

Master Response 1B

California Condor Critical Habitat

Table MR1B-1 .Comments Addressed in Master Response 1B

Comment	Commenter
04-64	Center for Biological Diversity (Keats, Adam)
04-66	Center for Biological Diversity (Keats, Adam)
04-80	Center for Biological Diversity (Keats, Adam)
04-103	Center for Biological Diversity (Keats, Adam)
04-104	Center for Biological Diversity (Keats, Adam)
04-105	Center for Biological Diversity (Keats, Adam)
04-107	Center for Biological Diversity (Keats, Adam)
04-109	Center for Biological Diversity (Keats, Adam)
04-113	Center for Biological Diversity (Keats, Adam)
04-243	Center for Biological Diversity (Keats, Adam)
04-416	Center for Biological Diversity (Keats, Adam)
04-418	Center for Biological Diversity (Keats, Adam)
05-4	Defenders of Wildlife (Flick, Pamela)
05-16	Defenders of Wildlife (Flick, Pamela)
05-17	Defenders of Wildlife (Flick, Pamela)
010-15	TriCounty Watchdogs (de Leeuw, Jan)
010-18	TriCounty Watchdogs (de Leeuw, Jan)
010-23	TriCounty Watchdogs (de Leeuw, Jan)
I212-1	Burk, John W.
I212-5	Burk, John W.
I293-5	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-6	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-7	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-8	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-9	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-10	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-11	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-12	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone

Comment	Commenter
I293-17	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-22	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I 293-24	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-27	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-37	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-44	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-45	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-47	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I293-48	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I425-10	Duchamp, Mark
I426-12	Duchamp, Mark
I948-17	Manning, Jeffrey A
I948-26	Manning, Jeffrey A
I948-28	Manning, Jeffrey A
I1054-3	Moore, Stan
I1163-8	Palmer, Bruce
I1300-5	Risebrough, Bob
I1300-14	Risebrough, Bob

1B.1 Summary of Substantive Comments

The following summarizes the substantive comments received on the Draft EIS and Draft TU MSHCP related to California condor critical habitat and the determination of adverse modification of that habitat. Table MR1B-1 provides a list of the commenters and a reference to the individual comment, as summarized below. The parenthetical reference after each summary bullet indicates where a response to that comment is provided.

This response begins with an overview of the Service's approach to the evaluation of the effects of the Proposed TU MSHCP Alternative and associated incidental take permit (ITP) on critical habitat. The overview discussion is followed by responses to the individual issues raised by commenters.

- The Draft TU MSHCP and the Draft EIS did not adequately define, discuss or analyze critical habitat for the California condor. (Response provided in Section 1B.2.2, Definition, Discussion, and Analysis of Critical Habitat for the California Condor.)
- The Draft TU MSHCP improperly uses the Condor Study Area, rather than the critical habitat boundaries, to identify important condor habitat on the ranch, and the Condor Study Area boundary itself is inappropriate because it excludes important habitat. (Response provided in Section 1B.2.3, Definition and Significance of the Condor Study Area.)
- The Draft TU MSHCP and Draft EIS incorrectly interpret the California Condor Recovery Plan regarding the importance of loss of foraging habitat. (Response provided in Section 1B.2.4, Loss of Foraging Habitat in the California Condor Recovery Plan.)
- The Draft TU MSHCP does not reach an accurate and well-supported conclusion regarding adverse modification of critical habitat. In addition, the Service must distinguish between the terms *destruction* and *adverse modification* when describing the effects on critical habitat, in accordance with Section 7(a)(2) of the Endangered Species Act (ESA). (Response provided in Section 1B.2.5, Adverse Modification of Critical Habitat.)
- Development in critical habitat could set a precedent for development with substantial adverse effects and continuation of the *status quo* as mitigation. (Response provided in Section 1B.2.6, Development in the Critical Habitat.)
- The assessment in the Draft EIS under-represents the "action area." (Response provided in Section 1B.2.7, Findings Required under the Endangered Species Act.)
- The Draft TU MSHCP does not adequately evaluate potential effects on the California condor population movements across all critical habitat units. (Response provided in Section 1B.2.8, Potential Effects on Condor Population Movements Across All Critical Habitat Units.)

1B.2 Responses to Substantive Comments

1B.2.1 Overview

Portions of the lands on Tejon Ranch proposed to be covered by the TU MSHCP lie in critical habitat for the California condor. As a consequence, the Service is required to analyze condor habitat on ranch lands both within and outside of the critical habitat under two different statutes. In compliance with the National Environmental Policy Act (NEPA), the Service is required to analyze the effects of the proposed Federal action on the human environment. That analysis must include an evaluation of the proposed action on condor habitat, including critical habitat. This Supplemental

Draft EIS has been prepared to meet the Service's NEPA obligations. Thereafter, the Service is required to render a formal determination of the effects of the proposed ITP and TU MSHCP on critical habitat for the California condor as part of the Service's intra-Service consultation under Section 7 of the ESA. This determination is made in a biological opinion that formally addresses the issue of the destruction or adverse modification of critical habitat.

Under the Section 7 process, as informed by the NEPA EIS process, the Service will determine whether the proposed Federal action would result in the destruction or adverse modification of critical habitat consistent with the Ninth Circuit Court of Appeals decision in *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) (*Gifford Pinchot*). The Service no longer relies on the regulatory definition of critical habitat. Instead, consistent with *Gifford Pinchot*, the Service relies on the statutory definition of critical habitat under the ESA and analyzes the effects of the proposed action on the ability of critical habitat to carry out its intended function and conservation role. Thus, in reviewing the effects of a proposed Federal action that would eliminate or degrade the habitat value of specific lands within the boundaries of critical habitat, the Service analyzes what the effects of such habitat elimination or degradation are likely to be on the overall ability of critical habitat to perform its conservation function. The analysis is species-specific and habitat-specific, and considers the life history needs of the species and the particular role of the affected critical habitat in meeting those life history needs. The analysis also considers the extent to which the effects of the proposed action on the specific critical habitat area alter the overall capability of critical habitat to serve its intended conservation role and function.

