

Response to Comments on PG&E's MRHCP and the Service's Environmental Assessment

During the initial comment period, the U.S. Fish and Wildlife Service (Service) received four comment letters: one letter from a federal agency, one letter from a state agency, and two letters from non-profit organizations. Several of the comments addressed similar issues regarding the Environmental Assessment (EA) and the Multiple Region Operations & Maintenance Habitat Conservation Plan (MRHCP). Responses to common concerns are summarized in the *Master Responses* section. Responses to the individual comments of each letter follow in the *Specific Responses* section.

Master Responses

Master Response 1: Covered Species

The commenters recommended covering more species in the MRHCP. In December 2016, the Service and the National Marine Fisheries Service issued the revised *Habitat Conservation Planning and Incidental Take Permit Processing Handbook*, referred to herein as the "HCP Handbook."¹ The HCP Handbook includes several factors that should be considered when determining species to be covered in an HCP, including identifying those listed species that are likely to be taken (p. 7-5). In addition, the HCP Handbook notes that all covered species "must have sufficient background information" in order to conduct an adequate effects analysis for the proposed covered activities. The HCP Handbook also notes that, although the Service encourages applicants to address listed plants, take prohibitions under Section 9 of the federal Endangered Species Act (ESA) generally are not applicable to plants. The Service cannot require an applicant to cover a particular species in an HCP. The Service and the applicant, Pacific Gas and Electric Company (PG&E)(Applicant) worked closely to evaluate which species should be covered based on Service guidance that the incidental take permit (ITP) application should only include species for which incidental take is "reasonably certain to occur" (80 Fed. Reg. 26832), and PG&E then determined the species for which it is seeking an ITP. As noted by some of the commenters, many species were considered for coverage. The following criteria were used to determine which species should be included in the MRHCP: range of the species proposed for coverage, potential for impact on the species proposed for coverage, listing status of the species proposed for coverage, and life history information regarding the species (see Section 1.5.2 of the MRHCP). Through discussions with the Service, PG&E chose species for inclusion in the MRHCP that are federally listed, or likely to be federally listed within the permit term, and that are also reasonably certain to be taken by the activities covered in the MRHCP. This approach is consistent with the 2016 HCP Handbook, which provides that the appropriate standard for coverage is "reasonably certain" and states that the Service should "avoid processing applications submitted purely as insurance when take of ESA-listed species is not anticipated."

In addition to the criteria noted above, the process of determining which species to include in the MRHCP was informed by the Service's and PG&E's experience with developing PG&E's *San Joaquin Valley Operations and Maintenance Habitat Conservation Plan* (San Joaquin Valley O&M HCP) and

¹ U.S. Department of the Interior Fish and Wildlife Service, U.S. Department of Commerce National Oceanic and Atmospheric Administration National Marine Fisheries Service. 2016. *Habitat Conservation Planning and Incidental Take Permit Processing Handbook*. December 21. Washington, D.C. Available at: [https://www.fws.gov/guidance/sites/default/files/documents/Habitat Conservation Planning and Incidental Take Permit Processing Handbook December%202016.pdf](https://www.fws.gov/guidance/sites/default/files/documents/Habitat%20Conservation%20Planning%20and%20Incidental%20Take%20Permit%20Processing%20Handbook%20December%202016.pdf).

Bay Area Operations and Maintenance Habitat Conservation Plan (BAHCP), as well as with implementing other programmatic biological opinions, project-specific low-effect HCPs, and various environmental programs and plans to avoid and minimize impacts on sensitive species. If additional non-covered species are listed, as noted in Section 6.6.2.1 of the MRHCP, PG&E would evaluate the need to seek incidental take authorization at that time. Following this provision, PG&E would work with the Service to determine whether a newly listed species could be affected by covered activities. If so, PG&E and the Service would discuss whether to amend the MRHCP to include take coverage for those species. Should the applicant choose not to amend the HCP to include such a species, incidental take of the species would be prohibited, and covered activities would be required to obtain incidental take authorization on a project-by-project basis. Further, the Service would provide technical assistance to identify possible modifications to the permit and, until the permit was amended, PG&E would develop and implement measures to avoid the likelihood of jeopardy or take of the newly listed species.

It should be noted that listed fish species were not included in the MRHCP because incidental take from the covered activities is not anticipated. In the event that in-water work is required during the course of a covered activity, PG&E would be required to obtain a permit under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act, which would provide an opportunity for the U.S. Army Corps of Engineers and the Service or the National Marine Fisheries Service (NMFS), depending on the fish species to review the potential effects under Section 7 of the ESA.

Federally listed birds, with the exception of marbled murrelet and northern spotted owl, were not included in the list of species covered under the MRHCP because the Service and PG&E determined that incidental take from covered activities was not reasonably certain (see Master Response 3, *Avian Impacts*). The covered plant species list was similarly refined based on listing status and proximity of facilities to known plant populations; additional detail on the plant analysis is provided in Master Response 2, *Impact Analysis*. It should be noted that, when PG&E acquires mitigation lands, these lands also will benefit non-covered species. Listed species that are not included in the MRHCP will not be authorized to be taken under the ITP.

Master Response 2: Impact Analysis

Several commenters indicated that the impact analysis was inadequate because work location information was too general and did not include site-specific species data. The Service worked closely with PG&E to formulate an approach to evaluate the potential effects associated with operations and maintenance (O&M) activities. As described in greater detail below, the method for analysis was based on PG&E's facility corridors. Because specific work locations vary within the facility corridor from year to year, the MRHCP applies a criteria-based approach to ensure that the applicable Avoidance and Minimization Measures (AMMs) will be applied and the remaining take and associated impacts will be mitigated. This approach, coupled with a limit on the total amount of take authorized, and reporting and tracking mechanisms to stay below the take limits, provides a planned and coordinated approach for addressing covered activities within the Plan Area, which is defined by the location of PG&E's existing gas and electric infrastructure plus a buffer (see MRHCP Section 1.5.1). Further, the take estimates for most species are conservative over the course of the 30-year permit duration.

