Response to Comment P-6-1

The commenter is correct in stating that habitat loss and degradation associated with development is one of the reasons of decline for most of the 27 species proposed for coverage under the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP). As described in Chapter 5, Other Covered Species, of the TU MSHCP, various other factors also affect the status and distribution of most of the Covered Species, including predation by other species (e.g., western spadefoot, two-striped garter snake); competition with other species (e.g., purple martin); historic use of pesticides, such as dichlorodiphenyltrichloroethane (DDT) (e.g., American peregrine falcon, bald eagle); nest parasitism (e.g., least Bell's vireo, yellow warbler); changes in prey base (e.g., white-tailed kite, coast horned lizard); and overgrazing or destruction of habitat by other species, such as feral pigs (e.g., Tehachapi pocket mouse, Fort Tejon woolly sunflower), among others.

Tejon Ranchcorp (TRC) has submitted an application to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act (ESA), as amended, for activities covered under the TU MSHCP. Section 10(a)(2)(B) of the ESA provides statutory criteria that must be satisfied before an ITP can be issued to TRC. Specifically, before issuing an ITP, the Service must find, among other things, that the effects of authorized incidental take are minimized and mitigated to the maximum extent practicable; that take would not appreciably reduce the likelihood of survival and recovery of the species in the wild; and that adequate funding for the TU MSHCP is ensured. This determination includes consideration of the effects the loss of habitat anticipated under the plan would have on the Covered Species. To that end, Section 4.1, Biological Resources, in Volume I of the Supplemental Draft Environmental Impact Statement (EIS), includes an assessment of modeled habitat that would be lost and conserved under the TU MSHCP. The Service will make a formal determination on the effects of the Covered Activities, including the effects of habitat loss, on the Covered Species in the Biological Opinion for the TU MSHCP.

Of note, the Centennial Project is not included as a Covered Activity under the TU MSHCP. Potential effects on federally listed species under that project would be considered independently by the Service under either ESA Section 7 or ESA Section 10. It is, however, considered a reasonably foreseeable action in the cumulative effects analysis included in the Supplemental Draft EIS (see Section 4.0.4.2, Other Reasonably Foreseeable Actions).

Response to Comments P-6-2 and P-6-3

As provided in 50 Code of Federal Regulations (CFR) 17.32, the Service considers several factors in determining the duration of an ITP, including the duration of the activities proposed under the TU MSHCP, and the expected positive and negative effects on the Covered Species over the proposed term of the permit, including the extent to which the conservation plan will increase the survivability of the covered species and/or enhance their habitat. As summarized in the Service's "Five Point Policy" addendum to the *Habitat Conservation Planning Handbook* (65 Federal Register [FR] 35252), the Service also considers the extent of scientific and commercial data underlying the proposed plan, the length of time necessary to implement and achieve the benefits of the conservation plan, and the extent to which the program incorporates adaptive management

strategies. TRC has requested the Service consider an ITP with a 50-year term. The Service will consider the above factors in determining the appropriate duration of the ITP for the TU MSHCP, should one be issued.

It is also noted that TRC anticipates a 30-year build-out of development-related activities within the Covered Lands. As a result, a 20-year permit term would not likely accommodate the proposed Covered Activities.

With respect to climate change and as discussed in Section 4.9, Climate Change and Greenhouse Gases, in Volume I of the Supplemental Draft EIS, the exact relationship between climate change and biological resources, including California condors and their habitat, is not well understood. The Supplemental Draft EIS recognizes the potential for global climate change to affect Covered Species and provides an analysis of this relationship, to the extent that it is understood, including consideration of how the TU MSHCP would respond to the potential for climate change to affect Covered Species. With respect to the California condor, Appendix C to the Supplemental Draft EIS analyzes the relative vulnerability of the species to climate change and finds that the California condor, although vulnerable to stochastic events, is less likely than many of the other Covered Species to be vulnerable to climate change because of its relatively broad geographic range and high level of mobility, and because it forages in habitat that is less likely to be substantially affected by climate change.

Regarding fire incidence on the Covered Lands, Section 4.9, Climate Change and Greenhouse Gases, of the Supplemental Draft EIS, identifies the potential for increased intensity of fires as a result of climate change, unrelated to the proposed action. Because this effect can be reasonably anticipated to occur over the 50-year term of the ITP, short interval return fires (i.e., those occurring with greater frequency in the same location than indicated by historic records) are regarded as a changed circumstance under the TU MSHCP (see Section 8, Changed Circumstances and Plan Implementation, in the TU MSHCP). For specific types of fires that are damaging to biological resources within the Covered Lands, the cause of the fire would be reviewed and preventative measures, such as a reconfiguration of fuel breaks, would be considered. If an increase in fire frequency occurs within the Covered Lands, TRC and the Service would assess the damage caused by the fire, and TRC would implement the following initial actions:

- Develop and implement a program to monitor natural re-growth within the damaged area for an appropriate period;
- If it is determined that natural re-growth is not occurring and that such absence would adversely affect Covered Species, an action plan identifying efforts to improve habitat conditions would be developed and implemented. Efforts to improve habitat conditions could include, for example, reseeding burned areas with native plant seeds; and
- Implement other appropriate adaptive management measures, such as specific components of the Grazing Management Plan or Integrated Pest Management Plan (IPMP).