As noted above, the Service has not yet completed the ESA Section 7 process. The Draft TU MSHCP is the applicant's document and the analysis and conclusions in the Draft TU MSHCP regarding critical habitat are those of the applicant (Tejon Ranchcorp [TRC]).

Since the Draft TU MSHCP and Draft EIS were released to the public, the Service has considered the comments provided by the public on this issue, as well as current condor management methods being implemented by the Service's California condor recovery program in Southern California, updated condor global positioning system (GPS) location data, and the 2010 analysis by the U.S. Geological Service (USGS) (Johnson et al. 2010) (Appendix I of this Supplemental Draft EIS). Based on this updated analysis, as well as continued use of prior and more recent California condor GPS location data, the Service has developed a revised model of foraging habitat for the California condor, which is described in greater detail in Master Response 1E, California Condor Loss of Foraging Habitat. The analysis in this Supplemental Draft EIS (Section 4.1, Biological Resources, in Volume I of this Supplemental Draft EIS) has been updated to reflect the updated condor data, including the USGS study and the revised foraging habitat suitability model, to more accurately evaluate the effects of the Proposed TU MSHCP Alternative on the condor and its habitat, including direct and indirect loss of foraging habitat that would likely result from proposed development activities. The project applicant, TRC, has updated the analysis in the TU MSHCP as well.

The following discussion addresses the significance of the updated California condor analysis and the revised amount of suitable foraging habitat available on Tejon Ranch. The discussion specifically considers the anticipated effects of the TU MSHCP on the species and its essential foraging and roosting habitat in critical habitat and ranchwide, as well as the issue of connectivity to other suitable condor habitat (including nesting habitat) within the species' historical range.

1B.2.2 Definition, Discussion, and Analysis of Critical Habitat for the California Condor

Commenters raised a series of issues relating to critical habitat for the California condor. Several commenters emphasized the importance of the habitat on Tejon Ranch and its significance as critical habitat for recovery of the condor. Other commenters suggested that TMV Project lands are some of

the most important areas for condors within critical habitat areas. Commenters also noted important habitat elements, such as native ungulate populations, topography, and populations of ravens and golden eagles, which assist condors in foraging and roosting. One commenter stated broadly that the TU MSHCP and Draft EIS are too inadequate to allow for an analysis of effects and do not mention or discuss critical habitat. Other commenters sought better, additional, and clearer information regarding condor use, hunting restrictions, and the definition of critical habitat. Several commenters called for consideration of recovered or expanded future condor populations. Other commenters expressed concern regarding the reliance on historical and current condor habitat use data, or assessments of “static environmental conditions” to determine critical habitat. One commenter asked that the use of appropriate buffers around development be used to calculate effects on critical habitat. One commenter suggested that the foraging and feeding functions of Tejon Ranch would be preserved through management of the large conserved area. One commenter noted that critical habitat cannot be assessed without consideration of management practices.

The Service designated critical habitat for the California condor in 1976 (41 *Federal Register* [FR] 41914, September 24, 1976). It was one of the first critical habitat designations, was demarcated generally by township and range lines, and lacks the detailed discussion of essential habitat features and primary constituent elements that are characteristic of more recent designations. The totality of the discussion of Tejon Ranch in the 1976 final rule is as follows:

The Tejon Ranch, Kern County rangelands, and Tulare County rangelands, as described below, are considered critical for feeding and related activities. The Tejon Ranch is very important because it contains the only significant feeding habitat remaining in close proximity to the Sepe-Piru Condor nesting area. In most cases Condor feeding habitat is not so restricted as nesting and roosting sites, and only certain portions of the areas described below are needed at any one time. Because, however, the location of food is directly related to both Condor distribution and reproductive success, substantial areas of open range, with adequate food, and limited development and disturbance, would have to be preserved in each delineated area in order to maintain the species.

Tejon Ranch: an area of land, water and airspace in Kern County, with the following components (San Bernardino Meridian): R16W T10N, R17W T10 N, R17W T11N, R18W T9N, R18W T10N, R19W T10N (41 FR 41914–41916).

The Tejon Ranch critical habitat unit encompasses 134,871 acres. A total of 102,098 acres of critical habitat would be conserved under the TU MSHCP and the Ranchwide Agreement, which include both suitable foraging habitat and traditional roosting areas. As discussed above, the specific conservation function of the Tejon critical habitat unit as described in the final critical habitat rule is to provide essential feeding (foraging) areas for the California condor. In addition, the Tejon critical habitat unit provides areas for roosting, including traditional roost sites, as well as habitat connectivity to other portions of the historic range outside and beyond the boundaries of Tejon Ranch. As discussed previously, the Service has revised the model of foraging habitat for the California condor on Tejon Ranch (Master Response 1E, California Condor Loss of Foraging Habitat). Based on the revised model, there are 87,400 acres of suitable foraging habitat in the Tejon Ranch critical habitat unit. Commercial and Residential Development Activities proposed under the TU MSCHP would result in the direct loss and indirect effects on 12,015 acres of foraging habitat in the Tejon Ranch critical habitat unit. Approximately 80,231 acres of critical habitat, including 46,045 acres of foraging habitat, in the critical habitat unit would be conserved in the TU MSHCP Mitigation Lands. In addition, 21,867 acres of critical habitat, including approximately 18,261 acres of suitable foraging habitat, would be conserved outside of the Covered Lands under the Ranchwide Agreement.

In evaluating the effects of the TU MSHCP on condor critical habitat, the Service considered the loss of foraging habitat and the effect such loss is likely to have on the availability of food for the condor, as well as the amount of foraging habitat that would be lost and conserved under the TU MSHCP. To estimate the available food supply for free-flying condors in California, the Service calculated the

number of carcasses that would be necessary to support one wild population of 150 condors in their historic range (with the other disjunct wild population identified in the Recovery Plan occurring in Arizona), and the amount of available carcasses from cattle operations, hunting and natural sources, within the range of the California population. (See discussion under Section 1B.2.4, Loss of Foraging Habitat in the California Condor Recovery Plan, below.) Using this information, the Service assessed the importance of Tejon Ranch to a wild population of condors in California in terms of the estimated amount of annual livestock and wildlife mortality available to condors that currently use Tejon Ranch and that are anticipated to use it in the future.