PG&E is required by state and federal law to inspect and maintain its facilities, and maintenance could occur anywhere along a facility corridor. PG&E and the Service determined that a modeled habitat approach was appropriate to analyze impacts for a large Plan Area and the activities proposed for coverage. The impact analysis for wildlife was based on an intersection of facility corridors with modeled habitat. Modeled habitat was identified based on multiple data sets, including land-cover data, species habitat requirements, and species habitat models developed as part of other regional HCPs (see MRHCP Section 2.3.4, *Species Habitat Models*). For example, the giant garter snake model was based on the life history needs of the giant garter snake. The MRHCP

model used land-cover types similar to those in the ecological models developed for the Yolo HCP/Natural Community Conservation Plan, which also underwent Service and public review. The MRHCP impact analysis describes the life history and distribution of each species, including direct impacts, permanent impacts on habitat, temporary impacts on habitat, impacts on critical habitat, and indirect impacts.

Plant take estimates and impacts were based on aerial photography review of known plant populations. The impact analysis for plants was based on site-specific population information in relation to PG&E's facilities. This information, plus activity size estimates (small or large) and presence of suitable habitat close to the facilities, was used to estimate the potential disturbance to plant occurrences. Similar to the impact analysis for covered wildlife, this approach likely results in an overestimate of the level of impact on the covered plant species.

Most covered activities have estimates of habitat loss resulting from each instance of a covered activity. During implementation, the impacts of small activities will be calculated and tracked based on the amount of disturbance of a given covered activity within modeled habitat, regardless of the actual habitat quality at the location of a covered activity. This approach could result in PG&E mitigating for small dispersed impacts to marginal or low quality habitat, providing significant conservation benefits through landscape level mitigation of high quality habitat. Identification of the acreage of impacts for large activities will be based on PG&E's review of the habitat models, site-specific habitat evaluations, and on-site observations of ground disturbance.

The MRHCP differentiates between temporary and permanent habitat impacts. These are defined for both wildlife and plants, and PG&E is required to track its annual temporary and permanent impacts for both. We included additional protections for covered plants. Further, to confirm that the estimates for small activities are accurate and have not changed over time, the MRHCP requires a validation study that will review covered activities in implementation years 5 and 10 (see MRHCP Section 6.9.1.1, *Implementation*). PG&E and the Service will use this information to verify disturbance estimates and inform future monitoring and reporting efforts. The impact analysis for plants was based on site-specific population information in relation to PG&E's facilities. The Service will monitor and evaluate these impacts via annual reports; an audit study; and site-specific reviews, if needed.

Master Response 3: Avian Impacts

Several commenters stated that the MRHCP should cover both listed and non-listed bird species to address collision and electrocution from electric facilities. However, these types of impacts are not associated with the types of maintenance work covered under the MRHCP. PG&E implements an Avian Protection Plan (APP) to address various issues, including collision and electrocution, which is based on guidelines issued by the Avian Power Line Interaction Committee. PG&E's APP identifies areas of high risk where raptors are abundant (Raptor Concentration Zones [RCZs]) to ensure that new or replacement poles in the RCZs are built "bird-safe." PG&E also has an extensive program for retrofitting older poles to address collision and electrocution issues. Minor new construction could result in new poles that can cause electrocutions or that non-covered birds may collide with, but these facilities will also be built to current safer standards. With the exception of vegetation management activities in the habitat for marbled murrelet and northern spotted owl, PG&E determined that incidental take of federally listed bird species was not reasonably certain to result from the covered activities and that coverage under the MRHCP therefore was not requested. If non-covered, federally listed avian species would be affected by minor new construction anywhere in the plan area, covered activities would not be authorized to take those species and PG&E would need to obtain take authorization prior to carrying out the covered activity. Avian species will continue to be addressed through PG&E's APP. The APP includes several measures to reduce impacts on birds. Examples include:

- A risk assessment process to identify high-risk areas for collision and electrocutions.
- Bird-safe construction requirements for all new construction/reconstruction work in “raptor concentration zones.”
- Retrofits installed on all poles where collisions or electrocutions have been reported.
- A proactive retrofit program in areas with collisions or electrocutions.
- Implementation of a Nesting Bird Management Plan to establish buffers or work restrictions.
- Outreach and research in coordination with various avian organizations.

PG&E has posted their APP on their website. Please see Master Response 1, *Covered Species*.

Master Response 4: Covered Activities

The U.S. Environmental Protection Agency (EPA) and the Center for Biological Diversity (CBD) had questions about and expressed concern regarding the scope of the covered activities. Although take of a listed animal species is prohibited under Section 9 of the ESA, the Service has no authority to compel any individual or entity to cover any particular activity in an HCP. Covered activities in the MRHCP include gas and electric O&M activities and minor new construction in the Plan Area that may result in take of covered species. These activities are described in MRHCP Chapter 3, *Covered Activities*. Non-covered activities include major new projects, pesticide and herbicide applications, energy production, and energy delivery. Commenters indicated that avian electrocutions should be covered, implying that energy delivery should be covered. Operation of the electric lines (i.e., energy delivery), conducting electricity through lines, is not a covered activity; and PG&E determined that, with the exception of the marbled murrelet and northern spotted owl, incidental take of listed avian species in the Plan Area as a result of the covered activities was not reasonably certain, and therefore were not included in the MRHCP as covered species.

