

Master Response 11 Alternatives

Table MR11-1. Comments Addressed in Master Response 11

Comment	Commenter
04-245	Center for Biological Diversity (Keats, Adam)
04-246	Center for Biological Diversity (Keats, Adam)
04-247	Center for Biological Diversity (Keats, Adam)
04-248	Center for Biological Diversity (Keats, Adam)
04-249	Center for Biological Diversity (Keats, Adam)
04-249A	Center for Biological Diversity (Keats, Adam)
04-250	Center for Biological Diversity (Keats, Adam)
04-251	Center for Biological Diversity (Keats, Adam)
04-252	Center for Biological Diversity (Keats, Adam)
04-253	Center for Biological Diversity (Keats, Adam)
04-254	Center for Biological Diversity (Keats, Adam)
04-255	Center for Biological Diversity (Keats, Adam)
04-256	Center for Biological Diversity (Keats, Adam)
04-257	Center for Biological Diversity (Keats, Adam)
04-258	Center for Biological Diversity (Keats, Adam)
04-259	Center for Biological Diversity (Keats, Adam)
04-260	Center for Biological Diversity (Keats, Adam)
04-261	Center for Biological Diversity (Keats, Adam)
04-262	Center for Biological Diversity (Keats, Adam)
04-263	Center for Biological Diversity (Keats, Adam)
04-264	Center for Biological Diversity (Keats, Adam)
04-265	Center for Biological Diversity (Keats, Adam)
08-8	Santa Clarita Organization for Planning and the Environment (Lutness, David)
012-3	TriCounty Watchdogs (de Leeuw, Jan)
I293-46	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I948-8	Manning, Jeffrey A
I948-9	Manning, Jeffrey A
I948-10	Manning, Jeffrey A
I948-11	Manning, Jeffrey A
I948-12	Manning, Jeffrey A
I948-13	Manning, Jeffrey A
I73-2	Balbona, Gina
I627-22	Hamber, Robert
I627-23	Hamber, Robert
I627-24	Hamber, Robert

Comment	Commenter
I627-26	Hamber, Robert
I657-1	Heintzelman, Donald
I1648-1	Willer, Benjamin
I1300-7	Risebrough, Robert
G2-5	U.S. Environmental Protection Agency (Goforth, Kathleen)
G2-18	U.S. Environmental Protection Agency (Goforth, Kathleen)
G2-44	U.S. Environmental Protection Agency (Goforth, Kathleen)
G2-49	U.S. Environmental Protection Agency (Goforth, Kathleen)
G2-50	U.S. Environmental Protection Agency (Goforth, Kathleen)
G2-53	U.S. Environmental Protection Agency (Goforth, Kathleen)
G2-54	U.S. Environmental Protection Agency (Goforth, Kathleen)

11.1 Summary of Substantive Comments

The following summarizes the substantive comments received on Draft EIS regarding the alternatives analysis. Table MR11-1 provides a list of the commenters and a reference to the individual comments, as summarized below. The parenthetical reference after each summary bullet indicates where a response to that comment is provided. Section 11.2.1, Regulatory Overview, below, provides an overview of the regulations governing the alternatives analysis in the context of the National Environmental Policy Act (NEPA).

- The purpose and need of the Federal action were unclear and too narrowly defined. (Response provided in Section 11.2.2, Scope of Purpose and Need Statement.)
- The Draft EIS used an improper and inconsistent baseline. (Response provided in Section 11.2.3, Use of a Consistent Baseline.)
- The Ranchwide Agreement was improperly excluded from all alternatives except for the Proposed TU MSHCP Alternative. (Response provided in Section 11.2.4, Incorporating the Ranchwide Agreement.)
- The No Action Alternative improperly assumed full buildout of the Kern County General Plan and overstated its effects. (Response provided in Section 11.2.5, Analysis of the No Action Alternative.)
- The Kern County General Plan Buildout MSHCP Alternative and Proposed TU MSHCP Alternative in the Draft EIS improperly assumed full buildout of the Kern County General Plan and overstated its impacts. (Response provided in Section 11.2.5, Analysis of the No Action Alternative, and Section 11.2.6, Analysis of the Kern County General Plan Buildout Alternative.)
- A broader range of alternatives should have been considered; specifically, comments suggested the following alternatives:
 - an alternative that does not allow development in the California condor critical habitat on Tejon Ranch (concentrating development near Interstate 5 [I-5]),
 - an alternative with a habitat conservation plan (HCP) covering all of Tejon Ranch,
 - alternatives in which development would be concentrated in different parts of Tejon Ranch,

- an alternative based on the South Coast Wildlands proposed reserve design, and
- an alternative of establishing a national park or wildlife preserve on the Covered Lands.

(Response provided in Section 11.2.7, Range of Alternatives Considered.)

11.2 Responses to Substantive Comments

11.2.1 Regulatory Overview

NEPA requires that an EIS include, in comparative form, a rigorous exploration and objective evaluation of a reasonable range of alternatives to a proposed Federal action (42 United States Code [U.S.C.] 4332(c); 40 Code of Federal Regulations [CFR]. 1502.14). As quoted correctly by a commenter, the regulations state that the alternatives analysis is the “heart” of the EIS; it must include a no action alternative, and it must describe the environmental effects of the proposed action and the alternatives in comparative form so as to sharply define the issues and provide a clear basis for choice among options by the decision-maker and the public (40 CFR 1502.14). An agency must follow a “rule of reason” in preparing an EIS, in terms of which alternatives the agency must discuss and the extent to which it must discuss them (*Natural Res. Def. Council v. Morton*, 458 F.2d 827, 834 [D.C. Cir. 1972]; *Alaska v. Andrus* 580 F.2d 465, 475 [D.C. Cir. 1972]).

The alternatives analysis is based upon a lead agency’s statement of the underlying purpose and need to which the agency is responding (40 CFR 1502.13). In developing the purpose and need, the lead agency is guided by consideration of the applicant’s purposes and needs as well as the statutory objectives of the agency and its authorizations to act (48 *Federal Register* [FR] 34263, 34267).

