



U.S. Fish and Wildlife Service

Draft Environmental Assessment
for
the Issuance of an Eagle Nest Take Permit
for Pacific Gas and Electric Tree Removal

Prepared by
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December 2022

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Introduction

This Environmental Assessment (EA) has been prepared to analyze the environmental consequences of the U.S. Fish and Wildlife Service (Service) issuing a permit to remove an alternate bald eagle nest¹ associated with the Pacific Gas and Electric Company's (PG&E) proposed tree removal pursuant to the National Environmental Policy Act (NEPA; 42 United States Code [U.S.C.] §§ 4321–4347). Our issuance of an eagle nest take permit (permit) under the Bald and Golden Eagle Protection Act (Eagle Act; 16 U.S.C. §§ 668–668d and 50 Code of Federal Regulations [CFR] § 22.85²) constitutes a discretionary federal action that is subject to NEPA. This EA assists us in ensuring compliance with NEPA, and in deciding whether the proposed action is likely to have significant effects and is therefore appropriate for an Environmental Impact Statement (EIS) under 40 CFR § 1501.3. This EA evaluates the effects of alternatives for our decision whether to issue the permit.

The Eagle Act authorizes us to issue eagle take permits only when the take is compatible with the preservation of each eagle species (Service 2016a), defined in the Service's 2016 Programmatic EIS (PEIS) for the Eagle Rule Revision (Service 2016b) as “consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units (EMUs) and the persistence of local populations throughout the geographic range of each species.” The PEIS analyzed the potential impacts on the human environment that may result from implementation of several eagle permit regulations that authorize take of bald and golden eagles and eagle nests pursuant to the Eagle Act.

The applicant, PG&E, is requesting Eagle Act take coverage for the take of one bald eagle nest. The nest exists in a dead tree on private property near an existing aboveground electric line servicing a single customer. PG&E must remove the dead tree to comply with state law that requires utilities to remove hazardous vegetation that poses a potential risk to electric lines or equipment. PG&E's removal of the tree would mitigate the fire-ignition threat posed by the tree

¹ As defined in 16 United States Code sections 668–668d and 50 Code of Federal Regulations section 22.6, *alternate nest* means one of potential several nests within a nesting territory that is not an in-use nest at the current time. When there is no in-use nest, all nests in the territory are alternate nests. *In-use nest* means a bald or golden eagle nest characterized by the presence of one or more eggs, dependent young, or adult eagles on the nest in the past 10 days during the breeding season.

² Effective February 7, 2022, 50 CFR 22.27 was renumbered to 50 CFR 22.85 (87 FR 876, Migratory Bird Permits: Administrative Updates).

to alleviate an existing safety emergency, ensuring health and safety for the public and the nesting eagles.

Department of Interior policy requires the Service to analyze the issuance of eagle permits under NEPA. Department of the Interior Departmental Manual Part 516, Chapter 8 (516 DM 8), titled *Managing the NEPA Process – U.S. Fish and Wildlife Service*, designates certain Service actions as categorical exclusions. A *categorical exclusion* (CatEx) is a category of actions that do not individually or cumulatively have a significant effect on the human environment and therefore do not require preparation of an EA or an EIS. One of the Service's categorical exclusions covers permitting actions where the permit would cause *no or negligible environmental effects* (516 DM 8.5(C)(1)).

For eagle take permits, this categorical exclusion applies when:

1. The tiering criteria are met without the need for compensatory mitigation (i.e., tiering to our 2016 Eagle Rule Revision PEIS);
2. The other environmental effects of the permit issuance are negligible (e.g., the required conservation measures do not have more than negligible environmental effects). Nonnegligible impacts that are fully mitigated would preclude application of the categorical exclusion because those effects are potentially significant before application of mitigation; AND,
3. The permitting action does not trigger any extraordinary circumstances in which a normally excluded action may have a significant environmental effect. A Departmental list of potential extraordinary circumstances can be found at 516 DM 2, Appendix 2.