In summary, a total of 14,837 acres of critical habitat, including 12,015 acres of suitable foraging habitat for the condor, would be lost and indirectly affected as a result of development within the TMV Planning Area. Approximately 80,231 acres of California condor critical habitat, including 46,045 acres of suitable foraging habitat, would be conserved in the TU MSHCP Mitigation Lands. An additional 21,867 acres of critical habitat, including 18,261 acres of suitable foraging habitat, would be conserved outside the Covered Lands under the Ranchwide Agreement.

Finally, the Service evaluated historic and current data on the use of Tejon Ranch by California condors (Master Response 1A, California Condor Data and Habitat Use). The California population of condors continues to grow, and the number of condors equipped with GPS data transmitters likewise continues to increase, providing the Service with a larger data set relative to the data included in the Draft TU MSHCP and Draft EIS. This larger data set reflects a pattern of increased use of Tejon Ranch by California condors, relative to the amount of use Tejon Ranch received at the time the Draft TU MSHCP and Draft EIS were published. Based on this updated information, condor use of traditional roosting and foraging locations in the Condor Study Area continues to increase, as does condor flyover and foraging activity within and in the vicinity of the TMV Planning Area.

1B.2.2.1 Food Supply within the Range of the California Condor

Free-flying California condors need approximately 2.2 pounds of food per day based on caloric requirements (Houston 1971, Wilbur 1978). Assuming condors obtain a minimum of 50 pounds of food from the average ungulate carcass (some carcasses likely provide more than 50 pounds), Wilbur (1978) calculated that a population of 50 condors would require 39,600 pounds of food or 720 carcasses per year. Based on these calculations, the Service estimates 2,160 carcasses per year would be necessary to provide enough food for one wild population of 150 condors (which would constitute one of the two wild and disjunct populations needed to meet the down-listing criteria of the California Condor Recovery Plan [U.S. Fish and Wildlife Service 1996], as discussed in Section 1B.2.4, Loss of Foraging Habitat in the California Condor Recovery Plan, below.) For the purposes of this EIS, the Service considers condors in southern California and condors in Big Sur/Pinnacles National Monument as two subpopulations that will both contribute to one free-flying population in California per the recovery plan down-listing criteria. Although condors in southern California are not currently mixing regularly with condors in the north (generally between the Big Sur Coast in Monterey County and Pinnacles National Monument in San Benito County), the Service expects that individuals, probably juveniles and unpaired adults, will eventually intermix more frequently than they currently are, if these subpopulations continue to grow and expand their ranges.

The total number of beef cattle reported in Kern, Los Angeles, San Luis Obispo, Santa Barbara, Tulare, Kings, and Ventura Counties in 2009 equaled 112,000 head (U.S. Department of Agriculture 2011). There was an average mortality rate of 4.7% for cattle and calves in California from 1988 through 2010 (U.S. Department of Agriculture 2011). The U.S. Department of Agriculture includes death loss of all cattle in their reporting (J. Hardegree pers. comm) and the average mortality of range cattle could be lower or higher than the overall average. However, for lack of another available mortality rate, using an average mortality rate of 4.7%, it is estimated that approximately 112,000

head of cattle would provide 5,260 carcasses within the range of the southern California subpopulation of condors.

The average sheep and lamb mortality rate in California from 1988 through 2010 was 4.6% (U.S. Department of Agriculture 2011). Sheep also historically provided an important food resource for condors (Wilbur 1978, Koford 1953). A total of 106,600 sheep and lamb were reported in Kern and San Luis Obispo Counties in 2009 (Kern County 2009, San Luis Obispo County 2009), with an additional 28,460 sheep reported in Ventura County in 2009 (Ventura County 2010). Using the average mortality rate for sheep and lambs, 135,060 sheep and lambs would provide an estimated 6,212 sheep and lamb carcasses.

Based on the above livestock data, it is estimated that 11,472 cattle and sheep carcasses would be produced within the current range of the southern California subpopulation of condors, from San Luis Obispo County through Kings County (although because not all are range animals, not all of them would be available for condors), and an unknown number of native ungulate, other native mammal, and wild pig carcasses would provide additional food for condors. Livestock, wild pig, and native ungulate carcasses in Monterey and San Benito Counties would add to the 11,472 carcasses estimated in the southern California subpopulation's current range. This is more than what would be needed (2,160 carcasses) to support one (California population) of the two populations of 150 free-flying condors identified in the recovery plan's down-listing criteria.

Not all carcasses would be found and eaten by condors. Some carcasses may be disposed of by landowners, consumed by other predators, or simply not discovered by condors. The variability in food availability is consistent with the opportunistic scavenging and far-ranging foraging behavior characteristic of condors (U.S. Fish and Wildlife Service 1976, 1996; Wilbur 1978; Snyder and Snyder 2000). For these reasons, the Service cannot accurately predict what proportion of the estimated annual food base would actually be used by condors, nor the number of condors these available carcasses would support. Regardless, reasonable estimates suggest that the overall available food supply is well in excess of that needed to support a population of 150 free-flying condors in California.

The Service anticipates that at least some of this food supply would continue to be available to condors. While livestock production in the condors' historic range in California may be declining, it is not expected to disappear from those counties in the foreseeable future; in fact, livestock production in Kern County appears to be increasing (Kern County 2007, 2008, 2009, 2010). Because a substantial amount of potential food should be available for condors, it is not expected that all condors in the recovering population would feed exclusively on Tejon Ranch at all times. Large areas of additional suitable foraging habitat currently occur elsewhere in the historic range of the condor, including lands in public and private ownership (i.e., national forest and refuge lands, private ranches, and preserve lands). Overall, the Service estimates there are currently more than enough potential carcasses from livestock, hunting, and other mortality of native ungulates and feral pigs in the condors' historic range in California to support one of the two free-flying population of 150 birds envisioned in the recovery plan and necessary to down list the condor to threatened status (assuming the mortality factors, particularly lead poisoning, are minimized or eliminated).

