

# Response to Comment Letter P-5

---

## Response to Comment P-5-1

The U.S. Fish and Wildlife Service (Service) acknowledges the receipt of the comments provided by the referenced condor researchers on the Draft Environmental Impact Statement (EIS). All substantive comments provided collectively on the Draft EIS by those researchers (referenced in Comment Letter I-293) were responded to in Volume II of the Supplemental Draft EIS. The following responds to additional comments provided in the May 3, 2012, letter on the Supplemental Draft EIS, referenced in this document as Comment Letter P-5.

## Response to Comment P-5-2

Please refer to Master Response 3, California Condor Foraging Habitat, for a discussion of how effects on California condor foraging habitat resulting from the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) were considered in the EIS. Please refer to Master Response 4, California Condor Food Availability Analysis, for a discussion of the approach and assumptions associated with estimating future food availability for the southern California subpopulation of California condors.

## Response to Comments P-5-3 through P-5-6

Please refer to Master Response 4, California Condor Food Availability Analysis, for a discussion of the approach and assumptions associated with estimating future food availability for the southern California subpopulation of California condors.

## Response to Comments P-5-7 through P-5-11

Please refer to Master Response 3, California Condor Foraging Habitat for a discussion of how effects on California condor foraging habitat resulting from the TU MSHCP were considered in the EIS, including a discussion of which vegetation communities were considered in the condor foraging habitat model.

## Response to Comment P-5-12

As described in Master Response 3, California Condor Foraging Habitat, of this Final EIS the analysis of the effects of the proposed action on foraging habitat is based on site-specific conditions on Tejon Ranch, including an assessment made by the Service of vegetation communities likely to provide condors with consistent access to food and/or the ability to escape from potential predators while foraging. Similarly and as described in Master Response 4, California Condor Food Availability Analysis, the analysis of food availability is based on an estimated amount of livestock (cattle and sheep) carcasses produced annually in the range of the southern California subpopulation of condor, as provided by the U.S. Department of Agriculture (2011) for several counties. The estimates of

livestock carcasses are not intended as an absolute quantification of the available food base for condors, but as an estimation of livestock carcasses produced annually. The Service also considered that an additional, but unknown, number of carcasses would be available from native ungulate and wild pig carcasses. Unlike for livestock, there is no reliable available information on the amount and distribution of such carcasses. The Service acknowledges the potential limitations of the food availability analysis provided in the EIS: namely, not all carcasses would be found and eaten by condors, and an estimate of other food sources, such as native ungulate and wild pig carcasses, is not available or provided in the EIS (See Master Response 4, California Condor Food Availability Analysis, in this Final EIS). In recognition of the ranch being a potential food source for condor, the TU MSHCP includes conservation measures to ensure that hunting and grazing comparable to historic average levels (14,500 head of cattle) would continue on the ranch through the permit term.

The analysis provided in the Supplemental Draft EIS is based on the best scientific information available about the availability and suitability of condor foraging habitat on Tejon Ranch, and the continued availability of food supplies within the range of the southern California subpopulation.

## Response to Comment P-5-13

The Service acknowledges the importance of Tejon Ranch to California condors. As described in Section 4.1, Biological Resources, in Volume I of the Supplemental Draft EIS, prior to publication of the Supplemental Draft EIS, the Service contracted with U.S. Geological Survey (USGS) to conduct an independent analysis of all condor data sets for the southern California subpopulation of the California condor, including three management units on Tejon Ranch: Tejon Mountain Village (TMV) Planning Area, Condor Study Area, and the remaining areas of Tejon Ranch. The USGS report clarified that condors currently use, and are likely to continue using, all three of the Tejon Ranch management units, as well as the other three management units outside Tejon Ranch (i.e., Hopper Mountain National Wildlife Refuge, Bitter Creek National Wildlife Refuge, and Wildlands Conservancy-Wind Wolves Preserve) (Johnson et al. 2010). The Service considers the USGS study and recent GPS data to be the best scientific information available regarding condor use of Tejon Ranch and other southern California management units. These data indicate that condors may now use all of Tejon Ranch, and that use is focused on specific locations depending on the availability of food resources, temporary overnight roosting behavior, and the regular use of roost sites in the Condor Study Area (Johnson et al. 2010). See also Master Response 2, California Condor Critical Habitat, for a discussion of condor critical habitat in the Covered Lands.

