May 6, 2020

Mr. Stephen P. Henry
Field Supervisor
Ventura Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Submitted electronically via sbc-oilandgasgcp@fws.gov

Re: Comments on the Draft General Conservation Plan for Oil and Gas Activities in Santa Barbara County and Draft Environmental Assessment (85 FR 13181)

Dear Mr. Henry:

The Environmental Defense Center (“EDC”) submits these comments regarding the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office’s (“Service”) Draft Environmental Assessment (“EA”) and Draft General Conservation Plan for Oil and Gas Activities in Santa Barbara County (“County”), California (“GCP”) on behalf of EDC, Sierra Club, by and through the Los Padres Chapter, and Santa Barbara County Action Network (“SBCAN”). These comments are further supported by two expert reports attached hereto produced by David Magney, a California Certified Consulting Botanist with over thirty years of experience consulting on botanical resources,¹ and Michael Bumgardner, a biological consultant with over thirty years of experience in conducting biological assessments, studies, and inventories, and developing mitigation and conservation plans.² Mr. Magney and Mr. Bumgardner’s professional resumes are attached hereto.³

³ Resume of David Magney (Attachment C); Resume of Michael Bumgardner (Attachment D).
The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and encouraging humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club’s conservation interests encompass everything from National Forest Wilderness areas of the Santa Ynez Mountains to the Channel Islands National Park in the Santa Barbara Channel. SBCAN is a countywide grassroots organization that works to promote social and economic justice, to preserve our environmental and agricultural resources, and to create sustainable communities. EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California’s south-central coast. EDC’s service area includes Santa Barbara, San Luis Obispo, and Ventura Counties.

For the reasons set forth herein, the GCP and EA must not be approved. The GCP does not achieve the most basic requirements for a conservation plan under Section 10 of the Endangered Species Act (“ESA”) and is inconsistent with the Service’s policy for general conservation plans.\(^4\) 16 U.S.C. § 1539(a)(2)(A)(i)-(iv). Despite the ESA’s purpose to conserve and recover species to a point that statutory protections are no longer needed, the misguided intent of the GCP is to “streamline the application for a section 10(a)(1)(B) incidental take permit by allowing the Service to develop a single general conservation plan for a local area.” (GCP at 3, 16 U.S.C. § 1531(b), 16 U.S.C. § 1532(3)) In the interest of efficiently permitting oil and gas activities under the ESA, the GCP encompasses an overly-broad Planning Area that even includes coastal areas, covers a wide-ranging list of complex and technical oil and gas activities, fails to identify any specific project sites, provides for a 20-year permit duration despite the fact that the average lifespans of oil and gas projects are thirty to fifty years, and includes an improperly narrow and unsupported analysis of alternatives.

Given these omissions and deficiencies in the description of the GCP’s purpose and need, the biological impacts analysis for the three species is likewise flawed. The GCP omits critical background information on the current status of the listed species and their critical habitats in reaching their survival and recovery goals, and fails to disclose all of the direct and indirect impacts that will likely result from take incidental to oil and gas activities, such as oil field fires (at least three have occurred since 2016 in the Cat Canyon Oil Field alone).\(^5\) 16 U.S.C. § 1539(a)(2)(A)(i). The incidental take figures for the three species are also unsupported or unexplained in the GCP, and the limitations of the Searcy model with regards to California tiger salamander (\textit{Ambystoma californiense}) (“CTS”) are not disclosed in the GCP. Finally, the avoidance standards are weak and unworkable, especially where no analysis of project redesign

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\(^{4}\) Memorandum from Director of U.S. Fish and Wildlife Service to Assistant Regional Directors, Regions 1, 2, 3, 4, 5, 6, and 7, and Manager, California/Nevada Operations Office, Subject: Final General Conservation Plan Policy at 1 (October 5, 2007) (hereafter referenced as “GCP Policy”).

\(^{5}\) Santa Barbara County Fire Department, 
\textit{Cat Fire Incident Report} (June 27, 2016); Santa Barbara County Fire Department, 
\textit{Lease Fire Incident Report (NFIRS-1 Basic)} (December 5, 2017); Edhat Reader, 
or alternative siting to avoid impacts is required, and many of the measures in the GCP to minimize and mitigate take will not do so to the “maximum extent practicable,” as required under Section 10. Id. Collectively, the GCP does not set forth the required information and analysis mandated under Section 10, and therefore approval of this GCP would be in violation of the ESA.

Furthermore, the preparation of an Environmental Impact Statement (“EIS”) under the National Environmental Policy Act (“NEPA”) is required because the GCP and the oil and gas activities proposed thereunder will result in significant adverse effects on the environment. Even if an EA were appropriate, the EA prepared in this case is inadequate because it fails to address the full scope of activities that may occur and fails to analyze all of the possible environmental consequences. In addition, the EA does not include an adequate discussion of alternatives, mitigation measures, or cumulative impacts.

I. Overview of the Proposed Action and Covered Species

A. The GCP Will Make It Easier for Oil and Gas Operators to Obtain a Permit to Generate More Fossil Fuel Energy in Santa Barbara County.

In 2019, a landmark report from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services found that globally, approximately one million animal and plant species are now threatened with extinction, more than ever before in human history. More than forty percent of amphibian species are threatened with extinction, and climate change is a major driver of this threat. The GCP, however, would allow the permanent take of 675 acres of CTS upland habitat, including 152 acres of federally designated CTS critical habitat, and temporary take of 1,254 acres of habitat. (GCP at 57-59) With regards to the California red-legged frog (“CRLF”) (Rana draytonii), the GCP would allow permanent take of 355 acres of CRLF critical habitat and 710 acres of temporary impacts. (GCP at 63) Notably, there is no cap on take of CRLF habitat located outside of designated CRLF critical habitat. (GCP at 59-64) Finally, the GCP would authorize permanent take of 27.5 acres of Lompoc yerba santa (“LYS”) (Eriodictyon capitatum) habitat, including 7.5 acres of critical habitat. (GCP at 64-65) The GCP would also allow injury or mortality to three CTS and ten CRLF per year as a result of vehicle-strikes along access roads. (GCP at 63)

The GCP sets the foregoing take limits for the three species throughout the 674,220 acre-Planning Area in order to provide a streamlined mechanism for oil and gas operators to comply with the statutory and regulatory requirements under the ESA for covered activities involving “geophysical exploration (seismic), development, extraction, storage, transport, remediation, and/or distribution of crude oil, natural gas, and/or other petroleum products, and construction,

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7 Id.
maintenance, operation, repair, and decommissioning of oil and gas pipelines and well field infrastructure. (GCP at 3, 5) Although the GCP fails to identify a single oil and gas project site in the County, the Planning Area does overlap with the Cat Canyon Oil Field where two operators, TerraCore and Aera Energy (“Aera”), propose to drill and operate nearly 500 new wells, utilizing carbon-intensive steam injection production methods to extract the heavy crude oil in the Field. The approval of these two projects alone would triple the County’s current onshore oil production.