This categorical exclusion applies to most one-time bald eagle disturbance permits and bald eagle nest take permits. However, given the public interest in the nest that is the subject of the proposed nest removal permit, we have decided to prepare this issue-driven and focused EA to assist our planning and decision making in consideration of this permit, as is our discretion under 40 CFR section 1501.5.

This EA evaluates whether issuance of the permit will have significant impacts on the potentially affected environment and the degree of the effects of the action. In considering this, 40 CFR section 1501.3 directs an agency to consider the affected area (national, regional, or local) and its resources. In evaluating the degree of the effects, we must also consider short-term, long-term, beneficial, and adverse effects; impacts on public health and safety; and compliance with other environmental protection laws.

This proposal conforms with and carries out the management approach analyzed in and adopted subsequent to the PEIS (Service 2016b). Accordingly, this EA tiers from the 2016 PEIS. We will consider project-specific information not considered in the PEIS in this EA as described below.

Purpose and Need

Our purpose in considering the proposed action is to fulfill our authority under the Eagle Act and its regulations (50 CFR § 22.85). The need for this action is a decision on an eagle nest take permit application from PG&E. The decision must comply with all applicable regulatory requirements and be compatible with the preservation of eagles.

Authorities

Our authorities are codified under multiple statutes that address management and conservation of natural resources from many perspectives, including, but not limited to the effects of land, water, and energy development on fish, wildlife, plants, and their habitats. This analysis is based on the Eagle Act (16 U.S.C. 668–668e) and its regulations (50 CFR § 22.85). The PEIS has a full list of authorities that apply to this action (Service 2016b: Section 1.6, pp. 7–12), which are incorporated by reference here.

Background

PG&E contacted the Service on January 4, 2022, regarding a dead/dying Ponderosa pine (*Pinus ponderosa*) tree containing a bald eagle nest on private property approximately one quarter-mile northeast of the Van Arsdale Reservoir spillway on the Eel River in Mendocino County, California. The tree is next to an aboveground electric line servicing a single customer on private property and poses a fire-ignition risk due to its proximity to the electric line (Figure 1). PG&E sought to remove the hazard tree to comply with California Public Utilities Commission General Order 95, Rule 35, which specifies that “dead, rotten and diseased trees or portions thereof, that overhang or lean towards and may fall into a span, should be removed,” and Public Resource Code 4293, which requires a 4-foot minimum clearance to be maintained for power lines between 2,400 and 72,000 volts. PG&E requested advice and permissions from the Service on the removal of the nest contained in the hazard tree that was not in use by bald eagles at the time. PG&E was hoping to resolve the situation prior to the eagle nesting season that we formally recognize as beginning on January 15.

On January 13 and 14, 2022, multiple citizens and nongovernment organizations in the local community contacted us about the potential nest removal. Those opposing the nest removal noted that an adult bald eagle was documented at the nest on January 11, 2022, and that the nest had fledged young during several nesting periods since 2011. Others supported removing the

nest prior to it becoming occupied to mitigate the fire risk and minimize the adverse effect to the bald eagle breeding pair.

Given the local opposition for the hazard tree removal in January 2022, PG&E abandoned their plans to remove the tree on January 15, 2022. The bald eagle pair nested and successfully fledged young from the nest in the 2022 breeding season. By the end of summer, the nest tree's decay had further progressed, amplifying the safety and fire hazard it posed. On July 22, 2022, PG&E requested a nest take (i.e., removal) permit as needed to remove the hazard tree. On August 15, 2022, PG&E de-energized the electric line to mitigate the fire-ignition risk posed by the hazard.



Source: PG&E.

Figure 1. Picture of Hazard Tree with Eagle Nest (January 2022)

Scoping and Coordination

This EA incorporates by reference the scoping performed for the PEIS (Service 2016b: Chapter 6, p. 175).