Master Response 5: Mount Hermon June Beetle

Several commenters expressed concern about the Mount Hermon June beetle. The Service and PG&E are aware of the sensitivity of the Mount Hermon June beetle. The habitat model built for this species over-estimates potential habitat and this larger area will be used for environmental screening and to implement measures to avoid and minimize impacts. Further, the conservative nature of the habitat model means that mitigation will likely be provided in excess of the actual habitat impacted. The Service recognizes that take could occur from multiple types of activities, but that PG&E will need to conduct covered activities periodically within this species’ habitat. The Hill and O’Malley citation is helpful in advancing the science and conservation of the species, but does not require a modification of the analysis in the HCP; the Service believes the analysis in the HCP is adequate as the conservation strategy will ensure that impacts are avoided, minimized and mitigated. To ensure restoration does not adversely affect this species’ habitat, PG&E will modify their Field Protocol 14 to ensure that the typical restoration approach involving reseeded will not be conducted in habitat for Mount Hermon June beetle, Ohlone tiger beetle and Zyante band-winged grasshopper.

Specific Responses

U.S. Environmental Protection Agency

EPA 1: PG&E is required to comply with air quality standards in the course of conducting their work and follows best management practices (BMPs) to minimize impacts on air quality. BMP 5 in the

MRHCP indicates that motorized equipment will comply with Air Resources Board requirements. Issuance of an ITP does not authorize the underlying O&M activity or minor new construction work. As such, the Service is not proposing to add additional air quality protection requirements to the Final EA or ITP. However, the controls identified by EPA typically are implemented by PG&E in the course of conducting their larger activities.

EPA 2: Please see Master Comment 3, *Avian Impacts* and Master Response 1, *Covered Species*. PG&E's O&M activities are part of the baseline condition and will continue with or without issuance of the ITP. If non-covered, federally listed avian species would be affected by minor new construction anywhere in the plan area, covered activities would not be authorized to take those species and PG&E would need to obtain take authorization prior to carrying out the covered activity. When constructed, these facilities will conform to current Avian Power Line Interaction Committee standards. Finally, the mitigation lands provided for covered species are anticipated to also benefit non-covered species.

EPA 3: The Final EA will describe the outcome of the tribal consultation process. To date, no comments have been received by the tribes, and no further edits are proposed to the EA or MRHCP.

California Department of Fish and Wildlife

CDFW 1: The Service acknowledges that there are dually listed species (federally listed species that also are listed under the California Endangered Species Act (CESA)), but PG&E has decided to pursue separate state permit authorization with the California Department of Fish and Wildlife (CDFW). The Service does not propose that the applicant modify the MRHCP or permitting course at this time. While federal and state permit issuance criteria are slightly different, the MRHCP has a framework to avoid, minimize, and mitigate temporary and permanent impacts associated with PG&E's O&M and minor new construction activities. We recognize that mitigation requirements for CESA may be different than those for the federal ESA.

CDFW 2: PG&E decided to cover only federally listed plant species and activities in vernal pool habitat that would not largely be avoided through seasonal restrictions, minimizing work areas, and implementing a series of plant AMMs. The species selection criteria in MRHCP Chapter 1, Section 1.5.2 were applied to vernal pool plant species, and it was determined that impacts to listed plants not included in the HCP would be avoided. Impacts to non-covered, federally-listed plants will be avoided based on pre-project surveys, future site-specific evaluations, modifying work activities to minimize impacts, and developing site-specific restoration plans that are subject to Service review and approval. PG&E has specifically committed to avoiding impacts to non-covered, federally-listed plants, and will seek the aid of the Service prior to implementing a covered activity should it become known that a covered activity will impact a federally-listed plant. Although state-listed plants may be present, such species do not require federal incidental take authorization, and so it is at the discretion of the applicant to include non-federally listed plants in an HCP or federal permit application. PG&E is required to comply with applicable state law regarding take of state-listed plant species.

CDFW 3: PG&E has indicated that the covered activities are part of its "obligations to provide service to the public." Under the California Constitution, Article XII, Section 5, the California Legislature has plenary power to confer authority and jurisdiction on the California Public Utilities Commission (CPUC) to regulate electric and gas utilities such as PG&E. The California Legislature has done so by enacting the Public Utilities Code that establishes the laws and rules governing PG&E's public utility obligation to serve, and the CPUC's authority to regulate PG&E's public utility services, rates and tariffs. Public Utilities Code Sections 451, 454, 728, 761, 762, 768 and 770 define PG&E's retail public utility "obligation to serve." Specifically, Section 451 provides that "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities,....as are necessary to promote the safety, health,

comfort, and convenience of its patrons, employees, and the public” and Sections 768 and 770 authorize the CPUC to order PG&E to “construct, maintain and operate” facilities to promote the health and safety of its customers, and to fix the “just and reasonable...services to be furnished” by PG&E.

CDFW 4: Please see response to CDFW 1 and Master Response 1, *Covered Species*. PG&E will seek state take permits for state-listed wildlife and fish when needed.

CDFW 5: It is the responsibility of the applicant to comply with all state laws, including all relevant portions of the California Fish and Game Code, when implementing its activities. PG&E has indicated that it is aware that take, as defined in Section 86 of the Fish and Game Code, of a fully protected species is prohibited.

CDFW 6: Minor new construction is defined in the MRHCP; major new construction activities are larger than those defined as minor new construction. Undisturbed lands are grasslands, wetlands, forests, or upland areas that have not been disturbed by agriculture or other human activities.

CDFW 7: PG&E is required to mitigate its impacts on covered species habitat, including impacts on conservation lands. The Service is not requiring additional mitigation beyond that identified in the conservation strategy, given the totality of what the applicant is providing: training, avoidance and minimization, mitigation (with a substantial jump-start provision), and reporting. The Service recognizes that O&M work may be needed on high-value conservation lands, including those of CDFW and the Service. Regarding site access, site access matters are handled between the landowner and the Applicant. An HCP or a section 10(a)1(B) permit does not authorize site access. However, the Applicant has committed in the MRHCP to providing notice to landowners prior to accessing protected lands (Field Protocol 5).