B. The Santa Barbara County Distinct Population Segment of CTS is Federally-Listed as an Endangered Species.

The listing petition for the Santa Barbara County Distinct Population Segment (“DPS”) of CTS was submitted to the Service in 1992. Not until September 21, 2000 was the species federally listed as endangered, first on an emergency basis and then through a final rule. In the emergency rule, the Service found that half of the then-documented breeding sites and associated upland habitats “have been destroyed or have suffered severe degradation” in the 18 months previous, and additional planned development posed “a significant and imminent risk” to the species’ survival, considering that development had already “reduced greatly” available habitat.

At the time of listing, the Service recognized the role of oil production in contributing to CTS decline, with “oil sump ponds” potentially acting as “toxic sinks” that attract and kill adult CTS seeking breeding sites, and oil wells “burping” hydrogen sulfide gas that “settles in low-lying areas, reducing the survival rates of larvae and adults.” Additionally, runoff containing contamination from oil production was detected in ponds, and linked to CTS die-offs and deformities. Litigation was necessary in order to compel the Service to designate critical habitat. Environmental Defense Center, et al. v. U.S. Fish and Wildlife Service, et al., No. EVCD 03–00195 (C.D. Cal). After EDC prevailed in 2003, the Service issued proposed and final designations in 2004.

Litigation was necessary in order to compel the Service to designate critical habitat. Environmental Defense Center, et al. v. U.S. Fish and Wildlife Service, et al., No. EVCD 03–00195 (C.D. Cal). After EDC prevailed in 2003, the Service issued proposed and final designations in 2004. While these events were pending, the Service also attempted to downgrade the status of CTS to threatened, and to de-categorize the Santa Barbara CTS as a DPS, as part of a court-approved consent decree in which the Service was supposed to be adding protections for CTS by listing the Central California population, rather than removing protections for the Santa Barbara population. Compare Center for Biological Diversity v. U.S.

8 Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Redevelopment Plan (November 2018); Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan (February 2019).
13 Id.; See also 65 Fed. Reg. 57242, 57253, 57257.
14 Id.; See also 65 Fed. Reg. at 57258.
EDC challenged this effort in court, and the court restored both the endangered status of CTS and the designation of Santa Barbara population as a DPS, recognizing that the final rule was “bereft of any analysis” to support the decision to eliminate the population categories, and “neither the final rule nor the record indicate any discernible path regarding why FWS eventually down-listed the populations.” *Ctr. for Biological Diversity v. United States Fish and Wildlife Service*, 2005 WL 2000928, at *13-14 (N.D. Cal. 2005).

In 2012, environmental groups had to sue again to compel the Service to complete the recovery plan for the Santa Barbara County DPS for CTS, with a proper plan finally put in place due to a settlement agreement in the litigation in 2016,17 *Center for Biological Diversity v. Salazar*, No. CV 12 1767 JCS, 2012 WL 1237865 (N.D. Cal. Apr. 12, 2012) (complaint). Getting close to thirty years after the initial listing petition and twenty years after the listing, EDC again must challenge the proposed approach to conservation planning for CTS for the reasons set forth in these comments on the GCP.

CTS use aquatic and upland habitats during their life cycle and as such, may be present in either or both habitats on a given property.18 CTS spend most of their life below ground in burrow systems that are created and maintained by rodents. (GCP at 30) However, winter rains cause CTS to emerge from underground burrows in search of breeding ponds. *(Id.)* “Currently, there are approximately 60 known extant tiger salamander breeding ponds in Santa Barbara County (Service 2009) distributed across the six metapopulations….” *(Id. at 35)* CTS populations are more or less distributed around breeding sites (seasonal pools and ponds) and populations that are linked by dispersal form a ‘metapopulation.’ *(Id. at 31-32, 34)* The existing geographic range of CTS in Santa Barbara County is distributed as six clusters of breeding sites (labeled as ‘metapopulations’) across a series of hill and valley landforms. *(Id. at 32-33)* Anthropogenic factors have significantly fragmented and isolated each of these metapopulations so that there is no longer any genetic interchange between them. (GCP at 34, 36) “The loss, destruction, degradation, and fragmentation of habitat represents the primary threats to” CTS. *(Id. at 35)*

“Additional threats to the species include hybridization with non-native tiger salamanders, predation and competition by non-native species, vehicle-strike mortality, and lack of regulatory compliance. Other potential threats include contaminants, disease, and climate change.” *(Id.)*

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16 FWS apparently issued the proposed rule at the behest of a variety of industry groups, who had challenged the CTS listing and designation of distinct population segments in court. *Home Builders Ass’n of N. Cal. v. Williams*, No. S-04-0345 LKE GG (E.D. Cal.) (dismissed as moot in light of the FWS proposed rule).


C. The CRLF is Federally-Listed as Threatened and Has Been Extirpated or Nearly Extirpated from Seventy Percent of Its Former Range.

CRLF is endemic to California and Baja California, Mexico, at elevations ranging from sea level to approximately 5,000 feet. Monterey, San Luis Obispo, and Santa Barbara Counties support the largest extent of currently occupied habitat. On May 23, 1996, the species was federally listed under the ESA as a threatened species throughout its range in California. The species has sustained a seventy percent reduction in its geographic range in California as a result of several factors acting singly or in combination. EDC played a major role in winning protection for the CRLF as a threatened species in litigation to compel the final determination on the proposed rule that CRLF be listed under the ESA. Environmental Defense Center v. Babbitt, 73 F.3d 867 (9th Cir. 1995).