Once the purpose and need have been identified, the Council on Environmental Quality (CEQ) regulations require an agency to “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated” (40 CFR 1502.14). The term “reasonable alternatives” refers to alternatives “that are technically and economically practical or feasible and meet the purpose and need of the proposed action” (43 CFR 46.420(b)). An agency need not give detailed consideration to alternatives similar to alternatives actually considered (or with environmental consequences that are similar), or alternatives that are infeasible, ineffective, or inconsistent with the basic policy objectives for the management of the area or the purpose and need of the action (*Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 551 [1978]; see also *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853, 868 [9th Cir. 2004][agency not required to separately analyze alternatives with substantially similar consequences]; *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1159 [9th Cir 1997][agency not required to evaluate alternative submitted during comment period and characterized as environmentally superior where alternative would not meet project purposes or were similar to alternatives already analyzed]).

Approval of the TMV Project by Kern County in the TMV Project Approvals and Tejon Mountain Village Environmental Impact Report (TMV EIR) (Kern County 2009a) resulted in changes to some of the general plan land use designations underlying the alternatives previously considered in the Draft EIS; therefore, these changes were incorporated into the revised alternatives considered in this Supplemental Draft EIS. This Supplemental Draft EIS considers five alternatives in detail:

- No Action Alternative
- Proposed Tehachapi Uplands Multiple Species Habitat Conservation Plan Alternative (Proposed TU MSHCP Alternative) (Preferred Alternative)
- Condor Only HCP Alternative

- Condor Critical Habitat Avoidance Multiple Species Habitat Conservation Plan Alternative (CCH Avoidance MSHCP Alternative)
- Kern County General Plan Buildout Alternative

As discussed in Section 2.3, Summary and Comparison of Alternatives, in Volume I of this Supplemental Draft EIS, the primary differences between the five alternatives are their underlying approach to species protection, the intensity and location of development, and the extent of permanently preserved open space areas. Thus, in response to comments, the Supplemental Draft EIS alternatives expands the range of species conservation management approaches—from no management/no action, to multiple species coordinated management, to management for one species, to project-by-project management approach; and development scenarios—from no development, to proposed development, to alternative development locations, to full buildout under the Kern County General Plan.

11.2.2 Scope of Purpose and Need Statement

The comments related to the EIS statement of purpose and need state that:

- NEPA requires agencies to define the purpose and need statement of a proposed action in a sufficiently broad manner so as to allow for consideration of a reasonable range of alternative ways to accomplish the underlying goals of a proposal.
- The Service defined the purpose and need statement—responding to Tejon Ranchcorp’s (TRC) application for a multispecies incidental take permit (ITP)—too narrowly, thereby eliminating other viable alternatives from consideration.
- The need for the ITP should be discussed further and an analysis of commercial and residential demand performed, because it is unclear why there is a need for commercial and residential development in the currently undeveloped areas of Tejon Ranch.

As discussed above, an EIS must “briefly specify the underlying purpose and need to which the agency is responding” to form a basis for its alternatives analysis (40 CFR 1502.13). It is the lead agency’s responsibility to define the purpose and need. In doing so, the lead agency is guided by the agency’s mission, statutory objectives, and authorizations to act. When asked to approve a permit application, the agency should also consider the needs and goals of the parties involved in the application or permit as well as the public interest (43 CFR 420(a)(2)). The statutory purpose underlying the Federal action is critical to consider, and courts have noted that referencing the statutory objectives provides a reasonable compromise between unduly narrow objectives and hopelessly broad societal objectives that would expand the range of relevant alternatives (*Native Ecosystem Council v. U.S. Forest Serv.*, 428 F.3d 1233 [9th Cir. 2005] [discussion of alternatives required by NEPA is limited by an agency’s statutory objectives]; *Citizens Against Burlington v. Busey*, 938 F.2d 190, 196 [D.C. Cir. 1991]; *City of New York v. U.S. Dep’t of Transp.*, 715 F.2d 732, 743 [2d Cir. 1983]; *Vt. Pub. Interest Research Group v. U.S. Fish & Wildlife Serv.*, 247 F. Supp. 2d 495, 526-527 [D. Vt. 2002][upholding a narrow purpose and need statement in light of a “clear Congressional directive” to the agency]). In defining the purpose of the Federal action, the court stated, “[p]erhaps more importantly, an agency should always consider the views of Congress, expressed, to the extent that the agency can determine them, in the agency’s statutory authorization to act, as well as in other congressional directives” (*Citizens Against Burlington v. Busey*, 938 F.2d at 196 [1991]).

Here, the purpose and need statement set forth in Section 1.3, Purpose of Supplemental Draft EIS, in Volume I of the EIS is defined primarily by the statutory and regulatory requirements of the Federal Endangered Species Act (ESA), but also considers the applicant’s purpose and need for their project. Section 10 of the ESA provides a regulatory mechanism to permit the incidental take of federally listed fish and wildlife species by private interests and non-Federal government agencies during

lawful activities, such as development. Congress intended this process to reduce conflicts between listed species and economic development activities, and to provide a framework that would encourage "creative partnerships" between the public and private sectors and state, municipal, and Federal agencies in the interests of endangered and threatened species and habitat conservation (H.R. Rep. No. 97-835 1982).

ESA Section 10 states, "[i]f the Secretary finds, after opportunity for public comment, with respect to a permit application and related conservation plan that [certain conditions are met,] the Secretary shall issue the permit." In order to issue an ITP, the Service must find that:

- the taking is incidental to an otherwise lawful activity;
- the applicant will, to the maximum extent practicable, minimize and mitigate the effects of such taking;
- the applicant will ensure that adequate funding for the HCP will be provided;
- the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- any measures required by the Service as necessary or appropriate for purposes of the HCP will be met.

See Master Response 8, Regulatory Considerations, for more information on the Service's regulatory requirements.

The Service's *Habitat Conservation Planning Handbook* (U.S. Fish and Wildlife Service 1996) emphasizes 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" (Chapter 1, Section A). Contrary to the commenter's statements, it is neither reasonable nor consistent with the statutory purposes underlying ESA Section 10 to ignore the applicant's needs or the statutory purpose of ESA Section 10, which is to allow for otherwise lawful activity on private property, such as development, to proceed by authorizing the Service to permit the limited, regulated take of federally listed animal species incident to such lawful activity, if the impacts of such take are minimized and mitigated to the maximum extent practicable and the take will not appreciably reduce the likelihood of the survival and recovery of the listed species in the wild.

