

The U.S. Fish and Wildlife Service (Service) acknowledges the receipt of the comments provided by the referenced condor researchers on the Draft Environmental Impact Statement (EIS). All substantive comments provided collectively on the Draft EIS by those researchers (referenced in Comment Letter I-293) were responded to in Volume II of the Supplemental Draft EIS. The following responds to additional comments provided in the May 3, 2012, letter on the Supplemental Draft EIS, referenced in this document as Comment Letter P-5.

Response to Comment P-5-2

Please refer to Master Response 3, California Condor Foraging Habitat, for a discussion of how effects on California condor foraging habitat resulting from the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) were considered in the EIS. Please refer to Master Response 4, California Condor Food Availability Analysis, for a discussion of the approach and assumptions associated with estimating future food availability for the southern California subpopulation of California condors.

Response to Comments P-5-3 through P-5-6

Please refer to Master Response 4, California Condor Food Availability Analysis, for a discussion of the approach and assumptions associated with estimating future food availability for the southern California subpopulation of California condors.

Response to Comments P-5-7 through P-5-11

Please refer to Master Response 3, California Condor Foraging Habitat for a discussion of how effects on California condor foraging habitat resulting from the TU MSHCP were considered in the EIS, including a discussion of which vegetation communities were considered in the condor foraging habitat model.

Response to Comment P-5-12

As described in Master Response 3, California Condor Foraging Habitat, of this Final EIS the analysis of the effects of the proposed action on foraging habitat is based on site-specific conditions on Tejon Ranch, including an assessment made by the Service of vegetation communities likely to provide condors with consistent access to food and/or the ability to escape from potential predators while foraging. Similarly and as described in Master Response 4, California Condor Food Availability Analysis, the analysis of food availability is based on an estimated amount of livestock (cattle and sheep) carcasses produced annually in the range of the southern California subpopulation of condor, as provided by the U.S. Department of Agriculture (2011) for several counties. The estimates of

livestock carcasses are not intended as an absolute quantification of the available food base for condors, but as an estimation of livestock carcasses produced annually. The Service also considered that an additional, but unknown, number of carcasses would be available from native ungulate and wild pig carcasses. Unlike for livestock, there is no reliable available information on the amount and distribution of such carcasses. The Service acknowledges the potential limitations of the food availability analysis provided in the EIS: namely, not all carcasses would be found and eaten by condors, and an estimate of other food sources, such as native ungulate and wild pig carcasses, is not available or provided in the EIS (See Master Response 4, California Condor Food Availability Analysis, in this Final EIS). In recognition of the ranch being a potential food source for condor, the TU MSHCP includes conservation measures to ensure that hunting and grazing comparable to historic average levels (14,500 head of cattle) would continue on the ranch through the permit term.

The analysis provided in the Supplemental Draft EIS is based on the best scientific information available about the availability and suitability of condor foraging habitat on Tejon Ranch, and the continued availability of food supplies within the range of the southern California subpopulation.

Response to Comment P-5-13

The Service acknowledges the importance of Tejon Ranch to California condors. As described in Section 4.1, Biological Resources, in Volume I of the Supplemental Draft EIS, prior to publication of the Supplemental Draft EIS, the Service contracted with U.S. Geological Survey (USGS) to conduct an independent analysis of all condor data sets for the southern California subpopulation of the California condor, including three management units on Tejon Ranch: Tejon Mountain Village (TMV) Planning Area, Condor Study Area, and the remaining areas of Tejon Ranch. The USGS report clarified that condors currently use, and are likely to continue using, all three of the Tejon Ranch management units, as well as the other three management units outside Tejon Ranch (i.e., Hopper Mountain Nation Wildlife Refuge, Bitter Creek National Wildlife Refuge, and Wildlands Conservancy-Wind Wolves Preserve) (Johnson et al. 2010). The Service considers the USGS study and recent GPS data to be the best scientific information available regarding condor use of Tejon Ranch and other southern California management units. These data indicate that condors may now use all of Tejon Ranch, and that use is focused on specific locations depending on the availability of food resources, temporary overnight roosting behavior, and the regular use of roost sites in the Condor Study Area (Johnson et al.2010). See also Master Response 2, California Condor Critical Habitat, for a discussion of condor critical habitat in the Covered Lands.

Response to Comment P-5-14

Please refer to Master Response 3, California Condor Foraging Habitat, for a discussion of how other proposed developments in the vicinity of Tejon Ranch were considered in the EIS analysis.

Response to Comment P-5-15

There is no evidence that development in the region, and in particular the reasonably foreseeable projects considered in the cumulative effects analysis, would reduce the condor's range to Tejon Ranch, Wind Wolves Preserve, Hopper Mountain National Wildlife Refuge, and Bitter Creek National Wildlife Refuge, and it is speculative to assume that private ranchlands will disappear to the point that the only foraging habitat available to condor in California would be associated with these areas. Please refer to Master Response 4, California Condor Food Availability Analysis, for a discussion of

the approach and assumptions associated with estimating future food availability for the southern California subpopulation of California condors. Refer to Master Response 3, California Condor Food Availability Analysis, for a discussion of the importance of foraging habitat on Tejon Ranch to the California condor.

Response to Comment P-5-16 through P-5-18

Please refer to Master Response 2, California Condor Critical Habitat, for a discussion of how effects on condor critical habitat are considered in the EIS, and the evaluation the Service will provide in their intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA. Regarding the commenter's concern that the conclusions in the EIS and TU MSHCP are not based on sound science, and as discussed in Master Response 3, California Condor Food Availability Analysis, the analysis of the effects of the proposed action on foraging habitat is based on site-specific conditions on Tejon Ranch, including an assessment made by the Service of vegetation communities likely to provide condors with consistent access to food and the ability to escape from potential predators while foraging. Similarly, the analysis of food availability on the Covered Lands is based on the best range-wide cattle and sheep carcass information available, ranch-specific grazing and hunting practices, and consideration of the TU MSHCP conservation measures that require grazing and hunting to continue on the Covered Lands over the term of the ITP.

With respect to the commenter's statement that the condor can be expected to achieve future survival in the wild if lead contamination can be controlled and sufficient foraging habitat can be guaranteed, the Service notes that the TU MSHCP (in combination with the Ranchwide Agreement) includes provisions to continue the lead ban on the ranch in perpetuity, and to conserve large areas of open space, including about 148,000 acres of suitable condor foraging habitat.

Roger Root, Assistant Field Supervisor, USFWS
2493 Portola Road, Suite B,
Ventura, CA 93003
Fw8tumshcp@fws.gov

May 3, 2012

Comments on Tehachapi Upland Draft MSHCP/SEIS

Dear Mr. Root;

We appreciate the opportunity to comment on the Tejon Uplands Multi-species Habitat Conservation Plan (TU MSHCP) documents for Tejon Ranch development. These documents constitute a much more comprehensive and thorough justification for Tejon Mountain Village (TMV) development than the documents issued four years earlier, but we find them still troubled with fatal flaws that invalidate the stated conclusions.