CRLF occur in different habitats depending on their life stage, the season, and weather conditions. Rangewide, and even within local populations, there is much variation in how frogs use their environment; in some cases, they may complete their entire life cycle in a particular habitat (i.e., a pond is suitable for all life stages), and in other cases, they may seek multiple habitat types. Generally speaking, CRLF combine both specific aquatic and riparian components. The adults require dense, shrubby or emergent riparian vegetation closely associated with deep, still or slow-moving water. The largest densities of CRLF are associated with deep-water pools with dense stands of overhanging willows and an intermixed fringe of cattails. However, CRLF have been found up to thirty meters (ninety-eight feet (ft)) from water in adjacent dense riparian vegetation for up to seventy-seven days. Well-vegetated terrestrial areas within the riparian corridor may provide important sheltering habitat during winter.

In Santa Barbara County, the species is typically located in perennial front and back country creeks and rivers in the southern Los Padres National Forest. The species are also present in Gaviota Creek and many perennial creeks along the Gaviota Coast. In the past, the species has been an issue in projects such as Colson Quarry (La Brea Creek), and Fox, McCoy, and Alder Creeks (water diversion projects).

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20 Id.
25 Id.
26 Id.
27 Id.
28 Id.
Breeding sites for CRLF generally entail deep, still or slow-moving water. CRLF can breed at sites with dense shrubby riparian or emergent vegetation, such as cattails, tules, or overhanging willows or can proliferate in ponds devoid of emergent vegetation and any apparent vegetative cover, such stock ponds. The CRLF disperse upstream and downstream of their breeding habitat to forage and seek estivation habitat. Estivation habitat, and the ability to reach estivation habitat, is essential for the survival of the species within a watershed. Estivation habitat for CRLF is potentially all aquatic and riparian areas within the range of the species and includes any landscape features that provide cover and moisture during the dry season within 300 feet of a riparian area.

A number of species prey on CRLF, including raccoons, garter snakes, bass, sunfish, mosquito fish, herons, egrets, cats, foxes, coyotes, and most importantly, the introduced American bullfrog. The most secure aggregations of CRLF are found in aquatic sites that support substantial riparian and aquatic vegetation for cover and lack exotic predators. Nevertheless, the fragmentation of existing habitat and the continued colonization of existing habitat by nonnative species may represent the most significant current threats to CRLF. Over-harvesting, habitat loss, non-native species introduction, and urban encroachment are other primary factors that have negatively affected CRLF throughout its range. (GCP at 45)

D. The Current Distribution of LYS is Restricted and Only Five Known Populations Exist, Significantly Heightening the Risk of this Species’ Extinction.

In April 19, 2000, LYS was listed as endangered pursuant to the ESA and state-listed as rare. LYS critical habitat was designated on November 7, 2002. This species occurs along the south-central California coast and is endemic to western Santa Barbara County. This species occurs in sensitive habitats, including central sage scrub, maritime chaparral, and southern bishop pine forest. (GCP at 46)

There are only five known populations of LYS, two in the Solomon Hills, two on the western portion of Burton Mesa (both of which are on Vandenberg AFB), and one in the Santa Ynez Mountains on Hollister Ranch about 10 miles south of Lompoc. “Based on our current understanding of E. capitatum, there are no more than 68 or 69 individual plants exist, each

30 Greater than 2.5 feet.
33 Id.
34 Id.
35 Id.
36 Id.
37 Id.
38 50 C.F.R. 17; Magney at 3.
40 Magney at 4.
presenting as either small or large clones. This means that the genetic variability of *E. capitatum* is extremely limited, which also means that it has higher vulnerability, or lower ability, to adapt to changes in its environment, such as from disease or climate change.”

The limited, restricted distribution and small population sizes of LYS makes it more vulnerable and at risk of extinction due to stochastic events. (GCP at 52) “All or some of the populations are at risk of destruction from vegetation clearing, oil and gas exploration and extraction, urban development, agriculture (including over-grazing), too frequent wildfires (CNPS 2001), competition from invasive exotic plants (D’Antonio et al. 1993) and animals (feral pigs), and/or climate change (Myers et al. 2019).” In particular, oil and gas development in the County threatens the survival of the species because these activities significantly reduce its habitat. Expansion of well pads, pipeline installation, oil seeps, surface expressions, installation and maintenance of existing and new oil seep cans, and potential future pipeline spills have the potential for short-term and permanent degradation or loss of habitat for LYS.

II. **Legal Background**

Implementing the conservation strategy proposed under the GCP will require compliance with various provisions under both the ESA and NEPA. The issuance of Incidental Take Permit (“ITPs”) triggers the statutory requirements set forth under Section 7 and Section 10 under the ESA. Additionally, the Service’s proposed action will require a full environmental review under NEPA.

### A. Endangered Species Act

The ESA, 16 U.S.C. §§ 1531, *et seq.*, is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley Authority v. Hill* 437 U.S. 153, 180 (1978). The statute’s fundamental purposes are “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species.…” 16 U.S.C. § 1531(b). To achieve these objectives, the ESA directs the Service and the National Marine Fisheries Service (“NMFS”) to determine which species of plants and animals are “threatened” and “endangered” and place them on the list of protected species. 16 U.S.C. § 1533(a)(1). An “endangered” species is one “in danger of extinction throughout all or a significant portion of its range,” and a “threatened” species is one “likely to become endangered in the near future throughout all or a significant portion of its range.” *Id.*; 16 U.S.C. §§ 1532(6); 1532(20).

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41 *Id.* at 11.
42 *Id.* at 4-5.
44 The Service and NMFS share responsibility for implementing the ESA. 16 U.S.C. § 1532(15). The Service retains jurisdiction over terrestrial species and freshwater aquatic species, while NMFS retains jurisdiction over marine species and most anadromous fish.

Section 10 of the Act provides exceptions for activities otherwise prohibited by Section 9. 16 U.S.C. § 1539. Section 10(a)(1)(A) authorizes the Services to issue an ITP for any taking that is incidental to “an otherwise lawful activity.” 16 U.S.C. § 1539(a)(1)(B) However, an ITP may not be issued unless the applicant submits a habitat conservation plan (“HCP”) that meets certain requirements. See 16 U.S.C. § 1539(a)(2)(A); see also National Wildlife Federation v. Babbitt, 128 F.Supp.2d 1274, 1291 (2000) (held issuance of ITP to member of regional group which planned to engage in immediate development was arbitrary and capricious.)