The continued availability of a reliable and consistent food source for condors on Tejon Ranch is likely to increase in importance if the overall production of livestock within the range of the condor declines. Under the TU MSHCP, hunting and grazing would continue throughout the Tejon Ranch critical habitat unit as well as the other areas of foraging habitat on Tejon Ranch. Ranching would continue at current grazing levels up to a total of 14,500 head of cattle, consistent with past practices (Chapter 2, Proposed TU MSHCP and Alternatives, in Volume I of this Supplemental Draft EIS). Continued ranching would include grazing, breeding, and calving. Cattle would continue to be grazed on the TU MSHCP Mitigation Lands and Existing Conservation Easement Areas on the

Covered Land as well as the Tejon Ranch areas conserved under the Ranchwide Agreement outside the Covered Lands.

As outlined in the grazing plan in the Interim Ranchwide Management Plan (RWMP) (Tejon Ranch Company 2009), grazing would follow seasonal rotations currently in place, where cattle use grazing lands on the lower elevations of the ranch in the winter, moving gradually onto the higher elevation grazing lands through the spring and summer. The continuation of calving on Tejon Ranch, both on the TU MSHCP Mitigation Lands outside of the TMV Planning Area and on the other conserved rangelands on the ranch, is particularly important with regard to food availability for condors. Calves in particular have served as an important food source for condors in the past (Koford 1953, Wilbur 1978, Miller et al. 1965), and the Service (1976) has concluded that cow/calf operations on Tejon Ranch provide a crucial food source for condors.

The Service does not anticipate that carcasses in the TMV Specific Plan or Oso Canyon Development Envelopes, or within 0.5 mile of these Development Envelopes, would serve as a significant food source to condors based on disturbance associated with development. Therefore, the Service does not anticipate that these areas would remain functional as foraging habitat for condors following development in the TMV Planning Area (see discussion of indirect effects in Section 1B.2.2.2, Habitat Suitability Model, below, and Master Response 1E, California Condor Loss of Foraging Habitat).

Hunting, particularly hunter-killed native ungulate and feral pig carcasses and gut piles, also provides an important food source for condors on Tejon Ranch (see Master Response 1E, California Condor Loss of Foraging Habitat, for more discussion of hunting and potential effects associated with the Proposed TU MSHCP Alternative). Approximately 800 to 1,200 pigs are killed on Tejon Ranch each year (Tejon Ranch Conservancy pers. comm.). Wild pigs are expanding their range in California (California Department of Fish and Game 2011). Although not a Covered Activity under the Proposed TU MSHCP Alternative, TRC would continue its established commercial hunting program on the TU MSHCP Mitigation Lands and other conserved portions of the ranch. Managed hunting would also continue in the TMV Planning Area Open Space; however, as described above, the Service does not anticipate that carcasses associated with hunting in the open space within the TMV Specific Plan or Oso Canyon Development Envelopes, and within 0.5 mile of these Development Envelopes, would serve as a significant food source to condors based on disturbance associated with development (see discussion of indirect effects in Section 1B.2.2.2, Habitat Suitability Model, below and Master Response 1E, California Condor Loss of Foraging Habitat).

1B.2.2.2 Habitat Suitability Model

Another important consideration in evaluating the effects of the TU MSHCP on California condor critical habitat is the extent to which foraging habitat would be affected by the Covered Activities, particularly any development in the TMV Specific Plan or Oso Canyon Development Envelopes. The Service revised the model of foraging habitat for the condor to better evaluate the effects of the proposed action on condor foraging and feeding habitat on Tejon Ranch, including areas in the Tejon Ranch critical habitat unit.

The California condor forages opportunistically over large expanses of its range. It is a visual scavenger that may identify a food source on its own, or by following other scavenging species, such as common ravens and golden eagles, to locate carcasses. It is recognized that, by definition, an opportunistic scavenger feeds wherever it can find and access a food source. Responses to comments about the foraging behavior of California condors are described primarily in Master Response 1E, California Condor Loss of Foraging Habitat.

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

observable and accessible to condors because of the open structure of the vegetation. Although condors can locate food and feed under the canopy of various habitat types, including woodlands and chaparral, the Service does not believe this happens as consistently as feeding that occurs in savannahs or grasslands. Grasslands and savannahs are the vegetation communities that have been consistently identified as the primary foraging habitat for the California condor (U.S. Fish and Wildlife Service 1976, 1996; Snyder and Snyder 2000; Wilbur 1978; Koford 1953). These habitat types also likely provide the most consistent potential for condors to locate and access food sources. Given the substantial amount of woodland habitat types on Tejon Ranch (approximately 53,211 acres), which include both thick canopy cover and dense vegetative understory (two characteristics that make it more difficult, although not impossible, for condors to access food), the Service does not believe it is accurate or appropriate to assume all woodland habitats on Tejon Ranch qualify as suitable foraging habitat. The Service also considered other habitat types that condors use as foraging habitat in other parts of their historic range, including *potreros* (open grassland) within chaparral and scrub. Although the scrub and chaparral habitat types on Tejon Ranch contain some amount of open ground mixed with dense ground cover, they do not contain large *potreros* conducive to grazing ungulates (areas where condors are known to feed within these habitat types) (U.S. Fish and Wildlife Service 1996). Therefore, the Service does not consider chaparral and scrub as suitable foraging habitat for condors on Tejon Ranch.

Commenters suggested that permitting the TU MSHCP could set a precedent for permitting actions that use “static environmental conditions” such as vegetation maps, to rank the quality of suitable habitat in order to justify adverse modification and fragmentation of critical habitat. While vegetation maps may be static to the extent they capture the particular environmental conditions present at the time the data used in the mapping was collected, the use of vegetation mapping to characterize habitat types is not a precedent-setting concept. The Service developed the suitable foraging habitat model for the California condor included in this Supplemental Draft EIS based on vegetation mapping, knowledge of the species and its foraging and feeding habits, and ground-truthing of those mapped vegetation types on Tejon Ranch (see Master Response 1E, California Condor Loss of Foraging Habitat, and Appendix D, Habitat Suitability Criteria Methods, to this Supplemental Draft EIS for more information on the revised foraging habitat model for the condor).

Approximately 6,653 acres of suitable foraging habitat in the Tejon Ranch critical habitat unit also occurs in TRC’s potential Grapevine development, on the San Joaquin Valley floor at the edge of the foothills and extends up to the boundary of the Covered Lands at 2,000 feet above mean sea level (amsl). These 6,653 acres are located outside of the Covered Lands and are not proposed for conservation under the Ranchwide Agreement.