In 2008, as part of a group of concerned condor researchers formerly associated with the conservation program, we submitted to the U.S. Fish and Wildlife Service detailed comments on the Draft HCP and DEIS regarding Tejon Mountain Village (TMV). Our credentials were given in that earlier letter, and are also briefly summarized at the end of this letter. Otherwise, we do not wish to repeat here what is contained in the earlier letter, except to emphasize that we still stand by our conclusions in that letter that the development proposals constitute significant impact on California Condor Critical Habitat, for the reasons specified. P-5-1

In the following comments, we avoid discussing minor errors that do not bear critically on the major question of whether the development proposals constitute a take of the California Condor, and we limit our remarks to the most important issues bearing on a finding of no significant impact. We see two principal problems in the MSHCP analyses that fundamentally invalidate this finding. These are:

1. Section 4.2.2.2 concludes that there will be ample food for a recovered condor population, despite the loss from condor use of substantial acreage of Critical Habitat under development plans. This belief is based on a calculation purporting to show that available food supplies across the entire foraging range greatly exceed the calculated needs of recovered populations. Unfortunately this conclusion is deeply flawed by basic unstated assumptions that the calculated carrion food supplies are all or largely available to condors and that current foraging regions outside Critical Habitat will remain intact in the future. Both these assumptions are unjustified. That all calculated food supplies might be available to condors is very far from the truth simply because (a) there are many other scavenger species, which normally greatly outnumber condors, feeding on the same food supply and reducing its abundance for condors, (b) many available carcasses are not attractive as potential food for condors, and (c) effective condor foraging is commonly limited by specific wind conditions, topography, and other factors, so that only a small fraction of the overall mapped foraging range of the

P-5-2 P-5-3 P-5-4 P-5-5

P-5-5 cont.

species on which calculations of food supply were based can actually be utilized by condors at any given time.

P-5-3 cont.

With respect to (a), other species within condor range that commonly scavenge and are mostly much more abundant than condors on an individual species basis (and presumably will always be much more abundant than condors collectively), include the following: Turkey Vultures (*Cathartes aura*), Common Ravens (*Corvus corax*), Golden Eagles (*Aquila chrysaetos*), Coyotes (*Canis latrans*), Bobcats (*Lynx rufus*), Mountain Lions (*Felis concolor*), Black Bears (*Ursus americanus*)), Gray foxes (*Urocyon cinereoargenteus*), Ring-tailed Cats (*Bassariscus astutus*), various scavenging insects such as blowflies, fungi, and bacteria. We are not aware of any studies to comprehensively apportion the fraction of available carcass biomass normally ending up in the diet of these other scavengers, but strongly suspect it may often approach 100% in sum. Condors are very rarely the first scavenger species to arrive at a carcass, and they normally defer to several other species (e.g., Golden Eagles) when they do arrive, sometimes getting no food as a result.

P-5-4 cont.

With respect to (b) condors rarely feed on full grown cattle carcasses, apparently because of the difficulty they have in penetrating the thick and tough hides of these animals. Cattle carcasses comprise a major fraction of the food supply calculated in section 4.2.2.2.

P-5-5 cont.

With respect to (c), condors normally concentrate their foraging efforts in areas of topography with good winds that provide adequate lift for their ponderous soaring flight. Only a small fraction of mapped foraging range qualifies as excellent foraging habitat. Many portions, including many areas of grassland, are unusable under conditions of low ambient wind, regardless of their food supplies. The areas with the most consistently good winds include TMV portions of Condor Critical Habitat, and this superiority renders these areas far more important to the species than many other areas, a factor not considered or analyzed in the 4.2.2.2 presentation.

P-5-6

Thus, the amount of food actually available to condors is only a very tiny fraction of the total carrion in the environment, rendering the entire food supply calculations of section 4.2.2.2 misleading and invalid, despite their superficially quantitative nature. They constitute pseudoscience and do not allow any confidence in the conclusions reached. These calculations can only greatly overestimate the foods really available to the species. As former condor researchers, we cannot support calculations of real food supplies for the species on such a faulty and biased basis.

P-5-7

2. The exclusion in section 4.2.2.2 of woodland habitat portions of TMV in Critical Habitat from importance to condors is not well justified, especially in view of the fact that we have personally observed a number of cases of condors feeding under closed canopy woodland conditions within TMV and elsewhere. While condors

P-5-7 cont.

may prefer to forage in open grassland habitats, our observations show unequivocally that they are not prevented from finding and utilizing food in well-forested areas, and this is especially plausible because they clearly often monitor the activities of other species such as Turkey Vultures and Common Ravens to find food. Food need not be visible from the air to be found by Turkey Vultures because of the keen sense of smell in this species, and studies of Houston (1986) have demonstrated how well adapted this species is to dense forested conditions. Other scavenger species also have considerable capacities to find carrion in forested habitats by odor. Presumably, species such as condors that evidently lack a keen sense of smell, have the potential for locating food in forested areas by monitoring the activities of other scavengers. We do not believe it is legitimate to simply exclude forested areas from importance to condors, as is done in section 4.2.2.2, especially when such areas occur in regions with excellent winds, such as are found where TMV overlays Condor Critical Habitat. We believe that doing so will significantly underestimate the amount of habitat utilized by and important for condors within Critical Habitat. While it can be argued that the extent of underbrush in some forested regions may be dense enough to preclude entry by condors, we are aware of no scientific data to establish this possibility or define such limits, and none are presented in the TU MSHCP documents. Thus the approach taken in the TU MSHCP of excluding forested habitats from consideration does not constitute either a conservative or defensible approach, and the area calculations for suitable habitat are fundamentally underestimated, unconvincing, and invalid.

P-5-8

P-5-9

P-5-10

P-5-11

P-5-12 Together the methodological problems considered above can be expected to lead to truly major underestimates of the impacts on condors that would result from development of TMV lands within Condor Critical Habitat. It is especially relevant to note that those preparing these documents did not err in the direction of overestimating the importance of TMV lands to the species, but instead chose faulty and non peer-reviewed analyses to justify a massive underestimate of the importance of these lands. These analyses do not constitute an unbiased or legitimate basis for concluding that these impacts are only of a minor nature, and this undermines the entire basis for claiming that these TMV lands can be developed without significant impact on the species.

P-5-13 We believe that the abundant condor GPS locations accumulated in recent years in TMV areas of Critical Habitat indicate that these areas are of major importance to the species. Surely the burden of proof is on those who might claim otherwise, and we see no such proof in the documents under review. Further the relative importance of these areas can be projected to only increase in the future, considering the fact that many other areas of current condor foraging range that are not classified as Critical Habitat are unprotected from development and will undoubtedly be lost to development in the years ahead. Many additional regions formerly used by condors, such as the Simi Valley, have already been lost to regular condor activity because of developments, and such developments are currently planned for many other areas additional to Tejon Ranch, for example the Newhall Ranch along Hwy 126. Given the current predictions of human population growth for the San Joaquin Valley, and the political and economic emphasis being placed

P-5-14

P-5-14 cont. on renewable energy development, including wind power, it can be safely assumed that much condor foraging habitat will be lost in piecemeal fashion in the foreseeable future. It is unconscionable and completely inappropriate to encourage that loss by approving development within a unit of designated Critical Habitat that has been demonstrated to be of major importance to the California Condor.

In sum, all evidence of which we are aware, including sightings of feeding birds and GPS condor locations, suggest that TMV lands within Critical Habitat are indeed consistently important to the species. Calculations in section 4.2.2.2 purporting to show that the overall food supplies in condor foraging range far exceed the needs of recovered populations, and by implication that those in TMV are not crucial to survival and well being of the species, are deeply flawed by gross overestimates of the overall food supply actually available to condors, and by lack of recognition of the highly favorable foraging conditions (especially wind and topography) found in Critical Habitat, including TMV lands. Because of progressive development of ranchlands, the overall food supply can be expected to decline progressively in the future on private lands within condor foraging habitat, potentially leading at some future date to a situation where the only remaining usable foraging habitat is on the Tejon Ranch, the Wind Wolves Preserve, the Hopper Mountain National Wildlife Refuge, and the Bitter Creek National Wildlife Refuge. If and when this point is reached, we could well find a situation where available food supplies are inadequate to sustain a viable wild population, and where potentials have vanished to create new viable foraging habitat.