Consistent with this guidance and the statutory purpose of ESA Section 10, the Service developed a purpose and need statement that accurately specifies the underlying purpose and need:

- Protect, conserve, and enhance the California condor and other Covered Species and their habitat within the Covered Lands.
- Provide a means and take steps to conserve the ecosystems on which the California condor and other Covered Species depend.
- Contribute toward the long-term survival and recovery of the Covered Species through protection and management of the California condor and other covered species and their habitat.
- Respond to TRC's application for an ITP based on proposed Covered Activities that could result in the incidental take of the Covered Species on the Covered Lands, including incidental take resulting from habitat modification associated with ranch uses and planned future community development and construction of related infrastructure on approximately 5,533 acres in the Tehachapi Uplands of Tejon Ranch.

The purpose and need statement in this Supplemental Draft EIS reflects the applicant's shared commitment to the purposes identified in the first three bullets above (Section 1, Introduction and Background, in the TU MSHCP). The purpose and need statement also takes into account TRC's specific need to support, through development of the TU MSHCP, its application for an ITP for the Covered Species pursuant to ESA Section 10(a)(1)(B) and its implementing regulations and policies.

In this way, the Service acknowledges both the agency's purpose and need based on ESA statutory and public interest purposes, and the applicant's need. Specifically, the applicant's need for the ITP is based on intended development that would require land disturbance development activities on approximately 5,533 acres in the Tehachapi Uplands of Tejon Ranch, which account for approximately 4% of the Covered Lands. These development activities and ranch uses could potentially lead to incidental take of species as a result of habitat modification. As set forth in Section 1, Introduction and Background, of the TU MSHCP, the applicant's proposed development is intended to serve the market needs for an ecotourism mountain resort community in proximity to Los Angeles and Bakersfield; provide sufficient space for infrastructure required by Kern County and necessary for a self-serving community; provide extensive open space to preserve the natural and cultural heritage, including ongoing ranching activities; and provide adequate sales fees to generate intended conservation fees. The ESA statutory needs require the Service to respond to the application and evaluate whether its approval of the proposed HCP meets the public interest and ESA species protection and management goals listed above. The purpose and need statement was not drawn too narrowly. It appropriately considers the applicant's goals and need for obtaining an ITP while focusing on the Service's statutory objectives under the ESA, including public interest goals. The purpose and need statement in this Supplemental Draft EIS allows for consideration of a full spectrum of alternatives that examine varying development and take scenarios and species management mechanisms, as discussed more fully below in Section 11.2.7, Range of Alternatives Considered.

With respect to the comment that the need for development should be discussed further and an economic analysis performed, NEPA does not require an agency to conduct independent analysis of an applicant's purpose and goals (*Stop The Pipeline v. White*, 233 F. Supp. 2d 957, 970-71 [S.D. Ohio 2002] [upholding the U.S. Army Corps of Engineers (USACE) purpose and need statement for issuance of a Clean Water Act Section 404 permit required for an oil pipeline based on applicant's projections of petroleum demand]; *Anson v. Eastburn*, 582 F. Supp. 18, 21-3 [S.D. Ind. 1983] [upholding an agency's need statement for permits required for a power plant that relied on the applicant's determination that there was a need for a new coal plant: "It should be noted at the outset that no provision of NEPA (42 U.S.C. 4321 *et seq.*) mandates an independent evaluation by the agency involved of the need for a project."]). Moreover, nothing in Section 10 of the ESA directs the Service to evaluate the merits of the underlying lawful activities that trigger the applicant's ITP permit, nor does Section 10 establish a presumption against development, requiring the applicant to justify the need for the project. Rather, under Section 10, the Service is required to evaluate the applicant's permit application, including the underlying habitat conservation plan, to determine whether it meets the statutory permit issuance criteria. Accordingly, the merits of the TU MSHCP, and not the TMV Project and other development, are the focus of the analysis presented in this EIS.

11.2.3 Use of a Consistent Baseline

Comments related to the baseline used in the alternatives analysis state that reliance on a baseline that incorporates future conditions, such as general plan buildout, creates an inaccurate comparison of alternatives.

Description of the environmental baseline is an analytical tool that enables the agency to evaluate changes that the alternatives would make to existing environmental conditions. The baseline, or existing environmental condition, is described in Chapter 3, Affected Environment, in Volume I of

this Supplemental Draft EIS and does not assume future general plan buildout. Each of the alternatives, including the No Action Alternative and the four action alternatives, are evaluated against existing environmental conditions in Chapter 4, Environmental Consequences, in Volume I of this Supplemental Draft EIS. In addition, each of the action alternatives is evaluated against the No Action Alternative.

With respect to the Ranchwide Agreement, the discussion of existing conditions in this Supplemental Draft EIS acknowledges the Ranchwide Agreement has been executed, and the range of alternatives considers a range of possible implementation outcomes, as discussed further below. In this Supplemental Draft EIS, the No Action Alternative has been revised to assume that no action would be taken by the Service; no ITP would be issued, and no Covered Species-related mitigation measures would be undertaken. Under the revised No Action Alternative, this Supplemental Draft EIS assumes that the Ranchwide Agreement would remain in effect, that development of the TMV Project and other future commercial or residential development allowed within the Covered Lands under the Ranchwide Agreement would not occur, and that the ranch's existing activities would continue at current levels into the future. As noted above, in this Supplemental Draft EIS, the No Action Alternative and each of action alternatives are evaluated against the existing environmental conditions, and each of the action alternatives are evaluated relative to the No Action Alternative.

11.2.4 Incorporating the Ranchwide Agreement

One commenter stated that the alternatives analysis in the EIS improperly excludes the protections provided to the Covered Lands by the Ranchwide Agreement from all but the preferred alternative, when in fact the Ranchwide Agreement and its protections are part of the environmental baseline. The commenter points out that, although the conservation easement conveyances in the Ranchwide Agreement are triggered by development approvals, as long as any one development is approved, all easements would be conveyed. The commenter also stated that the Ranchwide Agreement does not rely on, or require, an HCP; its terms are not dependent on an HCP being approved. The commenter states that the Service must withdraw the entire Draft EIS to issue new descriptions and analyses of the alternatives that include the Ranchwide Agreement.