The TU MSHCP would also preserve large blocks of habitat in the Covered Lands, securing space to accommodate shifts in a Covered Species' range in response to climate change. By acreage, vegetation communities protected in Open Space under the TU MSHCP would range from about 50% for scrub (i.e., 281 of 564 acres) to 100% for Mojavean scrub, oak riparian, desert wash/riparian/seeps, and several savannah and woodland communities (see Table 4.1-2 in Volume I of the Supplemental Draft EIS). Other vegetation communities protected in Open Space would include 94% of chaparrals, 90% of grasslands, 94% of the savannahs, 95% of woodlands, 98% of conifers, 84% of riparian/wetlands, 92% of riparian woodland, and 99% of washes. Protecting these communities is important because they are some of the communities in California expected to be most affected by climate change (Hansen et al. 2001; Kueppers et al. 2005; Lenihan et al. 2003).

Protected Open Space includes the riparian habitat/forests, which, as noted by the commenter, is used by least Bell's vireo, yellow-billed cuckoo, and willow flycatchers.

In summary, the Service expects that climate change effects on biological resources would occur with or without implementation of the proposed action. Under the TU MSHCP, more than 129,000 acres of the Covered Lands would be preserved, thereby protecting the vast majority of communities expected to be most affected by climate change. Design features would be included that would provide for flexible buffers, landscape connectivity would be ensured, and provisions would be included to allow a flexible response to climate change effects such as drought and wildfire.

For a variety of reasons, the methods for monitoring Covered Species vary between HCPs; however, all HCPs, including the TU MSHCP, are required to incorporate monitoring, regardless of the permit duration (50 CFR 17.22; 65 FR 35242). The monitoring program is customized for each HCP to reflect the nature of the biological goals and objectives. Therefore, while not every HCP monitoring program will include surveys for species numbers, every HCP must monitor species status, appropriately measured for the particular operating conservation program. While the conservation measures and provisions in the TU MSHCP provide for the preservation and monitoring of extensive areas of modeled habitat for the Covered Species, it is not the intent of the TU MSHCP to monitor overall species populations or abundance. Rather, the results of the monitoring program are intended to inform the need for, and implementation of, the adaptive management provisions in the TU MSHCP. As a final consideration, pursuant to 50 CFR 17.32(b)(8), the Service may revoke a permit if it concludes that continuation of the permit would result in jeopardy to a Covered Species. Thus, limiting the permit to a 20-year term would not be necessary to allow for appropriate changes in management.

Response to Comment P-6-4

The Service agrees that Tejon Ranch is centrally located for California condor movement and that it is important to ensure that adequate connectivity between the Traverse Ranges and the Sierra Nevada would be maintained if the TU MSHCP were implemented. Although Tejon Ranch does serve as an important linkage between historic condor habitat areas east and west of the ranch, proposed development on Tejon Ranch would not prevent condors from continuing to fly over Tejon Ranch, or accessing areas further to the east or west of the ranch for several reasons. The free-flying condors in the southern California subpopulation have been recorded flying over communities in the Tehachapi Mountains that have rural residential densities similar to or greater than that proposed for the Tejon Mountain Village Project (TMV) Project, including Pine Mountain Club and Frazier Park, Pinion Pines, Lake of the Woods, Interstate 5 (I-5), and even developed portions of Santa Clarita and northern San Fernando Valley. Such flyovers have resulted in no measurable ill effects regarding continued condor use of historical and current foraging, roosting, and nesting areas, as evidenced by Service global positioning system (GPS) tracking data. These data indicate increasing use of these habitat areas since 2002, when the Service began to use GPS transmitters to track free-flying condors.

Furthermore, the U.S. Geological Survey (USGS) recently released a report presenting a statistical analysis of GPS data collected from 2004 to 2009 for spatial behavior patterns in six management units in southern California, including Hopper Mountain National Wildlife Refuge and Bitter Creek National Wildlife Refuge, Wildlands Conservancy Wind Wolves Preserve, the TMV Specific Plan Area, the Condor Study Area, and the remaining portions of Tejon Ranch (Johnson et al. 2010). The study generated condor home ranges by estimating utilization distribution, which in turn, was used to estimate the probability and intensity of use of certain areas of interest. Appendix A of the USGS condor study includes the utilization distribution maps for 21 individual condors and shows

urbanized areas of Santa Clarita in the estimated home ranges of 16 individuals, and the communities of Frazier Park and Pine Mountain Club in the home ranges of 18 individuals. For example, a utilization distribution map from Appendix A of the USGS report shows a condor's estimated home range and high likelihood of occurrence locations, including the Condor Study Area on Tejon Ranch, Bitter Creek National Wildlife Refuge, Hopper National Wildlife Refuge, and the San Gabriel Mountains. This particular individual's home range encompasses highly urbanized areas in the Santa Clarita and San Fernando valleys and the Frazier Park and Pine Mountain Club areas. The USGS condor study supports the conclusion that condors regularly fly over developed areas and that these areas, based on the GPS data, are part of their estimated home ranges.