Section 10(a)(2)(A) requires that an HCP specify: (1) “the impact which will likely result from such taking;” (2) “steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;” (3) “alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized;” and (4) “other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.” 16 U.S.C. § 1539(a)(2)(A)(i)-(iv). The Service must only issue an ITP upon finding that “the taking will be incidental;” “the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;” “the applicant will ensure that adequate funding for the plan will be provided;” “the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;” and “other measures required by the Secretary will be met.” 16 U.S.C. § 1539(a)(2)(B)(i)-(v).

Finally, Section 7 of the ESA requires federal agencies to consult with the Service and/or NMFS to ensure that “any action authorized, funded, or carried out by such agency…is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification” of critical habitat. 16 U.S.C. § 1536(a)(2). The consultation process is designed “to ensure compliance with the [ESA’s] substantive provisions.” Thomas v. Peterson, 753 F.2d 754, 764 (9th Cir. 1985). “Issuance of an incidental take permit by the Service, pursuant to section 10(a)(1)(B), constitutes a Federal action that is subject to the requirements of section 7(a)(2), and the Service must prepare an internal consultation to address the effects of the permit issuance.” (GCP at 7)

Formal consultation under Section 7 mandates the issuance of a biological opinion (“BiOp”) to set forth the determination about whether the proposed action is likely to jeopardize a listed species or destroy or adversely modify its critical habitat. 16 U.S.C. § 1536(b)(3)(A). The BiOp must use the best available scientific information to evaluate the current status of the species and habitats, the effects of the action on species conservation, and the cumulative effects. 16 U.S.C § 1536(a)(2), (b)(3)(A); 50 C.F.R. §§ 402.14(g)-(h), 402.02. If the action will not cause jeopardy, based on the analysis in the BiOp, the Service may authorize incidental take and issue an incidental take statement (“ITS”). Id.
B. National Environmental Policy Act

NEPA is “our basic national charter for protection of the environment” and “promote[s] efforts which will prevent or eliminate damage to the environment and biosphere….“40 C.F.R. § 1500.1; 42 U.S.C. § 4321. The scope of NEPA is quite broad, mandating disclosure and consideration of direct and indirect environmental effects. 40 C.F.R. §§ 1502.14(a), 1508(b). Direct effects are caused by the action and occur at the same time and place as the proposed project. 40 C.F.R. § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distances, but are still reasonably foreseeable. 40 C.F.R. §§ 1508.8(a), 1508.8(b). Both direct and indirect impacts include “effects on natural resources, structures, and functioning of affected ecosystems.” 40 C.F.R. §§ 1508.8(a), 1508.7.

Additionally, NEPA mandates disclosure and consideration of “connected,” “cumulative,” and “similar” environmental effects. 40 C.F.R. §§1502.14(a), 1508(b). A cumulative impact is defined as:

“the impact on the environment which results from the incremental impact of the action when added to the other past, present, and reasonably foreseeable future actions regardless of which agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

NEPA requires each federal agency to prepare, and circulate for public review and comment, a detailed environmental impact statement (“EIS”) prior to undertaking any major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C). American Horse Protection Ass’n, Inc. v. Andrus 608 F.2d 811, 815 (1979). An EIS functions to disclose information to not only inform the federal agencies of a proposed action’s potential environmental effects, but also to disclose this information to the public. 40 C.F.R. § 1502.1. As such, an EIS is critical to ensure informed decision-making and that the public is able to engage in a full and fair discussion of the potentially significant environmental impacts of a proposed project. “The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government.” Id. “An environmental impact statement is [thus] more than a disclosure document … [i]t shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.” Id.

NEPA and its implementing regulations embody a precautionary approach under which an agency must prepare an EIS when there is a substantial question whether there may be any significant impacts. Klamath Siskiyou Wildlands Center v. Boody 468 F.3d 549, 562 (9th Cir. 2006) (EIS “must be prepared if substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor.”); see also Idaho Sporting

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45 40 C.F.R. § 1508.18.
46 40 C.F.R. § 1508.27.
Congress v. Thomas, 137 F.3d 1146, 1150 (9th Cir. 1998) (“[A] plaintiff need not show that significant effects will in fact occur, but if the plaintiff raises substantial questions whether a project may have a significant effect, an EIS must be prepared.”). In considering the threshold for preparing an EIS, the Ninth Circuit has repeatedly emphasized that “[t]his is a low standard.”

Klamath Siskiyou Wildlands Center, 468 F.3d at 562.

C. Coastal Zone Management Act

The GCP includes the coastal zone in the Planning Area; therefore, the Coastal Zone Management Act (“CZMA,” 16 U.S. C. §§ 1451 et seq.) applies. Under the CZMA, the State of California must be allowed to review the GCP to ensure its consistency with the State’s Coastal Management Program. 16 U.S.C. § 1456(c)(1)(A).

III. Argument

A. The GCP Violates the ESA and its Implementing Regulations and Does Not Ensure Consistency with the CZMA.

The GCP must “specify the amount of take anticipated, avoidance and minimization measures, mitigation required, and any other measures necessary to meet the issuance criteria as required by section 10(a)(2)(B) of the Act.” While a landscape-scale approach to conservation planning is an appropriate tool under certain circumstances, this GCP is too ambitious in scope and scale to constitute a legally-defensible plan under Section 10 of the ESA. Encompassing all oil and gas activities from exploration through decommissioning for 674,220 acres within the County, the GCP fails to specify the impacts which will likely result from take of the three species and as a result, does not adequately determine what steps to take to avoid, minimize and mitigate such impacts. (GCP at 5, 16 U.S.C. § 1539(a)(2)(A)) The GCP also improperly limits the scope of alternatives to only the no action alternative, which is summarily dismissed without adequate consideration.