P-5-15

The documents under review here constitute crucial plans in respect to future survival of a very highly regarded endangered species, a species not yet exhibiting viable wild populations, but which can be expected to achieve such populations if contaminants such as lead ammunitions can be effectively controlled and sufficient foraging habitat can be guaranteed into the indefinite future. Critical Habitat on Tejon Ranch represents a lynchpin in such expectations, as has been amply testified by condor researchers over the years, and we agree with this assessment. There is no scientifically reputable justification for suburban or urban development of *any* of these lands, and it is astonishing that the Ranch is proposing such developments and that the USFWS is evidently amenable to approving such developments. We can only reiterate the remarks of the current Director of the USFWS that this organization must remain committed to sound science. The conclusions put forth in the documents under discussion here are not based on sound science.

P-5-16

P-5-17

We conclude that the proposed development of TMV lands will appreciably diminish the values of Critical Habitat for survival and recovery of the species and that the proposed developments do indeed constitute a take of the species and adverse modification of Critical Habitat. The intent of Critical Habitat classification of these lands was that these lands should be fully protected from significant development. We see no credible justification for a conclusion that development of TMV will constitute no significant negative impact to the California Condor.

P-5-18

Authors of Comments:

Dr. Noel F.R. Snyder, USFWS biologist in charge of condor field studies 1980-1986, member of Condor Recovery Team 1980-1985. [redacted]
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Response to Comment P-6-1

The commenter is correct in stating that habitat loss and degradation associated with development is one of the reasons of decline for most of the 27 species proposed for coverage under the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP). As described in Chapter 5, Other Covered Species, of the TU MSHCP, various other factors also affect the status and distribution of most of the Covered Species, including predation by other species (e.g., western spadefoot, two-striped garter snake); competition with other species (e.g., purple martin); historic use of pesticides, such as dichlorodiphenyltrichloroethane (DDT) (e.g., American peregrine falcon, bald eagle); nest parasitism (e.g., least Bell's vireo, yellow warbler); changes in prey base (e.g., white-tailed kite, coast horned lizard); and overgrazing or destruction of habitat by other species, such as feral pigs (e.g., Tehachapi pocket mouse, Fort Tejon woolly sunflower), among others.

Tejon Ranchcorp (TRC) has submitted an application to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act (ESA), as amended, for activities covered under the TU MSHCP. Section 10(a)(2)(B) of the ESA provides statutory criteria that must be satisfied before an ITP can be issued to TRC. Specifically, before issuing an ITP, the Service must find, among other things, that the effects of authorized incidental take are minimized and mitigated to the maximum extent practicable; that take would not appreciably reduce the likelihood of survival and recovery of the species in the wild; and that adequate funding for the TU MSHCP is ensured. This determination includes consideration of the effects the loss of habitat anticipated under the plan would have on the Covered Species. To that end, Section 4.1, Biological Resources, in Volume I of the Supplemental Draft Environmental Impact Statement (EIS), includes an assessment of modeled habitat that would be lost and conserved under the TU MSHCP. The Service will make a formal determination on the effects of the Covered Activities, including the effects of habitat loss, on the Covered Species in the Biological Opinion for the TU MSHCP.

Of note, the Centennial Project is not included as a Covered Activity under the TU MSHCP. Potential effects on federally listed species under that project would be considered independently by the Service under either ESA Section 7 or ESA Section 10. It is, however, considered a reasonably foreseeable action in the cumulative effects analysis included in the Supplemental Draft EIS (see Section 4.0.4.2, Other Reasonably Foreseeable Actions).

Response to Comments P-6-2 and P-6-3

As provided in 50 Code of Federal Regulations (CFR) 17.32, the Service considers several factors in determining the duration of an ITP, including the duration of the activities proposed under the TU MSHCP, and the expected positive and negative effects on the Covered Species over the proposed term of the permit, including the extent to which the conservation plan will increase the survivability of the covered species and/or enhance their habitat. As summarized in the Service's "Five Point Policy" addendum to the *Habitat Conservation Planning Handbook* (65 Federal Register [FR] 35252), the Service also considers the extent of scientific and commercial data underlying the proposed plan, the length of time necessary to implement and achieve the benefits of the conservation plan, and the extent to which the program incorporates adaptive management

strategies. TRC has requested the Service consider an ITP with a 50-year term. The Service will consider the above factors in determining the appropriate duration of the ITP for the TU MSHCP, should one be issued.

It is also noted that TRC anticipates a 30-year build-out of development-related activities within the Covered Lands. As a result, a 20-year permit term would not likely accommodate the proposed Covered Activities.

With respect to climate change and as discussed in Section 4.9, Climate Change and Greenhouse Gases, in Volume I of the Supplemental Draft EIS, the exact relationship between climate change and biological resources, including California condors and their habitat, is not well understood. The Supplemental Draft EIS recognizes the potential for global climate change to affect Covered Species and provides an analysis of this relationship, to the extent that it is understood, including consideration of how the TU MSHCP would respond to the potential for climate change to affect Covered Species. With respect to the California condor, Appendix C to the Supplemental Draft EIS analyzes the relative vulnerability of the species to climate change and finds that the California condor, although vulnerable to stochastic events, is less likely than many of the other Covered Species to be vulnerable to climate change because of its relatively broad geographic range and high level of mobility, and because it forages in habitat that is less likely to be substantially affected by climate change.

Regarding fire incidence on the Covered Lands, Section 4.9, Climate Change and Greenhouse Gases, of the Supplemental Draft EIS, identifies the potential for increased intensity of fires as a result of climate change, unrelated to the proposed action. Because this effect can be reasonably anticipated to occur over the 50-year term of the ITP, short interval return fires (i.e., those occurring with greater frequency in the same location than indicated by historic records) are regarded as a changed circumstance under the TU MSHCP (see Section 8, Changed Circumstances and Plan Implementation, in the TU MSHCP). For specific types of fires that are damaging to biological resources within the Covered Lands, the cause of the fire would be reviewed and preventative measures, such as a reconfiguration of fuel breaks, would be considered. If an increase in fire frequency occurs within the Covered Lands, TRC and the Service would assess the damage caused by the fire, and TRC would implement the following initial actions:

- Develop and implement a program to monitor natural re-growth within the damaged area for an appropriate period;
- If it is determined that natural re-growth is not occurring and that such absence would adversely affect Covered Species, an action plan identifying efforts to improve habitat conditions would be developed and implemented. Efforts to improve habitat conditions could include, for example, reseeding burned areas with native plant seeds; and
- Implement other appropriate adaptive management measures, such as specific components of the Grazing Management Plan or Integrated Pest Management Plan (IPMP).