Center for Biological Diversity

CBD 1: The Service is satisfied that the MRHCP is appropriately detailed. The MRHCP represents a framework to address take arising from covered activities. Covered activities include gas and electric O&M activities and minor new construction in the Plan Area that may result in take of covered species. These activities are described in detail in MRHCP Chapter 3, *Covered Activities*.

The Service worked closely with PG&E to formulate an approach to evaluate the potential effects associated with covered activities (MRHCP Chapter 4, *Impact Analysis*). The method for analysis was based on PG&E’s facility corridors and species modeled habitat. Specific work locations vary within the facility corridor from year to year, and the MRHCP applies a criteria-based approach to ensure that applicable AMMs will be applied and that the remaining take and associated impacts will be mitigated (MRHCP Chapter 5, *Conservation Strategy*). This approach, coupled with a limit on the total amount of take authorized, and reporting and tracking mechanisms to stay below the take limits, provides a planned and coordinated approach for addressing covered activities within the Plan Area. Further, these take estimates are conservative for most covered species over the course of the 30-year permit duration.

The EA is intentionally focused, highlighting that (1) much of this work is currently occurring and part of baseline conditions; and (2) restrictions and limits on the extent of take are associated with all activities, including minor new construction.

CBD 2: Please see Master Response 1, *Covered Species* and Master Response 3, *Avian Impacts*. The Service is not delaying the analysis of other species, simply recognizing that much of this work is ongoing and will continue to occur, and that subsequent analysis will occur when a specific project is proposed that needs other federal or state permits.

CBD 3: The Service has disclosed and appropriately analyzed the direct, indirect, and cumulative effects of our action. The Draft EA addresses these impacts beginning on page 3-1. The impacts of PG&E's activities over the course of the next 30 years are described in the MRHCP and EA.

CBD 4: The Service does not agree that an Environmental Impact Statement (EIS) is necessary for this project, as it believes that impacts associated with the federal action have been appropriately identified and analyzed. One of the purposes of an EA is to provide agency decision makers with the information necessary to determine whether the agency needs to prepare an EIS or if an EA is sufficient. An EIS is necessary when an agency action would result in significant impacts on the human environment. The Council on Environmental Quality guidance allows preparation of an EA and use of a mitigated Finding of No Significant Impact (FONSI) to comply with the National Environmental Policy Act's (NEPA's) procedural requirements and reduce impacts to less than significant, thereby, avoiding the need to prepare an EIS (see referenced case law below). In this case, the MRHCP's covered activity descriptions, impact analysis, and conservation strategy—in addition to the limited level of permanent habitat loss to be authorized by the ITP—provide the basis for concluding that there are no significant impacts and therefore an EA and FONSI is the appropriate level of analysis under NEPA.

The analysis in the EA indicates that most O&M activities are part of the baseline conditions and that permanent and temporary disturbance of suitable habitat would be mitigated at ratios that offset the potential impacts on covered species. Consequently, reliance on the conservation strategy, including its associated mitigation, to find no significant impact is appropriate and is supported by case law and policy guidance. See, for example, *Friends of Endangered Species, Inc. v. Jantzen*, 760 F.2d 976, 987 (9th Cir. 1985) (“[C]ourts have permitted the effect of mitigation measures to be considered in determining whether preparation of an Environmental Impact Statement is necessary.”); *Or. Nat. Desert Ass'n v. Singleton*, 47 F. Supp. 2d 1182, 1193 (D. Or. 1998) (“[T]he ‘mitigated FONSI’ is upheld when the mitigation measures significantly compensate for a proposed action's adverse environmental impacts.”); *City of Auburn v. United States*, 154 F.3d 1025, 1033 (9th Cir. 1998) (“Regarding mitigation, it is clear that an agency may condition its decision not to prepare a full EIS on adoption of mitigation measures.”). See also, Council on Environmental Quality *Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact* (76 Fed. Reg. 7843 (Jan. 21, 2011)) (“[A]n agency does not have to prepare an EIS when the environmental impacts of a proposed action can be mitigated to a level where the agency can make a FONSI determination, provided that the agency or a project applicant commits to carry out the mitigation, and establishes a mechanism for ensuring the mitigation is carried out.”); U.S. Fish and Wildlife Service and National Marine Fisheries Service. 2016. *Habitat Conservation Planning and Incidental Take Permit Processing Handbook*. Washington, DC. P. 13-8. (“If the applicant provides sufficient assured conservation actions, to avoid significant impacts on the environment, we may be able to comply with NEPA's procedural requirements by issuing an EA and a Finding of No Significant Impact [FONSI], or mitigated FONSI.”)

PG&E engages in O&M activities on existing facilities and has been conducting these activities for many years throughout the 34 counties covered in the Plan Area. PG&E complies with the ESA on individual projects when needed and has infrequently but periodically needed a biological opinion (pursuant to Section 7 of the ESA) or has applied for Section 10(a)(1)(B) ITPs and prepared HCPs for projects. The MRHCP represents a more standardized way to address take, otherwise prohibited by Section 9 of the ESA, that is reasonably certain to result from activities that are ongoing to maintain gas and electric services to PG&E customers. The context of regional and site-specific effects would vary, and current analysis in the MRHCP and EA demonstrate that the effects of the covered activities would be appropriately avoided, minimized, and mitigated.

CBD 5: The Service has included the appropriate level of analysis in its NEPA document and the MRHCP, and disagrees with the assertion that an EIS is needed. Please see response to comment CBD 4.

CBD 6: CBD asserted that the MRHCP does not include a complete account of activities; sufficient information relating to the sex, age, and number of individuals of the species to be taken; or how habitat can be used as a proxy for impacts. The Service is comfortable with the level of information provided regarding covered activities and has reviewed the information provided to determine impacts.