In addition, the TMV Project would not preclude foraging on Tejon Ranch, and thus, would not result in habitat fragmentation effects that would prevent flyover of the ranch and movement between areas east and west of the ranch as a result of excessive flight distances. The TMV Specific Plan and Oso Canyon Development Envelopes were modified to move development off of the northernmost higher elevation ridges and slopes to preserve high-quality condor foraging and flyover habitat. These areas include Grapevine Peak and northern Grapevine Ridge, the northern portions of Middle, Silver, Squirrel, and Lolas Ridges, the area encompassing the junction of Tunis and Geghus Ridges, and the easternmost 3-mile reach of Geghus Ridge. Additionally, TMV Project development south of the contiguous 2-mile-wide block of high-quality condor foraging and roosting habitat that extends from the western ranch boundary near Grapevine Peak eastward throughout the upland portions of the ranch is planned as very low-density residential development that would not inhibit condors from flying over or adjacent to these areas. Moreover, there are substantial portions of this area south of the 2-mile-wide area that would not have any development at all, but rather are preserved as Open Space under the TU MSHCP or the Ranchwide Agreement. Thus, the open space lands, low-density developed lands, and high-density developed lands in the TMV Planning Area would all continue to serve as condor overflight habitat and would provide an ample flight path and linkage for continued condor use of Tejon Ranch, as well as of areas to the east and west of Tejon Ranch.

Response to Comment P-6-5

As described in the Supplemental Draft EIS, the Service anticipates there is a potential for condors to be attracted to human activities and structures associated with the development proposed under the TU MSHCP during and following construction of infrastructure. The TU MSHCP includes measures to avoid or minimize the potential for habituation to these structures, such as limitations on design and construction of development on ridges within the TMV Planning Area to low-density Mountain Residential; requirements for TMV Planning Area setbacks and use restrictions; and provisions for an onsite Service-approved biologist to monitor condors on the ranch in coordination with the Service and respond to negative interactions between humans and condors quickly, using Service-approved measures to haze condors. Other measures are included in the TU MSHCP to minimize human disturbance to condors, including dissemination of information addressing prohibited behaviors related to condors; requirements for construction workers, filming crews, TRC staff, and residential and commercial occupants and their guests to cease any behavior that constitutes an attractive nuisance or otherwise presents an unreasonable and avoidable danger to California condors; restrictions on recreational activities, particularly organized events and filming projects in areas where condors are known or expected to occur; and prohibition of fireworks, explosions (louder than gunshots), or other abnormally loud noises in the TU MSHCP Mitigation Lands unless the Service-approved Tejon biologist determines, in consultation with the Service, that no condors are present or would be otherwise adversely affected (see Table 2-3 in Chapter 2, Proposed TU MSHCP and Alternatives, in Volume I of the Supplemental Draft EIS).Of note, violations of the ESA, including unauthorized take of a federally listed species, such as pursuing or injuring a California condor, are punishable under civil and criminal enforcement mechanisms in Sections 9

and 11 of the ESA; nothing in the Section 10 process removes that authority. The Service also notes that the ITP does not shield third parties from liability under the ESA for take of Covered Species or limit the authority of the state or Federal government to enforce endangered species laws (Implementing Agreement, Sections 3 and 12).

Response to Comment P-6-6

The Service agrees that condors or wild-hatched condor chicks may be harmed by ingestion of small bits of plastic and metal, referred to as microtrash. As described in Response to Comment P-6-5, the TU MSHCP includes several conservation measures to minimize the risk of exposure of condors to microtrash. For example, education and educational materials regarding threats to condors, including microtrash ingestion, and measures to minimize these threats must be prepared by the Service-approved biologist and provided to contractors, residents, and guests. Such educational materials would be reviewed and approved by the Service and would provide guidance on proper behavior by persons who construct or buy real estate or visit areas within the Covered Lands. The TU MSHCP also includes requirements to eliminate microtrash at construction sites, recreational areas, communication tower sites, outdoor filming projects, roads, and back-country areas where human presence occurs. TRC, or an included entity, must ensure that routine community maintenance activities include regular efforts to eliminate microtrash in these areas. All trash receptacles must be fitted with animal and weather-proof lids, regularly emptied, and regularly inspected by the Service-approved biologist. In addition, land managers (e.g., conservation easement holders, homeowners associations) would be empowered and required to take action to prevent any such activity that would pose a threat to condors under the terms of project conservation easements, covenants, conditions, and restrictions (CC&Rs), and similarly enforceable measures.

As noted in Response to Comment P-6-5, violations of the ESA, including unauthorized take of a federally listed species, are punishable under civil and criminal enforcement mechanisms in Sections 9 and 11 of the ESA.

