



U.S. Fish and Wildlife Service

# Finding of No Significant Impact

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

**Prepared by:**

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## **Introduction**

The U.S. Fish and Wildlife Service (Service) received an application from the Pacific Gas and Electric Company (PG&E) requesting eagle nest take coverage under the Bald and Golden Eagle Protection Act (Eagle Act; 16 United States Code [U.S.C.] §§ 668–668d and 50 Code of Federal Regulations [CFR] § 22.851) for take of one alternate bald eagle (*Haliaeetus leucocephalus*) 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 (the Proposed Action) 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 to alleviate an existing safety emergency, ensuring health and safety for the public and the nesting eagles. The applicant requested a take permit (permit) for the take of one bald eagle nest. Our issuance of an eagle nest take permit under the 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 the National Environmental Policy Act (NEPA).

In accordance with NEPA, we prepared the *Environmental Assessment (EA) for the Issuance of an Eagle Nest Take Permit for Pacific Gas and Electric Tree Removal* (Service 2022), analyzing the environmental consequences of issuing a permit for the take of the bald eagle nest associated with the Proposed Action, as well as alternatives to this proposed action, which is hereby incorporated by reference. The EA assists the Service in ensuring compliance with NEPA and making a determination as to whether any “significant” impacts on the environment not previously analyzed under the Service’s Programmatic Environmental Impact Statement (PEIS) for the Eagle Rule Revision (Service 2016) could result from the analyzed actions, which would require preparation of an Environmental Impact Statement (EIS). *Significance* under NEPA is addressed by regulation 40 CFR § 1501.3 and requires the Service to analyze the potentially affected environment and degree of the effects of the action. The definition of *effects* was recently updated at 40 CFR 1508.1(g) to include cumulative effects; the updated definition was

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<sup>1</sup> Effective February 7, 2022, 50 CFR 22.27 was renumbered to 50 CFR 22.85 (87 FR 876, Migratory Bird Permits: Administrative Updates).

<sup>2</sup> IBID.

used in making this decision and analyzed in the EA. The EA evaluates the effects of alternatives for our decision whether to issue an eagle nest take permit.

### 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.

## **Proposed Actions and Alternatives Considered**

In the EA, we fully analyzed two potential courses of action, summarized below, to respond to the Applicant's request for an incidental eagle nest removal permit.

### 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 Proposed Action 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 Proposed Action (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 of the eagle nesting season (August 1–January 14). The Proposed Action 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 done 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.

## **Public Comment and Tribal Notification**

We published drafts of this FONSI and our EA on our Regional webpage<sup>3</sup> for public review from December 13 to December 27, 2022. We hosted a public information meeting on December 20, 2022. We received five public comment letters on the draft EA and revisions were incorporated into the EA as a result of substantive comments, as appropriate.

We sent letters to federally-recognized tribal governments located within the vicinity of the Project, informing them of the application and that the draft EA and draft FONSI were available for review.

## **Selected Alternative**

Based on review of the analyses detailed in the EA, the Service selected the Proposed Action of issuing a permit to PG&E to take one alternate eagle nest.

The Proposed Action is consistent with the purpose and need for this Federal action and is in compliance with all statutory (16 U.S.C. §§ 668) and regulatory requirements (50 CFR § 22.85 and 50 CFR § 13.21), including the criteria codified for permit issuance (50 CFR § 22.85(e)(2)).

## **Effects of Implementation**

### Degree of Effects

The following have been considered in evaluating the degree of the effects (40 CFR 1501.3(b)(2)), as appropriate, of the Proposed Action:

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<sup>3</sup> <https://www.fws.gov/library/collections/pacific-southwest-region-nepa-documents-eagle-permits>

## **1. Short- and Long-Term Effects**

We expect no direct mortality of bald eagles to occur as a result of the Proposed Action or nest removal, and no such take would be authorized under the permit. The Proposed Action would result in the loss of one eagle nest. There is a nearby (0.8 miles away) alternate nest that the eagle nesting pair could use. Removal of the hazardous-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. 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, given that the alternate nest site is farther away from any powerline. The loss of this nest is not expected to result in the take of eagles (i.e., will not affect their ability to reproduce), or significantly affect the Local Area Population (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 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, which would not occur under the No Action Alternative.