Proposed Action and Alternatives

NEPA requires federal agencies to consider the purpose and need for the proposed action and, from that, “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” As discussed in this EA, we have not identified any unresolved conflicts concerning alternative uses of available resources associated with PG&E’s proposal. Therefore, in accordance with NEPA and its implementing regulations (40 CFR Parts 1500–1508), this EA considers the no-action alternative and proposed action.

Alternative 1: No Action

Under the No Action Alternative, we would take no further action on PG&E’s permit application, and, therefore, PG&E would not be able to legally remove the eagle nest by cutting down the hazard tree. There would be no disturbance of existing environmental conditions at the site, and there would be no new environmental protection, mitigation, or enhancement measures. Under the No Action Alternative, the project would not occur, there would be no project impacts on eagles or eagle nests requiring an eagle nest take permit, and we would not issue an eagle nest take permit to PG&E.

Alternative 2: Proposed Action – Issuance of an Eagle Nest Take Permit

We propose to issue a permit to take one alternate eagle nest with associated conditions, as allowed by regulation. Given the limited scope of the project (a single tree-cutting event on private property), there are no other measures required by other agencies and jurisdictions to conduct the tree removal.

PG&E proposes to cut down the tree outside the eagle nesting season (August 1–January 14). The project involves approximately four or five personnel. The personnel will use a chainsaw and fell the tree to the south, away from the electric line. The crew will use a woodchipper to shred some of the vegetative material and haul it off site. Large-diameter vegetation (i.e., the main trunk of the tree) will be left on site. PG&E would bury the nest substrate at the site. All work will be performed in 1 day.

Our regulations do not require that eagle nest removals provide a net benefit to eagles when the removal is necessary to ensure public health and safety (§ 22.85 (a)(1)(ii)). However, PG&E would make a voluntary contribution to a rehabilitation facility that specializes in caring for sick and injured bald eagles sufficient to provide for the rehabilitation costs of a sick or injured eagle for 2 months.

Alternatives Considered, but Eliminated

Relocate Eagle Nest

We considered requiring PG&E to relocate the eagle nest either to a nearby tree or to construct a platform for the nest's placement. Although this option is appropriate in some situations, we determined that this eagle breeding pair already has a known alternate nest within their breeding territory available for their use (see *Affected Environment*, below, for bald eagle survey information). In addition, the habitat supports additional nest trees available for future alternate nest sites. To minimize future electrocution or collision risk to this pair of eagles and their offspring, we determined that facilitating their continued nesting proximate to the electric line was not practicable. A requirement to relocate the nest or construct a new nest was not biologically warranted. Therefore, we eliminated this potential alternative from further consideration.

Affected Environment

This section describes the environment of the area to be affected by the proposed action and alternatives, including planned actions in the area. The description of the affected environment focuses on important issues, including health and safety and biological resources.

As noted above, under *Background*, PG&E de-energized the electric line on August 15, 2022, as a means to ensure public safety and avoid an ignition or wildfire until PG&E can remove the hazard tree with the eagle nest. Figure 1 shows the hazard tree with the eagle nest in January 2022. Figure 2 gives a closer view of the hazard tree from July 2022 that clearly shows that the tree is dead, as evidenced by bare branches and brown needles. PG&E must remove the hazard tree to comply with California Public Utilities Commission General Order 95, Rule 35, which specifies that “dead, rotten and diseased trees or portions thereof, that overhang or lean towards and may fall into a span, should be removed,” and Public Resource Code 4293, which requires a 4-foot minimum clearance to be maintained for power lines between 2,400 and 72,000 volts.

The remaining description of the affected environment focuses on biological resources of importance that may be affected by the proposed action or alternatives.



Source: PG&E.

Figure 2. Picture of Hazard Tree with Eagle Nest (July 2022)

Bald Eagle

General information on the population trends, distribution, and habitat of bald eagles is detailed in the PEIS (Service 2016b: Sections 3.3 and 3.4). This section more specifically describes the bald eagle population in the affected area for this application.

