



CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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April 24, 2017

Re: Draft Environmental Assessment/Draft Habitat Conservation Plan for Pacific Gas and Electric Company's San Francisco Bay Area Operations and Maintenance, Federal Register/Vol. 82, No. 56/Friday, March 24, 2017.

Dear Mr. Thomas,

This responds to the Draft Environmental Assessment (EA) and Draft Habitat Conservation Plan (HCP) for Pacific Gas and Electric Company's (PGE) Operations and Maintenance (O&M) activities in the nine Bay Area counties for 31 federally listed species. Please find attached comments provided by our consultant, Dr. Shawn Smallwood [attachment 1] regarding the inadequacies of the draft EA/HCP. In addition, the Citizens Committee to Complete the Refuge (CCCR) supports the comments submitted by the Committee for Green Foothills and the Center for Biological Diversity.

Failure to initiate a new scoping period:

The Federal Register notice states that a Notice of Intent (NOI) to prepare a joint EIS/environmental impact report (EIR) was issued in November 2006. A 30-day public scoping period was provided and three public scoping meetings were held. The Federal Register states that no significant issues were identified, and that since that time the overall scope of the draft HCP has been reduced. The Service also stated that upon review, "it appears that there are no potential significant impacts to the human environment." Based upon that conclusion, the Service has withdrawn the intent to prepare a joint EIS/EIR, and instead has issued the draft EA.

Section 2.3 (A) of the Fish and Wildlife Service NEPA Reference Handbook describes the scoping process as a

"...public participation process that begins with the publication in the Federal Register of our notice of intent to prepare and EIS. The scoping process ends with the publication of the Environmental Protection Agency's notice of availability of the draft EIS in the Federal Register. Scoping can be informal or formal, as in the case of an EIR. Scoping is required for an EIS. *We encourage public scoping for an EA since it helps satisfy NEPA's purposes in section 101 (b).*"[emphasis added]

Certainly, given the geographic scope and the number of federally listed species potentially covered by the draft HCP, the continued and unrelenting development (and therefore habitat reduction) and fragmentation of bay area open spaces (i.e. "natural land-cover types"), accelerating climate disruption impacts (e.g. sea level rise, drought, increased temperatures, flooding, invasive species, etc.), and the fact that the only scoping period for the draft HCP was held 11 years ago, it would have been appropriate to hold a new scoping session.

Inadequate notification and comment period:

CCCR reiterates the concerns cited in our request for a time extension sent April 6, 2017 [attachment 2]. CCCR has repeatedly requested that we be kept informed of any public comment periods for the bay area HCP/environmental CCCR Comments Draft PGE HCP/EA

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review document, yet and CCCR and other bay area environmental groups failed to receive any notification regarding the release of these documents. We received notice from another group more than a week after the documents had been released. We sent a request for a time extension and have subsequently received an email notifying us that the comment period for the draft HCP will be extended for another 60 days to allow the public time to review and provide comments regarding the adequacy of the HCP, however, any comments pertaining to the draft EA must be received by April 24, 2017. It is illogical to provide a time extension for the HCP and not the EA. Under the National Environmental Policy Act (NEPA) regulations (§1508.9 Environmental assessment), the purpose of an EA is to provide sufficient evidence to determine whether an Environmental Impact Statement (EIS) is necessary or a finding of no significant impact (FONSI). Additionally, an EA provides an agency's compliance with NEPA when it determines no EIS is necessary. These two documents by definition of the process are linked. To allow an extension on the HCP, but not the EA, raises the question of what assurances the public has regarding whether substantive comments will be duly considered and adequately responded to. We urge the Service to extend the public comment period on the EA as well.

The "*Habitat Conservation Planning and Incidental Take Permit Processing Handbook*," (HCP Handbook) dated December 21, 2016, states, "Low-effect and EA-level HCPs need only the 30-day notice period as required by ESA section 10(c)." [13.4.1 Public Participation Requirements] However, Section 14.6 Required Public Comment Periods provides for longer public comment periods:

We have established requirements for the length of the public review/comment period for NOAs. If we involved other agencies and the public by doing early scoping or public meetings, we must offer the public at least 30 days to comment on the HCP and application supported by a categorical exclusion, EA, or mitigated EA (i.e., we consider mitigation measures in an EA to avoid or lessen potentially significant environmental effects of proposed actions that would otherwise need to be analyzed in an EIS). *Service policy requires at least a 60-day comment period for a draft EIS, or on an EA for HCPs that are large-scale or regional. If the public hasn't been involved, we may need to add 30 days to the comment period.* For HCPs that are exceptionally complex or precedent-setting, we recommend a 90-day public review/comment period. *If we anticipate a lot of interest in an HCP, it may be prudent to add 30 or 60 days to the comment period so you don't have to reopen or extend it.* Discuss this with the Regional HCP Coordinator. [emphasis added]

