



## CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane, Palo Alto, CA 94306

Tel: 650-493-5540

[www.bayrefuge.org](http://www.bayrefuge.org)

[cccrrefuge@gmail.com](mailto:cccrrefuge@gmail.com)

Mike Thomas, Chief, Conservation Planning Division  
U.S. Fish and Wildlife Service  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, W-2605  
Sacramento, California 95825  
*Sent via Facsimile to: 916-414-6713*  
*Hard copy to follow by mail*

June 23, 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 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. While we appreciate the time extension provided to review the Draft HCP (due to inadequate notification), we reiterate our objection to the separation of the comment deadlines for the Draft EA and the Draft HCP. The two documents are inextricably linked and the comment period should have been extended for both documents.

The Citizens Committee to Complete the Refuge (CCCR), the Committee for Green Foothills (CGF) (letter by Shute Mihaly Weinberger) and the Center for Biological Diversity (CBD) submitted extensive comments April 24, 2017. The comment letters detailed a flawed public review process and numerous fatal flaws in both the Draft EA and Draft HCP.

The public's ability to provide substantive comments on the Draft HCP has been stymied by the absence of essential information.

**No delineated permit area/no analysis provided of why listed species within the plan area are not covered by the Draft HCP:**

The December 2016 HCP Handbook states:

The permit area must be clearly delineated with a map and written description in the HCP and the permit. The written description may include township, range, and section information; plat map and parcel numbers; global positioning system (GPS) coordinates; legal descriptions; or whatever is necessary to ensure that there is no uncertainty as to where covered activities may occur and take is authorized.

The HCP Handbook does acknowledge that "...some data and geographic locations...may be proprietary or need to be protected for national security purposes." This is the claim PG & E and the Service have made, however, it has been pointed out by members of the public that maps of the gas transmission lines can be found online. If this is the case, why isn't this information included in the Draft HCP? This information is crucial in providing an understanding of which species are likely to be impacted by the proposed covered activities and could provide insight into why some species are proposed as "covered" species and others are not.

**No analysis provided regarding identification of covered and not-covered species:**

During the presentation on June 19<sup>th</sup>, Service staff provided clarification as to why the San Mateo thornmint was not included as a covered species, however, that information did not appear in the Draft HCP. The only information provided is a list of species (Table A-1) identified as occurring within the plan area, with a “yes” or “no” to denote that the species is not covered under the plan. No explanation is provided. In the absence of a clearly delineated permit area it is impossible to understand why one species might be covered and another not, even though they might occur in proximity to one another. [Comments were previously submitted by Shute Mihaly, Center for Biological Diversity and by Dr. Smallwood regarding species that should be covered under the Draft HCP but are not.]

**Key documents relied upon to minimize adverse impacts of implementation of the HCP are not provided:**

The HCP 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 the HCP refers 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 are not included within the Draft HCP or as appendices to the plan.

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.

**Expansion of existing facilities and “minor” new construction should not be included under an Operations and Maintenance HCP:**

The Draft HCP states “minor” new construction or expansion:

...includes installing new or replacement structures to upgrade existing facilities or to extend service to new customers. These covered activities when in natural vegetation are limited to 2 miles or less of new electric or gas line extensions from an existing line, 1.0 acre or less of new gas pressure limiting stations, and 0.5 acre or less per electric substation expansion.

New construction and expansion of existing facilities, but in particular new construction, differs from maintenance and operations impacts, in that (presuming one knew where these impacts and activities were occurring), it should be possible to anticipate impacts to covered species. According to the notes in Table 1-1. Plan Area, minor new construction is assumed to occur within 80% natural vegetation and the acreage provided under this covered activity is 3,014 acres. There does not appear to be any further breakdown of the types of natural habitat that are included in the estimated 3,014 acres. The Draft HCP fails to provide any estimate of impacts of minor new construction to covered species, stating in a footnote on Table 2-4. Estimated Extent of Covered Wildlife Species Habitat by Facility Type, “minor new construction activities are not included but would be reviewed on a case-by-case basis for species issues.” When would this review take place? After issuance of the Incidental Take Permit? If so, how can these impacts be accounted for in the development of the Incidental Take Permit if the analysis occurs after-the-fact?