As discussed in Section 2.3, Summary and Comparison of Alternatives, in Volume I of this Supplemental Draft EIS, it is acknowledged that the Ranchwide Agreement has been executed and, for NEPA purposes, it is assumed that the Ranchwide Agreement remains in effect (although implementation levels may vary). The conservation requirements associated with the Ranchwide Agreement are assumed to remain in place for all of the alternatives except one, the Kern County General Plan Buildout Alternative, to represent a reasonable range of alternatives to the proposed action. The Ranchwide Agreement is a private agreement between parties, and the Service is not a party to, and has no contractual standing under, the agreement. Thus, it can be amended (or even terminated) by mutual agreement of the parties such that the land preservation outcome of the Ranchwide Agreement on Covered Lands may not be realized. 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.

The Ranchwide Agreement was entered into in furtherance of the TU MSHCP, and is provided as Appendix E to the TU MSHCP. Its land conservation requirements, in significant part, form the basis of mitigation measures for the TU MSHCP. It is thus both appropriate and furthers the conservation goals of the ESA to "credit" as mitigation under the TU MSHCP the extensive land preservation commitments made by TRC under the Ranchwide Agreement. To fail to credit this conservation as mitigation would discourage landowners from proactively entering into separate conservation agreements during the HCP development process.

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 since the Stipulation for Stay and the Memorandum of Agreement were entered by the court in 1999 (Master Response 15, Procedural Considerations), committing TRC and the Service to work toward preparation of an HCP. During that time, the boundaries and focus of the HCP have changed (Master Response 8, Regulatory Considerations, regarding Covered Species, and Section 11.2.7, Range of Alternatives Considered, below, regarding the geographic scope of the Covered Lands). Meanwhile, TRC has made more specific development plans. While still pursuing an HCP with the Service that would cover only a portion of the ranch (Covered Lands), TRC worked with Audubon California, the Endangered Habitats League, Natural Resources Defense Council, Planning and Conservation League, Sierra Club, and the newly formed nonprofit Tejon Ranch Conservancy (Resource Groups) to establish a broad conservation agreement, the Ranchwide Agreement, which was entered into on June 17, 2008, after the Notice of Intent to develop an EIS for the TU MSHCP was issued on March 26, 2008.

The agreement provides for the 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 Proposed TU MSHCP Alternative) and Centennial and Grapevine projects. This agreement covers the entirety of the ranch, not only the 141,886 acres included in the Covered Lands under the TU MSHCP. While it is true that the permanent land conservation protections (recording of the conservation easements) are triggered by the final approval of any one of the three projects noted above, 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. Approval of an HCP is defined as an anticipated project approval under the Ranchwide Agreement. In addition, the agreement requires the TMV Project to comply with the TU MSHCP. The Resource Groups do not have authority to approve the TU MSHCP; rather they covenanted with TRC in Section 10.5 of the Ranchwide Agreement not to challenge the TU MSHCP. The agreement need not be reliant on approval of the TU MSHCP to be in furtherance of the plan. For these reasons, the Ranchwide Agreement conservation lands form the basis of the TU MSHCP Mitigation Lands, and the conservation provided under the Ranchwide Agreement on the Covered Lands is appropriately credited as mitigation under the TU MSHCP and considered in this Supplemental Draft EIS analysis.

11.2.5 Analysis of the No Action Alternative

Several comments state that the No Action Alternative of the Draft EIS is improper. Specifically, comments state that:

- The no action scenario should reflect existing conditions, stated as follows:
 - The Federal action at issue is a Federal action on a project proposal, rather than an approval of a land management plan, as described in the CEQ's NEPA guidance; therefore, the No Action Alternative should mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity, as opposed to a comparison of the proposed action to conditions under ongoing management under the existing plan.
 - Full buildout of the general plan is not likely, given current market conditions, slow growth rates in the Tehachapi Uplands, and analysis in the Kern County General Plan showing that most population growth occurs in incorporated cities.

- Reliance on general plan buildout inflates the baseline and results in a false comparison between the preferred alternative and the No Action Alternative by masking the environmental impacts of the Federal action.
- General plan buildout is no less likely to occur if the Proposed TU MSHCP Alternative is adopted.
- The No Action Alternative should describe the existing ranching, agriculture, mining, hunting, and other activities that currently take place on Tejon Ranch.
- A general plan is not a reasonable indicator of future actions, as it does not vest any rights. Site-specific approvals, including an ITP, would be required prior to development.
- The No Action Alternative improperly assumes that no take of California condors would occur outside of the Condor Study Area and 2-mile buffer.
- The No Action Alternative should not have assumed that the 8,272 acres designated for mineral and petroleum uses would actually be disturbed, as they are currently undeveloped.

This response is divided into four subsections addressing the regulatory context, revisions in this Supplemental Draft EIS to the No Action Alternative, the use of the Kern County General Plan, the assumption regarding no take of California condors; and the assumption regarding mineral and petroleum acreage.

11.2.5.1 Regulatory Guidance and the No Action Alternative in the TU MSHCP

Commenters stated that under the CEQ NEPA guidance, the Federal action should be reviewed in the "project" context, where no action means not building the project, rather than in the "land management plan" context, where no action means continuation of land management activities. The commenter stated that the land management plan is the Kern County General Plan, but because it has not been under permit review or permitted by Federal or state governments for potential effects on species, any development pursuant to the general plan should be considered a new "project." Another commenter cited the CEQ regulations with respect to no action and stated that an accurate comparison of the preferred alternative to the No Action Alternative would compare the proposed development with the status quo, and defines the status quo as the continuance of existing activities on the ranch, including ranching, agriculture, mining, and hunting.

CEQ NEPA regulations section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." CEQ's NEPA guidance distinguishes between no action that is in a project context (where it means not building the project) and no action in the land or plan management context (where it means continuing the current management plan rather than going back to the *status quo ante*) (46 FR 18026, 18027).