The TU MSHCP would also preserve large blocks of habitat in the Covered Lands, securing space to accommodate shifts in a Covered Species' range in response to climate change. By acreage, vegetation communities protected in Open Space under the TU MSHCP would range from about 50% for scrub (i.e., 281 of 564 acres) to 100% for Mojavean scrub, oak riparian, desert wash/riparian/seeps, and several savannah and woodland communities (see Table 4.1-2 in Volume I of the Supplemental Draft EIS). Other vegetation communities protected in Open Space would include 94% of chaparrals, 90% of grasslands, 94% of the savannahs, 95% of woodlands, 98% of conifers, 84% of riparian/wetlands, 92% of riparian woodland, and 99% of washes. Protecting these communities is important because they are some of the communities in California expected to be most affected by climate change (Hansen et al. 2001; Kueppers et al. 2005; Lenihan et al. 2003).

Protected Open Space includes the riparian habitat/forests, which, as noted by the commenter, is used by least Bell's vireo, yellow-billed cuckoo, and willow flycatchers.

In summary, the Service expects that climate change effects on biological resources would occur with or without implementation of the proposed action. Under the TU MSHCP, more than 129,000 acres of the Covered Lands would be preserved, thereby protecting the vast majority of communities expected to be most affected by climate change. Design features would be included that would provide for flexible buffers, landscape connectivity would be ensured, and provisions would be included to allow a flexible response to climate change effects such as drought and wildfire.

For a variety of reasons, the methods for monitoring Covered Species vary between HCPs; however, all HCPs, including the TU MSHCP, are required to incorporate monitoring, regardless of the permit duration (50 CFR 17.22; 65 FR 35242). The monitoring program is customized for each HCP to reflect the nature of the biological goals and objectives. Therefore, while not every HCP monitoring program will include surveys for species numbers, every HCP must monitor species status, appropriately measured for the particular operating conservation program. While the conservation measures and provisions in the TU MSHCP provide for the preservation and monitoring of extensive areas of modeled habitat for the Covered Species, it is not the intent of the TU MSHCP to monitor overall species populations or abundance. Rather, the results of the monitoring program are intended to inform the need for, and implementation of, the adaptive management provisions in the TU MSHCP. As a final consideration, pursuant to 50 CFR 17.32(b)(8), the Service may revoke a permit if it concludes that continuation of the permit would result in jeopardy to a Covered Species. Thus, limiting the permit to a 20-year term would not be necessary to allow for appropriate changes in management.

Response to Comment P-6-4

The Service agrees that Tejon Ranch is centrally located for California condor movement and that it is important to ensure that adequate connectivity between the Traverse Ranges and the Sierra Nevada would be maintained if the TU MSHCP were implemented. Although Tejon Ranch does serve as an important linkage between historic condor habitat areas east and west of the ranch, proposed development on Tejon Ranch would not prevent condors from continuing to fly over Tejon Ranch, or accessing areas further to the east or west of the ranch for several reasons. The free-flying condors in the southern California subpopulation have been recorded flying over communities in the Tehachapi Mountains that have rural residential densities similar to or greater than that proposed for the Tejon Mountain Village Project (TMV) Project, including Pine Mountain Club and Frazier Park, Pinion Pines, Lake of the Woods, Interstate 5 (I-5), and even developed portions of Santa Clarita and northern San Fernando Valley. Such flyovers have resulted in no measurable ill effects regarding continued condor use of historical and current foraging, roosting, and nesting areas, as evidenced by Service global positioning system (GPS) tracking data. These data indicate increasing use of these habitat areas since 2002, when the Service began to use GPS transmitters to track free-flying condors.

Furthermore, the U.S. Geological Survey (USGS) recently released a report presenting a statistical analysis of GPS data collected from 2004 to 2009 for spatial behavior patterns in six management units in southern California, including Hopper Mountain National Wildlife Refuge and Bitter Creek National Wildlife Refuge, Wildlands Conservancy Wind Wolves Preserve, the TMV Specific Plan Area, the Condor Study Area, and the remaining portions of Tejon Ranch (Johnson et al. 2010). The study generated condor home ranges by estimating utilization distribution, which in turn, was used to estimate the probability and intensity of use of certain areas of interest. Appendix A of the USGS condor study includes the utilization distribution maps for 21 individual condors and shows

urbanized areas of Santa Clarita in the estimated home ranges of 16 individuals, and the communities of Frazier Park and Pine Mountain Club in the home ranges of 18 individuals. For example, a utilization distribution map from Appendix A of the USGS report shows a condor's estimated home range and high likelihood of occurrence locations, including the Condor Study Area on Tejon Ranch, Bitter Creek National Wildlife Refuge, Hopper National Wildlife Refuge, and the San Gabriel Mountains. This particular individual's home range encompasses highly urbanized areas in the Santa Clarita and San Fernando valleys and the Frazier Park and Pine Mountain Club areas. The USGS condor study supports the conclusion that condors regularly fly over developed areas and that these areas, based on the GPS data, are part of their estimated home ranges.

In addition, the TMV Project would not preclude foraging on Tejon Ranch, and thus, would not result in habitat fragmentation effects that would prevent flyover of the ranch and movement between areas east and west of the ranch as a result of excessive flight distances. The TMV Specific Plan and Oso Canyon Development Envelopes were modified to move development off of the northernmost higher elevation ridges and slopes to preserve high-quality condor foraging and flyover habitat. These areas include Grapevine Peak and northern Grapevine Ridge, the northern portions of Middle, Silver, Squirrel, and Lolas Ridges, the area encompassing the junction of Tunis and Geghus Ridges, and the easternmost 3-mile reach of Geghus Ridge. Additionally, TMV Project development south of the contiguous 2-mile-wide block of high-quality condor foraging and roosting habitat that extends from the western ranch boundary near Grapevine Peak eastward throughout the upland portions of the ranch is planned as very low-density residential development that would not inhibit condors from flying over or adjacent to these areas. Moreover, there are substantial portions of this area south of the 2-mile-wide area that would not have any development at all, but rather are preserved as Open Space under the TU MSHCP or the Ranchwide Agreement. Thus, the open space lands, low-density developed lands, and high-density developed lands in the TMV Planning Area would all continue to serve as condor overflight habitat and would provide an ample flight path and linkage for continued condor use of Tejon Ranch, as well as of areas to the east and west of Tejon Ranch.

Response to Comment P-6-5

As described in the Supplemental Draft EIS, the Service anticipates there is a potential for condors to be attracted to human activities and structures associated with the development proposed under the TU MSHCP during and following construction of infrastructure. The TU MSHCP includes measures to avoid or minimize the potential for habituation to these structures, such as limitations on design and construction of development on ridges within the TMV Planning Area to low-density Mountain Residential; requirements for TMV Planning Area setbacks and use restrictions; and provisions for an onsite Service-approved biologist to monitor condors on the ranch in coordination with the Service and respond to negative interactions between humans and condors quickly, using Service-approved measures to haze condors. Other measures are included in the TU MSHCP to minimize human disturbance to condors, including dissemination of information addressing prohibited behaviors related to condors; requirements for construction workers, filming crews, TRC staff, and residential and commercial occupants and their guests to cease any behavior that constitutes an attractive nuisance or otherwise presents an unreasonable and avoidable danger to California condors; restrictions on recreational activities, particularly organized events and filming projects in areas where condors are known or expected to occur; and prohibition of fireworks, explosions (louder than gunshots), or other abnormally loud noises in the TU MSHCP Mitigation Lands unless the Service-approved Tejon biologist determines, in consultation with the Service, that no condors are present or would be otherwise adversely affected (see Table 2-3 in Chapter 2, Proposed TU MSHCP and Alternatives, in Volume I of the Supplemental Draft EIS).Of note, violations of the ESA, including unauthorized take of a federally listed species, such as pursuing or injuring a California condor, are punishable under civil and criminal enforcement mechanisms in Sections 9

and 11 of the ESA; nothing in the Section 10 process removes that authority. The Service also notes that the ITP does not shield third parties from liability under the ESA for take of Covered Species or limit the authority of the state or Federal government to enforce endangered species laws (Implementing Agreement, Sections 3 and 12).