First, sufficient information has not been provided in the draft EA to reach a determination that this is a "Low-effect and EA-level HCP, to the contrary, as indicated by the comments submitted by Dr. Smallwood, Committee for Green Foothills and Center for Biological Diversity, there is every indication that there could be significant impacts to covered and non-covered listed species and migratory birds. Second, according to the language above, there is no regulatory reason why a longer comment period should not have been provided for review of the PGE draft HCP/EA, and in fact, the comment period for the draft EA should be extended.

Need for an Environmental Impact Statement (EIS):

The EA states [page 1-5] that it has "preliminarily determined that an EA is the appropriate level of review for the Proposed Action." It goes on to state:

An EA must *provide a detailed statement of the environmental impacts of the action, the no action alternative, and measures to mitigate adverse effects of the proposed action (42 U.S.C. § 4332(C)).* While NEPA does not mandate any particular result, it requires the agency to follow particular procedures in its decision-making process. The purpose of these procedures is to ensure that the agency has the best possible information to make an "intelligent, optimally beneficial decision" and *to ensure that the public is fully apprised of any environmental risks that may be associated with the Proposed Action.*[emphasis added]

Despite the limited opportunity we have had to review the draft EA/HCP it is evident that the EA has failed to achieve the requirements that a detailed statement of the environmental impacts of the action be provided and to ensure the public is fully apprised of any environmental risks that may be associated with the Proposed Action. Substantive information has not been provided in the draft EA. Some examples include, but are not limited to:

- The EA fails to provide any discussion of why some federally listed species were covered and others were not. The EA/HCP simply provides a list of criteria for determining whether a federally listed species would or would not be covered [EA 1-13]. Tables 1-2 and 1-3 list species that were or were or were not included for coverage, but the public is left to guess which of the criteria species that were not covered failed to meet. Despite the failure to provide even generalized maps of where PGE O&M activities may occur, it appears federally listed species that are not covered in the draft HCP may in fact be impacted by the proposed suite of activities. [See comments submitted by Shute Mihaly, Center for Biological Diversity and by Dr. Smallwood whose comments are attached]
- The EA fails to provide access to information that would allow the public to assess the efficacy of measures that are meant to “protect” avian species. As an example, both the EA and HCP refer to an “Avian Protection Plan” and a “Nesting Bird Management Plan” that are supposed to avoid or minimize impacts to migratory birds, yet these documents were not provided for public review.

In a section meant to demonstrate the protective measures that will be implemented to protect nesting birds [Section 2.2.2.15 Nesting Bird Management Guidance], the EA refers the reader to Table 5-2 of the HCP, “Vegetation Management Best Management Practices to Reduce Environmental Impacts.” BMP 15 provides specific language regarding protection of known active Northern Spotted Owl nests (a species that is not covered by the HCP) but provides no details regarding other nesting birds. Instead BMP 16 states all PGE employees must follow the “Vegetation Management Migratory Bird Process”, yet another set of procedures that is not provided for review.

The very next BMP, BMP 17, refers to the “Vegetation Management Sudden Oak Death Protocols” this document is absent as well.

- The Draft EA/HCP fails to assess the impacts of the covered activities on migratory birds or special status species, especially as pertains to replacement, expansion, or new construction activities, clearly activities that have the potential to introduce new and significant impacts that would require avoidance, minimization and mitigation. See comments provided by Shute Mihaly, Center for Biological Diversity and Dr. Smallwood. This is a fatal flaw of the EA.
- The Field Protocols, Avoidance and Minimization Measures (AMMs) and BMPs identified in Table 5-2 do not adequately protect covered, non-covered, special status species, or migratory birds. A *qualified* biological monitor should be on-site while work is being performed in any Hot Zone or Map Zone. The qualifications of land planners, *qualified* biologist, and field crews are not synonymous. A *qualified* biologist should be the party responsible for determining appropriate AMMs, providing oversight on installation of exclusion fencing, ensuring listed, special status species, migratory or nesting birds are not within the project area, and have the ability to halt all work immediately if listed species, special status species, migratory or nesting birds are encountered.

We believe that citing the APP (Avian Protection Plan), as the tool that eliminates the need to address impacts to almost all avian species is specious and inadequate. The letter from Shawn Smallwood repeatedly demonstrates that the AMMs may have significant flaws and are even now failing to achieve their goals.