Here, although the Service recognizes that approval of the TU MSHCP and issuance of an ITP would facilitate development of a project (e.g., the TMV Project), approval of the TU MSHCP is approval of a land management plan, the TU MSHCP, and thus, the No Action Alternative is appropriately described in the land management plan context, which assumes continuation of Existing Ranch Uses. Because the No Action Alternative, as revised in this Supplemental Draft EIS, assumes that the TMV Project and other commercial and residential development would not occur, and that existing ranch activities and management would continue, the No Action Alternative is the same whether framed in terms of "no project" or "continuing an existing land management plan" under the CEQ NEPA guidance. As revised, the No Action Alternative reflects existing conditions and provides a basis of comparison with each of the action alternatives.

11.2.5.2 Revisions of the No Action Alternative in This Supplemental Draft EIS

The No Action Alternative in this Supplemental Draft EIS has been revised. Under the revised No Action Alternative, it is assumed for purposes of the NEPA analysis that the proposed action—issuance of an ITP—would not occur, that the Ranchwide Agreement would remain in effect, that development of the TMV Project and other future commercial or residential development allowed within the Covered Lands under the Ranchwide Agreement would not occur, and that existing ranch uses would continue at current levels into the future. The conditions of approval for the TMV Project by Kern County identify certain actions to be undertaken by the Service, including directing the potential operation of a supplemental feeding program and capture of California condors that have become habituated. The No Action Alternative does not assume future action on the part of the Service, including future Service action identified as a condition of Kern County's approval of the TMV Project. It is assumed the Service would continue to provide technical assistance to TRC regarding the California condor.

11.2.5.3 Reliance on the Kern County General Plan to Predict Development in the No Action Alternative

One commenter stated that a general plan designation is not a reasonable indicator of predictable future action and that buildout of the general plan is "not even remotely likely," stating that growth projections in the Draft EIS contradict projections in the general plan, and references "[f]uture indicators of residential market sales," which indicate a slowing of growth in Kern County. The commenter stated that the general plan buildout projected under the No Action Alternative is no less likely if the preferred alternative is selected. Finally, this commenter stated that an ITP under the ESA would be required before building anything according to the general plan. The commenter states that this problem with the No Action Alternative fatally skews the analysis of alternatives under NEPA.

As discussed above, the No Action Alternative in this Supplemental Draft EIS has been revised to reflect existing conditions without an ITP or other Service action. No Commercial and Residential Development Activities would occur under this alternative.

The Kern County General Plan Buildout Alternative does reflect buildout of the land use designations provided for in the amended general plan. Incremental development on a project-by-project basis is a realistic alternative to the proposed action because, even if the Service did not issue an ESA Section 10 permit based on a comprehensive HCP as reflected in the TU MSHCP, the Service anticipates that development could still proceed on a building-by-building or project-by-project basis in the Covered Lands, with individual incidental take authorizations issued as appropriate through either ESA Section 7 or Section 10. Currently, there are only four federally listed species that potentially occur in the Covered Lands, and the Service expects that some individual projects on the Covered Lands could be undertaken in a manner that is unlikely to result in take under the ESA. Alternatively, if a future specific project were likely to cause take of a listed species, then incidental take could be authorized either under ESA Section 7, assuming the presence of a Federal nexus, such as a jurisdictional wetland under the Clean Water Act, or through a project-specific HCP and ITP under ESA Section 10. The difference between the proposed TU MSHCP and ITP and a project-by-project approach is that, in the latter case, evaluation of effects on listed species and take minimization and mitigation measures would be done on a project-specific basis rather than on a landscape scale. The Kern County General Plan Buildout Alternative analyzed in this Supplemental Draft EIS is discussed further below.

11.2.5.4 Assumption that the No Action Alternative Would Not Involve Take of California Condors

Commenters stated that the Draft EIS does not support or prove that the Condor Study Area, along with a 2-mile buffer, would prevent any need for a take permit, and the No Action Alternative would likely result in take. One commenter stated that this creates a comparison between illegal development and the preferred alternative, in violation of NEPA.

As noted above, the No Action Alternative has been revised. No development is contemplated under the No Action Alternative in this Supplemental Draft EIS. This comment is no longer relevant.

11.2.5.5 Inclusion of Effects on Mineral and Petroleum Acreage in the No Action Alternative

One commenter stated that the inclusion of effects on 8,272 acres of mineral and petroleum activities under the No Action Alternative is incorrect because there is no current proposal to mine those areas. The commenter states that because the 8,272 acres are currently undeveloped, assuming that this area would be mined under the No Action Alternative infers that the No Action Alternative contains significantly less habitat available to listed species than the Proposed TU MSHCP Alternative and biases the effects analyses and anticipated levels of take.

The Supplemental Draft EIS range of alternatives has been revised. Future mineral and petroleum activities are not assumed under the revised No Action Alternative and are not included as Covered Activities in the Proposed TU MSHCP Alternative, the Condor Only HCP Alternative, or the CCH Avoidance MSHCP Alternative. Within the Covered Lands, there are two existing mining operations, the La Liebre mine and the National Cement mine, facilities that are not owned or operated by TRC and that collectively occupy 2,636 acres. The Ranchwide Agreement, which is assumed under all of the action alternatives except, the Kern County General Plan Buildout Alternative, restricts mining activity in the Covered Lands to these two mine areas. Under the Kern County General Plan Buildout Alternative, all areas with a mining general plan designation would remain undeveloped, in consideration of the absence of pending mine proposals and the speculative nature of assessing a type or level of mining without an actual proposal. Because the two mines are in the Covered Lands, they are acknowledged and described as part of the baseline; however no new mining is considered under any of the alternatives.

11.2.6 Analysis of the Kern County General Plan Buildout Alternative

A commenter stated that the "MSHCP General Plan Buildout Alternative" from the Draft EIS was improper because it inflates the effects of that alternative in comparison to the Proposed TU MSHCP Alternative. The commenter further stated that it is a "straw man" alternative that does not properly reflect an HCP alternative, and was included only to be disregarded without any realistic consideration. The commenter stated that the alternative allows for more disturbance of Covered Species and their habitat and provides for less conserved habitat than the No Action Alternative and would lead to greater jeopardy through adverse modification of critical habitat, sensitive habitat, and wildlife than the No Action Alternative, resulting in an unrealistic habitat conservation plan scenario.