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 Proposed Action will occur outside of the nesting season. Some birds may experience short-term disturbance and may avoid the immediate area for 1 day while tree-removal activities occur. We do not anticipate issuance of the permit to substantively affect any other species of migratory birds.

We evaluated the six species protected under the Endangered Species Act (ESA) that occur in Mendocino County for their potential to be affected by the nest-tree removal, as summarized in the EA (Service 2022). 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.

## **2. Beneficial and Adverse Effects**

As discussed in the previous section, project-related disturbances and issuance of our permit would not result in adverse effects to eagles, birds, or ESA-listed species. Issuance of the permit will allow PG&E to remove the dying nest tree and is expected to result in beneficial effects to eagles. The risk of electrocution and collision for the eagles and their offspring will be reduced because the alternate nest is farther away from power lines, compared to the current nest site. Removal of the dying nest tree is also expected to reduce the risk of fire. In addition, should the eagles use this tree for nesting in the 2023 breeding season, there is an increasing chance that the tree could fall prior to the end of the breeding season, putting the bald eagle breeding pair's eggs or young at risk.

Reducing the risk of fire would also benefit other migratory birds and ESA species at the project site and in the surrounding areas. Reducing the potential fire risk would also benefit the human community, including landowners and residents.

### **3. Effects on Public Health and Safety**

Under the Proposed Action, we would authorize removal of the bald eagle nest located in a dying tree that is in danger of falling into an electric powerline immediately proximate to the tree. As explained previously, issuance of this permit would allow PG&E to provide power to their customer and eliminate the fire risk at this location.

### **4. Effects that would Violate Federal, State, Tribal, or Local Law Protecting the Environment**

The Proposed Action, issuance of an incidental take permit under the Eagle Act, does not violate any known Federal, State, Tribal, or local law or requirement imposed for the protection of the environment. In addition, the Proposed Action is consistent with applicable Eagle Act, Migratory Bird Treaty Act, and ESA regulations, policies, and programs.

## **Finding of No Significant Impact Determination**

The Service's Migratory Bird Program concludes from the analysis conducted in the EA and the information provided above that the Proposed Action would not trigger significant impacts on the environment based on criteria established by regulation, policy, and analysis. Analyses of effects were conducted at the Proposed Action, LAP, and regional/Ecological Monitoring Unit scales, and we assessed direct, indirect, and cumulative effects. Additionally, public safety and economic impacts were considered. The selected Proposed Action is unlikely to have significant impact on eagles because there is mitigated take of eagles, cumulative effects are addressed, and

the Proposed Action meets the Eagle Act's preservation standard (16 U.S.C. §§ 668a, 50 CFR § 22.6) and all regulatory requirements (50 CFR § 22.85).

Based on the findings discussed herein, the Service concludes that the Proposed Action is not a major Federal action and will result in no significant impacts on the environment, individually or cumulatively with other actions in the general area. No environmental impacts meet the definition of significance in 40 CFR 1501.3. Therefore, preparation of an EIS to further analyze possible effects is not required pursuant to NEPA section 102(2)(c), and our environmental review under NEPA is concluded with this FONSI.

**Signed**

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## **List of Acronyms and Abbreviations**

CFR	Code of Federal Regulations
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EA	Environmental Assessment
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FONSI	Finding of No Significant Impact
LAP	Local Area Population
NEPA	National Environmental Policy Act
PEIS	Programmatic Environmental Impact Statement
permit	take permit
PG&E	Pacific Gas and Electric Company
Service	U.S. Fish and Wildlife Service
U.S.C.	United States Code



## **List of Preparers**

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## **References**

Service. 2016. *Programmatic Environmental Impact Statement for the Eagle Rule Revision*. Washington, D.C. Division of Migratory Bird Management.

Service. 2022. *Environmental Assessment for the Issuance of an Eagle Nest Take Permit for Pacific Gas and Electric Tree Removal*. Sacramento, CA: Pacific Southwest Region.