Bald eagles occur most frequently around reservoirs, lakes, rivers, and coastal areas. Breeding habitat is typically coniferous forests adjacent to rivers, lakes, or wetlands (Buehler 2020). In California, breeding bald eagles are resident year-round and mostly remain in their well-defined nesting territories. Bald eagle nest territories usually contain several alternative nest sites, only a single of which is normally used in any given year (Buehler 2020). In most of California, the bald eagle breeding season lasts from about January through July or August.

The bald eagles that nest in the affected area are part of a larger breeding population distributed throughout much of the western United States and Canada in suitable habitats. The estimated total population in the Pacific Flyway North EMU that encompasses the affected area is 13,000 individuals (Service 2016c). The Service defines the *Local Area Population* (LAP) as the bald or golden eagle population within the area of a human activity or project bounded by the natal dispersal distance for the respective species (50 CFR § 22.6). The LAP is estimated using the average eagle density of the EMU or EMUs where the activity or project is located. The LAP for bald eagles is 86 miles. The LAP for this project comprises many breeding bald eagle pairs (CDFW 2022a).

PG&E conducts eagle productivity surveys three times annually for the Potter Valley Project as a condition of its license with the Federal Energy Regulatory Commission. Since it began monitoring the nest in 2007, PG&E has documented the nest in the hazard tree as in-use during a total of 12 breeding seasons (M. Best pers. comm.). In 2016, this breeding territorial pair used a known alternate nest on a ridge approximately 0.8 mile to the south (Figure 3). PG&E's 2021 surveys determined that eagles did not nest in either the hazard tree or in the known alternate ridge top nest (M. Best pers. comm.). In 2021, PG&E's surveys found that the nest in the hazard tree appeared to be slumping. There were also signs that the bald eagle territorial pair may have been working on their alternate ridge-top nest, as evident from fresh lining material observed. Even so, the pair did not use either nest location to produce young in 2021.

PG&E conducted three eagle productivity surveys in the project area vicinity in 2022. The subject nest in the hazard tree was in use by the territorial pair of bald eagles. Surveys conducted in April 2022 identified two nestlings in the nest. A subsequent survey conducted on June 7, 2022, documented one large nestling. Documentation of surveys is inconclusive as to whether one or both nestlings fledged (Jepsen pers. comm.). These surveys also verified that the eagle pair's alternate nest, approximately 0.8 mile to the southwest and last used in 2016, was intact. Therefore, there is a viable alternate eagle nest that this pair maintains within their breeding territory. The productivity surveys also documented six bald eagle nests around Lake Pillsbury (8 miles northeast of the project area), including four alternate nests and two in-use nests, each with two nestlings (Jepsen pers. Comm.), indicating that the area's bald eagle population is productive and that the habitat supports alternate nests and additional trees suitable for nesting.