Response to Comment P-6-7

Section 9.4 of the Implementing Agreement acknowledges that the Service has continuing access to the Covered Lands for the purposes of monitoring and enforcing the conservation measures provided in the TU MSHCP. Specifically, that section states:

> Pursuant to 50 CFR Section 13.21(e)(2), by accepting the Permit, Permittee consents to and will allow entry to the Covered Lands by agents and employees of the USFWS engaged in and for the purpose of ensuring compliance with the Permit, and laws and regulations applicable to the Permit, and/or undertaking any activities that are necessary to protect the Covered Species and/or are identified in the TU MSHCP. Except where specified below, such entry will occur under the following conditions: (1) at reasonable hours; (2) in a manner consistent with the purpose of the entry, that minimizes any disruption of the Covered Activities or any other operation of Permittee or ay holder of a Certificate of Inclusion; (3) after provision of advance notice to Permittee; and (4) with the opportunity for an agent or employee of Permittee to accompany the USFWS's agent or employee. These conditions on entry will not apply in the following circumstances: (1) when the USFWS has reason to believe a Covered Species is at risk of injury or death and an immediate response is necessary; or (2) when the USFWS has reason to believe a violation of the Permit, or laws or regulations applicable to the Permit has occurred or may be occurring which, in the USFWS's good-faith judgment, warrants immediate or noticeless access; or (3) entry, without consent, is otherwise for law enforcement purposes consistent with the Fourth Amendment of the Constitution. Access to the Covered Lands by USFWS agents or employees and California Condor Recovery Team members

solely to establish and operate a trap and release/supplemental feeding site, if deemed necessary by USFWS in accordance with TU MSHCP Section 4.4.3.2, shall not be governed by this Section 9.4, but shall be allowed in accordance with the provisions of the TU MSHCP.

Section 5.1.1(e)(2) through (4) of the Implementing Agreement also acknowledges that the conservation easements conveyed over the Covered Lands, which would be conveyed in perpetuity, "…name the Service as a third party beneficiary with access rights and the right to enforce the terms of the conservation easement."

The California Department of Fish and Game (CDFG) is not a party to the TU MSHCP, and its right to access the Covered Lands would be arranged separately under state law and in compliance with state permits.

Response to Comment P-6-8

Comment noted. Tejon Ranch lies within the area of responsibility for the Ventura Fish and Wildlife Office, located in Ventura, California. The Ventura Fish and Wildlife Office staff is responsible for projects in all or portions of 12 counties in California. This office is also supported by staff in the Region 8 office, located in Sacramento, California. The Service has no reason to believe that a commensurate number of qualified staff from the Ventura Fish and Wildlife and Region 8 offices, and California Condor Recovery Team would not be available in the foreseeable future to monitor and oversee implementation of the TU MSHCP and ITP.

The Service cannot address current or future staffing at CDFG.

Response to Comment P-6-9

For clarification, the reference to the habituation of six condors on page 4.1-130 of the Supplemental Draft EIS includes potential habituation of four condors under the TU MSHCP over the term of the 50- year ITP, as well as one condor under the Newhall Ranch Development Project, and one condor under the oil and gas lease expansion project in the Los Padres National Forest (two reasonably foreseeable actions considered in the cumulative effects analysis in the Supplemental Draft EIS). As described in that section, the Service does not consider the potential habituation of up to six condors over a 50-year time span as a result of those three actions to be incompatible with condor survival and recovery, given the expanding condor population and efforts taken to avoid or minimize the potential for habituation. The Service will formally evaluate the effects of the proposed issuance of an ITP in connection with the TU MSHCP on condors in the intra-Service consultation on the proposed action. In general, however, the determination to base the ITP on habitation of up to four condors on Tejon Ranch was derived through consideration of several factors, including the Service's experience with previous undesirable interactions between humans and condors (i.e., typically juvenile birds that are generally receptive to hazing efforts); the conservation measures proposed under the TU MSHCP to reduce the potential for habituation (e.g., removal of microtrash, ongoing monitoring and ability to respond quickly by a Service-approved biologist, as enhanced through use of more GPS units); and the avoidance and minimization measures that would be provided to reduce the potential for habituation from the other reasonably foreseeable actions (e.g., requirements for the disposal of microtrash).

It is important to note that habituation, or "take" of condors, as contemplated in this EIS and under the TU MSHCP, would occur when a condor becomes attracted to development or other human activity and becomes unresponsive to measures incorporated into the TU MSHCP to deter such condor/human interactions such that its "normal behavioral patterns are disrupted", thereby

creating a "likelihood of injury" in an individual bird. Lethal take of condor is not contemplated or allowed under the TU MSHCP.

Response to Comment P-6-10

As required by the National Environmental Policy Act (NEPA), the magnitude and incremental effects (qualitative or quantitative) of each alternative are disclosed and compared in this EIS. NEPA regulations require that this evaluation discuss the context and intensity of each potential effect (40 CFR 1508.27); a significance conclusion is not legally required. However, to provide the public with a meaningful understanding of how potential effects were considered in the EIS, each section in Chapter 4, Environmental Consequences, of the Supplemental Draft EIS describes the general criteria (quantitative and/or qualitative) by which the effects are evaluated. These criteria are considered in assessing the relative magnitude of the potential direct, indirect, and cumulative effects of each alternative, including, where appropriate, determining if the effects are anticipated to be minor (i.e., minimal or hardly noticeable), moderate (i.e., above negligible), or substantial. Although these criteria are subjective, they are intended to provide the public with a reference for comparing the relative effects of the five alternatives considered in this EIS.

For the California condor, the EIS evaluation considers the loss of foraging habitat, effects of habituation to human structures and activities, risk of collisions with power lines and/or artificial structures, and ingestion of microtrash that would occur under each of the five alternatives, including the proposed TU MSHCP.