Often, it is not practical to measure take in terms of numbers of individuals of the species. The HCP Handbook recognizes this, stating “it is not always practical to survey and count affected wildlife populations directly. More often we use a surrogate measure, such as acres of habitat or a measurable ecological condition that we define and use to express incidental take authorized by a permit.” (U.S. Fish and Wildlife Service and National Marine Fisheries Service. 2016. *Habitat Conservation Planning and Incidental Take Permit Processing Handbook*. Washington, D.C. P. 8-3). The Service will follow the HCP Handbook and the incidental take regulations in determining the appropriate use of surrogates, including habitat, for measuring and tracking incidental take. (See 80 Fed. Reg. 26832 (May 11, 2015) – Interagency Cooperation – Endangered Species Act of 1973, as Amended; Incidental Take Statements. Final rule.)

In preparing its biological opinion, the Service will quantify the amount of take of covered species pursuant to the ESA, regulation, policies, and guidance.

CBD 7: Chapters 3 and 4 of the MRHCP contain detailed descriptions of the range of O&M activities and minor new construction that could be implemented in the Plan Area and provides an estimate of how often these activities are likely to occur. The chapters also contain detailed descriptions of the impact mechanisms and how species are likely to be affected by covered activities. O&M activities could be required anywhere in the Plan Area, which is defined by the location of PG&E's existing gas and electric infrastructure plus a buffer (see MRHCP Section 1.5.1). Therefore, the HCP addresses the potential for covered activities to be implemented in any given location in the Plan Area.

CBD 8: Please see response to CBD 6.

CBD 9: PG&E has described its monitoring and reporting obligations in MRHCP Chapter 6 (Section 6.3, *Monitoring* and Section 6.4, *Reporting*); these efforts will focus on annual habitat loss. The Service will review PG&E's annual reports to determine whether the take limit has been exceeded. In addition, PG&E is obligated to let the Service know if their take limit has been exceeded.

CBD 10: The Service is aware of the requirements for its biological opinion. Comment noted.

CBD 11: The Service is aware of the recommendations in the HCP Handbook and the ESA's permit issuance requirements.

CBD indicated that the Service should not issue an ITP and the project does not conform to the issuance criteria. The Service's permit issuance criteria in the ESA include the following.

1. The taking will be incidental.
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.
3. The applicant will ensure that adequate funding for the plan will be provided.
4. The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.
5. Such other measures that the Service may require as being necessary or appropriate for purposes of the plan.

In its Section 10 findings and recommendations, the Service will determine whether the HCP meets the issuance criteria. If the Service finds that the HCP meets the issuance criteria, the Service will issue an ITP.

CBD expressed concern that the AMMs are not sufficiently specific and do not avoid impacts. PG&E's current environmental screening and review process (see MRHCP Section 1.6, *Environmental Screening Processes*) will be complemented and augmented by the process described in MRHCP Section 5.4, *Environmental Review, Planning, and Screening Process*. The environmental screening process is the first step in the process and ensures that impacts are avoided or minimized upfront. This process may involve redesign or relocation of proposed work activities, as well as adjusting access routes or work periods.

Field Protocols (FPs) are implemented for all work activities to avoid and minimize impacts on sensitive resources and habitats. These protocols cover all aspects of the work, including training crews, access/worksite management, erosion control, and natural resource protection. BMPs comprise 41 separate requirements to avoid and minimize impacts from vegetation management activities. Further, when performing work in a Hot Zone (a defined area containing a known population of a covered wildlife species with a small and well-defined range where the species would occur and may be affected by covered activities), species-specific AMMs would be implemented to minimize impacts on covered species. These AMMs may involve additional site-specific surveys or limits on work periods or equipment types, and may include specific AMMs for certain types of work performed in areas with sandy soils or native grass lands of Santa Cruz County. If the work is within a Map Book Zone (an area occupied by one or more covered plant species based on occurrence data of the California Natural Diversity Database), specific plant AMMs are implemented to minimize impacts on covered plants.

FPs, BMPs, and AMMs, detailed in Table 5-1 and Table 5-2 in the MRHCP, provide specific direction to employees and contractors. As an example, FP-18, which requires that active bird nests with eggs or chicks be avoided, also requires that a crew member or contractor who finds such a nest to contact PG&E's Avian Protection Program manager, biologist, or land planner for further guidance. Likewise, BMP 20 requires not only that potential cultural resources be left untouched but also that work must be stopped if the resources must be moved to complete the work, and that the cultural resources program manager be contacted and appropriate applicable laws followed. These various preventive measures are similar to standard measures found in other HCPs within the region.

It is recognized that the AMMs will not avoid all impacts, which is the reason that PG&E is seeking an incidental take permit. The AMMs should be viewed in the context of the conservation strategy as a whole. Avoidance and minimization of effects on covered species is only one part of the conservation strategy, and AMMs are not intended to avoid and minimize all effects on covered species. The Applicant has proposed to mitigate temporary disturbance with permanent conservation, which will result in permanent conservation of high quality habitat even when the species have not lost habitat as a result of covered activities. Additionally, due to the habitat models' overestimation of available habitat for covered species, we anticipate that there will be instances where effects on marginal and low quality habitat for covered species will be mitigated with high quality habitat. The MRHCP conservation strategy also encourages habitat enhancement and restoration, which will result in small increases in habitat availability for covered species when these options are exercised.

Collectively, the conservation strategy as a whole serves to reduce and mitigate impacts on covered species. Conducting additional surveys and monitoring activities that are currently occurring on existing facilities is unnecessary. For the low-risk PG&E activities covered in this MRHCP, such as pole replacements in low-quality habitats on road shoulders, species will benefit more from acquisition of habitat (that is protected in perpetuity) than from habitat surveys and extensive monitoring. Given the small individual footprints of the covered activities, the Service and PG&E developed an approach that deemphasized surveys and monitoring of numerous small activities in order to emphasize funding long-term regional conservation efforts on a larger scale. The overall

conservation strategy approach is specific by providing consistency in how PG&E conducts its work, interacts with the Service, and mitigates its effects. This approach is more effective than project-by-project permitting.