Response to Comment P-6-6

The Service agrees that condors or wild-hatched condor chicks may be harmed by ingestion of small bits of plastic and metal, referred to as microtrash. As described in Response to Comment P-6-5, the TU MSHCP includes several conservation measures to minimize the risk of exposure of condors to microtrash. For example, education and educational materials regarding threats to condors, including microtrash ingestion, and measures to minimize these threats must be prepared by the Service-approved biologist and provided to contractors, residents, and guests. Such educational materials would be reviewed and approved by the Service and would provide guidance on proper behavior by persons who construct or buy real estate or visit areas within the Covered Lands. The TU MSHCP also includes requirements to eliminate microtrash at construction sites, recreational areas, communication tower sites, outdoor filming projects, roads, and back-country areas where human presence occurs. TRC, or an included entity, must ensure that routine community maintenance activities include regular efforts to eliminate microtrash in these areas. All trash receptacles must be fitted with animal and weather-proof lids, regularly emptied, and regularly inspected by the Service-approved biologist. In addition, land managers (e.g., conservation easement holders, homeowners associations) would be empowered and required to take action to prevent any such activity that would pose a threat to condors under the terms of project conservation easements, covenants, conditions, and restrictions (CC&Rs), and similarly enforceable measures.

As noted in Response to Comment P-6-5, violations of the ESA, including unauthorized take of a federally listed species, are punishable under civil and criminal enforcement mechanisms in Sections 9 and 11 of the ESA.

Response to Comment P-6-7

Section 9.4 of the Implementing Agreement acknowledges that the Service has continuing access to the Covered Lands for the purposes of monitoring and enforcing the conservation measures provided in the TU MSHCP. Specifically, that section states:

> Pursuant to 50 CFR Section 13.21(e)(2), by accepting the Permit, Permittee consents to and will allow entry to the Covered Lands by agents and employees of the USFWS engaged in and for the purpose of ensuring compliance with the Permit, and laws and regulations applicable to the Permit, and/or undertaking any activities that are necessary to protect the Covered Species and/or are identified in the TU MSHCP. Except where specified below, such entry will occur under the following conditions: (1) at reasonable hours; (2) in a manner consistent with the purpose of the entry, that minimizes any disruption of the Covered Activities or any other operation of Permittee or ay holder of a Certificate of Inclusion; (3) after provision of advance notice to Permittee; and (4) with the opportunity for an agent or employee of Permittee to accompany the USFWS's agent or employee. These conditions on entry will not apply in the following circumstances: (1) when the USFWS has reason to believe a Covered Species is at risk of injury or death and an immediate response is necessary; or (2) when the USFWS has reason to believe a violation of the Permit, or laws or regulations applicable to the Permit has occurred or may be occurring which, in the USFWS's good-faith judgment, warrants immediate or noticeless access; or (3) entry, without consent, is otherwise for law enforcement purposes consistent with the Fourth Amendment of the Constitution. Access to the Covered Lands by USFWS agents or employees and California Condor Recovery Team members

solely to establish and operate a trap and release/supplemental feeding site, if deemed necessary by USFWS in accordance with TU MSHCP Section 4.4.3.2, shall not be governed by this Section 9.4, but shall be allowed in accordance with the provisions of the TU MSHCP.

Section 5.1.1(e)(2) through (4) of the Implementing Agreement also acknowledges that the conservation easements conveyed over the Covered Lands, which would be conveyed in perpetuity, "…name the Service as a third party beneficiary with access rights and the right to enforce the terms of the conservation easement."

The California Department of Fish and Game (CDFG) is not a party to the TU MSHCP, and its right to access the Covered Lands would be arranged separately under state law and in compliance with state permits.

Response to Comment P-6-8

Comment noted. Tejon Ranch lies within the area of responsibility for the Ventura Fish and Wildlife Office, located in Ventura, California. The Ventura Fish and Wildlife Office staff is responsible for projects in all or portions of 12 counties in California. This office is also supported by staff in the Region 8 office, located in Sacramento, California. The Service has no reason to believe that a commensurate number of qualified staff from the Ventura Fish and Wildlife and Region 8 offices, and California Condor Recovery Team would not be available in the foreseeable future to monitor and oversee implementation of the TU MSHCP and ITP.

The Service cannot address current or future staffing at CDFG.

Response to Comment P-6-9

For clarification, the reference to the habituation of six condors on page 4.1-130 of the Supplemental Draft EIS includes potential habituation of four condors under the TU MSHCP over the term of the 50- year ITP, as well as one condor under the Newhall Ranch Development Project, and one condor under the oil and gas lease expansion project in the Los Padres National Forest (two reasonably foreseeable actions considered in the cumulative effects analysis in the Supplemental Draft EIS). As described in that section, the Service does not consider the potential habituation of up to six condors over a 50-year time span as a result of those three actions to be incompatible with condor survival and recovery, given the expanding condor population and efforts taken to avoid or minimize the potential for habituation. The Service will formally evaluate the effects of the proposed issuance of an ITP in connection with the TU MSHCP on condors in the intra-Service consultation on the proposed action. In general, however, the determination to base the ITP on habitation of up to four condors on Tejon Ranch was derived through consideration of several factors, including the Service's experience with previous undesirable interactions between humans and condors (i.e., typically juvenile birds that are generally receptive to hazing efforts); the conservation measures proposed under the TU MSHCP to reduce the potential for habituation (e.g., removal of microtrash, ongoing monitoring and ability to respond quickly by a Service-approved biologist, as enhanced through use of more GPS units); and the avoidance and minimization measures that would be provided to reduce the potential for habituation from the other reasonably foreseeable actions (e.g., requirements for the disposal of microtrash).

It is important to note that habituation, or "take" of condors, as contemplated in this EIS and under the TU MSHCP, would occur when a condor becomes attracted to development or other human activity and becomes unresponsive to measures incorporated into the TU MSHCP to deter such condor/human interactions such that its "normal behavioral patterns are disrupted", thereby

creating a "likelihood of injury" in an individual bird. Lethal take of condor is not contemplated or allowed under the TU MSHCP.

Response to Comment P-6-10

As required by the National Environmental Policy Act (NEPA), the magnitude and incremental effects (qualitative or quantitative) of each alternative are disclosed and compared in this EIS. NEPA regulations require that this evaluation discuss the context and intensity of each potential effect (40 CFR 1508.27); a significance conclusion is not legally required. However, to provide the public with a meaningful understanding of how potential effects were considered in the EIS, each section in Chapter 4, Environmental Consequences, of the Supplemental Draft EIS describes the general criteria (quantitative and/or qualitative) by which the effects are evaluated. These criteria are considered in assessing the relative magnitude of the potential direct, indirect, and cumulative effects of each alternative, including, where appropriate, determining if the effects are anticipated to be minor (i.e., minimal or hardly noticeable), moderate (i.e., above negligible), or substantial. Although these criteria are subjective, they are intended to provide the public with a reference for comparing the relative effects of the five alternatives considered in this EIS.