## Response to Comment P-5-14

Please refer to Master Response 3, California Condor Foraging Habitat, for a discussion of how other proposed developments in the vicinity of Tejon Ranch were considered in the EIS analysis.

## Response to Comment P-5-15

There is no evidence that development in the region, and in particular the reasonably foreseeable projects considered in the cumulative effects analysis, would reduce the condor's range to Tejon Ranch, Wind Wolves Preserve, Hopper Mountain National Wildlife Refuge, and Bitter Creek National Wildlife Refuge, and it is speculative to assume that private ranchlands will disappear to the point that the only foraging habitat available to condor in California would be associated with these areas. Please refer to Master Response 4, California Condor Food Availability Analysis, for a discussion of

the approach and assumptions associated with estimating future food availability for the southern California subpopulation of California condors. Refer to Master Response 3, California Condor Food Availability Analysis, for a discussion of the importance of foraging habitat on Tejon Ranch to the California condor.

## Response to Comment P-5-16 through P-5-18

Please refer to Master Response 2, California Condor Critical Habitat, for a discussion of how effects on condor critical habitat are considered in the EIS, and the evaluation the Service will provide in their intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA. Regarding the commenter's concern that the conclusions in the EIS and TU MSHCP are not based on sound science, and as discussed in Master Response 3, California Condor Food Availability Analysis, the analysis of the effects of the proposed action on foraging habitat is based on site-specific conditions on Tejon Ranch, including an assessment made by the Service of vegetation communities likely to provide condors with consistent access to food and the ability to escape from potential predators while foraging. Similarly, the analysis of food availability on the Covered Lands is based on the best range-wide cattle and sheep carcass information available, ranch-specific grazing and hunting practices, and consideration of the TU MSHCP conservation measures that require grazing and hunting to continue on the Covered Lands over the term of the ITP.

With respect to the commenter's statement that the condor can be expected to achieve future survival in the wild if lead contamination can be controlled and sufficient foraging habitat can be guaranteed, the Service notes that the TU MSHCP (in combination with the Ranchwide Agreement) includes provisions to continue the lead ban on the ranch in perpetuity, and to conserve large areas of open space, including about 148,000 acres of suitable condor foraging habitat.



Roger Root, Assistant Field Supervisor, USFWS  
 2493 Portola Road, Suite B,  
 Ventura, CA 93003  
 Fw8tumshcp@fws.gov

May 3, 2012

Comments on Tehachapi Upland Draft MSHCP/SEIS

Dear Mr. Root;

We appreciate the opportunity to comment on the Tejon Uplands Multi-species Habitat Conservation Plan (TU MSHCP) documents for Tejon Ranch development. These documents constitute a much more comprehensive and thorough justification for Tejon Mountain Village (TMV) development than the documents issued four years earlier, but we find them still troubled with fatal flaws that invalidate the stated conclusions.

P-5-1

In 2008, as part of a group of concerned condor researchers formerly associated with the conservation program, we submitted to the U.S. Fish and Wildlife Service detailed comments on the Draft HCP and DEIS regarding Tejon Mountain Village (TMV). Our credentials were given in that earlier letter, and are also briefly summarized at the end of this letter. Otherwise, we do not wish to repeat here what is contained in the earlier letter, except to emphasize that we still stand by our conclusions in that letter that the development proposals constitute significant impact on California Condor Critical Habitat, for the reasons specified.

In the following comments, we avoid discussing minor errors that do not bear critically on the major question of whether the development proposals constitute a take of the California Condor, and we limit our remarks to the most important issues bearing on a finding of no significant impact. We see two principal problems in the MSHCP analyses that fundamentally invalidate this finding. These are:

P-5-2

1. Section 4.2.2.2 concludes that there will be ample food for a recovered condor population, despite the loss from condor use of substantial acreage of Critical Habitat under development plans. This belief is based on a calculation purporting to show that available food supplies across the entire foraging range greatly exceed the calculated needs of recovered populations. Unfortunately this conclusion is deeply flawed by basic unstated assumptions that the calculated carrion food supplies are all or largely available to condors and that current foraging regions outside Critical Habitat will remain intact in the future. Both these assumptions are unjustified. That all calculated food supplies might be available to condors is very far from the truth simply because (a) there are many other scavenger species, which normally greatly outnumber condors, feeding on the same food supply and reducing its abundance for condors, (b) many available carcasses are not attractive as potential food for condors, and (c) effective condor foraging is commonly limited by specific wind conditions, topography, and other factors, so that only a small fraction of the overall mapped foraging range of the

P-5-3

P-5-4

P-5-5

P-5-5  
cont.

species on which calculations of food supply were based can actually be utilized by condors at any given time.