Please see Master Response 1, *Covered Species* and Master Response 4, *Covered Activities*. Comment noted.

CBD 12: Minor new construction is intended to encompass new facilities and construction of short (2 miles or less) gas or electric line extensions to provide service to new residential or commercial users in locally approved developments. It differs from large new construction, where more than 2 miles of new right-of-way is secured. Minor new construction includes two gas activities (G14, Pressure Limiting Station Installation and G15, New Customer/Business Pipeline Extensions) and four electric activities (E12, New Distribution and Transmission Line Construction or Relocation for Wood or Steel Poles, E13, Tower Line Construction, E14 Substation Expansion, and E15, Underground Line Construction). Most of this work is expected to be close to existing corridors.

As a worst-case assessment, this work could result in 236 acres of permanent impacts over 30 years distributed across PG&E's 565,000-acre Plan Area. In the past 10 years of implementation of PG&E's San Joaquin Valley O&M HCP, this type of work resulted in less than 10 acres of permanent impacts and 16 acres of temporary impacts. The MRHCP acreage limit also is subject to individual species take caps that, in some cases, may preclude a minor new construction activity within a covered species' habitat. For example, the maximum amount of permanent habitat loss for the Morro shoulderband snail is 3 acres, while other species such as the Sierra Nevada yellow-legged frog have maximum permanent habitat loss capped at less than 0.68 acre over the 30-year permit term. Overall, the Service expects new construction work to occur infrequently during the 30-year permit term. Additionally, AMM Minor New-1 in the MRHCP outlines that the Service and PG&E will review the specific details of minor new construction projects to ensure that PG&E's activities are within the scope of analysis and that no unaccounted for impacts or take of non-covered species are resulting. This process is defined in the MRHCP in Table 5-1:

For minor new construction activities excluding upgrades and replacements, (G15, E12, E13, and E15), PG&E will notify USFWS of the anticipated project and provide a summary of the activity. The summary will include information on HCP measures to avoid, minimize, and mitigate likely take of covered wildlife species and/or impacts on covered plant species, confirm there is adequate take authorization remaining for the covered species, and confirm that the activity does not have a reasonably certain likelihood of take of listed non-covered species.

Although specific locations are not known, it can be assumed that these service extensions will be located in proportion to existing modeled habitat throughout the Plan Area and that impacts will be within the scope of the analysis provided in the MRHCP and EA. PG&E's annual report will summarize the impacts associated with minor new construction, and the Service will be able to verify these effects. The criteria-based approach limiting take (e.g., habitat and species-specific limits on take), coupled with additional review, provides sufficient detail to support an analysis of impacts associated with minor new construction.

CBD 13: Please see response to CBD 12.

CBD 14: Please see Master Response 1, *Covered Species*. Scoping done in 2006 represented early impressions of those species that might be covered. The list was narrowed down by PG&E to focus on those species most likely to need incidental take coverage. If it turns out that other listed species could be incidentally taken by a particular covered activity, PG&E would need to seek additional take authorization prior to carrying out the covered activity. Effects of the action on federally listed species within the action area that are not included in the HCP as covered species will be analyzed through intra-agency consultation pursuant to section 7 of the ESA. Should the Service identify that covered activities would be reasonably certain to incidentally take listed species that have not been included for coverage in the HCP, prior to permit issuance the Service will work with the applicant

to either alter the HCP to include that species (which would require a second public inspection period for the HCP), or alter this HCP to avoid adverse effects on those species.

CBD 15: Please see Master Response 1, *Covered Species* and Master Response 3, *Avian Impacts*.

CBD 16: Impacts and mitigation are expected to occur in the Plan Area. The location of impacts is described programmatically, and impacts are expected to occur proportionally to the disturbance estimates by facility type in listed species habitat throughout PG&E's facility corridors. Mitigation areas are intended to be flexible to meet species needs. PG&E's mitigation efforts, including initial acquisitions and a map, are described in MRHCP Chapter 5, *Conservation Strategy* (Section 5.6, *Approach to Mitigation*).

CBD 17: Please see response to CBD 12 for a discussion related to minor new construction. Regarding cumulative impacts, the Service has determined that the cumulative impact assessment is adequate, as described in Chapter 3, beginning on page 3-24 of the EA.

Overall, the covered activities are ongoing activities that are part of the pre-project environmental conditions in the Plan Area and the proposed HCP is expected to result in a net long-term benefit with regard to providing compensatory mitigation, including habitat restoration and enhancement. It also would result in corollary benefits to common and special-status plants and wildlife using the habitats preserved and protected. In total, any contribution by the covered activities to cumulative impacts would be minor.

CBD 18: PG&E has described the extent of the Plan Area in species' habitat, including critical habitat, and has quantified habitat disturbances within the species' ranges. The Service has reviewed the habitat models and facility corridor information and concurs with the approach to the impact analysis. Specific impact mechanisms are described in MRHCP Chapter 4, *Impact Analysis*. The impact analysis describes multiple types of impact mechanisms and the Service acknowledges that different types of maintenance will result in different types of impacts. However, PG&E's conservation strategy includes a suite of employee education, avoidance and minimization (including seasonal constraints when possible), and mitigation to address its effects. When taken together, the Service believes the conservation strategy sufficiently takes into account and offsets the effects on different life stages of covered species.