For the California condor, the EIS evaluation considers the loss of foraging habitat, effects of habituation to human structures and activities, risk of collisions with power lines and/or artificial structures, and ingestion of microtrash that would occur under each of the five alternatives, including the proposed TU MSHCP.

Response to Comment P-6-11

The aboveground transmission lines referred to by the commenter represent an existing condition and are not included as part of the Covered Activities in the TU MSHCP. In addition, these lines are owned and operated by Southern California Edison, not TRC. The text of the TU MSHCP and the EIS has been amended in response to comments to clarify the extent to which transmission lines are included as Covered Activities, describe the current locations of power lines on the Covered Lands, and clarify the measures that would be taken to reduce the likelihood of collisions (including Service review of power line relocations). These revisions are summarized as errata in Chapter 2 of this Final EIS. Of particular note, one of the existing transmission lines in the TMV Planning Area would be relocated and undergrounded as part of development activities, and all new power lines associated with development within the Covered Lands would be required to be underground.

To address the potential for power line collisions and electrocutions, the Service initiated power pole aversion training to captive bred and wild caught condors beginning in the 1990s in an attempt to keep birds away from power lines and poles. The training has had some success because the number of deaths and injuries attributable to power line collisions and electrocutions has declined significantly, with no fatal collisions or electrocutions having occurred since 2007 (Rideout et al. 2012). The aversion training is expected to continue to minimize the potential for electrocution of condors posed by the transmission lines/towers that occur on Tejon Ranch. To date, there have been no documented or observed incidences of California condors or any other raptorial birds being electrocuted by perching on any of the transmission towers associated with the two existing aboveground high-voltage transmission lines on Tejon Ranch.

Response to Comment P-6-12

The commenter is correct in noting that wind farms can pose a threat to condors as rotating blades can strike a condor in flight, transmission lines can pose collision risks, and transmission lines and poles may pose electrocution risks for condors that perch on them. This is particularly true when wind farms are located in areas that are attractive to condors, such as ridgetops and upper-elevation slopes where strong winds provide lift for large birds. To address this concern, Section 4.4.1.4 of the TU MSHCP provides that no wind turbine farms will be constructed (and TRC agrees to expand the ban to all ranch lands) during the term of the ITP. Additionally, the prohibition on wind farms shall be maintained on the TU MSHCP Mitigation Lands in perpetuity, and TRC committed to maintain its negative easement right prohibiting wind farms on Gorman Ranch (located outside the Covered Lands). Individual wind turbine devices, which have the primary purpose to serve electrical generation needs on site, may be constructed following review and approval by the Service, based on the Service's determination that the device and any associated structures and electrical lines are of a design and in a location that would not pose a threat to condors. The effects of other, reasonably foreseeable wind energy projects in eastern Kern County, in combination with potential effects associated with the TU MSHCP are considered in Section 4.1.7, Cumulative Effects, in the Supplemental Draft EIS. It should be noted that the Centennial Project is located outside the Covered Lands and is not a Covered Activity under the TU MSHCP.

Although TRC has not made specific Leadership in Energy and Environmental Design (LEED) commitments in the TU MSHCP, the Mitigation, Monitoring, and Reporting Program (MMRP) for the TMV EIR (Kern County 2009) includes two mitigation measures that relate to energy efficiency and sustainability for the TMV Project. For example, Mitigation Measure 4.3-6 states that TRC shall incorporate measures into the design and operation of the TMV Project that ensure energy efficiency that is 25% beyond what is required by 2008 Title 24 standards. Mitigation Measure 4.3-5 generally provides that builders and custom lot owners within the TMV Development Area select sustainable construction materials to reduce emissions associated with the construction process, and promotes the use of alternative fuel technologies during the construction phase. In addition, Mitigation Measure 4.3-18 requires the TMV Project to reduce its greenhouse gas emissions to at least 29% below business as usual emissions, which requires implementation of many energy-saving measures. The commenter is directed to the TMV EIR for further information on mitigation measures required as part of the California Environmental Quality Act (CEQA) process.

Response to Comment P-6-13

The comment refers to separate incidents on Tejon Ranch that occurred during the past decade involving the killing of a condor and 11 mountain lions. The comment questions whether issuance of a permit to TRC is appropriate given these occurrences, whether the permit should include stronger terms and conditions, or whether greater fines should be levied on TRC.

In 2003, a hunter killed AC-8, the last remaining female condor removed from the wild in 1986 and the first wild condor returned to the wild in 2000. TRC, in a written explanation to the Service, stated that the hunter had previously been barred access to TRC's hunting programs but gained entry on the ranch as part of a subgroup of hunters participating in the wild pig management hunt offered by TRC as a part of its wildlife management program. TRC stated that it had provided an oral orientation to the hunters at the start of the hunt aimed at avoiding California condors, and that the shooting occurred outside the presence of TRC personnel and in direct violation of TRC's direction. The killing of AC-8 represented a significant loss to condor reintroduction efforts, and the United States Attorney prosecuted the hunter under the Migratory Bird Treaty Act. The hunter received a $20,000 fine and was sentenced to 5 years of probation and 200 hours of community service. TRC

cooperated with, and provided the results of its own investigation to, the United States Attorney, and was not charged civilly or criminally in the shooting. In the aftermath of the shooting, TRC informed the Service that it strengthened the terms of its hunting permitting procedures, including permit terms and review of access permits, and revised its oral orientation to address the shooting and increase hunter awareness of the protected status of the condor. In 2008, the ranch implemented a ranch-wide ban on use of lead ammunition in its hunting program and strengthened its hunter education and firearm policies to increase protection for California condors. There have been no other incidents involving a shooting of a condor on Tejon Ranch.

Under California law, it has been illegal since 1990 to kill mountain lions without a properly issued depredation permit issued by the CDFG. Such permits are typically issued in response to attacks on livestock or threats to or destruction of human life or property. In 2011, a hunting guide formerly employed by TRC filed a wrongful termination lawsuit in which he claimed he had been fired for complaining about the improper killing of mountain lions on Tejon Ranch. TRC reported to the Service that although it had fired the employee for reasons unrelated to the mountain lion allegations, it investigated the former employee's claims in cooperation with CDFG and determined that the hunting guide had himself killed 11 mountain lions on TRC property. TRC indicated that although some of the kills had occurred while depredation permits were in effect, senior management was unaware of, and did not encourage or reward the killings. As a result of TRC's investigation, all hunting guides with knowledge of the unlawful activity were disciplined and the supervisor of the guides was separated from employment on the ranch. TRC cooperated with the CDFG and Kern County District Attorney's Office investigations into the killings. TRC stipulated to the filing of a complaint and stipulated judgment which committed the company to follow the law and to reimburse CDFG $21,500 for the agency's investigation costs, to pay $15,000 in restitution to Kern County Animal Control, and to pay a $100,000 penalty. TRC voluntarily suspended all hunting activities on the ranch in January 2012 while it conducted an evaluation of its hunting programs and made operational improvements to ensure proper management and full regulatory compliance. As a result of its evaluation, TRC has revised its hunting offerings, increased supervision of hunters by guides, provided for more direct accountability of hunting managers to senior management, improved the content of hunting orientation and instructions, and established closer contact and cooperation with CDFG game wardens, including providing wardens greater access to the ranch to conduct inspections and investigations. TRC reports that it intends to resume its commercial hunting program in the fall of 2012.

As Federal law does not prohibit the killing of mountain lions, TRC was not charged with a violation of Federal law in connection with the mountain lion incidents, and Federal law does not provide a basis for levying fines against TRC.