This Supplemental Draft EIS includes a revised Kern County General Plan Buildout Alternative that reflects the current general plan, including approval of the TMV Project, but does not include the assumption of an MSHCP. Under this alternative, development is assumed to proceed in accordance with the Kern County General Plan, including implementation of the TMV Project (as it is already

approved by Kern County in the TMV Project Approvals and TMV EIR[Kern County 2009a]). Development of the Covered Lands would require Kern County approval and ESA authorization if take of federally listed species would result. For purposes of this NEPA analysis, development is assumed to proceed on a project-by-project basis with the Service considering project-specific incidental take authorizations, as necessary, through either ESA Section 7 or Section 10. With respect to open space, in total, the Kern County General Plan Buildout Alternative would include 119,392 acres of open space, including 34,130 acres of permanently protected open space—12,795 acres of Existing Conservation Easement Areas and 21,335 acres of permanent open space required by the TMV Project Approvals—as well as 85,262 acres of Restricted Open Space that would be available for mitigation and species management on a project-by-project basis.

The revised Kern County General Plan Buildout Alternative in this Supplemental Draft EIS assumes the continuation of development trends consistent with the general plan without the comprehensive landscape-level conservation planning proposed under the TU MSHCP and provided for in the Ranchwide Agreement. This alternative was selected for analysis because, if the Service did not issue an ESA Section 10 permit based on a comprehensive land management plan, development could still proceed on a building-by-building or project-by-project basis with the Service considering incidental take authorizations as appropriate through either ESA Section 7 or Section 10.

It is reasonable to look to the general plan as a source of development assumptions. The general plan has been described as the “constitution for all future developments” within the city or county....” (*California Native Plant Soc. v. City of Rancho Cordova*, 172 Cal. App. 4th 603, 636 [2003]). Each county and each city is required to prepare, adopt, and maintain a general plan to govern the physical development of all the land area under its jurisdiction. While general plans may be amended up to four times per year to accommodate specific projects, as was done for the TMV Project, and specific projects must undergo individual environmental review and obtain local approvals, general plans remain a meaningful long-term plan for development.

The Service may rely on the projections for land use and development set forth in the Kern County General Plan (*City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1162 [9th Cir. 1997] [upholding purpose and need statement that relied, in part, on the city's master plan]; *Laguna Greenbelt v. U.S. Dep't of Transp.*, 42 F.3d 517, 526 [9th Cir. 1994] [upholding growth inducing impacts analysis of a toll road where the EIS concluded that the toll road would not influence growth in Orange County because local planning documents assumed the existence of the toll road]; *Nat'l Wildlife Fed'n v. Norton* 2005 U.S. Dist. LEXIS 33768 [E.D. Cal. Sept. 7, 2005] [upholding the Service's reliance on city and county general plans to determine the probable extent of development as best current information]). The Kern County General Plan notes the increasing population of unincorporated areas. According to the general plan, “substantial resource designated areas still exist within the plan to accommodate future population increases projected for the County,” which includes the agriculturally designated land on Tejon Ranch (Kern County 2009b, page xiii). Even if the growth is lower relative to areas like Bakersfield, as a commenter suggested, that does not mean the general plan buildout will not occur as Kern County's historic growth trend has continued through numerous cycles in the housing market. Without further information, attempting to determine the effects of recent economic activity on housing demands in Kern County in the future would be speculative. Thus, the Service reasonably relied on the predictions of the local government.

The Service agrees with the comment that site-specific environmental review, permits, and approvals are required prior to building, and that general plans do not vest any rights or entitlements. This is also consistent with the general plan itself. As described in this Supplemental Draft EIS, the Kern County General Plan specifies that individual projects must comply with other laws, and threatened and endangered species should be protected in compliance with Federal and state requirements (Section 4.1.1.1, Regulatory Setting, in Volume I of this Supplemental Draft EIS). If approved by the Service, the TU MSHCP and ITP would not authorize any land development on

Tejon Ranch. Such decisions would be made by Kern County subject to compliance with applicable Federal, state, and local laws.

11.2.7 Range of Alternatives Considered

Several comments state that the Draft EIS should have considered a broader range of alternatives and suggest several specific alternatives that should have been included in the analysis.

Comments specifically referenced the following alternatives:

- An alternative avoiding all development in designated California condor critical habitat (this alternative should consider clustering development near I-5).
- An alternative in which development is limited to areas close to existing metropolitan areas and/or existing rail transportation.
- An alternative in which the Covered Lands include all of Tejon Ranch.
- Alternatives involving developments in specific areas of the Covered Lands and surrounding areas, including the foothills and flatlands outside of the Covered Lands; one commenter provided specific parameters on housing cost and neighborhood design.
- An alternative based on the South Coast Wildlands' proposed reserve design.
- An alternative involving establishment of the Covered Lands as a park or natural preserve.

This response sets forth the general requirements on the scope of the alternatives analysis, then addresses the four remaining types of additional alternatives suggested by commenters.

11.2.7.1 General Requirements and Scope of Alternatives

CEQ regulations require an agency to "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated" (40 CFR 1502.14). The Supplemental Draft EIS revises and supplements the range of alternatives, providing an evaluation of a reasonable range of alternatives. Because the Federal proposed action is issuance of an ITP pursuant to Section 10(a)(1)(B) of the ESA based on the TU MSHCP, a species conservation plan, in setting the range of reasonable alternatives, this Supplemental Draft EIS looks to explore different levels of species and habitat protection and management. The Supplemental Draft EIS provides a range of alternatives: from no management actions by the Service and no development under the No Action Alternative; to comprehensive management of multiple species to minimize and mitigate the effects of the Covered Activities on the Covered Species and their habitats in the Proposed TU MSHCP Alternative; to a single-species management approach in the Condor Only HCP Alternative, focused solely on mitigating the effects of the Covered Activities on the California condor; to restricted development outside of California condor critical habitat with comprehensive species and habitat management in the CCH Avoidance MSHCP Alternative; to an *ad hoc*, project-by-project management approach in the Kern County General Plan Buildout Alternative, assuming mitigation of future development through project-specific take authorizations. The level of development considered in this Supplemental Draft EIS ranges from none in the No Action Alternative, to the proposed development in the Proposed TU MSHCP Alternative and Condor HCP Alternative, to restricted development outside of California condor critical habitat in the CCH Avoidance MSHCP Alternative, to general-plan-consistent development as set forth in the Kern County General Plan Buildout Alternative.