For example, Dr. Smallwood states on page 9, "...However, although I witnessed the linemen working at the tops of transmission towers, I did not understand what they were doing until I observed a great blue heron appearing to hang dead in mid-air (Figures 12 and 13). **The linemen had installed very narrow-gauged ground wires that were nearly invisible from ground positions...** [emphasis added]."

On page 15, Dr. Smallwood states, "PG&E's operation and maintenance activities risk injury, death and displacement impacts to burrowing owls. Burrowing owls are vulnerable to electrocution on distribution poles and collisions with lines (Appendices 1 and 2). They are also vulnerable to displacement caused by inspections and maintenance activities along transmission lines and gas pipelines. **"Just recently, on 13 April 2017, I was surveying for burrowing owls in the Altamont Pass when the last two breeding pairs I had found that day were flushed by a caravan of PG&E trucks and a tractor driving over wet grassland during a rainstorm, moving from one set of transmission towers to the next. The PG&E crew appeared oblivious to the owls as they drove within about 3 feet of both nest burrows, flushing the owls to the other side of the canyon. Not only did this caravan narrowly miss driving over the owls' nest burrows, but their flushing of the owls exposed the owls to predators."** [emphasis added]

Clearly to this extent, at least, the AMMs are flawed and require a full exposure to the public and an explanation in detail about how they will protect listed species, how they will be implemented and how we can be assured that they were actually followed by PG&E maintenance staff.

BMPs 31 – 48 pertain to the use of herbicides, an activity that is "not covered" by this HCP. Plant-01 restricts the use of herbicides within 100 feet of a Map Book Zone, but there is no corresponding AMM for Hot Zones. This must be rectified to clearly indicate herbicides must not be used within at minimum 250' (buffer zone for vernal pools) of a Hot Zone.

The Willis L. Jepson Chapter of the California Native Plant Society (CNPS) requested CCCR incorporate substantive concerns they have identified [attachment 3]. Two of these are specific to Table 5-1 – BMP 12 should not be utilized in serpentine habitat and soils which naturally are more sparsely vegetated and contain patches of bare ground. Conducting erosion control activities in serpentine habitat could unnaturally increase the thatch and cover in these areas and preclude re-establishment of native forbs that prefer bare ground, and could in turn negatively affect the host and nectar plants and Bay checkerspot butterfly.

- Plant-01, Plant-02, Plant-04, Plant-05, Plant-07 – salvaging and replanting Coyote Ceanothus, Metcalf Canyon Jewelflower, and Santa Clara Valley Dudleya is unlikely to be successful, therefore would not minimize adverse impacts to these species.
- Plant-08 is insufficient as written to address the threat of Phytophthora plant pathogens to covered species and could have negative impacts to Coyote Ceanothus.
- Please refer to the comments provided in attachment 3 – comments from the Willis L. Jepson Chapter of CNPS regarding:
 - the lack of clarity in the impact analysis for the Santa Clara Valley Dudleya and Metcalf Canyon Jewelflower. The numbers of occurrences and number of individuals appears to be inconsistent.

- the concern that the inconsistency that exists for covered species between this HCP and other HCPs could adversely affect the conservation strategies of other plans.
 - the assumption of an equal density of individuals across an entire CNDDDB occurrence with no field verification is not an accurate way of calculating impacts.
- Section 9.6.1 Changed Circumstances of the updated HCP Handbook states:

Changed circumstances are defined in the No Surprises rule as *“changes in circumstances affecting a species or geographic area covered by [an HCP] that can reasonably be anticipated by [plan] developers and the Services and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).”* (50 CFR 17.3). *If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances, and such measures were provided for in the HCP, the permittee will be required to implement such measures (50 CFR 17.22(b)(5)(i), 17.32(b)(5)(i); 50 CFR 222.307(g)(1)).* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances, and such measures were not provided for in the HCP, the Services will not require any additional measures beyond those provided for in the HCP, without the consent of the permittee, provided the HCP is being properly implemented (50 CFR 17.22(b)(5)(ii), 17.32(b)(5)(ii); 50 CFR 222.307(g)(2)). [emphasis added]