Response to Comment P-6-11

The aboveground transmission lines referred to by the commenter represent an existing condition and are not included as part of the Covered Activities in the TU MSHCP. In addition, these lines are owned and operated by Southern California Edison, not TRC. The text of the TU MSHCP and the EIS has been amended in response to comments to clarify the extent to which transmission lines are included as Covered Activities, describe the current locations of power lines on the Covered Lands, and clarify the measures that would be taken to reduce the likelihood of collisions (including Service review of power line relocations). These revisions are summarized as errata in Chapter 2 of this Final EIS. Of particular note, one of the existing transmission lines in the TMV Planning Area would be relocated and undergrounded as part of development activities, and all new power lines associated with development within the Covered Lands would be required to be underground.

To address the potential for power line collisions and electrocutions, the Service initiated power pole aversion training to captive bred and wild caught condors beginning in the 1990s in an attempt to keep birds away from power lines and poles. The training has had some success because the number of deaths and injuries attributable to power line collisions and electrocutions has declined significantly, with no fatal collisions or electrocutions having occurred since 2007 (Rideout et al. 2012). The aversion training is expected to continue to minimize the potential for electrocution of condors posed by the transmission lines/towers that occur on Tejon Ranch. To date, there have been no documented or observed incidences of California condors or any other raptorial birds being electrocuted by perching on any of the transmission towers associated with the two existing aboveground high-voltage transmission lines on Tejon Ranch.

Response to Comment P-6-12

The commenter is correct in noting that wind farms can pose a threat to condors as rotating blades can strike a condor in flight, transmission lines can pose collision risks, and transmission lines and poles may pose electrocution risks for condors that perch on them. This is particularly true when wind farms are located in areas that are attractive to condors, such as ridgetops and upper-elevation slopes where strong winds provide lift for large birds. To address this concern, Section 4.4.1.4 of the TU MSHCP provides that no wind turbine farms will be constructed (and TRC agrees to expand the ban to all ranch lands) during the term of the ITP. Additionally, the prohibition on wind farms shall be maintained on the TU MSHCP Mitigation Lands in perpetuity, and TRC committed to maintain its negative easement right prohibiting wind farms on Gorman Ranch (located outside the Covered Lands). Individual wind turbine devices, which have the primary purpose to serve electrical generation needs on site, may be constructed following review and approval by the Service, based on the Service's determination that the device and any associated structures and electrical lines are of a design and in a location that would not pose a threat to condors. The effects of other, reasonably foreseeable wind energy projects in eastern Kern County, in combination with potential effects associated with the TU MSHCP are considered in Section 4.1.7, Cumulative Effects, in the Supplemental Draft EIS. It should be noted that the Centennial Project is located outside the Covered Lands and is not a Covered Activity under the TU MSHCP.

Although TRC has not made specific Leadership in Energy and Environmental Design (LEED) commitments in the TU MSHCP, the Mitigation, Monitoring, and Reporting Program (MMRP) for the TMV EIR (Kern County 2009) includes two mitigation measures that relate to energy efficiency and sustainability for the TMV Project. For example, Mitigation Measure 4.3-6 states that TRC shall incorporate measures into the design and operation of the TMV Project that ensure energy efficiency that is 25% beyond what is required by 2008 Title 24 standards. Mitigation Measure 4.3-5 generally provides that builders and custom lot owners within the TMV Development Area select sustainable construction materials to reduce emissions associated with the construction process, and promotes the use of alternative fuel technologies during the construction phase. In addition, Mitigation Measure 4.3-18 requires the TMV Project to reduce its greenhouse gas emissions to at least 29% below business as usual emissions, which requires implementation of many energy-saving measures. The commenter is directed to the TMV EIR for further information on mitigation measures required as part of the California Environmental Quality Act (CEQA) process.

Response to Comment P-6-13

The comment refers to separate incidents on Tejon Ranch that occurred during the past decade involving the killing of a condor and 11 mountain lions. The comment questions whether issuance of a permit to TRC is appropriate given these occurrences, whether the permit should include stronger terms and conditions, or whether greater fines should be levied on TRC.

In 2003, a hunter killed AC-8, the last remaining female condor removed from the wild in 1986 and the first wild condor returned to the wild in 2000. TRC, in a written explanation to the Service, stated that the hunter had previously been barred access to TRC's hunting programs but gained entry on the ranch as part of a subgroup of hunters participating in the wild pig management hunt offered by TRC as a part of its wildlife management program. TRC stated that it had provided an oral orientation to the hunters at the start of the hunt aimed at avoiding California condors, and that the shooting occurred outside the presence of TRC personnel and in direct violation of TRC's direction. The killing of AC-8 represented a significant loss to condor reintroduction efforts, and the United States Attorney prosecuted the hunter under the Migratory Bird Treaty Act. The hunter received a $20,000 fine and was sentenced to 5 years of probation and 200 hours of community service. TRC

cooperated with, and provided the results of its own investigation to, the United States Attorney, and was not charged civilly or criminally in the shooting. In the aftermath of the shooting, TRC informed the Service that it strengthened the terms of its hunting permitting procedures, including permit terms and review of access permits, and revised its oral orientation to address the shooting and increase hunter awareness of the protected status of the condor. In 2008, the ranch implemented a ranch-wide ban on use of lead ammunition in its hunting program and strengthened its hunter education and firearm policies to increase protection for California condors. There have been no other incidents involving a shooting of a condor on Tejon Ranch.