P-5-3  
cont.

With respect to (a), other species within condor range that commonly scavenge and are mostly much more abundant than condors on an individual species basis (and presumably will always be much more abundant than condors collectively), include the following: Turkey Vultures (*Cathartes aura*), Common Ravens (*Corvus corax*), Golden Eagles (*Aquila chrysaetos*), Coyotes (*Canis latrans*), Bobcats (*Lynx rufus*), Mountain Lions (*Felis concolor*), Black Bears (*Ursus americanus*), Gray foxes (*Urocyon cinereoargenteus*), Ring-tailed Cats (*Bassariscus astutus*), various scavenging insects such as blowflies, fungi, and bacteria. We are not aware of any studies to comprehensively apportion the fraction of available carcass biomass normally ending up in the diet of these other scavengers, but strongly suspect it may often approach 100% in sum. Condors are very rarely the first scavenger species to arrive at a carcass, and they normally defer to several other species (e.g., Golden Eagles) when they do arrive, sometimes getting no food as a result.

P-5-4  
cont.

With respect to (b) condors rarely feed on full grown cattle carcasses, apparently because of the difficulty they have in penetrating the thick and tough hides of these animals. Cattle carcasses comprise a major fraction of the food supply calculated in section 4.2.2.2.

P-5-5  
cont.

With respect to (c), condors normally concentrate their foraging efforts in areas of topography with good winds that provide adequate lift for their ponderous soaring flight. Only a small fraction of mapped foraging range qualifies as excellent foraging habitat. Many portions, including many areas of grassland, are unusable under conditions of low ambient wind, regardless of their food supplies. The areas with the most consistently good winds include TMV portions of Condor Critical Habitat, and this superiority renders these areas far more important to the species than many other areas, a factor not considered or analyzed in the 4.2.2.2 presentation.

P-5-6

Thus, the amount of food actually available to condors is only a very tiny fraction of the total carrion in the environment, rendering the entire food supply calculations of section 4.2.2.2 misleading and invalid, despite their superficially quantitative nature. They constitute pseudoscience and do not allow any confidence in the conclusions reached. These calculations can only greatly overestimate the foods really available to the species. As former condor researchers, we cannot support calculations of real food supplies for the species on such a faulty and biased basis.

P-5-7

2. The exclusion in section 4.2.2.2 of woodland habitat portions of TMV in Critical Habitat from importance to condors is not well justified, especially in view of the fact that we have personally observed a number of cases of condors feeding under closed canopy woodland conditions within TMV and elsewhere. While condors

P-5-7  
cont. | may prefer to forage in open grassland habitats, our observations show unequivocally that they are not prevented from finding and utilizing food in well-forested areas, and this is especially plausible because they clearly often monitor the activities of other species such as Turkey Vultures and Common Ravens to find food. Food need not be visible from the air to be found by Turkey Vultures because of the keen sense of smell in this species, and studies of Houston (1986)

P-5-8 | have demonstrated how well adapted this species is to dense forested conditions. Other scavenger species also have considerable capacities to find carrion in forested habitats by odor. Presumably, species such as condors that evidently lack a keen sense of smell, have the potential for locating food in forested areas by monitoring the activities of other scavengers. We do not believe it is legitimate to simply exclude forested areas from importance to condors, as is done in section

P-5-9 | 4.2.2.2, especially when such areas occur in regions with excellent winds, such as are found where TMV overlays Condor Critical Habitat. We believe that doing so will significantly underestimate the amount of habitat utilized by and important for condors within Critical Habitat. While it can be argued that the extent of underbrush in some forested regions may be dense enough to preclude entry by condors, we are aware of no scientific data to establish this possibility or define such limits, and none are presented in the TU MSHCP documents. Thus the

P-5-10 | approach taken in the TU MSHCP of excluding forested habitats from consideration does not constitute either a conservative or defensible approach, and the area calculations for suitable habitat are fundamentally underestimated, unconvincing, and invalid.

P-5-11 |

P-5-12 | Together the methodological problems considered above can be expected to lead to truly major underestimates of the impacts on condors that would result from development of TMV lands within Condor Critical Habitat. It is especially relevant to note that those preparing these documents did not err in the direction of overestimating the importance of TMV lands to the species, but instead chose faulty and non peer-reviewed analyses to justify a massive underestimate of the importance of these lands. These analyses do not constitute an unbiased or legitimate basis for concluding that these impacts are only of a minor nature, and this undermines the entire basis for claiming that these TMV lands can be developed without significant impact on the species.