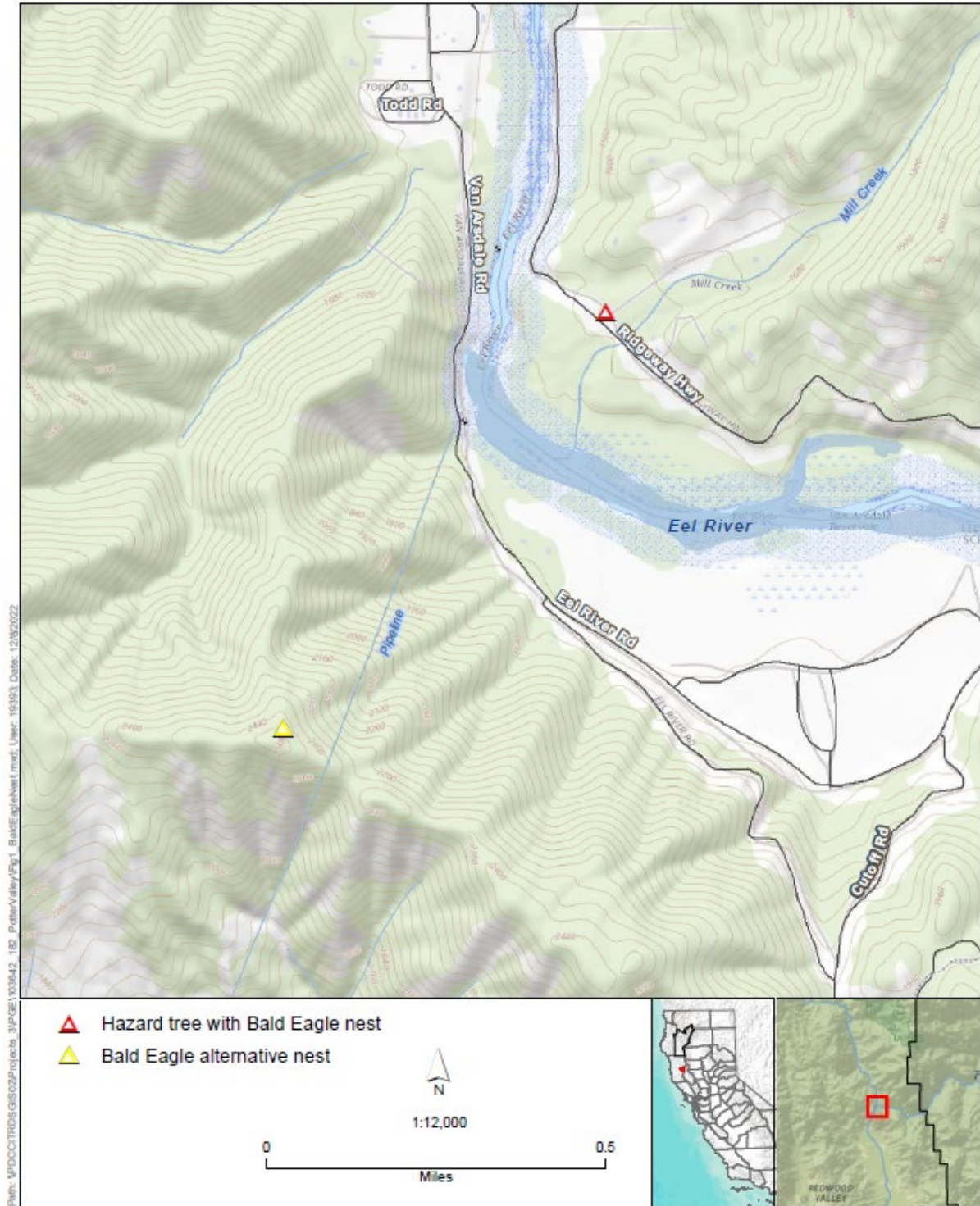


Figure 3. Project Location

Migratory Birds

Many species of migratory birds occur or have the potential to occur in the project area. These include year-round residents, migratory birds that pass through and are temporary visitors, winter residents, and those that occur during the breeding season.

Endangered Species

We evaluated the potential for species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. §§ 1531–1544), to occur in the project area. We identified the following six species that occur within in Mendocino County (Service 2022a).

- Northern spotted owl (*Strix occidentalis caurina*)
- Western snowy plover (*Charadrius nivosus nivosus*)
- Yellow-billed cuckoo (*Coccyzus americanus*)
- Burke’s goldfields (*Lasthenia burkei*)
- Contra Costa goldfields (*Lasthenia conjugens*)
- Showy Indian clover (*Trifolium amoenum*)
- Monarch butterfly (*Danaus plexippus*)

We found that of the six ESA-protected species, five would not occur because of known species distributions, migration patterns, habitats, and the season for the planned nest tree removal (Table 1).

One species, northern spotted owl, may occur in the project area. Northern spotted owls prefer habitats with old-growth and mature forest components for breeding (Gutierrez et al. 1995). Their foraging habitat is characterized by high canopy closure and complex structure. The courtship phase of the breeding season typically begins in February to March, with the breeding season ending in late August.