The HCP has not identified and analyzed reasonably foreseeable, changed circumstances that could affect a species or geographic area during its term (50 CFR 17.3). The HCP discusses changes circumstances that could affect the efficacy of mitigation sites, e.g. remedial measures are proposed to address vandalism of a mitigation site. None of the remedial measures proposed touch on changed circumstances that could affect a species. As an example, the only covered avian species, the Ridgway’s Rail (RIRA) is a tidal marsh species, and as such could be adversely impacted by sea level rise. Point Blue has provided graphic representations of reasonably foreseeable changes in circumstances for the RIRA in the south bay. Attachment 4 represents approximate occurrences of the rail in 2010, and Attachment 5 represents the approximate suitable habitat remaining in the south bay in 2050 under a “high”(perhaps no longer on the high end) estimate of sea level rise and low sediment supply. RIRA habitat will shrink considerably in the south bay under this scenario, and impacts to local populations of RIRA (and presumably salt marsh harvest mouse which is less mobile), could be much more significant at the local level than in other areas of the bay. This is a reasonably foreseeable change in circumstance for which no remedial measures have been proposed.

Examples of such remedial measures can be found in the April 2016 Draft Habitat Conservation Plan for Lalamilo Wind Farm:

- The USFWS lists a species occurring in the Project Area or a listed species not covered in the HCP begins using the Project Area. Lālāmilo will evaluate the likelihood of take as a result of the Project should one or more species that occur in, or transit through, the Project Area be listed pursuant to the ESA or if a listed species not covered in the HCP begins using the habitat of the Project Area. If take of the species is likely, Lālāmilo will seek coverage for the species under an amendment to this HCP or through a separate HCP or Section 7 consultation.
- Disease outbreaks in covered species Should prevalence of disease increase substantially and become identified by DLNR and USFWS as a major threat to the survival of a covered species, Lālāmilo will consult with the agencies to determine if changes in monitoring, reporting, or mitigation are warranted. Any such changes will be approved by DLNR and USFWS and will be performed to achieve mitigation objectives described in the HCP. Changes to the mitigation budget will be made with the approval of Lālāmilo, USFWS, and DLNR.

- Natural/anthropogenic disasters (e.g., hurricanes, severe storms, fires) substantially alter the status of a covered species. Natural and anthropogenic disasters, including hurricanes, severe storms, and fires, have potential to alter the status of one or more of the covered species on Hawai'i and, consequently, alter the relative importance of the incidental take of individuals. Such disasters could result in loss of habitat, decreased suitability of available habitat, and could hinder or disrupt mitigation efforts. If such changes occur as a result of natural or anthropogenic disasters, Lālāmilo will coordinate with USFWS to determine if any changes to operation of the HCP and mitigation areas are warranted. Global climate change substantially alters status of the covered species.
- Global climate change within the life of the ITP /ITL (20 years) conceptually has the potential to affect covered species through region-wide changes in weather patterns, sea level, average temperature, and levels of precipitation affecting the species or their habitats (Intergovernmental Panel on Climate 2007). Covered species may be affected through changes in temperature, precipitation, the distribution of their food resources, and possible changes in the vegetation at their preferred habitats.

As an expected result of global climate change, hurricanes or storms may occur with greater intensity (Webster et al. 2005; US Climate Change Science Program 2009), which may increase the risk of damage to established mitigation sites. Sea level is predicted to rise approximately 1 m in Hawai'i by the end of the twenty-first century (Fletcher 2009). Given this prediction, any rise in sea level experienced during the life of the Project likely will be less than 1 m (3 feet).

Precipitation may decline by 5%–10 % in the wet season and increase 5% in the dry season, due to climate change (Giambelluca et al. 2009). This may result in altered hydrology at mitigation sites. Vegetation may change with decreased precipitation or increased temperatures and threat of fire. Other mitigation sites may be considered for continued mitigation if selected sites are considered no longer suitable. The alternate mitigation site(s) will be chosen in consultation with USFWS and DLNR.

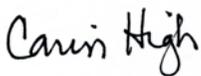
Overall, if changes substantially affecting one or more covered species occur as a result of global climate change, Lālāmilo will coordinate with DLNR and USFWS to determine if changes to operation of the HCP are warranted. Any changes will be performed to meet objectives of the HCP.

This HCP must include similar remedial measures to address reasonably foreseeable changed circumstances resulting from climate change that have the potential to affect listed species or geographic areas.

These are only some of the substantive flaws or shortcomings of the draft EA/HCP. It is evident that it would be impossible, based upon the information available, for the Service to issue a findings of no significant impact (FONSI). The Service must prepare an EIS for the draft PGE EA/HCP.

We ask we receive notification of receipt of our comment letter, and that we be kept informed of any and all future opportunities to provide public comment.

Sincerely,



Carin High
Citizens Committee to Complete the Refuge Co-Chair