11.2.7.2 Alternatives Suggested by Commenters

The other alternatives suggested by commenters, as further discussed below, reflect several slight variations on species management and development assumed under the five alternatives considered in this Supplemental Draft EIS. One would expand multispecies HCPs to the boundaries of Tejon Ranch, and a number of suggested alternatives would provide additional or reconfigured open space without considering specific species management, and would concentrate development in more urbanized areas or other parts of Tejon Ranch. As described in more detail below, the Service considered the alternatives raised by commenters and, in general, concluded that the suggested alternatives either were not practical or feasible, were within the range of alternatives already considered, were inconsistent with the purpose and need of the proposed Federal action, or a combination of these three scenarios. One suggested alternative—an alternative that would avoid development in California condor critical habitat (and cluster a more dense development near I-5) was carried forward into this Supplemental Draft EIS for detailed consideration, and is reflected as the CCH Avoidance MSHCP Alternative.

Alternative Avoiding Critical Habitat

In response to several comments on the Draft EIS, this Supplemental Draft EIS has been revised to include the CCH Avoidance MSHCP Alternative, in which species management would occur through an MSHCP, and where, no development would occur in federally designated California condor critical habitat. Instead, more dense development would be clustered near I-5.

Alternative Covering All of Tejon Ranch

One commenter stated that, with respect to alternatives, it was unclear why the covered area does not include the entirety of the Tejon Ranch and the proposed development that would occur outside of the currently proposed Covered Lands.

An alternatives analysis may properly limit the geographic scope of alternatives because of the underlying statutory and applicant objectives (*Citizens Against Burlington v. Busey*, 938 F.2d 190, 196–197 (D.C. Cir. 1991)[approving of Toledo airport expansion EIS that considered applicant's job creation goals and eliminated consideration of expansion projects outside of the Toledo area]). As discussed above, the alternatives analyzed in this Supplemental Draft EIS present varying levels of development and species management within the Covered Lands. The Covered Lands represent 141,886 acres of the 270,365-acre Tejon Ranch. Based on the landform, there are two distinct areas of the Tejon Ranch: the Tehachapi Uplands and the valley floor.

While originally the Service and TRC discussed an HCP for the entire ranch, the parties recognized that the valley floor areas reflect different biological areas generally, as discussed in Master Response 12, Cumulative Effects. As the California condor was the key species driving the HCP, and the valley floor is sufficiently biologically distinct, TRC elected not to include the entire ranch in its application for an ITP. TRC has not requested coverage for either the Centennial project or the Grapevine project (two other possible future projects on Tejon Ranch contemplated in the Ranchwide Agreement) as part of their application.

The Covered Lands encompass areas of California condor activity on Tejon Ranch based on historic and current radio telemetry, global positioning system (GPS), and observational data, and elevation limits that define most current condor activity, and county boundaries. The Covered Lands encompass the Tehachapi Uplands areas of the ranch and associated biota, located roughly between 2,000 feet above mean sea level (amsl) on the north side of the mountains and 3,500 feet amsl on the south. Consistent with these two dissimilar biological areas, the TU MSHCP is directed at the mountain landscape, with its distinct species, uses, and habitat types that differ substantially from the species, agricultural uses, and habitat types on the valley floor.

As explained above, the alternatives need not extend beyond those reasonably related to the statutory purposes of the Federal action. The agency has considerable discretion to define the purpose and need of a Federal action. The Service considered the specific species management purposes of the TU MSHCP, and the proposed goals of the applicant, to reasonably define the scope of the Covered Lands, and therefore limited the range of alternatives to those that encompass the Covered Lands and its montane habitats and species—particularly the California condor—rather than the ranch as a whole.

Alternative Involving Different Development Sites

Other commenters stated preferences for specific development sites that would create a development in other areas of Tejon Ranch, and further suggest that such alternatives would still be profitable. Specifically, one commenter suggested development at the bottom of the Grapevine near the IKEA development. Another commenter suggested development of three or four small, scattered developments (less than 2 square miles and 2,000 residents) on the periphery of the Tejon Ranch in the foothills and flat areas outside of the Covered Lands, including the Centennial site, and potentially a small development near I-5 on the south side of Castac Lake, with specific design and housing cost guidelines. Finally, one commenter suggested an alternative that would concentrate development nearer to existing metropolitan areas and rail service.

NEPA requires the analysis of a reasonable range of alternatives that are consistent with the proposed Federal action and its related purpose and need. Given that the proposed Federal action is not development, but rather responding to an ITP application—specifically issuance of a permit based on the ITP application (i.e., the TU MSHCP)—evaluating a range of development scenarios that the applicant has no interest in pursuing, or development on other lands owned by the applicant for which it does not request incidental take authorization, is not reasonable and is beyond the scope of the proposed action.

As discussed above, the alternatives analyzed in this Supplemental Draft EIS represent a reasonable range of alternatives as required by NEPA and explore varying levels of development and species management in response to the applicant's proposed development and HCP for the Covered Lands. The variety of proposed development alternatives suggested in the comments summarized above represent variations on a theme of requesting consideration of various development scenarios (generally outside the boundaries of the Covered Lands), along with additional or reconfigured open space, without considering specific species management needs. Consequently, such alternatives do not contain any of the comprehensive biologically protective measures offered under the TU MSHCP and reflect the more *ad hoc* species management approach of the Kern County General Plan Buildout Alternative.