The GCP is intended to set the course for conservation planning for CTS, CRLF, and LYS over the course of twenty-plus years. Challenges arise with landscape-scale plan areas, such as:

- “biological information such as species occurrence and habitat conditions may be less available and more difficult to acquire for a large plan area;”
- less data availability for large plan areas can lead to greater uncertainties associated with the impacts of implementing these HCPs;
- more robust monitoring and adaptive management programs are often needed to address the uncertainties associated with large plan areas; …”

47 GCP Policy at 3.
48 Id. at 6-3.
As evidenced by the numerous omissions and unsupported analysis in the GCP, the challenges associated with regional and multi-species conservation planning are difficulties that this GCP has not overcome. For the reasons set forth herein, the GCP must not be utilized as the conservation planning strategy to issue ITPs pursuant to Section 10(a)(1)(B) of the ESA for oil and gas activities in Santa Barbara County.

1. **The GCP Purpose and Need Statement is Inadequate.**

To inform the GCP and EA, the proposed action must be adequately defined to ensure that the impacts and alternatives are sufficiently addressed. See 43 CFR § 46.420(a)(1). The Service’s purpose and need, however, is distinct from that of an applicant. The Service must not consider the need for the particular development, like oil and gas activities, but instead determine whether the activity complies with the requirements under the ESA. For the reasons detailed below, the purpose and need for the GCP fails to fulfill the Service’s conservation obligations under Section 10 of the ESA, focusing instead on streamlining the ITP process for the benefit of oil and gas operators. (GCP at 3)

a. **The GCPViolates the ESA and Its Implementing Regulations.**

The GCP would significantly curtail the recovery efforts for the species covered under the plan and sets forth highly questionable mitigation measures, violating the fundamental objectives of the ESA—“to halt and reverse the trend toward species extinction, whatever the cost.”

It is well-established that agency decisions must not be inconsistent with the governing statute. Although the purpose of the ESA is to protect and preserve species, Section 10 of the ESA provides a narrow exception for take upon issuance of an ITP. Prior to issuing an ITP, the applicant must submit a conservation plan, the purpose of which is to ensure adequate minimization and mitigation of the effects of any incidental take. Such a plan must specify:

- “the impact which will likely result from such taking;
- what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
- what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
- such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.”


50 *Id.*
Subsequently, an ITP may be issued upon finding that:

- “the taking will be incidental;
- the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- the applicant will ensure that adequate funding for the plan will be provided;
- the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; ....” 16 U.S.C. § 1539(a)(2)(B)(i)-(v).

Despite the clear process for habitat conservation planning under the ESA, the Service here initiated the GCP approach for the improper purpose of “streamlin[ing] the application for a section 10(a)(1)(B) incidental take permit by allowing the Service to develop a single general conservation plan for a local area.” (GCP at 3) As utilized here, the GCP manipulates the incidental take exception to entirely swallow the rule against harm to species and adverse modification of habitat.

1. The GCP Fails to Consider the Geographic Scope of the Planned Activities and Therefore the Planning Area is Overly-broad.

Section 10 of the ESA mandates that no ITP may be issued unless the applicant submits an HCP that meets certain requirements. 16 U.S.C. § 1539(a)(2)(A). One such requirement is that prior to issuing an ITP, there must be consideration of the “geographic scope of the applicant’s planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.” 50 C.F.R. § 17.22(b)(2)(ii). The HCP Handbook further explains that “[t]he general conservation plan’s plan area should be tailored to the prospective covered activities and conservation needs of the affected species. The Services define the type of activity and applicant who would qualify to participate in the general conservation plan.” 51

The Planning Area for the GCP is an estimated 674,220 acres, including areas within the California coastal zone. (GCP at 5) The Planning Area spans nearly the entirety of Santa Barbara County and comprises some oil and gas fields as well as agricultural lands, undeveloped lands, and urban development. (Id. at 6) Yet, the GCP admits that “[t]he Covered Activities would not affect all of the Planning Area,” and that most covered activities occur “within northern Santa Barbara County, California.” (Id. at 4-5) Despite the fact that the “plan area should be tailored to the prospective covered activities and conservation needs of the affected species,” the Planning Area here extends substantially beyond such areas without any explanation. 52 This analysis is improperly missing from the GCP. The GCP is silent as to where oil and gas operations occur within the Planning Area or why coastal areas within the County are included under the GCP.

51 Id.
Moreover, Section 10 requires that an HCP must specify “the impact which will likely result from such taking.” 16 U.S.C. §1539(a)(2)(A)(i). “[T]he area analyzed to determine the impact of the taking on a covered species is the entire range of that species. However, this analysis is often conducted using a stepwise approach with local and intermediate areas analyzed such as the area occupied by a local population and a recovery unit.”53 Despite the clear requirements under ESA implementing regulations and the Service’s own guidance, the GCP Planning Area comprises nearly the entire County, including lands not suitable for oil and gas development. Given the failure of the GCP to provide any basis for the massive geographic scope of the Planning Area, the analysis in the GCP is too speculative to comply with Section 10 of the ESA.

ii. The GCP Fails to Identify or Discuss Any Project Sites within the Planning Area.

The GCP does not adequately identify the projects eligible to participate in the Plan and fails to specify where such projects occur throughout the County.54 Although the GCP defines the term “Project Area,” there is no further discussion about the project areas throughout the County or the projects that may apply. (GCP at 5)

iii. The Twenty-Year Permit Duration Lacks a Rational Basis When Considering the Duration of the Covered Activities and the Impacts Associated with Oil and Gas Activities.

Pursuant to regulations under the ESA, “[i]n determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.” 50 C.F.R. § 17.22(b)(4). The GCP provides no explanation or scientific basis for covering incidental take associated with oil and gas activities “for up to 20 years after Permit issuance.” (GCP at 6)

The Service’s guidance in the Handbook emphasizes the importance of carefully considering permit duration for a general conservation plan because “[t]hese considerations directly influence the analysis of effects in the plan.”55 The recommended approach is “to consider total ‘build-out’ in the plan area over a projected period.”56 Here, no analysis is provided in the GCP with regards to the 20-year permit duration. Setting the individual permit duration to a maximum of 20 years may present serious problems given that the project life for most oil and gas projects is at least thirty years. For example, the project life for the two massive

53 Id. at 6-4.
54 Id.
55 Id.
56 Id.
onshore oil projects proposed in Cat Canyon Oil Field are estimated to range from thirty to fifty years or more.  