1B.2.2.3 Habitat Use

Additional data and analysis have become available since release of the Draft EIS and Draft TU MSHCP (U.S. Fish and Wildlife Service 2011, Johnson et al. 2010), and these data and analyses have been incorporated into the analysis presented in this Supplemental Draft EIS and the TU MSHCP (for a more detailed discussion of California condor habitat use on Tejon Ranch, please refer to Master Response 1A, California Condor Data and Habitat Use). Current California condor GPS data indicate that both the number of condors using the ranch and the extent of ranch lands used by condors have increased since the Draft EIS and Draft TU MSHCP were released for public comment in January 2009. While the Service’s regulatory conclusion regarding the effects of the proposed ITP on the California condor and its critical habitat will be contained in the biological opinion for the proposed action, the Service has revised this Supplemental Draft EIS to reflect the updated analysis of the use of Tejon Ranch by California condors. Similarly, TRC has updated the relevant analysis in the TU MSHCP.

1B.2.3 Definition and Significance of the Condor Study Area

Several commenters specifically criticized the use of the historical and current data to establish the boundaries of the Condor Study Area and assert that the Condor Study Area excludes the most important habitat within the critical habitat. Commenters also suggested that the Services' GPS data suggests the TMV Planning Area is one of the most heavily used areas of condor critical habitat in recent years.

The Condor Study Area was designed to encompass the core area of California condor activity on the Ranch at the time it was originally conceived, as shown by telemetry and historical data, while capturing some of the areas deemed important to condor conservation by knowledgeable California condor biologists. Since the Condor Study Area was developed and formally proposed as part of the TU MSHCP, the Service has engaged in a more in-depth, and statistically sound, analysis of the entire condor data set through a research contract with USGS (Johnson et al. 2010) (Appendix I).

As discussed in the Draft TU MSHCP, the Condor Study Area was originally designed to take into account historical information, the experience of California condor experts, and both telemetry and historical data points available at that time. Although the final configuration evolved over several years, it is important to understand how the shape and location of the Condor Study Area were determined. The first Condor Study Area configuration was created by former Condor Recovery Coordinator Bruce Palmer in 2002. Mr. Palmer prepared a report on the significance of Tejon Ranch to California condor recovery (U.S. Fish and Wildlife Service 2002) that served as a basis for delineating the original Condor Study Area of 37,099 acres. The Condor Study Area expanded on an area formerly known as the Section 4C Area to include Tunis and Winters Ridge and some of the higher elevations on the ranch. The intent of Mr. Palmer's effort was to capture both the likely feeding areas (i.e., high, exposed ridgelines with prevailing updrafts) and roosting habitat (i.e., tall trees and high ridges with prevailing updrafts). It also incorporated some of the early telemetry data collected from California condor AC-8, the last female taken from the wild. This configuration was the basis for all of the TU MSHCP discussions that followed for the next 4 years. TRC designed the TMV Project to avoid the Condor Study Area. Mr. Palmer delineated and established setbacks to provide a buffer between the development and the Condor Study Area to minimize potential conflicts between condors and new human activity.

Subsequently, the Service generated additional telemetry data (gathered after Mr. Palmer's first efforts) and reviewed historical data detailing California condor activity on the ranch. The historical data covers the period from 1910 through 1987, although the earliest data from the ranch is from 1967. Historical data ends in 1987, when the last wild California condor (AC-9) was taken into captivity. Historical data did not have the benefit of the precision afforded by radio transmitters, satellite tracking, or GPS units. Instead, observational records that identified specific locations were converted into coordinates that could be integrated into a GIS dataset and mapped. In contrast, the telemetry data gathered between 2000 and 2005 relies upon readings from transmitters carried by individual condors and recorded by mobile tracking units, satellites, and GPS transceivers. By triangulation or direct readings, biologists recorded the precise locations of California condors.

As described in the Draft EIS and Draft TU MSHCP, TRC and Service GIS experts mapped the data in its entirety to see if any patterns emerged. In general, the data revealed that condor activity was concentrated in several areas well-known to condor experts from their experiences with the birds both prior to their removal from the wild and since re-introductions began in 1992. One of these areas was Tejon Ranch; however, due to scale, the original mapping did not discern specific condor activity on the ranch to a level where a suitable Condor Study Area could be defined.

As part of the TU MSHCP, TRC next mapped only the telemetry data with the thought that this was the most precise data available. This map showed a definite pattern of use of the ranch by condors; however, it only accounted for activity from 2000 through 2005 and did not include historical

patterns. The Service advised TRC that while the telemetry data was accurate, the majority of the data was from two California condors, AC-8 and AC-9. One of the goals of the reintroduction program, particularly with regard to the “old” birds who were part of the wild flock before their capture, is to reestablish historic movement and land use patterns. While the activities of AC-8 and AC-9 would be useful for that purpose, limiting the mapping to the telemetry data introduced a bias toward these two individuals that could not be overlooked, but would have to be balanced with historical data for other birds.

TRC’s next step was to map both the telemetry data from 2000 to 2005 and the historical data from 1967 through 1987. The telemetry data and the historical data indicated that the Condor Study Area Bruce Palmer had delineated in 2002 generally reflected where condors were using the ranch. For most of the historical data, Cogan (1993) assigned an activity code using a complex system of numbers. For example, all foraging fell into category 30,000. Beneath that category, observers discerned (and Cogan coded) whether the food was bait set out by researchers or natural carrion, including the type of animal (e.g., deer carcass versus dead ground squirrel). In discussion with the Condor Recovery Coordinator, Jesse Grantham, the Service decided that some activities were more vital to conservation or reflective of the value of Tejon Ranch to condors than other activities. The Service concluded the foraging/feeding was the most important behavior supported by Tejon Ranch, followed by roosting/perching (nesting would have been first, but California condors have never been recorded as nesting on the ranch).