Under California law, it has been illegal since 1990 to kill mountain lions without a properly issued depredation permit issued by the CDFG. Such permits are typically issued in response to attacks on livestock or threats to or destruction of human life or property. In 2011, a hunting guide formerly employed by TRC filed a wrongful termination lawsuit in which he claimed he had been fired for complaining about the improper killing of mountain lions on Tejon Ranch. TRC reported to the Service that although it had fired the employee for reasons unrelated to the mountain lion allegations, it investigated the former employee's claims in cooperation with CDFG and determined that the hunting guide had himself killed 11 mountain lions on TRC property. TRC indicated that although some of the kills had occurred while depredation permits were in effect, senior management was unaware of, and did not encourage or reward the killings. As a result of TRC's investigation, all hunting guides with knowledge of the unlawful activity were disciplined and the supervisor of the guides was separated from employment on the ranch. TRC cooperated with the CDFG and Kern County District Attorney's Office investigations into the killings. TRC stipulated to the filing of a complaint and stipulated judgment which committed the company to follow the law and to reimburse CDFG $21,500 for the agency's investigation costs, to pay $15,000 in restitution to Kern County Animal Control, and to pay a $100,000 penalty. TRC voluntarily suspended all hunting activities on the ranch in January 2012 while it conducted an evaluation of its hunting programs and made operational improvements to ensure proper management and full regulatory compliance. As a result of its evaluation, TRC has revised its hunting offerings, increased supervision of hunters by guides, provided for more direct accountability of hunting managers to senior management, improved the content of hunting orientation and instructions, and established closer contact and cooperation with CDFG game wardens, including providing wardens greater access to the ranch to conduct inspections and investigations. TRC reports that it intends to resume its commercial hunting program in the fall of 2012.

As Federal law does not prohibit the killing of mountain lions, TRC was not charged with a violation of Federal law in connection with the mountain lion incidents, and Federal law does not provide a basis for levying fines against TRC.

Prior to issuing an ITP, the Service must evaluate whether the permit applicant demonstrates the requisite "responsibility" to hold the permit. Under 50 CFR 13.21(b)(1) and (3), the Service may refuse to issue a permit if the agency finds that the permit applicant evidences a lack of responsibility. The assessment of a civil penalty or conviction of a criminal provision of a statute or regulation related to the activity for which the permit is sought provides a basis for a finding of a lack of responsibility on the part of the applicant under 50 CFR. 13.21(b)(1). In this case, TRC was not determined to be responsible, either civilly or criminally, in the death of AC-8, which is the incident that is most closely related to the ITP sought by TRC. In addition, the criminal penalty and restitution assessed against TRC in connection with the shootings of the mountain lions is not related to the proposed action for which TRC is seeking a permit (i.e., non-lethal take of condors and take of other Covered Species [not including mountain lions] incidental to development and ongoing ranch activities). In fact, hunting is not a Covered Activity in the TU MSHCP. The Service will consider both the shooting of AC-8 and the mountain lions in its formal review of TRC's permit application. The Service notes that neither circumstance automatically disqualifies TRC from holding an ITP. Under 50 CFR 1321(c), factors that require Service disapproval of a permit application

include a felony violation of the Lacy Act or Migratory Bird Treaty Act and past revocation of an ITP. None of the mandatory disqualifying factors apply to TRC.

The determination of whether TRC's past conduct should disqualify the company from receiving an ITP will be left to the reasoned discretion of the Service. In making the determination, the Service must consider the circumstances of TRC's past conduct and make an informed judgment regarding the company's responsibility to hold and abide by the ITP. While a formal determination has not been made whether to grant an ITP to TRC, the Service takes particular note that the company was not culpable in the death of AC-8, and has taken steps since the death to reinforce the prohibition in its commercial hunting program against shooting large birds, to monitor the activities of hunters, and to terminate the permit of any hunter who does not complete with its terms. Similarly, with regard to the mountain lion shootings, TRC disciplined or terminated employees connected with the killings and implemented several measures to improve the supervision and operation of its hunting program to ensure such incidents are not repeated. These actions demonstrate an appreciation for the seriousness of the shooting incidents and a commitment to avoid future incidents.

Under the TU MSHCP, TRC is required to retain a full-time, Service-approved biologist (including assistants) to monitor implementation of the TU MSHCP, and in particular, the presence of condors on the Covered Lands throughout the permit term. Service personnel will also have continuing access to the Covered Lands to monitor condor activity. TRC is required to implement an education program for all its employees and contractors conducting Covered Activities to ensure they are properly advised of the TU MSHCP's requirements. Each future contract between TRC and a third party contractor must include a provision requiring the contractor to comply with the ITP. Under the proposed permit, TRC is liable for the actions of all of its employees, contractors, and third parties conducting Covered Activities under TRC's authority.