Prior to issuing an ITP, the Service must evaluate whether the permit applicant demonstrates the requisite "responsibility" to hold the permit. Under 50 CFR 13.21(b)(1) and (3), the Service may refuse to issue a permit if the agency finds that the permit applicant evidences a lack of responsibility. The assessment of a civil penalty or conviction of a criminal provision of a statute or regulation related to the activity for which the permit is sought provides a basis for a finding of a lack of responsibility on the part of the applicant under 50 CFR. 13.21(b)(1). In this case, TRC was not determined to be responsible, either civilly or criminally, in the death of AC-8, which is the incident that is most closely related to the ITP sought by TRC. In addition, the criminal penalty and restitution assessed against TRC in connection with the shootings of the mountain lions is not related to the proposed action for which TRC is seeking a permit (i.e., non-lethal take of condors and take of other Covered Species [not including mountain lions] incidental to development and ongoing ranch activities). In fact, hunting is not a Covered Activity in the TU MSHCP. The Service will consider both the shooting of AC-8 and the mountain lions in its formal review of TRC's permit application. The Service notes that neither circumstance automatically disqualifies TRC from holding an ITP. Under 50 CFR 1321(c), factors that require Service disapproval of a permit application

include a felony violation of the Lacy Act or Migratory Bird Treaty Act and past revocation of an ITP. None of the mandatory disqualifying factors apply to TRC.

The determination of whether TRC's past conduct should disqualify the company from receiving an ITP will be left to the reasoned discretion of the Service. In making the determination, the Service must consider the circumstances of TRC's past conduct and make an informed judgment regarding the company's responsibility to hold and abide by the ITP. While a formal determination has not been made whether to grant an ITP to TRC, the Service takes particular note that the company was not culpable in the death of AC-8, and has taken steps since the death to reinforce the prohibition in its commercial hunting program against shooting large birds, to monitor the activities of hunters, and to terminate the permit of any hunter who does not complete with its terms. Similarly, with regard to the mountain lion shootings, TRC disciplined or terminated employees connected with the killings and implemented several measures to improve the supervision and operation of its hunting program to ensure such incidents are not repeated. These actions demonstrate an appreciation for the seriousness of the shooting incidents and a commitment to avoid future incidents.

Under the TU MSHCP, TRC is required to retain a full-time, Service-approved biologist (including assistants) to monitor implementation of the TU MSHCP, and in particular, the presence of condors on the Covered Lands throughout the permit term. Service personnel will also have continuing access to the Covered Lands to monitor condor activity. TRC is required to implement an education program for all its employees and contractors conducting Covered Activities to ensure they are properly advised of the TU MSHCP's requirements. Each future contract between TRC and a third party contractor must include a provision requiring the contractor to comply with the ITP. Under the proposed permit, TRC is liable for the actions of all of its employees, contractors, and third parties conducting Covered Activities under TRC's authority.

Although hunting is not a Covered Activity under the TU MSHCP, TRC has committed to enforce the ranch-wide ban on lead ammunition in perpetuity and has included in its commercial hunting permit, a "Specific Notice" emphasizing the ban on use of lead ammunition and detailing specific prohibited behaviors with regard to condors. In addition to potential ESA liability, the Specific Notice states that a violation of the condor restrictions will result in immediate ejection of the hunter from the ranch and permanent termination of the hunter's future hunting privileges without refund of prepaid fees, among other consequences.

The measures undertaken by TRC to address the AC-8 and mountain lion shootings, as well as other protective measures included in the TU MSHCP, as described above, reflect the company's resolve to avoid repetition of the circumstances that led to the condor and mountain lion shooting incidents.

Finally, the Service notes that substantial sanctions are provided under the ESA for violation of a Federal ITP. Under Section 11 of the ESA, TRC may be assessed civil penalties of up to $25,000 and criminal penalties of up to $50,000 for each knowing violation of an ITP. A criminal conviction would also expose the violator to imprisonment for up to 1 year. Pursuant to 18 U.S.C. 3571(b)(5) and (c)(5), respectively, the criminal penalties may be doubled to $100,000 for each violation by an individual and $200,000 for each violation by the company. These provisions will provide the Service with powerful enforcement tools to ensure TRC's compliance with the ITP and a powerful disincentive for the company to violate the permit.

The Service does not believe that additional measures suggested by the commenter, including increased monitoring, greater fines, or other changes to the TU MSHCP, in consideration of the mountain lion incidents are necessary to ensure TRC's compliance with the terms of the ITP.

Regarding the comments that certain restrictions (e.g., not allowed to work for TRC within 5 years of leaving government service, not selected by TRC) and guarantees (e.g., provide secure careers in academia or the government, operate for the duration of the TU MSHCP) be placed on the Tejon staff biologist position, the Service believes that qualification and review requirements for this position,

as provided in Section 5.1.1(c) of the Implementing Agreement, provide reasonable assurances that the Tejon staff biologist would professionally implement and enforce the provisions of the TU MSHCP. Specifically, that section requires:

> …TRC retain the service of a full-time biologist, the Tejon Staff Biologist, to perform the functions described in Sections 4, 7, and 8 of the TU MSHCP. The hiring will occur no later than 30 days prior to initiation of the start of construction (i.e., prior to surface disturbing activities) of the TMV Project. Also, promptly, after issuance of the Permit, TRC will contract with a qualified third party, whose qualifications are approved by the USFWS, to perform the biologist's functions identified at Section 4.4.3.5 of the TU MSHCP until the Tejon Staff Biologist is retained. The qualifications of the Tejon Staff Biologist will be reviewed and approved by the USFWS and will either have expertise or contract with a biologist to be approved by the USFWS that has expertise with raptor(preferably California condor) life history and conservation.

As provided in Response to Comment P-6-7, Section 9.4 of the Implementing Agreement ensures the Service access to the Covered Lands for the purposes of monitoring and enforcing the conservation measures provided in the TU MSHCP. This routine access would allow the Service to monitor compliance with the TU MSHCP, and ensure that the Tejon staff biologist is implementing the plan as intended. Finally, Section 12.2 of the Implementing Agreement provides conditions under which the Service may suspend or revoke the ITP for cause in accordance with the laws and regulations in force at the time of such suspension of revocation, which ensures management of the Covered Lands in compliance with the TU MSHCP and ESA.

Response to Comment P-6-14

The Service assumes the commenter is referring to Section 12.3.1 of the Implementing Agreement, which is provided as Appendix C to the TU MSHCP, and describes the informal dispute resolution process that could occur if the Service and TRC disagree about implementation of the TU MSHCP or Implementing Agreement. The Service acknowledges that there may be a delay associated with any dispute resolution process; however, use of the informal dispute resolution process identified in the Implementing Agreement is optional, and the Service is free to seek any available remedy if the circumstances so warrant.

While we anticipate that TRC and the Service will work together in good faith to resolve disputes under the ITP in a timely manner, Section 12.2 of the Implementing Agreement acknowledges that the Service may suspend or revoke the ITP, in whole or in part, for cause in accordance with the laws and regulations in force at the time of such suspension of revocation. The outcome of any dispute resolution process would be topic dependent but, in all cases, would require TRC to demonstrate compliance with the ESA and ITP, including applicable take avoidance, minimization, and mitigation measures for the Covered Species, and the terms of any conservation easement recorded on the Covered Lands.