Environmental Consequences

This section summarizes the effects on the environment of implementing the No Action Alternative and the Proposed Action. The discussion of overall effects of the eagle nest take permit program is provided in the PEIS (Service 2016b) and incorporated here by reference. This section of this EA analyzes only the effects that were not analyzed in the PEIS that may result from the issuance of an eagle nest take permit for this specific project.

Alternative 1 – No Action

Under the No Action Alternative, we would not issue a nest take removal permit and, therefore, we expect that PG&E would not cut down the tree because it could not do so legally. Because the tree would remain a fire hazard, PG&E would not re-energize the electric line. Under the No Action Alternative, there would be no disturbance of existing environmental conditions at the site.

Economic Impact to the Public

The No Action Alternative would result in an adverse economic impact to the PG&E customer served at the nest tree property location. PG&E could not remove the hazard tree and, therefore, could not re-energize the electric line without undergrounding it. Because the section of electric line only serves the single customer, California Public Utilities Commission Rule 16 applies; per PG&E, the customer would need to pay for the undergrounding of the line or pay for some other means of electric power (e.g., operation of a gas-powered generator).

Public Safety

PG&E cannot re-energize the electric line under the No Action Alternative because re-energizing the line without being able to remove the hazard tree would present a risk to public safety. These risks include the potential for the tree to contact the energized line and ignite a wildfire and/or fall to the ground and present an electrocution risk.

Bald Eagle

Under this Alternative, bald eagles are not affected because the hazard tree would not be removed, nor would the nest in the tree. Over time, the hazard tree will likely fail and fall to the ground. Because the electric lines would not be energized, there would be no electrocution risk to the breeding pair, nor their offspring. Fire risk would also be eliminated. Risk of collision with the powerlines would remain at the same level as currently exists for this breeding territory.

Migratory Birds & Threatened and Endangered Species

There would be no changes to the current human environment. Therefore, no impacts on migratory birds or endangered species would occur under the No Action Alternative.

Alternative 2 - Proposed Action: Issuance of an Eagle Nest Removal Permit

Economic Impact to the Public

Issuance of a permit under this Alternative would result in a reduced economic impact to PG&E and the public. This Alternative would allow PG&E to remove the hazard tree and re-energize the electric line. This Alternative would avoid the cost of either re-routing or undergrounding the line or of supplying power to the customer through other means (e.g., gas-powered generator). The economic impact to the public is reduced under the Proposed Action Alternative to issue an eagle nest removal permit compared to the No Action Alternative.

Public Safety

Issuing the eagle nest take permit to facilitate removal of the hazard tree would eliminate the risk to public safety resulting from the tree's interference with an energized electric line. Therefore, compared to the No Action Alternative, the risk to public safety from electrocution and wildfire ignition is eliminated under the Proposed Action Alternative.

Bald Eagle

The proposed action would result in the loss of one eagle nest. As noted above, there is a nearby alternate nest that the eagle nesting pair could use. The removal of the hazard tree nest prior to the 2023 breeding season would not affect the bald eagle breeding territory. The pair has a known alternate nest site and would have adequate time to refurbish that nest or build a new nest in another tree within their territory. Eagle nests commonly blow out of trees during winter storms, and nest trees also occasionally fall down. Adjusting to such events is normal for breeding eagles. We have determined the removal of this nest will not affect the breeding pair.

Removal of the nest and hazard tree will benefit this pair of eagles and their offspring because electrocution and collision risk will be reduced at this territory when the alternate nest site is located further away from any power line. The loss of this nest is not expected to result in the take of eagles (i.e., will not impact their ability to reproduce) or significantly affect the LAP of bald eagles.

The risk of electrocution (should the lines be re-energized) and collision to bald eagles is expected to be reduced under the Proposed Action Alternative compared to the No Action Alternative because the eagles' alternative nest is farther away from the electric line. The additional mitigation provided under this Alternative results in a net benefit to bald eagle populations that would not occur under the No Action Alternative.