Although hunting is not a Covered Activity under the TU MSHCP, TRC has committed to enforce the ranch-wide ban on lead ammunition in perpetuity and has included in its commercial hunting permit, a "Specific Notice" emphasizing the ban on use of lead ammunition and detailing specific prohibited behaviors with regard to condors. In addition to potential ESA liability, the Specific Notice states that a violation of the condor restrictions will result in immediate ejection of the hunter from the ranch and permanent termination of the hunter's future hunting privileges without refund of prepaid fees, among other consequences.

The measures undertaken by TRC to address the AC-8 and mountain lion shootings, as well as other protective measures included in the TU MSHCP, as described above, reflect the company's resolve to avoid repetition of the circumstances that led to the condor and mountain lion shooting incidents.

Finally, the Service notes that substantial sanctions are provided under the ESA for violation of a Federal ITP. Under Section 11 of the ESA, TRC may be assessed civil penalties of up to $25,000 and criminal penalties of up to $50,000 for each knowing violation of an ITP. A criminal conviction would also expose the violator to imprisonment for up to 1 year. Pursuant to 18 U.S.C. 3571(b)(5) and (c)(5), respectively, the criminal penalties may be doubled to $100,000 for each violation by an individual and $200,000 for each violation by the company. These provisions will provide the Service with powerful enforcement tools to ensure TRC's compliance with the ITP and a powerful disincentive for the company to violate the permit.

The Service does not believe that additional measures suggested by the commenter, including increased monitoring, greater fines, or other changes to the TU MSHCP, in consideration of the mountain lion incidents are necessary to ensure TRC's compliance with the terms of the ITP.

Regarding the comments that certain restrictions (e.g., not allowed to work for TRC within 5 years of leaving government service, not selected by TRC) and guarantees (e.g., provide secure careers in academia or the government, operate for the duration of the TU MSHCP) be placed on the Tejon staff biologist position, the Service believes that qualification and review requirements for this position,

as provided in Section 5.1.1(c) of the Implementing Agreement, provide reasonable assurances that the Tejon staff biologist would professionally implement and enforce the provisions of the TU MSHCP. Specifically, that section requires:

> …TRC retain the service of a full-time biologist, the Tejon Staff Biologist, to perform the functions described in Sections 4, 7, and 8 of the TU MSHCP. The hiring will occur no later than 30 days prior to initiation of the start of construction (i.e., prior to surface disturbing activities) of the TMV Project. Also, promptly, after issuance of the Permit, TRC will contract with a qualified third party, whose qualifications are approved by the USFWS, to perform the biologist's functions identified at Section 4.4.3.5 of the TU MSHCP until the Tejon Staff Biologist is retained. The qualifications of the Tejon Staff Biologist will be reviewed and approved by the USFWS and will either have expertise or contract with a biologist to be approved by the USFWS that has expertise with raptor(preferably California condor) life history and conservation.

As provided in Response to Comment P-6-7, Section 9.4 of the Implementing Agreement ensures the Service access to the Covered Lands for the purposes of monitoring and enforcing the conservation measures provided in the TU MSHCP. This routine access would allow the Service to monitor compliance with the TU MSHCP, and ensure that the Tejon staff biologist is implementing the plan as intended. Finally, Section 12.2 of the Implementing Agreement provides conditions under which the Service may suspend or revoke the ITP for cause in accordance with the laws and regulations in force at the time of such suspension of revocation, which ensures management of the Covered Lands in compliance with the TU MSHCP and ESA.

Response to Comment P-6-14

The Service assumes the commenter is referring to Section 12.3.1 of the Implementing Agreement, which is provided as Appendix C to the TU MSHCP, and describes the informal dispute resolution process that could occur if the Service and TRC disagree about implementation of the TU MSHCP or Implementing Agreement. The Service acknowledges that there may be a delay associated with any dispute resolution process; however, use of the informal dispute resolution process identified in the Implementing Agreement is optional, and the Service is free to seek any available remedy if the circumstances so warrant.

While we anticipate that TRC and the Service will work together in good faith to resolve disputes under the ITP in a timely manner, Section 12.2 of the Implementing Agreement acknowledges that the Service may suspend or revoke the ITP, in whole or in part, for cause in accordance with the laws and regulations in force at the time of such suspension of revocation. The outcome of any dispute resolution process would be topic dependent but, in all cases, would require TRC to demonstrate compliance with the ESA and ITP, including applicable take avoidance, minimization, and mitigation measures for the Covered Species, and the terms of any conservation easement recorded on the Covered Lands.

Response to Comment P-6-15

The Service assumes the commenter is referring to Section 5.1.2 of the Implementing Agreement, which is provided as Appendix C to the TU MSHCP. Specifically, Section 5.1.2 states that if the Service "…makes a finding of Unforeseen Circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, Permittee will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected Covered Species."

This language is generally reflected in the issuance criteria provided at ESA Section 10(a)(2)(B)(iv), which states "the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild", and in the "jeopardy" definition provided in Section 7 of the ESA (50 CFR 402.02), which defines the term "jeopardize the continued existence of" as "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." In evaluating whether an activity undertaken by TRC would contribute to "appreciably reducing" the likelihood of the survival of a Covered Species, the Service would follow the analytical approach outlined in the ESA Section 7 consultation regulations (50 CFR 402.02) and the *Endangered Species Consultation Handbook* (pages 4-22 to 4-35). The Service would assess whether the Covered Species are likely to survive and recover, taking into account all of the effects of the activity in question, the environmental baseline (i.e., the effects of past and ongoing human and natural factors), the status of the species, and the cumulative effects of other non-federal actions in the action area.