Response to Comment P-6-15

The Service assumes the commenter is referring to Section 5.1.2 of the Implementing Agreement, which is provided as Appendix C to the TU MSHCP. Specifically, Section 5.1.2 states that if the Service "…makes a finding of Unforeseen Circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, Permittee will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected Covered Species."

This language is generally reflected in the issuance criteria provided at ESA Section 10(a)(2)(B)(iv), which states "the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild", and in the "jeopardy" definition provided in Section 7 of the ESA (50 CFR 402.02), which defines the term "jeopardize the continued existence of" as "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." In evaluating whether an activity undertaken by TRC would contribute to "appreciably reducing" the likelihood of the survival of a Covered Species, the Service would follow the analytical approach outlined in the ESA Section 7 consultation regulations (50 CFR 402.02) and the *Endangered Species Consultation Handbook* (pages 4-22 to 4-35). The Service would assess whether the Covered Species are likely to survive and recover, taking into account all of the effects of the activity in question, the environmental baseline (i.e., the effects of past and ongoing human and natural factors), the status of the species, and the cumulative effects of other non-federal actions in the action area.

Arthur Unger [redacted]

05/03/2012 04:58 PM

To: fw8tumshcp@fws.gov
cc:
Subject: Tehachapi Upland Draft MSHCP/SEIS Comments

Please confirm receipt.

I comment only as an individual and not on behalf of any organization.

P-6-1 Most of the 27 species this HCP is concerned with have been given their special status because they lack habitat. Development of Tejon Mountain Village (TMV) and Centennial by the Tejon Ranch Corporation (TRP) will reduce their habitat even further. Therefore the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TUMSHCP) must call upon TRP to do all it can for the special status species.

P-6-2 I think the incidental take permit should be for only 20 years because development and climate disruption (global warming) may rapidly alter the habitat of any species. We know that a century ago Condors flew over and foraged in the San Joaquin Valley. With the current intense development and the longer hotter summers climate disruption will bring to the next few decades, we do not know if Condors will continue to do so. A warmer earth may have different air currents. Perhaps Condors and trees will restrict themselves to higher, cooler habitat. Climate disruption will probably dry forested areas and increase intensity of fires, as noted on TUMSHCP page 4.9–6. Would fire incidence increase? At least some Condors used forests. Least Bells vireo, Yellow billed cuckoos

P-6-3 and Willow flycatchers depend on riparian forests. A shorter HCP duration will encourage monitoring of species numbers so that management can change if a species is diminishing.

P-6-4 Tejon Mountain Village is in the center of condor habitat and we do not know how easily condors will fly over it. Condors have investigated human dwellings in Pine Mountain

P-6-5 Club, so they might investigate Tejon Mountain Village. I hope inhabitants of Tejon Mountain Village will not molest condors or feed them so that they frequent

P-6-6 developments. Condors can be harmed by eating small bits of discarded trash; I am glad the TUMSHCP discusses microtrash. I hope Tejon Mountain Villagers who may be

P-6-6 cont. new comers to the area and may not be familiar with efforts to save the condor do not attract condors in order to entertain their guests. CDFG & USFWS must always have

P-6-7 access to TMV so they can warn or fine condor abusers. I hope CDFG & USFWS always have enough knowledgeable people to monitor this and other areas set aside for

P-6-8 our national treasures.

P-6-9 Page 4.1–130 says that habituation of six Condors will not cumulatively substantially effect the population rangewide. With such a small population, how do you know the loss of six individuals will not reduce the species' gene pool? How do you define

P-6-10 substantial?

P-6-11 The two existing aboveground transmission lines on Tejon Ranch should be insulated to prevent injury to Condors or any bird contacting them.

P-6-12 For condors, there is hope they will expand their habitat through out the Transverse Range and well into the western foothills of the Sierra Nevada Mountains. This new habitat is suitable for generating electricity from wind machines which probably have the ability to kill Condors. Therefore, minimizing local demand for electricity by making all buildings at least Leadership in Energy and Environmental Design (LEED) silver is a mitigation measure for TMV and Centennial. I hope that all development in the world will be at least LEED silver. Development on Tejon Ranch is a good opportunity to use LEED because building owners are affluent enough to afford the initial cost and can be made aware that they will soon save much more money on utility bills than they paid initially for LEED construction.

P-6-13 Tejon Ranch management as a whole is not to be trusted to allow proper management of wildlife. At least eleven mountain lions have been illegally killed on Tejon Ranch in recent years. Several years ago, as I remember, a person who was permitted by TRC to hunt on Tejon Ranch shot and killed a condor. To prevent the possibility of undue influence by TRC on monitors of the TUMSHCP, at least some of the biologists and TUMSHCP supervisors should have secure careers in academia or somewhere else outside of TRC or government; some supervisors should not long be associated with monitoring the TUMSHCP. This will reduce the opportunity for TRC to become too friendly with them. Certainly no one who enforces the TUMSHCP should be allowed to work for TRP for at least five years after leaving government service. The TUMSHCP wisely requires TRP to pay for management by biologists, but those biologists should not owe their job security to TRC. The biologists should not be selected by TRC. Data from the "Tejon Staff Biologist", described in appendix C, 5.1.1 c, should not be

P-6-13 cont. accepted by the USFWS even if the Tejon Staff Biologist has an excellent reputation before accepting a position with TRC. The biologists should operate for the duration of the HCP.

P-6-14 If USFWS and TRC disagree, who prevails? If section 12.3.1 is invoked, a lot of time could pass before the situation is resolved. How would a habitat damaging event or injured animal fare during this time?

P-6-15 Appendix C, 5.1.2 says “Permittee will avoid contributing to appreciably reducing the likelihood of the survival and recovery….” of a species. How much does the likelihood of survival or recovery have to decrease in order to be appreciable?

Please provide me with all follow up announcements concerning wildlife impacts of Tejon Ranch development.

Thank you for preparing a detailed HCP and for the opportunity to comment,

Arthur Unger

Response to Comment P-7-1

The U.S. Fish and Wildlife Service (Service) acknowledges the past work and accomplishments of those who have contributed toward the recovery of the California condor. The Service has considered all comments provided by the public regarding the proposed action. Specifically, the Service considered and responded to comments made by Noel Snyder and other condor biologists on the 2009 Draft Environmental Impact Statement (EIS) (Comment Letter I-293). The Service has also considered and responded to comments made by Noel Snyder on the Supplemental Draft EIS (Comment Letter P-5) as presented in this Final EIS.

Bob Hamber [redacted]

05/04/2012 12:08 AM
Please respond to Bob Hamber

To: "fw8tumshcp@fws.gov" <fw8tumshcp@fws.gov>
cc:
Subject: MSHCP Public Comment

P-7-1

While professional judgments among wildlife biologists exist, the ones to trust their analysis and recommendations are Noel Snyder and cosigners.
They are the ones who successfully brought the Condor back from the brink of extinction against tall odds when:
-- the learning curve was steep
-- the observations were intense
-- the analysis of data was conscientious and thorough
-- the decisions were critical and tough
They are the ones with the proven track record of good science justified judgment, and dedication to the Endangered Species Act.

I don't mean to preach to the USF&WS about reputations they probably already know. But I don't know who the Tehachapi Uplands Multi Species Habitat Conservation Plan decision makers are, and this testament is written for any of them who may not know which wildlife biologists/ecologists/habitat experts to trust and believe.

My strong opinion is based upon my peripheral association with the Condor Recovery Program since its inception.

Sincerely,
Bob Hamber
[redacted]

Chapter 5
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Chapter 6
References

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