Moreover, decommissioning, as a covered activity in the GCP, may not occur for decades after an oil and gas development project is approved and therefore could be after the ITP expires. (GCP at 21, 26) If an ITP issued under this GCP were to terminate years before decommissioning, the permitees would be required to prepare HCPs to apply for ITPs outside of the GCP process, ultimately reducing the streamlining and efficiency purposes of the GCP. (GCP at 3; EA at 1-2) Similar concerns were raised by the California Coastal Commission in the letter dated May 4, 2020 concerning the GCP.  

Given the foregoing considerations, the GCP must provide a thorough explanation of the considerations for the 20-year ITP duration and also describe how the duration identified in the GCP ties into the purpose and need for the GCP.  

Finally, there are inconsistencies in the GCP and EA about the duration of the GCP as compared to the duration of the ITPs. (GCP at 6, EA at 7-1). Please clarify the duration for both ITPs and the GCP itself.  

iv. The GCP Contains a Legally Inadequate Discussion of Alternatives.  

The ESA requires an applicant for an ITP to prepare an HCP that includes a discussion of “what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized.” 16 U.S.C. § 1539(a)(2)(A)(iii). To satisfy this statutory standard, the Service “must make an independent determination of practicability and make a finding that the impacts of the taking will be minimized and mitigated ‘to the maximum extent practicable.’” Sw. Ctr. For Biological Diversity v. Bartel, 470 F. Supp. 2d 1118, 1158 (S.D. Cal. 2006), appeal dismissed and remanded, 409 F. Appx 143 (9th Cir. 2011); citing to 16 U.S.C. § 1539(a)(2)(B)(iii). An ITP for a “less protective proposal” must not be issued if an “alternative that would have provided more mitigation or caused less harm to the endangered species” was feasible, but nevertheless rejected. Id.  

Although the case law does not suggest that more than one alternative must be considered, the courts have required at least a showing that alternatives resulting in less take and additional mitigation measures were actually considered. See Union Neighbors United, Inc. v. Jewel, 831 F.3d 564, 576 (D.C. Cir. 2016); National Wildlife Federation v. Babbitt, 128 F. Supp. 2d at 1292–93.  

Here, the GCP severely limited the alternatives analysis to address only the no action alternative, which was summarily dismissed on the grounds that no action would not achieve the

57 Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 2-5 (February 2019); See also Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Oilfield Redevelopment Project at 2-2 (November 2018).
58 Letter to Stephen P. Henry from Kate Huckelbridge regarding Draft Environmental Assessment and Draft General Conservation Plan for Oil and Gas Activities in Santa Barbara County, CA, at 3 (May 4, 2020).
needs of the project proponents. (GCP at 13) No explanation is provided to support the decision to analyze only one alternative. The failure to meaningfully consider additional alternatives that would cause less take is a glaring omission in the GCP that violates the statutory standard. Compare the alternatives analysis in this GCP with the facts in Union Neighbors United. There, the D.C. Circuit rejected an ITP as arbitrary and capricious in violation of NEPA where, “viewing the range of alternatives through the lens of its stated goals, the Service failed to consider a reasonable range of alternatives because it did not consider any reasonable alternative that would be economically feasible while taking fewer bats than Buckeye’s proposal.” 831 F.3d at 576.

Likewise, the lack of consideration in the GCP of any reasonable alternative that would involve less take is arbitrary and capricious.

In National Wildlife Federation v. Babbitt, the Eastern District of California rejected the issuance of an ITP because of the three alternatives analyzed, none involved additional mitigation measures. 128 F. Supp. 2d at 1292–93. The court determined that the duty under the ESA to minimize and mitigate impacts “to the maximum extent practicable” mandated consideration of alternatives involving greater mitigation and the failure to consider additional mitigation was a violation of the ESA. Id.; citing to Sierra Club v. Babbitt, 15 F.Supp.2d 1274, 1282 (S.D.Ala.1998)(“The Administrative Record must contain some analysis of why the level or amount selected is appropriate for the particular project at issue.”) Thus, as applied here, the GCP’s swift rejection of only one alternative is an improperly limited analysis of alternatives to the proposed incidental taking of CTS, CRLF, and LYS in violation of the ESA.

Additionally, Section 10 of the ESA requires the GCP to actually consider the no action alternative, but this analysis was improperly omitted from the GCP. (GCP at 13) As compared to the taking allowed under the GCP, the no action alternative would minimize take and maximize recovery without worsening climate change and fires, or increasing threats from spills of oil and produced water. This alternative would prevent take of the three species caused by vehicle-strikes, loss of upland and dispersal habitat, crushing, entombment, spills, and fires. (Id.) The alternative would also decrease the indirect effects of oily stormwater runoff entering into breeding ponds, which harm CTS.59 The conservation of CTS through stakeholder collaboration to purchase habitat easements and restore habitats through grants, as envisioned in the Recovery Plan, is also possible under the no action alternative.60 For example, recently in April 2020, the Land Trust for Santa Barbara County purchased a 118-acre conservation easement from a private

59 U.S. Fish and Wildlife Service, Recovery Plan for the Santa Barbara County Distinct Population Segment of the California Tiger Salamander (Ambystoma californiense) at I-18 (December 12, 2016) (“Oil and other contaminants in runoff from roads have been detected in adjacent ponds and have been linked to die-offs of, and deformities in, California tiger salamanders and spadefoot toads, and die-offs of invertebrates that form most of both species’ prey base (Sweet 1993). Several known breeding ponds occur along secondary roads and highways in northern Santa Barbara County and may be threatened by oil and other contaminants from road runoff.”)

60 Id. at I-20 – I-22.
landowner to permanently preserve critical habitat for CTS. The property hosts the largest natural vernal pond in the County, the protection of which is vital for CTS survival. The collaboration between private landowners, organizations like the Land Trust, and the Service to conserve and recover CTS in the County will be used as a model for future acquisitions and is recognized as “[t]he only way to ensure [CTS] persist[] in the wild,...” Thus, achieving the conservation goals for the species through stakeholder collaboration under the no action alternative would minimize take to the maximum extent practicable, as required by Section 10 of the ESA. 16 U.S.C. §1539(a)(2)(A)(ii).