### **Impacts to Golden Eagle and other raptors:**

The comments provided by Shawn Smallwood unequivocally demonstrate the significant and adverse impacts of PG&Es operations activities on Golden Eagles and other raptors. Golden Eagles should be incorporated as covered species under this HCP. The 2016 HCP Handbook provides the following useful guidance:

#### *7.4.2 Bald and Golden Eagles*

The Bald and Golden Eagle Protection Act (BGEPA) (see the HCP Handbook Toolbox) was enacted in 1940 (before the ESA) to conserve eagles. In 2009, the FWS amended the BGEPA implementing regulations to allow for, under certain circumstances, the permitting of incidental take of bald and golden eagles. Issuance of a take permit under the BGEPA requires a determination that the take is compatible with the preservation of eagles, which the FWS defines to mean that the taking is consistent with the goal of stable or increasing breeding populations. *Currently, the FWS has sufficient data to show that golden eagle populations cannot sustain any additional unmitigated take without experiencing declines.* Accordingly, all new authorized take of golden eagles must be at least equally offset by compensatory mitigation in the form of actions that either reduce another ongoing source of mortality or lead to an increase in carrying capacity that allows the eagle population to grow by an equal or greater amount. [emphasis added]

FWS will only issue permits for eagles where the take is associated with, but not the purpose of, the activity, and it cannot practicably be avoided. Therefore, applicants need to include all practicable measures they plan to use to avoid the potential for take and explain how any anticipated take of eagles from covered activities cannot practicably be avoided. Applicants will also need to include appropriate measures to support a determination that the plan will achieve the BGEPA's standard of maintaining stable or increasing breeding populations.

*Applicants can choose to include bald and golden eagles on the incidental take permit for an HCP. Doing so also confers take authorization under the BGEPA (50 CFR 22.11) without the need for a separate permit.* However, when making permit decisions, FWS must consider whether the permit issuance criteria under both ESA and BGEPA will be met by the conservation measures included in the HCP. Additional information on the permitting requirements for authorizing the take of eagles under BGEPA can be found in the permit regulations (50 CFR 22.26) and the FWS 2009 permit rule (74 FR 46835). In general, combining the requirements of BGEPA and ESA is more efficient than applying for two separate permits. FWS staff can reference the May 10, 2011 memorandum entitled "Use of Endangered Species Act Section 10 Permits to Provide Bald and Golden Eagle Act Authorization for Incidental Take of Bald Eagles and Golden Eagles;" refer to the HCP Handbook Toolbox for more information about including eagles in HCPs. As with other species, including eagles in an HCP without take authorization is possible, but the pros and cons of this approach should be examined before making this decision. [emphasis added]

### **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:**

Examples of inadequate and unenforceable AMMs and BMPs were provided in comment letters submitted on April 24, 2017 by CCCR, CGF, CBD, Marin Audubon Society, and Golden Gate Audubon Society. In addition, 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* biologists, 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.

**The HCP fails to ensure adequate agency oversight:**

The comments provided by Shute Mihaly Weinberger bear repeating:

As discussed above, the HCP relies heavily on BMPs, AMMs, and undisclosed plans to be implemented by PG&E to conclude that most of the HCP's impacts would be minimized. However, the HCP fails to include assurances of adequate Agency oversight to ensure that it will function as is intended. For instance, how will the Agency ensure that AMMs and conditions of the Permit are appropriately and adequately adhered to and enforced? Anticipated reduced Agency budgets are likely to lead to insufficient enforcement mechanisms and increased impacts.

It is imperative that providing adequate staff time is a Service priority and that review of annual reports and compliance site inspections occurs in a timely fashion to ensure the provisions of the HCP are being enforced. The annual reports should be made available to the public by posting them on the Service or PG&E HCP website.

