

California Native Plant Society

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July 7, 2009

US Fish and Wildlife Service
Pacific-Southwest Regional Office
Attn: Mary Grim
2800 Cottage Way, Room W-2606
Sacramento, CA 95825

Ms. Grim:

On behalf of the California Native Plant Society (CNPS), I am submitting the following comments to your office regarding the Tehachapi Upper Multi-Species Habitat Conservation Plan (TUMSHCP) Draft Environmental Impact Statement (DEIS).

The California Native Plant Society (CNPS) works to protect California's native plant heritage and preserve it for future generations. We are a non-profit organization whose nearly 10,000 members work to promote native plant conservation through 32 chapters located statewide. Our comments express both general and specific concerns with the TUMSHCP DEIS.

CNPS strongly believes the DEIS fails to meet its goal as a decision-making document because of two fatal flaws:

1. The DEIS's findings of potential impacts of project alternatives to covered plant species relies, in large part, on presence/absence surveys whose design, locations, and implementation details are unpublished and therefore whose validity are uncertain; and

2. The DEIS's finding that

"...mitigation could occur entirely within Covered Lands according to the program incorporated in the Tehachapi Uplands MSHCP." (TUMSHCP DEIS p. 4.1-60)

is based upon modeling results whose accuracy and validity have not been verified by post-modeling surveys.

1. Reliance on unpublished survey data

Published results of presence/absence surveys for covered plant species conducted in Spring 2007 on portions of the Covered Lands have been withheld by the Tejon Ranch Company (TRC). Therefore it is not possible for the public to determine whether surveys were designed properly, sited in appropriate locations, and performed knowledgeably to the degree that would provide a reliable census for the plant species in question.

Additionally, contradictory statements internal to portions of the TUMSHCP (presented in bold font below) further confound an accurate assessment of existing conditions within the Covered Lands:

"Tejon poppy was not observed during surveys in the Covered Lands; however, there are numerous CNDDDB records for Tejon poppy that lie west of the Covered Lands in Kern County. The nearest occurrence is approximately 1 mile southwest of the northern section of the Covered Lands and two other occurrences are west of the Covered Lands in the Tejon Hills (CDFG 2008d; TRC 2007).

The proposed plan conserves 7,938 acres of modeled suitable habitat for Tejon poppy within Established Open Space and 186 acres within TMV Planning Area Open Space, which total 64% of modeled suitable habitat for this species. In addition, 4,411

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acres within Potential Open Space areas will be preserved if acquired for a maximum total of 12,535 acres (99%) of modeled suitable habitat for this species potentially being preserved within Covered Lands. Covered Activities would result in a loss of 106 acres (1%) of modeled suitable habitat for Tejon poppy within Covered Lands. **No individuals of Tejon poppy have been observed within the Covered Lands**, so the only loss would be that of modeled habitat until or unless future surveys reveal the species' presence in areas where Covered Activities would remove them.

Because this species was found within the surveyed portion of Covered Lands, the potential of this species to occur elsewhere within suitable habitat on non-surveyed portions of Covered Lands is high (and it is possible that pre-construction surveys could identify individuals that could be permanently lost). However, because it is unlikely that all modeled habitat would be saturated and because it is assumed that some modeled habitat may not contain microhabitat required by this species, not all modeled habitat is expected to be occupied by this species. Furthermore, because 64% of the modeled suitable habitat for Tejon poppy would be conserved within a large, unfragmented open space system, and because of the number of remaining extant populations (58) of this species in Kern County, the proposed impacts to this species as a result of Covered Activities would not substantially affect the population on site nor would it substantially affect the species in its broader range within California." (TUMSHCP pp. 6-63 and 6-64).

Taken together, the withholding of survey data from Covered Lands botanical surveys (referenced in the DEIS as Dudek 2007a, unpublished data) and these contradictory statements prevent an objective evaluation of existing conditions, and call into question the accuracy and veracity of the plant survey results. How are we to interpret and verify unpublished data for ourselves, and how can we be certain USFWS staff have been able to perform an accurate evaluation of existing conditions when unverifiable and sometimes contradictory statements within the TUMSHCP form the basis of findings in the DEIS? While these questions remain unresolved, we hold that the TUMSHCP DEIS fails to meet its NEPA mandate to rigorously explore and objectively evaluate all reasonable alternatives.

2. Lack of post-modeling surveys

Estimates of the number of acres of potential suitable habitat within the Covered Lands for covered plant species were calculated using models described in the TUMSHCP. Post-modeling surveys necessary to ground-truth the accuracy of modeling results were not performed. How accurate are the number of acres of suitable habitat within the Covered Lands that were calculated with the model? In the absence of post-modeling surveys, this question cannot be answered objectively by those reviewing the DEIS. Yet the DEIS concludes that the amount of modeled suitable habitat within the Covered Lands satisfies the mitigation requirements for all alternatives presented. We insist that modeling results presented in the TUMSHCP must first be subjected to field ground-truthing by post-modeling surveys before the modeling results can be relied upon for findings in the DEIS.

This is a fatal flaw throughout the DEIS, found in the DEIS' treatment of plant species considered for conservation under the TUMSHCP, specifically; Fort Tejon woolly sunflower (*Eriophyllum lanatum* var. *hallii*), Kusche's sandwort (*Arenaria macradenia* var. *kuschei*), Round-leaved filaree (*California macrophylla*), Striped adobe lily (*Fritillaria striata*), Tehachapi buckwheat (*Eriogonum callistum*), and Tejon poppy (*Eschscholzia lemmonii* ssp. *kernensis*).

The project proponents feel it in their best interests, and have exercised their right to withhold information by requiring consultants to sign non-disclosure statements and by referencing unpublished data. Additionally, suitable habitat models were not ground-truthed by post-modeling surveys. Together these factors throw doubt upon the validity of survey results, the accuracy of modeling criteria and modeling results, and the findings within the DEIS that rely upon both the survey and modeling results. The public's inability to interpret results as illustrated by the flaws quoted above further underscore the need for transparency in the environmental review process.

We believe these flaws in the TUMSHCP DEIS must be rectified in a supplemental EIS that requires the Tejon Ranch Company (TRC) to allow public review of survey data, and that requires the TRC to perform post-modeling surveys that verify the accuracy of modeling results. We believe that only after these flaws are addressed in a

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supplemental EIS can a full and honest consideration of the likely impacts of project alternatives be performed and a TUMSHCP DEIS be considered as having met its requirements.

Thank you for providing CNPS with the opportunity to comment on the TUMSHCP DEIS. For questions regarding our comments, please contact me at 916-447-2677 x-206.

Sincerely,



Greg Suba
Conservation Program Director
California Native Plant Society

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