The no action alternative also achieves Biological Goal 1 for CTS and CRLF to “[a]void and minimize take and related disturbance” by “avoid[ing] any actions that could result in take of federally listed-species.” (GCP at 13, 66) Comparatively, the GCP allows for the permanent take of up to 675 acres of upland CTS habitat, 355 acres of CRLF critical habitat, and 27.5 acres of LYS stands. (GCP at 57-66) The no action alternative also accomplishes Biological Goal 2 by preserving and maintaining suitable and occupied upland habitats. (GCP at 66-67) To the contrary, the GCP would open the door for hundreds of acres to be graded within CRLF and CTS upland habitats and the permanent loss of designated critical habitat for all three species. (GCP at 58 – 65) Finally, the no action alternative better achieves Biological Goals 3 and 4 by avoiding LYS, whereas the GCP allows take of 27.5 acres of LYS. (GCP at 65) The aforementioned analysis was improperly omitted from the GCP and clearly demonstrates that the no action alternative best conserves CTS, CRLF, and LYS by avoiding significant impacts to the species, while allowing oil and gas activities that do not cause take. For activities where take cannot be avoided, project proponents could simply apply for an ITP and develop an HCP to comply with the ESA. (EA at 2-17) Thus, the GCP incorrectly asserts that the no action alternative “would not meet the needs of project proponents.” (GCP at 13)

In sum, the GCP does not meet the statutory obligations under the ESA given that only the no action alternative was identified, and the GCP provided an inadequate consideration of this alternative.

b. The GCP is Inconsistent with the Service’s Policy for General Conservation Plans.

The ESA does not envision general conservation planning as a tool for species protection. Rather, this concept was developed by the Service and memorialized in a memorandum detailing the general conservation plan policy ("Policy" or "GCP Policy"). The express purpose for the Policy is to "streamlin[e] and reduc[e] the processes associated with developing Habitat Conservation Plans (HCPs) under section 10(a)(1)(B) of the Endangered Species Act (Act)."  

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61 Land Trust of Santa Barbara County, Land Trust Conservation on Lompoc Farm Receives State Funds (May 5, 2020).
62 Id.
63 Id.
64 GCP Policy at 1.
65 Id.
Alarming[ly], the Policy admits that the GCP process “eliminat[es] the need for in-depth review of each application.”66 Although the Policy acknowledges that a GCP must be compliant with the issuance criteria under Section 10, the Policy also states that the GCP approach reduces the processes involved in developing a HCP to allow for “formulaic” issuance of ITPs, ultimately “eliminating the need for in-depth review of each application.”67 Streamlining the review process for ITPs in the interest of oil and gas activities will undoubtedly result in the failure to conduct an adequate analysis of the impacts and thus is inconsistent with Section 10 requirements.

The Policy acknowledges that the GCP approach is not recommended in all situations and has limitations.68 For example, the Policy explains that the GCP process is appropriate “where a large-scale HCP covering many similar actions is needed, but where such a plan is not available or feasible.”69 Here, no showing has been made to demonstrate the need for the GCP. Instead, the Service’s decision to draft the GCP solely appears to be based on the fact that oil and gas companies requested that the Service utilize the GCP process to expedite the processing of future projects.70 However, permitting oil and gas activities in the County should not be rushed and environmental review should not be reduced. Without the requisite showing to support the need for the GCP process, there is no basis for circumventing the express HCP procedures under the ESA.

Finally, the Policy expressly states that it is intended to benefit small landowners who are burdened in time and expense by the HCP process.71 Here, prospective applicants are sophisticated, resource-rich oil and gas companies—a far cry from “small landowners.” The oil companies should bear the burden of drafting their own individual HCPs rather than place the burden on the Service and reap the benefits of an expedited, streamlined permitting process.

c. The GCP Improperly Omits Critical Information about Activities in the Coastal Area.

The Santa Barbara coastline is purportedly included in the GCP Planning Area, but the GCP entirely omits any discussion about which oil and gas activities are currently occurring or may occur in coastal areas. (GCP at 5) Without an understanding of what activities are in the coastal area, potential impacts to the three listed species remain unknown, unassessed, and unmitigated. Moreover, if the County’s coastal areas are included in the Planning Area, the GCP and EA must assess the applicability of the CZMA, California Coastal Act, and the County’s Local Coastal Program.

66 Id.
67 Id.
68 Id.
69 Id.
70 E-mail from Robyn Gerstenslager, U.S. Fish & Wildlife Service, Ventura Fish & Wildlife Office, Public Affairs Specialist, to Wendy Motta, District Representative, Office of Representative Salud Carbajal (August 18, 2017).
71 GCP Policy at 1.
2. The Oil and Gas Activities Covered under the GCP are Numerous and Highly-complex, Which Severely Weakens the Adequacy of the GCP as a Conservation Planning Tool.

Pursuant to Section 10 of the ESA, covered activities in a conservation plan must be: (1) otherwise lawful, (2) non-Federal, and (3) under the direct control of the permittee. 16 U.S.C. §1539(a)(1)(A)-(B). The Handbook explains that covered activities may be of any scale, but there are challenges to consider in identifying covered activities, including, but not limited to, “increased complexities with understanding multiple activities and all the various resulting impacts, developing a variety of activity-specific minimization measures, […] developing more complex monitoring and adaptive management programs necessary for the suite of covered activities; and difficulties in understanding proposed activities when multiple competing commercial entities under a single HCP must protect proprietary business information.”

For the reasons identified below, the GCP fails to adequately consider the aforementioned challenges in selecting the scope of covered activities and is therefore deficient.

a. The Laundry List of Covered Activities in the GCP Confirms that a General Conservation Plan is the Wrong Conservation Tool for Oil and Gas Activities in Santa Barbara County.

The covered activities in the GCP range from exploration to decommissioning—and nearly everything in between. (GCP at 14) The covered activities involve highly complex and technical activities associated with oil and gas development, including, but not limited to, geophysical exploration, well drilling, installation of renewable energy facilities, pipeline construction, and decommissioning. (GCP at 14-27) Under Section 10 of the ESA, a conservation plan must analyze each activity and how the activity would impact the species for which incidental take coverage would be available. For this reason, the Policy states that a “GCP will be most useful in situations in which a smaller subset of activities, such as building single family homes, a specific type of agricultural practice, or similar activities of limited scope can be described and their impacts to listed species and their habitats can be adequately analyzed by the Service.”