**The HCP does not include an adequate enforcement mechanism:**

The comments provided by the Center for Biological Diversity must be addressed:

The HCP fails to include an adequate enforcement mechanism because too many of the key measure for avoidance and minimization of impacts are left to the discretion of the applicant with too little oversight and reporting to ensure they are applied as intended or have the anticipated effect. The HCP is "filled with 'should' and 'may' and imprecise language" and this "ambiguity can be cleared up in the permit terms." (2016 HCP Handbook.) Here, the Draft EA and HCP are filled with such permissive and non-binding language and should be revised to ensure that the ITP provides clear terms.

Overall, the HCP provides far too little information about Covered Activities, reporting and oversight to show that avoidance will be implemented first where possible and that needed minimization measures will be undertaken for Covered Activities in all cases before impacts occur and mitigation is needed. The Center suggests that the HCP be revised to include: additional prior notification to Service and public of all projects that go beyond existing O&M projects which also provide their location; additional on sight inspection by FWS for "hot zone" and "map book zone" projects; and that the Service require a qualified biologist to oversee the choices at key stages in application of the AMM, BMP, APP, and other avoidance and minimization measures.

**Public uncertainty over how the Draft HCP will be implemented:**

Additional information provided during the public workshop held June 19<sup>th</sup> did nothing to allay our concerns regarding the inadequacy of the Draft HCP. One controversial aspect of the Draft HCP is whether Line 109/132 replacements through Edgewood Park in San Mateo County would be covered by the plan. The response we received regarding the potential replacement of Line 109 through Edgewood Park in San Mateo County was nothing less than frustrating and indicative of the confusion that exists regarding how the HCP would be implemented.

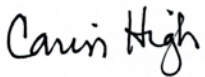
Edgewood Park supports rare serpentine habitat, the threatened bay checkerspot butterfly and a critical habitat unit for the butterfly. The Shute Mihaly Weinberger letter mentioned above, documented the failure of PG&E mitigation measures to restore disturbed serpentine soils. For this reason, and because a viable alternative exists that would avoid significant and adverse impacts to the Edgewood Park and listed and special status species, local environmental and Friends groups have been taken the position that this project should not be covered by the HCP.

During a meeting with Service staff on April 13<sup>th</sup>, 2017, attendees were told emphatically that the Line 109 replacement project through Edgewood Park would NOT be covered by the PG&E O&M HCP and that the project would be reviewed through a different process. During the June 19<sup>th</sup> meeting, the answer we received was a complete reversal – we were told that the project could be covered under the HCP provided it had obtained all other required permit authorizations,

but that there was no plan to proceed with the project at present. The fact that the plan has been temporarily set aside is irrelevant as the proposed duration of coverage for the HCP is a period of 30 years. The substantive concern remains that significant adverse and potentially permanent impacts will result from replacement of Line 109 through Edgewood Park because the Avoidance and Mitigation Measures and Best Management Practices outlined in the Draft HCP are ineffective and unenforceable as detailed in the Shute Mihaly Weinberger letter. The HCP should severely limit the footprint of ground disturbing work that would be covered under this HCP in habitats that have been demonstrated to be difficult to restore such as serpentine soils and vernal pools. In addition, improved oversight and BMPs must be developed that significantly reduce the likelihood that invasive species will be introduced when performing routine operations and maintenance work in serpentine habitats, Map Book Zones and Hot Zones. During the course of the workshop, it was remarked that a lot of comments have been received regarding the Line 109 project, this is because the public is intimately aware of the impacts PG&E work has had on the Edgewood Park serpentine habitat. A question that is unsettling is, "How many other Edgewood Park scenarios are there that the public is not aware of?"

Thank you for the opportunity to submit comments on the Draft HCP. Based upon our review of the document it is evident the Draft HCP is fatally flawed and it would be inappropriate for the Service to issue a Findings of No Significant Impact until the deficiencies are rectified. We ask that we be kept informed of any future opportunities to provide comment.

Sincerely,

A handwritten signature in black ink that reads "Carin High". The signature is written in a cursive, slightly slanted style.

Carin High  
Citizens Committee to Complete the Refuge Co-Chair