CBD 19: The Service and PG&E are aware of the sensitivity of the Ohlone tiger beetle. The habitat model built for this species over-estimates potential habitat and this larger area will be used for environmental screening and to implement measure to avoid and minimize impacts. Further, the conservative nature of the habitat model means that mitigation will likely be provided in excess of the actual habitat impacted. The Service toured known population locations and observed that most PG&E facilities in this species' habitat are near roads and other urban areas. The Service recognizes that the greatest risk of take is from digging up facilities, but PG&E will need to conduct this type of work periodically within this species' habitat. We agree that restoration in these areas needs to be carefully planned to maintain and not destroy habitat and PG&E should remove references in the MRHCP to reseeded in this species' habitat. To ensure restoration does not adversely affect this species' habitat PG&E will modify their Field Protocol 14 to ensure that the typical restoration approach involving reseeded will not be conducted in habitat for Mount Hermon June beetle, Ohlone tiger beetle and Zyante band-winged grasshopper. These changes will be reflected both in-text in the HCP itself, and captured in an errata sheet that will describe this, and other clarifications to the final HCP.

The Cornelisse & Duane 2013 citation referenced, titled *Effects of Knowledge of an Endangered Species on Recreationists' Attitudes and Stated Behaviors and the Significance of Management Compliance for Ohlone Tiger Beetle Conservation*, is helpful regarding advancing species conservation but less relevant to maintenance activities. The Cornelisse et. al. article in Plos One 2013, titled *The Implications of Habitat Management on the Population Viability of the Endangered Ohlone Tiger Beetle (Cicindela ohlone) Metapopulation*, is more relevant but does still not change the analysis and

conclusions in the HCP, which indicate PG&E should minimize off-road travel, soil disturbance and soil compaction in this species' habitat.

CBD 20: Please see Master Response 5, *Mount Hermon June Beetle*. The Hill and O'Malley citation is helpful in advancing the science and conservation of the species, but does not require a modification of the analysis in the HCP. The analysis will not be changed as the Service believes it is adequate. The covered activities will be implemented with measures to minimize impacts on this species' habitat.

CBD 21: Similar to the response to CBD 19, the Service and PG&E are aware of the sensitivity of the Zayante band-winged grasshopper. The habitat model built for this species also over-estimates potential habitat as it is built on the soil series and provides a surrogate for PG&E to screen its work in order to avoid and minimize impacts in this species' habitat. The Service toured known population locations and observed that most PG&E facilities in this species' habitat are near roads and other urban areas. The Service recognizes that take could occur from multiple types of activities, but that PG&E will need to conduct these activities periodically within this species' habitat. Although CBD indicates that there are only 57 acres of remaining open sand parkland habitat, the total available habitat is likely much greater, with thousands of acres of critical habitat described in the Service's 2000 federal register designation of critical habitat. The MRHCP is anticipated to benefit this species by providing avoidance, minimization, and mitigation measures for covered activities. The Service has considered cumulative effects for this species.

CBD 22: The reference to the use of weed-free seed mixes in the vicinity of some covered species will be removed from the MRHCP. Although the MRHCP proposes habitat preservation for the Smith's blue butterfly, PG&E also could partner with local conservation organizations to support habitat restoration actions, with the Service's approval.

CBD 23: The Service has evaluated all forms of take in its assessment of impacts on the valley elderberry longhorn beetle. The Service proposes to retain the existing methodology proposed in the MRHCP, as it accounts for both temporary and permanent impacts, and they do not need to be combined. Furthermore, mitigation will be provided even for effects on elderberry shrubs that are unlikely to be habitat for the species, resulting in conservation that is expected to exceed the total effects of the taking of the species. The Service will evaluate critical habitat impacts and determine whether or not the effects of covered activities on critical habitat will result in adverse modification of any critical habitat.

CBD 24: The commenter's statement that the Service is required to consult with the State regarding land acquisition for mitigation under Section 6 of the ESA is incorrect. The coordination provision refers to land acquisition by the federal government (such as National Wildlife Refuges), not the applicant's actions associated with mitigation.

CBD 25: CBD stated that the MRHCP is flawed because the Service has not assured compliance with local and state laws and regulations. The Service's permit authorizes incidental take of federally listed animal species in association with PG&E's activities, but it does not authorize PG&E's activities. PG&E is responsible for ensuring that its O&M activities comply with all applicable legal requirements. The HCP Handbook (p. 3-18) states that the applicant is responsible for complying with other applicable local, state, and federal laws; and the Services may accept an applicant's assertions of lawfulness:

For most activities we consider in HCP review, the Services can readily accept an applicant's certification regarding the lawfulness of their activities. Typical construction, timber management, mineral extraction, or other land management activities usually do not raise questions of lawfulness. For such routine activities, we must stay mindful that we do not enforce State and local laws authorizing the activity. This means that we do not generally evaluate an applicant's compliance with local requirements. . . .

The HCP Handbook guidance regarding applicant compliance with other laws is consistent with the courts' interpretation of the ESA. (See, for example, *Ctr. for Biological Diversity v. United States Fish &*

Wildlife Serv., 450 F.3d 930 (9th Cir. 2006) (“the Service is not required to ensure [applicant] compliance with federal and state law before issuing an ITS” [incidental take statement]).

CBD noted the need for the Service to coordinate with other agencies with jurisdiction over the resources and lands that could be affected by PG&E’s O&M activities. The Service and PG&E have made multiple federal and state agencies aware of the development of the MRHCP.

Overall, PG&E’s MRHCP will not change the utility’s obligation to comply with all state and federal laws and permitting requirements, nor will it change the obligations of state and federal agencies to comply with relevant laws and regulations. Approval of the MRHCP and issuance of an ITP by the Service will not change permitting triggers or conflict with implementation of other environmental laws. Similarly, the MRHCP will not change the terms of PG&E’s land rights for existing facilities nor any notification or coordination procedures that have been established (or may be established in the future) with the many public and private landowners crossed by PG&E’s existing facilities.

In the event that a PG&E covered activity would affect waters of the United States, PG&E would continue to pursue appropriate permits from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act, and the corresponding Section 401 water quality certification from the appropriate Regional Water Quality Control Board.