Continuing to use data provided by the Service, TRC created a new map with unique identifiers for telemetry data for AC-8; telemetry data for AC-9; telemetry data for all other condors fitted with telemetry transmitters; historical data points for foraging/feeding condors; and historical data points for roosting/perching condors. This mapping process reduced the number of historical data points that fell within the Covered Lands from 1,121 to 412 because data for preening, flushing, etc. were no longer mapped. The total number of telemetry data points remained the same (282).

The new map with the unique identifiers showed that the original Condor Study Area configuration defined by Bruce Palmer was still effectively captured by most of the recorded condor occurrence data. However, it also became apparent that there were historical data points for foraging/feeding and roosting/perching that were close to the Condor Study Area boundary but were not captured in its original configuration, and that there were some areas included in the original Condor Study Area where no historical data and very few telemetry data points occurred. TRC decided to see if it could reconfigure the Condor Study Area to capture a greater percentage of both the telemetry and historical data. By shifting some of the Condor Study Area to the east and extending some of the boundaries, an alternative to the original Condor Study Area configuration was created. The proposed revised Condor Study Area boundary was reviewed by the Condor Recovery Coordinator, Jesse Grantham, who has extensive experience with both the current and the historical use of the ranch by California condors. Mr. Grantham’s experience with California condors suggested that the western portion of the original Condor Study Area delineation had greater significance as foraging habitat than is reflected by the data because feeding events were rarely witnessed historically (only 13 natural feeding events were recorded on the Covered Lands between 1967 and 1987). Data for the baited feeding stations were more abundant (89 for the same period and area), most likely because observers were usually monitoring baited feeding sites. Perching/roosting data are naturally more abundant because the birds spend more time roosting and may stay in one location for extended periods, increasing the odds they will be observed or recorded by satellite, GPS, or radio telemetry while they are stationary.

Recent condor GPS data, particularly the data generated since release of the Draft EIS and Draft TU MSHCP to the public, indicates a greater number of condors are using a much larger portion of Tejon Ranch, beyond the boundaries of the Condor Study Area. The Service’s California Condor Recovery Program field biologists have documented condors feeding on non-proffered pig, cattle, and mule

deer carcasses, including areas inside the TMV Planning Area and the Condor Study Area, as well as regular use of the traditional roost sites in the Condor Study Area (Service GPS data and unpublished field data). Condor occurrence data from January 2010 through May 2011 were also mapped and considered in this Supplemental Draft EIS, including the effects analysis provided in Section 4.1, Biological Resources, in Volume I of this Supplemental Draft EIS.

Although the Condor Study Area was configured prior to the USGS data analysis (Johnson et al. 2010), and was intended to capture what was considered at the time it was developed the core area of the ranch that was most intensively used both currently and historically by condors, the Service recognizes that the Condor Study Area still contains a substantial amount of suitable foraging habitat (approximately 23,040 acres), as well as traditional roost sites that were historically and are currently used by the species. However, the Service does not necessarily consider any particular area of Tejon Ranch as the best or most important foraging habitat for the California condor or consider the Condor Study Area to be the core area for all condor activity on Tejon Ranch. The condor data sets do not provide information that is sufficient to provide qualitative information about the specific areas where condors were located at the time the data were generated. Non-proffered feeding events documented on Tejon Ranch by the Service show condors feeding primarily in grassland and oak savannah, regardless of critical habitat boundaries, elevation, slope, or distance from the center of ridgelines. In contrast to the widespread foraging activity that occurs across the ranch, condors continue to use important traditional roost locations on Winters Ridge (in the Condor Study Area). The Service believes these specific locations within the Condor Study Area are particularly important and are not found in other locations on the ranch.

1B.2.4 Loss of Foraging Habitat in the California Condor Recovery Plan

Commenters made several points about the role of critical habitat in the recovery of the condor, suggesting that the Draft EIS and Draft TU MSHCP misstate the importance of foraging habitat in the California Condor Recovery Plan. Commenters suggested that the development planned under the TU MSHCP is a major threat to the recovery of the condor and is incompatible with condor recovery. One commenter suggested that a potentially expanding population makes it scientifically indefensible to exclude any areas of the ranch from being considered suitable habitat. Another commenter suggested that the calculations of the affected and lost habitat areas are inaccurate. One commenter suggested that a population viability analysis should be presented to justify the effectiveness of the proposed conservation strategy. Another commenter cautioned that the loss of foraging habitat should be considered in the context of habitat losses in other areas.

The Service agrees the Tejon Ranch critical habitat unit includes high-quality foraging habitat that is a crucial part of the California condor recovery effort. Patterns of condor use on the ranch have increased since the Draft EIS and Draft TU MSHCP were released for public comment in December 2008, and this Supplemental Draft EIS has been revised to reflect these changes. TRC has also updated the Draft TU MSHCP to reflect the current use of the ranch by condors. (Refer to Master Response 1A, California Condor Data and Habitat Use, and Master Response 1E, California Condor Loss of Foraging Habitat).

The California Condor Recovery Plan (U.S. Fish and Wildlife Service 1996) does not identify specific criteria for delisting the species. However, the recovery plan does identify the existence of two wild, spatially disjunct and noninteracting, reproductively self-sustaining populations of 150 birds each, as well as one captive population, as the basis for down-listing the condor to threatened status. One of the free-flying populations would occur in California and one Arizona (J. Grantham pers. comm). Currently, due to a very high mortality rate among wild condors (approximately 20 to 25%), resulting primarily from lead contamination, there is no overall natural population growth in the

free-flying populations. Although reproduction has been successful in the wild, the population growth achieved in the free-flying condor populations is due entirely to the continuing introduction of captive-bred juvenile condors into the wild (i.e., mortality rates in the wild exceed reproduction in the wild). Until the threat of lead poisoning from ammunition is effectively minimized or eliminated throughout the condor's range, the Service does not anticipate achieving reproductively self-sustaining populations of condors. Therefore, achieving the recovery plan down listing goal of one of two disjunct, wild and reproductively self-sustaining populations of 150 condors is unlikely in the foreseeable future (i.e., the next 50 to 100 years). While circumstances may improve, particularly with effective enforcement of the ban on lead ammunition in California, the Service cannot at this time provide a reasonable estimate of the size of a fully recovered condor population or predict when recovery will be achieved. Therefore the Service has based the evaluation of future condor use of the ranch on the recovery plan goal of one population of 150 reproductively self-sustaining condors, even though the Service recognizes that this projection is unlikely to be achieved in the foreseeable future.