Arthur Unger [redacted]

05/03/2012 04:58 PM

To: fw8tumshcp@fws.gov
cc:
Subject: Tehachapi Upland Draft MSHCP/SEIS Comments

Please confirm receipt.

I comment only as an individual and not on behalf of any organization.

P-6-1 Most of the 27 species this HCP is concerned with have been given their special status because they lack habitat. Development of Tejon Mountain Village (TMV) and Centennial by the Tejon Ranch Corporation (TRP) will reduce their habitat even further. Therefore the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TUMSHCP) must call upon TRP to do all it can for the special status species.

P-6-2 I think the incidental take permit should be for only 20 years because development and climate disruption (global warming) may rapidly alter the habitat of any species. We know that a century ago Condors flew over and foraged in the San Joaquin Valley. With the current intense development and the longer hotter summers climate disruption will bring to the next few decades, we do not know if Condors will continue to do so. A warmer earth may have different air currents. Perhaps Condors and trees will restrict themselves to higher, cooler habitat. Climate disruption will probably dry forested areas and increase intensity of fires, as noted on TUMSHCP page 4.9–6. Would fire incidence increase? At least some Condors used forests. Least Bells vireo, Yellow billed cuckoos and Willow flycatchers depend on riparian forests. A shorter HCP duration will

P-6-3 encourage monitoring of species numbers so that management can change if a species is diminishing.

P-6-4 Tejon Mountain Village is in the center of condor habitat and we do not know how easily condors will fly over it. Condors have investigated human dwellings in Pine Mountain

P-6-5 Club, so they might investigate Tejon Mountain Village. I hope inhabitants of Tejon Mountain Village will not molest condors or feed them so that they frequent developments. Condors can be harmed by eating small bits of discarded trash; I am

P-6-6 glad the TUMSHCP discusses microtrash. I hope Tejon Mountain Villagers who may be

P-6-6 cont. new comers to the area and may not be familiar with efforts to save the condor do not attract condors in order to entertain their guests. CDFG & USFWS must always have

P-6-7 access to TMV so they can warn or fine condor abusers. I hope CDFG & USFWS

P-6-8 always have enough knowledgeable people to monitor this and other areas set aside for our national treasures.

P-6-9 Page 4.1–130 says that habituation of six Condors will not cumulatively substantially effect the population rangewide. With such a small population, how do you know the loss of six individuals will not reduce the species' gene pool? How do you define

P-6-10 substantial?

P-6-11 The two existing aboveground transmission lines on Tejon Ranch should be insulated to prevent injury to Condors or any bird contacting them.

P-6-12 For condors, there is hope they will expand their habitat through out the Transverse Range and well into the western foothills of the Sierra Nevada Mountains. This new habitat is suitable for generating electricity from wind machines which probably have the ability to kill Condors. Therefore, minimizing local demand for electricity by making all buildings at least Leadership in Energy and Environmental Design (LEED) silver is a mitigation measure for TMV and Centennial. I hope that all development in the world will be at least LEED silver. Development on Tejon Ranch is a good opportunity to use LEED because building owners are affluent enough to afford the initial cost and can be made aware that they will soon save much more money on utility bills than they paid initially for LEED construction.

P-6-13 Tejon Ranch management as a whole is not to be trusted to allow proper management of wildlife. At least eleven mountain lions have been illegally killed on Tejon Ranch in recent years. Several years ago, as I remember, a person who was permitted by TRC to hunt on Tejon Ranch shot and killed a condor. To prevent the possibility of undue influence by TRC on monitors of the TUMSHCP, at least some of the biologists and TUMSHCP supervisors should have secure careers in academia or somewhere else outside of TRC or government; some supervisors should not long be associated with monitoring the TUMSHCP. This will reduce the opportunity for TRC to become too friendly with them. Certainly no one who enforces the TUMSHCP should be allowed to work for TRP for at least five years after leaving government service. The TUMSHCP wisely requires TRP to pay for management by biologists, but those biologists should not owe their job security to TRC. The biologists should not be selected by TRC. Data from the "Tejon Staff Biologist", described in appendix C, 5.1.1 c, should not be

P-6-13 cont. accepted by the USFWS even if the Tejon Staff Biologist has an excellent reputation before accepting a position with TRC. The biologists should operate for the duration of the HCP.

P-6-14 If USFWS and TRC disagree, who prevails? If section 12.3.1 is invoked, a lot of time could pass before the situation is resolved. How would a habitat damaging event or injured animal fare during this time?

P-6-15 Appendix C, 5.1.2 says “Permittee will avoid contributing to appreciably reducing the likelihood of the survival and recovery….” of a species. How much does the likelihood of survival or recovery have to decrease in order to be appreciable?

Please provide me with all follow up announcements concerning wildlife impacts of Tejon Ranch development.

Thank you for preparing a detailed HCP and for the opportunity to comment,

Arthur Unger