P-5-13 | We believe that the abundant condor GPS locations accumulated in recent years in TMV areas of Critical Habitat indicate that these areas are of major importance to the species. Surely the burden of proof is on those who might claim otherwise, and we see no such proof in the documents under review. Further the relative importance of these areas can be projected to only increase in the future, considering the fact that many other areas of current condor foraging range that are not classified as Critical Habitat are unprotected from development and will undoubtedly be lost to development in the years ahead. Many

P-5-14 | additional regions formerly used by condors, such as the Simi Valley, have already been lost to regular condor activity because of developments, and such developments are currently planned for many other areas additional to Tejon Ranch, for example the Newhall Ranch along Hwy 126. Given the current predictions of human population growth for the San Joaquin Valley, and the political and economic emphasis being placed

P-5-14  
cont.

on renewable energy development, including wind power, it can be safely assumed that much condor foraging habitat will be lost in piecemeal fashion in the foreseeable future. It is unconscionable and completely inappropriate to encourage that loss by approving development within a unit of designated Critical Habitat that has been demonstrated to be of major importance to the California Condor.

P-5-15

In sum, all evidence of which we are aware, including sightings of feeding birds and GPS condor locations, suggest that TMV lands within Critical Habitat are indeed consistently important to the species. Calculations in section 4.2.2.2 purporting to show that the overall food supplies in condor foraging range far exceed the needs of recovered populations, and by implication that those in TMV are not crucial to survival and well being of the species, are deeply flawed by gross overestimates of the overall food supply actually available to condors, and by lack of recognition of the highly favorable foraging conditions (especially wind and topography) found in Critical Habitat, including TMV lands. Because of progressive development of ranchlands, the overall food supply can be expected to decline progressively in the future on private lands within condor foraging habitat, potentially leading at some future date to a situation where the only remaining usable foraging habitat is on the Tejon Ranch, the Wind Wolves Preserve, the Hopper Mountain National Wildlife Refuge, and the Bitter Creek National Wildlife Refuge. If and when this point is reached, we could well find a situation where available food supplies are inadequate to sustain a viable wild population, and where potentials have vanished to create new viable foraging habitat.

P-5-16

The documents under review here constitute crucial plans in respect to future survival of a very highly regarded endangered species, a species not yet exhibiting viable wild populations, but which can be expected to achieve such populations if contaminants such as lead ammunitions can be effectively controlled and sufficient foraging habitat can be guaranteed into the indefinite future. Critical Habitat on Tejon Ranch represents a lynchpin in such expectations, as has been amply testified by condor researchers over the years, and we agree with this assessment. There is no scientifically reputable justification for suburban or urban development of *any* of these lands, and it is astonishing that the Ranch is proposing such developments and that the USFWS is evidently amenable to approving such developments. We can only reiterate the remarks of the current Director of the USFWS that this organization must remain committed to sound science. The

P-5-17

conclusions put forth in the documents under discussion here are not based on sound science.

P-5-18

We conclude that the proposed development of TMV lands will appreciably diminish the values of Critical Habitat for survival and recovery of the species and that the proposed developments do indeed constitute a take of the species and adverse modification of Critical Habitat. The intent of Critical Habitat classification of these lands was that these lands should be fully protected from significant development. We see no credible justification for a conclusion that development of TMV will constitute no significant negative impact to the California Condor.

Authors of Comments:

Dr. Noel F.R. Snyder, USFWS biologist in charge of condor field studies 1980-1986, member of Condor Recovery Team 1980-1985. [REDACTED]  
[REDACTED]

David A Clendenen, Condor researcher and USFWS lead biologist for condors 1982-1997, member of Condor Recovery Team 1995-2000, [REDACTED]

Janet A. Hamber, Condor biologist, Santa Barbara Museum of Natural History 1976-present, Email = [REDACTED]

Dr. Vicky J. Meretsky, Field biologist, Condor Research Center 1984-1986. Email = [REDACTED]

Anthony Prieto, Co-founder of Project Gutpile and condor field biologist 1999-present. Email = [REDACTED]

William D. Toone, Condor Recovery Team member 1984-1992. Email = [REDACTED]