Updated population viability analysis looking at the long-term population growth in terms of recovering the condor is included in an environmental contaminants program grant administered by the Service that will investigate the biological impact of contaminants and management actions that may influence the long-term persistence of the California condor. The final results are anticipated in 2014, and this and other updated information about the California condor would inform the adaptive management program required under the TU MSHCP.

As discussed above, the Service has determined that the recent historic range of the California condor (as described in Section 1B.2.2.1, Food Supply in the Range of the California Condor) supports sufficient food resources from grazing, hunting, and native ungulate populations to support well in excess of 150 birds. The areas that would be conserved and managed under the TU MSHCP and the Ranchwide Agreement together would provide sufficient habitat to support a substantial fraction of a down listed population spread across the entire range in California. Considering the amount of foraging habitat that would remain on Tejon Ranch under the TU MSHCP and Ranchwide Agreement, and the available food supply for condors that would be produced from cattle, pig, and native ungulate carcasses on that foraging habitat within the TU MSHCP Mitigation Lands and other conserved areas of Tejon Ranch, it is likely that the ranch would continue to function as an essential and viable foraging area for the expanding condor population. In addition, the proposed permanent conservation of historically and currently used traditional roost sites on Winters Ridge, along with the permanent land use restrictions on the TU MSHCP Mitigation Lands and other rangelands proposed by Tejon Ranch within the Tejon Ranch critical habitat unit, would enable those lands to continue to provide foraging and roosting habitat essential for the conservation of the condor. The prohibition on commercial and residential development, the continuation of ongoing ranch-wide activities, such as grazing and hunting, and strict limitations on the nature and extent of public access, are expected to maintain the conservation value of the TU MSHCP Mitigation Lands and other conserved areas of the ranch to the condor.

The Service is aware that historic condor foraging areas in the Simi Valley, the Santa Clara Valley, and Hathaway Ranch adjacent to the Hopper Mountain National Wildlife Refuge have been developed or converted to other land uses that are not consistent with condor foraging, as pointed out by some commenters. The cumulative effects analysis in this Supplemental Draft EIS addresses potential development on the ranch outside the Covered Lands, including potential development identified in the Ranchwide Agreement. In addition to this NEPA analysis, and as part of the ESA Section 7 process described above, the Service also will formally address critical habitat, and other important condor habitat throughout the condor's range, in the intra-Service biological opinion. As discussed previously and below, the development proposed for the TMV Planning Area under the TU MSHCP would not likely result in diminished foraging opportunities on the remainder of the Tejon

Ranch critical habitat unit, or restrict condors from accessing the other critical habitat units designated for the species or other potential foraging habitat within the condor's historical range.

1B.2.5 Adverse Modification of Critical Habitat

Several commenters commented on findings regarding the determination of "adverse modification" and how the regulatory definition relates to the critical habitat. Commenters suggest that the conclusion in the Draft TU MSHCP regarding adverse modification of critical habitat is not accurate and not well supported, and that the TU MSHCP would allow major adverse effects, and adverse modification of critical habitat. One commenter stated the proposed plan could set a precedent for developing in critical habitat with substantial adverse effects. Commenters criticized the continuation of the *status quo* as mitigation or asserted that mitigation measures are not accurate, because the only adequate mitigation would be to prevent development within critical habitat entirely. Finally, one commenter suggested that the actual loss of critical habitat should be carefully calculated, not assumed.

The determination of either "destruction" or "adverse modification" of critical habitat is made under Section 7 of the ESA, and is based on the effects the proposed Federal action will have on the capability of critical habitat to carry out its function and conservation role. The Service's ESA Section 7 determination regarding critical habitat must only address those areas that are located within critical habitat.

Based on the updated condor habitat suitability model, approximately 13,718 acres of suitable foraging habitat in the Tejon Ranch critical habitat unit occurs within the TMV Planning Area. Of that total, 12,015 acres of suitable foraging habitat for condors within the TMV Planning Area boundary would be directly and indirectly affected by the proposed development. To quantify the extent of indirect effects on suitable condor foraging habitat, the Service assessed available information on the disturbance threshold of condors to establish a distance of approximately 0.5 mile, extending out from the edge of the proposed development footprint, which would encompass the area in which noise and visual activity associated with development may disturb condors away from potential food sources. This approach conservatively assumed that feeding opportunities for condors would be eliminated in the indirect effects area (i.e., up to 0.5 mile from the TMV Specific Plan/Oso Canyon Development Envelope and other developed areas, such as Interstate 5 (I-5)), and did not assume this area would continue to contribute toward the conservation of the species. Please see Master Response 1E, California Condor Loss of Foraging Habitat, and Master Response 1A, California Condor Data and Habitat Use, for a more detailed description of the analysis of the indirect effects footprint around proposed development under the Proposed TU MSHCP Alternative.

Under the TU MSHCP, TRC would mitigate the nonlethal incidental take of four California condors requested in its permit application through permanent preservation and management of 129,318 acres of the total 141,886 acres of the Covered Lands for the benefit of the California condor and other Covered Species. A total of 149,935 acres of suitable foraging habitat would be conserved both in the Covered Lands (66,117 acres) and outside the Covered Lands but within the ranch (83,818 acres) per the terms of the Ranchwide Agreement. In combination with continuation of the ranch's ongoing grazing and lead free hunting programs, these conserved areas would provide important, continuing benefits to the condor, and therefore are appropriate to consider as mitigation for adverse effects associated with the proposed action. The Service is not implementing an ongoing supplemental feeding program on Tejon Ranch and does not intend to do so in the future. The Service recognizes that there are detrimental effects associated with long-term supplemental feeding and, by definition, it would be unnecessary if condor populations were self-sustaining (see Master Response 1H, California Condor Supplemental Feeding, for additional information on this issue).

