

Response to Comment Letter F-1

Response to Comment F-1-1

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

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

Response to Comment F-1-2

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

Response to Comment F-1-3

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

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

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

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

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

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

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

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

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

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

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

For many resource areas, there were substantive differences between the Proposed TU MSHCP Alternative and CCH Avoidance MSHCP Alternative that warranted separate conclusions, and each alternative was discussed at a commensurate level of detail using a consistent analysis approach. For example, the Supplemental Draft EIS includes a standalone detailed assessment of the effects of the CCH Avoidance MSHCP Alternative on biological resources, including vegetation communities (Section 4.1.5.1) and wildlife and plants species (Section 4.1.5.2), that is commensurate in detail to, and substantively different than, the analysis provided for the Proposed TU MSHCP Alternative or the other alternatives. However, where the differences in the conclusions were minor (e.g., air quality analysis) to avoid repeating language, the Supplemental Draft EIS cross references the analysis provided for the Proposed TU MSHCP Alternative (or other alternative, as appropriate). For example, Section 4.3.5.1 states that, given the similarities between the CCH Avoidance MSHCP Alternative and the Proposed TU MSHCP Alternative, the analysis presented for construction-related emissions for the Proposed TU MSHCP Alternative would generally apply to the CCH Avoidance MSHCP Alternative.

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

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

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

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

Response to Comment F-1-6

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



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MAY 03 2012

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

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

Dear Mr. Root:

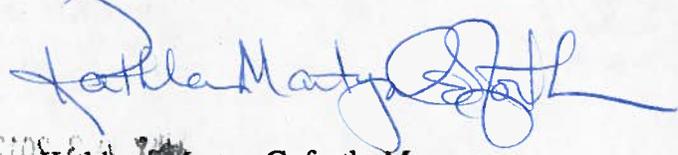
The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

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

F-1-1 | Based on our review of the Supplemental Draft Environmental Impact Statement (SDEIS), we are rating
 F-1-2 | the preferred alternative and the document as EC-2, Environmental Concerns – Insufficient Information
 (see enclosed EPA Rating Definitions). We commend the Service for preparing detailed responses to our
 comments. The responses were extensive, thoughtful, and addressed most of the issues raised in our July
 14, 2009 letter. We have continuing concerns, however, regarding the potential impacts of covered
 activities to wetlands and riparian areas, as well as the population of California condor that reside or
 forage within the proposed covered lands. We recommend that the Service demonstrate avoidance of
 waters of the U.S. before issuing the incidental take permit, and provide additional information in the
 final EIS comparing the effects of the alternatives on the California condor. Our detailed comments are
 enclosed.

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

Sincerely,



SIOB 6/11/2004
Kathleen Martyn Goforth, Manager
Environmental Review Office (CED-2)

Enclosure: Summary of the EPA Rating System
Detailed Comments

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

SUMMARY OF EPA RATING DEFINITIONS*

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

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

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

"EC" (Environmental Concerns)

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

"EO" (Environmental Objections)

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

"EU" (Environmentally Unsatisfactory)

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

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

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

"Category 2" (Insufficient Information)

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

"Category 3" (Inadequate)

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

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

Waters of the U.S.

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

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

F-1-3

Recommendation:

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

Critical Habitat for the California Condor

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

F-1-4

Recommendation:

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

F-1-5

F-1-6