PG&E met with NMFS regarding anadromous fish and the potential to cover them in the MRHCP. NMFS indicated that it preferred to review activities on a project-by-project basis given the small number of in-water projects conducted by PG&E that could affect anadromous fish.

PG&E’s MRHCP will not affect a federal agency’s responsibility or authority to manage federal lands according to the requirements of the agency’s authorizing act and adopted management plans and policies. If a PG&E covered activity requires issuance of a new permit or land right on federal lands, the land-managing agency is required under Section 7 of the ESA to consult with the Service or NMFS if the activity may affect federally listed species. As noted above, if a covered activity would result in adverse effects, the consultation process would conclude with the issuance of one or more biological opinions. Through that consultation process, the Service and the federal land-managing agency can determine whether PG&E’s MRHCP can provide a streamlined framework for avoidance, minimization, and mitigation of potential adverse effects on federally listed species associated with the activity.

CBD 26: The Service disagrees with the commenter that adequate enforcement is not associated with this permit. If the Service determines that issuance of a permit is appropriate, the permit will include clear language regarding the Service’s expectations of PG&E. The MRHCP does not give PG&E discretion in determining which AMMs to apply to covered activities in order to minimize impacts. Rather, it clearly requires implementation of all FPs when working in the Plan Area, as well as additional measures that will be prescribed for work in specific locations (e.g., Hot Zones, Map Book Zones, and near wetlands and vernal pools). The Hot Zone and Map Book Zone AMMs provide sufficient oversight by a qualified biologist without the need for additional presence by Service staff in the field during covered activities. If the Service issues a permit, the Service will continue to work with PG&E over the life of the permit. Furthermore the Service, can, and does, perform compliance checks on any permit we issue. If the Service detects non-compliance with the terms and conditions of our ITP, we have many remedies available to us, including suspension or revocation of the ITP.

CBD 27: The Service purposely prepared a focused EA based on recent federal streamlining guidance (Secretarial Order 3355). Given that PG&E routine O&M activities have been occurring for many years, they are appropriately considered part of the baseline condition. Please see response to CBD 1 and CBD 4.

CBD 28: Please see response to CBD 4.

CBD 29: Please see response to CBD 1, 4 and 12.

CBD 30: Please see response to CBD 4. CBD suggests that an EIS should be prepared for this regional HCP because an EIS was prepared for other regional HCPs, such as the *Santa Clara Valley Habitat Plan* and the *East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan* (East Contra Costa HCP/NCCP).

Each HCP developed to support a Section 10(A)(1)(B) permit is unique. Direct comparisons between one HCP and another or one HCP's NEPA document and another to determine the scope of NEPA analysis is not appropriate. However, because CBD identified other HCPs in the area as the basis for why they believe the Service should prepare an EIS, the Service provides the following brief comparison. The *Santa Clara Valley Habitat Plan* authorizes take resulting from the permanent loss of 17,975 acres of suitable habitat, and the East Contra Costa HCP/NCCP authorizes take resulting from the permanent loss of 13,029 acres of suitable habitat. The incidental take addressed by both of these HCPs is largely from new development. In contrast, the MRHCP address the take of covered species resulting from an aggregate total of no more than 1,327 acres of permanent habitat loss, and these acreages are located primarily in existing, previously disturbed rights-of-way (i.e., the majority of incidental take associated with the MRHCP would be primarily related to existing activities and not from new development). This level of permanent habitat loss amounts to less than 0.03% of natural land-cover types across 34 counties over 30 years. Further, most impacts from PG&E's MRHCP would be temporary, would not result from new facility footprints, and would recover annually. For these reasons, and the reasons described above, the Service determined that an EA and FONSI are appropriate, and the Service does not need to prepare an EIS.

CBD 31: Please see response to CBD 25.

Environmental Committee for the San Lorenzo Valley/Valley Women's Club

ECSLV 1: PG&E initially proposed a 50-year permit duration given that the facilities will exist on the landscape for the foreseeable future. The HCP Handbook (p. 12-8) includes several factors that should be considered when identifying an appropriate permit duration, including the duration of covered activities; ability to determine the effects on covered species; level of uncertainty related to the conservation strategy and long-term survivability of the covered species; how well the monitoring and adaptive management program address risk and uncertainty; and whether the proposed funding strategy is sufficient for the proposed permit duration. The Service considered these factors, in addition to uncertainty related to climate change, uncertainty regarding long-term species distributions, and the applicant's need to carry out O&M activities over a long period of time. Consequently, the Service recommended a 30-year permit duration, which is the proposed permit term in the MRHCP. A permit of shorter duration is not expected to provide additional protection of the covered species and would not reduce the effects of the covered activities on the covered species. A shorter duration permit is contrary to the long-term conservation objectives associated with this MRHCP because a shorter permit would not allow the same landscape-scale conservation in advance of impacts. Further, the MRHCP contains a monitoring and adaptive management process that will track and allow responses to changing environmental conditions over the duration of the permit. If any covered activities are determined to potentially jeopardize the continued existence of a covered species, the Service would be required to re-evaluate the effects of covered activities on that species, regardless of the length of any permit. The Service has determined that a 30-year permit duration is appropriate.

ECSLV 2: PG&E is required to maintain its facilities, including repair or replacement of electrical transmission lines. These activities are described in MRHCP Chapter 3, *Covered Activities*. Table 4-1 in the MRHCP identifies both the likely annual frequency and the size of disturbance of each covered activity. While there is no cap on the number of times a covered activity can be implemented, PG&E

is subject to the take limits authorized over the 30-year permit term. Please see Master Response 4, *Covered Activities*.

ECSLB 3: Please see Master Response 1, *Covered Species*.

ECSLB 4: Please see Master Response 2, *Impact Analysis*.

ECSLB 5: Please see Master Response 5, *Mount Hermon June Beetle*.

ECSLB 6: If the Service issues a permit, the Service will continue to work with PG&E over the life of the permit. Comment noted.