Moreover, all of these suggested alternatives to the proposed action involve development outside of the Covered Lands, and therefore fail to account for the applicant's purpose, which is to pursue development in the Covered Lands. Specifically, one commenter suggested that development should be located at the bottom of the Grapevine, at the northwest tip of Tejon Ranch, which is outside of the Covered Lands. Another commenter suggests that the applicant should build scattered developments at the periphery of Tejon Ranch outside the Covered Lands, except in a small area next to I-5. Alternatives that reflect development scenarios that the applicant has not expressed an interest in pursuing on other lands owned by the applicant for which it does not request incidental take authorization is not reasonable. Finally, with respect to another commenter's suggestions to place development nearer to metropolitan areas or rail service, there are no areas on the Covered Lands that are served by existing rail services or are substantially closer to existing metropolitan areas than the development areas identified for the Proposed TU MSHCP Alternative. The Supplemental Draft EIS notes that there is no local rail service in the Covered Lands and the demand for rail would be met by existing facilities and/or the proposed high-speed train facilities in

Bakersfield. It also notes that development under the Proposed TU MSHCP Alternative would be concentrated in areas already served by Kern Regional Transit (Sections 3.3, Air Quality, 3.8, Transportation, and 4.8, Transportation in Volume I of this Supplemental Draft EIS). Therefore, the suggested alternative also would have to involve development outside of the Covered Lands.

The ESA does not direct the Service to evaluate the merits of the underlying lawful activities that trigger the applicant's ITP permit; rather, the Service is directed to evaluate the HCP against the statutory and regulatory permit issuance criteria. Accordingly, potential alternatives to the proposed issuance of an ITP based on the TU MSHCP, and not the merits of the TMV Project and other development, are the focus of the Service's analysis.

Where the essential purpose of the Federal action is to respond to an ITP permit application and ensure compliance with the ESA, consideration of alternatives reflecting potential development on other areas of Tejon Ranch that the applicant has not proposed and for which the applicant does not seek incidental take authorization is beyond the scope of the proposed action. The alternatives suggested by commenters for development in different areas of Tejon Ranch are therefore outside of the range of reasonable and feasible alternatives that must be considered under NEPA (*City of Carmel-by-the-Sea v. U.S. Dep't of Transp.* 123 F.3d 1142, 1155, 1159 [9th Cir. 1997]; see also *Laguna Greenbelt, Inc. v. U.S. Dep't of Transp.* 42 F.3d 517, 524-525 [9th Cir. 1994]). These alternatives do not meet the Services statutory purposes or the applicant's objectives of the TU MSHCP and ITP application.

South Coast Wildlands Report

A commenter suggested that the South Coast Wildlands' Proposed Reserve Design for Tejon Ranch: A Threatened California Legacy (Conservation Biology Institute and South Coast Wildlands 2006) was among the alternatives that should have been addressed in the Draft EIS.

As discussed in the responses above, in considering a reasonable range of alternatives, a lead agency need not analyze alternatives that do not meet the project purpose or are within the range of alternatives already considered.

The stated purpose of the reserve design is "to design a wildland reserve for the [Tejon] Ranch that captures the broad array of landscape functions and conservation values that it supports." The reserve design includes the entirety of Tejon Ranch, and shows a reserve and three development areas, one of which is on the Covered Lands, largely within the TMV Planning Area.

For the same reasons given in the discussion regarding "Alternative Covering All of Tejon Ranch" and "Alternatives Involving Different Development Sites" above, the scope of the alternatives in this Supplemental Draft EIS must be reasonably related to the Covered Lands; thus, the report's consideration of areas outside of the Covered Lands is not consistent with the purpose of the action and is not relevant here.

Further, the reserve design described in the report excludes an area of approximately 8,247 acres in the subbasins of Castac Lake and Grapevine Creek watersheds for development, which is essentially consistent with the development and open space scheme presented in the Proposed TU MSHCP Alternative. This excluded area set aside for development would allow development surrounding Castac Lake and adjacent to I-5, in the southwest corner of the Covered Lands, with slight spillover into areas in Los Angeles County, south of the Covered Lands (Conservation Biology Institute and South Coast Wildlands 2006, p. 13, Figure 6d. Compare to Figure 2-4 in Chapter 2, Proposed TU MSHCP and Alternatives, in Volume I of this Supplemental Draft EIS). This design would result in a concentrated development pattern that correlates roughly to the densest development under the Proposed TU MSHCP Alternative. Although the 8,247 acres excluded from the South Coast Wildlands' reserve design would not follow the exact boundaries of the TMV Specific Plan in that it

would not include much of the large-lot residential development, which could potentially provide benefits to species due to connectivity in those areas, the reserve design would potentially allow disturbance of a larger total acreage in the Covered Lands than the 5,533 acres disturbed for development of Covered Activities under the Proposed TU MSHCP Alternative. Thus, to the extent the South Coast Wildlands reserve design encompasses the full ranch and includes development outside the Covered Lands, it fails to meet the project purpose. In addition, proposed development in the Covered Lands under the reserve design reflects an approach similar to the Proposed TU MSHCP Alternative and therefore is within the range of alternatives already considered.

National Park or National Wildlife Refuge

One commenter stated that the Covered Lands should become a new national park or wildlife refuge. Another commenter stated that while this is the most attractive alternative, it is not feasible.

As described above, NEPA requires the analysis of a reasonable range of alternatives that are consistent with the purpose and need of the proposed Federal action and take into account the purpose and need of the applicant for whom the Federal action is requested. The national park or wildlife refuge alternative is beyond the stated purpose and need for the Service in this EIS and is inconsistent with the purpose and need of TRC; therefore, this alternative is not within the range of reasonable alternatives that must be considered under NEPA. Specifically, an alternative contemplating a transfer to Federal ownership of the privately owned lands on Tejon Ranch to create a national park or refuge is inconsistent with Services purpose and need to respond to the ITP application before it, and the statutory directive of ESA Section 10 to allow limited regulated take of federally listed species on private property incidental to otherwise lawful activities, provided statutory permit issuance criteria are met. The national park or wildlife refuge alternative is also inconsistent with TRC's goals and expectations for use of its property.

Moreover, this alternative raises practicality issues and is not feasible for technical and economic reasons, such as the private property status of the covered lands. The Service cannot require a private landowner to dedicate its land as a park or wildlife refuge, and TRC has not indicated an interest in doing so.

Therefore, an alternative under which the Covered Lands become a park or wildlife refuge is not within the range of reasonable and feasible alternatives that must be evaluated under NEPA (*City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d at 1155, 1159; see also *Colo. Env'tl Coal. v. Dombeck*, 185 F.3d 1162 [10th Cir. 1999][holding that EIS with purpose and need of ski expansion project was not required to analyze conservation biology alternative]).