After considering the direct loss of habitat and the indirect effects on suitable foraging habitat, the amount of food condors require and the current amount of food estimated to be available in the condors' range, the Service believes the amount of foraging habitat remaining on the ranch, combined with the continuation of historical and current grazing levels and practices, feral pig hunting, and the populations of native ungulates that together provide a consistent food source, would meet the feeding and foraging needs of condors that currently use the ranch, and of the expanding population of condors expected to use the ranch into the future as the population continues to recover. For these reasons, the Service does not have any reason to believe the development proposed under the TU MSHCP would reduce condor reproduction through loss of foraging habitat within the Covered Lands. The Service will evaluate the adequacy of the measures included in the TU MSHCP in accordance with the issuance criteria contained in Section 10 of the ESA decision, as documented in the permit decision documents, and under Section 7 of the ESA as part of the intra-Service consultation process.

1B.2.6 Development in the Critical Habitat

Commenters stated that permitting the proposed action could set a precedent of developing in critical habitat areas. One commenter expressed concern that such development would affect critical habitat because of collisions with powerlines and other towers or other detrimental effects of urbanization. Other commenters suggest that the project, if approved, would rest on unsubstantiated assumptions that:

- development would have no adverse effects on the California condor and its critical habitat,
- maintaining existing conditions and management policies qualify as mitigation for negative effects, and
- negative effects can be mitigated by measures which themselves have negative impacts (i.e., supplemental feeding).

Legally, a critical habitat designation is not the same as a wildlife refuge or preserve designation (41 FR 41914, 41915, September 24, 1976). The designation of critical habitat does not establish a wildlife refuge or wilderness area, nor does it preclude development or other lawful uses of critical habitat lands. Nor does the loss of habitat in critical habitat as a result of development or other activities, in and of itself, compel a determination that critical habitat has been "destroyed" or "adversely modified" within the meaning of the statute.

Development is not precluded in critical habitat, and development within the Tejon Ranch critical habitat unit does not set precedent of development occurring in critical habitat. The Service identifies critical habitat as those lands that are essential for the conservation of the species, including those that may require special management. Pursuant to Section 7 of the ESA, it is the Service's responsibility to determine whether or not a proposed Federal action would destroy or adversely modify critical habitat. As previously stated, the Service will make this statutory determination in an intra-Service biological opinion, considering the proposed action in terms of the functionality of the critical habitat to continue to provide its intended function and conservation role for the California condor, as directed in policy guidance.

The commenter is confusing the Service's evaluation of the effects of proposed ITP and TU MSHCP on condor critical habitat under ESA Section 7 with the evaluation of the proposed permit under Section 10 of the ESA (and NEPA). The relevant considerations for the Service when it engages in consultations under Section 7 of the ESA are whether the proposed Federal action is likely to result in jeopardy or in the destruction or adverse modification of critical habitat for the condor. If it is determined that the proposed action is not likely to jeopardize the continued existence of the species or destroy or adversely modify condor critical habitat but may result in incidental take of

condors, the Service would include an incidental take statement with reasonable and prudent measures and terms and conditions to implement those measures and minimize the effects of the incidental take. The determination of whether measures incorporated into a habitat conservation plan adequately mitigate incidental take requested in an incidental take permit application is considered under ESA Section 10, not ESA Section 7. ESA Section 10 requires that the impacts of non-jeopardizing incidental take be minimized and mitigated to the maximum extent practicable.

The Service agrees with the commenters that urban and suburban development generally adversely affect condor conservation. Even with the variety of measures incorporated into the TU MSHCP to reduce condor interactions with humans and human structures, (Master Response 1C, California Condor Habituation and Take, and Master Response 1F, California Condor Collisions with Powerlines and Structures), the Service recognizes there would be a loss of foraging habitat and the potential for disturbance or habituation of condors as a result of the development and other Covered Activities proposed under the TU MSHCP. However, the Service also recognizes that the permanent protection of extensive foraging habitat for the condor on the Covered Lands and elsewhere on the ranch, and the permanent protection of traditional condor roosting areas on the Covered Lands, when combined with the proposed continuation of grazing at current levels, as well as other take avoidance and minimization measures under the TU MSHCP, would enable Tejon Ranch to continue to provide assured conservation value for the California condor, even with the development proposed under the TU MSHCP.

1B.2.7 Findings Required under the Endangered Species Act

One commenter stated that the focus of the analysis in the Draft TU MSHCP on the Covered Lands under-represents the action area, which has the potential to reduce the likelihood of the recovery and survival of the California condor by adversely modifying its critical habitat, reducing its distribution, and reducing its reproduction through loss of foraging habitats. One commenter suggested the TU MSHCP and ITP application are the result of a settlement agreement.

The action area is a determination that is made within the scope of a Section 7 consultation under the ESA. Action area is defined in the Service's Section 7 regulations at 50 Code of Federal Regulations (CFR) 402.2 as "all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action." NEPA does not require an independent or predecisional determination of an action area. NEPA does require that this Supplemental Draft EIS address the direct, indirect, and cumulative effects of the proposed Federal action, which will inform the determination of the action area during the Section 7 consultation. As noted above, the Service has not yet completed the ESA Section 7 analysis of the effects of the proposed ITP and TU MSHCP on critical habitat for the California condor. In the Section 7 consultation, the Service will formally consider the direct, indirect, and cumulative effects of the proposed action on critical habitat and make a statutory determination as to whether critical habitat will continue to serve its intended function and conservation role. The formal determination on the effects of the proposed action, and determination of the appropriate action area on which to base the regulatory determination regarding the California condor and its critical habitat will be made in the biological opinion.

1B.2.8 Potential Effects on Condor Population Movements Across All Critical Habitat Units

Several commenters noted that the Draft TU MSHCP does not adequately evaluate potential effects on condor population movements across all critical habitat units, because Tejon Ranch is critical for connectivity.

The Service does not have any scientific basis to believe development associated with the TU MSHCP would preclude condors from accessing other critical habitat units. Please see Master Response 1G, California Condor Overflight and Connectivity, for more information and analysis on this topic. Condors are known to fly over developed areas in southern and central California (e.g., Frazier Park, Lebec, Pine Mountain Club, Stallion Springs, Big Sur, King City, and Santa Clarita) to reach foraging areas. Therefore, the Service does not anticipate the Commercial and Residential Development Activities associated with the TU MSHCP would restrict condor movements or prevent condors from accessing critical habitat throughout their range.