Migratory Birds

Our PEIS includes a full analysis of effects on migratory birds in the PEIS (Service 2016b). A variety of migratory birds may occur in the project area; however, we do not anticipate issuance of the permit to substantively affect any other species of migratory birds. The project would occur outside the nesting season.

Endangered Species

We evaluated the six species protected under the ESA that occur in the County for their potential to be affected by the nest tree removal, as summarized in Table 1. We do not expect any adverse effects to ESA-listed or candidate species because none are likely to be present in the project area at the time of the tree-cutting event. The proposed action would not affect designated critical habitat because none is present in the project area; therefore, impacts are comparable to the No Action Alternative.

Table 1. Endangered Species with potential to occur in Mendocino County, California, and the U.S. Fish and Wildlife Service’s evaluation of impacts from issuance of a health and safety bald eagle nest removal permit and removal of the dead tree containing the nest located in Potter Valley, California.

Species	Potential to Occur	Potential to be Affected?	Reasoning
Northern Spotted Owl (<i>Strix occidentalis caurina</i>)	Yes	No	Project occurs outside of breeding season.
Western Snowy Plover (<i>Charadrius nivosus nivosus</i>)	No	No	No habitat present; occurs on the coast.
Yellow-billed Cuckoo (<i>Coccyzus americanus</i>)	No	No	Not present in winter timing of project.
Burke’s Goldfields (<i>Lasthenia burkei</i>)	No	No	Outside of species distribution.
Contra Costa Goldfields (<i>Lasthenia conjugens</i>)	No	No	Outside of species distribution.
Showy Indian Clover (<i>Trifolium amoenum</i>)	No	No	Outside of species distribution.
Monarch Butterfly (<i>Danaus plexippus</i>)	No	No	No habitat present; occur nears the coast.

Sources: CDFW 2022b; CDFW 2022c; Gutiérrez et al. 1995; Hughes 2020; Service 2012, Service 2022a, Service 2022b, Service 2022c; Western Monarch Milkweed Mapper 2022.

Cumulative Effects

We have determined that issuance of this nest removal permit would not result in take of eagles (i.e., permit or related activities would not result in eagles being killed or injured, or prevent their ability to produce young). Therefore, we do not expect the additive effect of the issuance of the nest removal permit to contribute to any cumulative effects.

In summary, the proposed action would not result in significant impacts on the public's economic interests, bald eagles, migratory birds, or ESA-listed species.

Mitigation and Monitoring

The proposed action incorporates measures (i.e., nest removal outside of the eagle nesting season) to minimize and avoid impacts on bald eagles to the maximum degree practicable, as required by regulation. PG&E will be required to continue their monitoring of this territory for 3 years and report this monitoring to the Service.

List of Acronyms and Abbreviations

516 DM 8	Department of the Interior Departmental Manual Part 516, Chapter 8
CatEx	categorical exclusion
CFR	Code of Federal Regulations
EA	Environmental Assessment
Eagle Act	Bald and Golden Eagle Protection Act
EIS	Environmental Impact Statement
EMU	eagle management unit
ESA	Endangered Species Act of 1973
LAP	Local Area Population
NEPA	National Environmental Policy Act
PEIS	Programmatic EIS
permit	eagle nest take permit
PG&E	Pacific Gas and Electric Company's
Service	U.S. Fish and Wildlife Service
U.S.C.	United States Code

List of Preparers

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Western Monarch Milkweed Mapper. 2022. Western Monarch Biology. Available: <https://www.monarchmilkweedmapper.org/western-monarch-biology/>. Accessed: December 5, 2022.

Personal Communications

Eric Jepson, Wildlife Ecologist, Kleinfelder email to Andrew Anderson, PG&E. June 22, 2022.

Mike Best, Pacific Gas & Electric Company, emails to Heather Beeler, U.S. Fish and Wildlife Service. January 4, 2022, and November 8, 2022.