To the contrary here, the numerous activities covered by the GCP are wide-ranging and dissimilar, involving specific processes and equipment as well as a host of different impacts. Given the scope of activities covered under the GCP, the analysis of the impacts to listed species and their habitats is severely deficient, as discussed in more detail in these comments. For the foregoing reasons, a general conservation plan is simply not the proper conservation planning tool for multifaceted and extremely technical oil and gas activities.

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72 HCP Handbook at 5-3.
73 Id. at 5-1.
74 Memorandum from Director of U.S. Fish and Wildlife Service to Assistant Regional Directors, Regions 1, 2, 3, 4, 5, 6, and 7, and Manager, California/Nevada Operations Office, Subject: Final General Conservation Plan Policy at 4 (October 5, 2007) (emphasis added).
Moreover, the Policy recognizes that a significant limitation of a general conservation plan is that its scope is “limited to what Service personnel can effectively analyze.”\textsuperscript{75} Here, the oil and gas activities covered under the GCP involve a specialized area of expertise and technical background. In fact, the GCP admits that “[i]ndustry standards, disturbance area estimates, and averages were obtained primarily from representatives of the oil and gas industry….”\textsuperscript{76} (GCP at 14) Rather than narrow the scope of covered activities, the GCP sets forth an inadequate analysis that fails to acknowledge the host of limitations and assumptions.

The foregoing underscores the flaws inherent in a broad GCP as opposed to a project-specific HCP. Without any actual project applications, the GCP can only engage in pure speculation as a means of projecting what the actual impacts on the covered species will be from the laundry list of covered activities, essentially throwing a dart into the midst of 674,220 acres spread throughout the Santa Maria Valley, San Antonio Creek, Lompoc Valley, Santa Ynez Valley, Cuyama Valley, and a portion of the Santa Barbara Coastline.

\textit{b. The GCP is Inconsistent in Covering Oil Seep Management, but Omitting Oil Spill Cleanup and Management as a Covered Activity.}

Oil spill management is not listed as a covered activity in the GCP. (GCP at 14 – 27) Oil seep management, however, is covered by the GCP. (GCP at 21 and 24 – 25) The GCP's approach is inconsistent because oil spill management and oil seep management involve similar responsive actions, such as vegetation removal in similar areas, like terrestrial habitats. Therefore, oil seep management should be excluded from covered activities for consistency.

\textit{c. The GCP is Unclear with Respect to Whether Soil Remediation is a Covered Activity.}

The GCP states that it covers oil and gas development, including “remediation.” (GCP at 4) However, the description of covered activities under “Decommissioning and Reclamation” does not list soil remediation as a covered activity. (GCP at 26)

\textit{d. Wind Energy Projects Serving Oil and Gas Projects are Limited to 300 Kilowatts, but No Such Limit is Provided for Solar Projects Serving Oil and Gas Projects.}

The GCP covers renewable energy projects serving oil and gas operations and would cover wind turbine projects between 50 kW and 300 kW. (GCP at 20) However, solar photovoltaic (“PV”) projects serving oil and gas production, which also can disturb habitat and cause take, are not limited by kilowatts. (GCP at 20) The GCP must include a limit on the energy

\textsuperscript{75} Id. at 5.
\textsuperscript{76} “It is disturbing that the USFWS is willing to accept at face value what oil industry standards and disturbance area estimates are allowed when other USDI services have expertise in oil and gas exploration activities.” Magney at 4.
capacity for solar projects to minimize take to the maximum extent practicable, as it does for wind energy projects serving oilfields.

In addition, the GCP lists PV and wind projects under covered activities, but states that, “Project proponents with wind turbines should seek consultation with the Ventura Fish and Wildlife Office to address potential impacts to listed species through a separate permitting process.” (Id.) This raises the question: why are wind turbines under 300 kW listed as covered under the GCP, but then expressly required to undertake a separate take permitting process in conflict with the streamlining purpose of the GCP?

e. **Decommissioning is a Covered Activity, but This Activity May Occur Thirty to Fifty Years After the GCP and ITP(s) Expire.**

The GCP describes decommissioning as a covered activity. (GCP at 21 and 26) However, decommissioning may not occur for decades after an oil and gas development project is approved and will likely occur after the twenty-year permit duration expires. For example, the project life for the two massive onshore oil projects proposed in Cat Canyon are for thirty to fifty or more years.\(^77\) The ITPs for these projects may be issued by the Service prior to construction, and if the ITP duration is for up to twenty-years, the ITP would terminate years before decommissioning. Permittees would then be required to prepare HCPs and apply for ITPs outside of the GCP process, contravening the streamlining and efficiency purposes of the GCP. (GCP at 3, EA at 1-2) The GCP must set forth a thorough analysis that addresses the interaction between the twenty-year ITP duration and the potentially decades-long oil and gas activities covered under the GCP.

f. **The CTS Recovery Plan Does Not Identify the Need for the GCP for Oil and Gas Activities.**

The 2016 CTS Recovery Plan’s Action 1.3 recommends developing a regional HCP for agriculture and urban development in northern Santa Barbara County and Santa Maria.\(^78\) The Recovery Plan makes this recommendation for the purpose of managing lands for CTS and to ensure “appropriate mitigation.”\(^79\) In 2019, the Service developed the County’s first general conservation plan for cultivation activities.\(^80\) A second general conservation plan for cultivation

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\(^77\) Santa Barbara County Planning and Development Department, *Proposed Final EIR for ERG West Cat Canyon Revitalization Plan* at 2-5 (February 2019); See also: Santa Barbara County Planning and Development Department, *Draft EIR for Aera East Cat Canyon Oilfield Redevelopment Project* at 2-2 (November 2018).


\(^79\) Id.

\(^80\) US Fish and Wildlife Service, *General Conservation Plan for Cultivation Activities Santa Barbara County, California* (September 19, 2019).
activities in the Los Alamos area was also recently noticed.\textsuperscript{81} Nevertheless, the CTS Recovery Plan does not recommend developing a GCP for oil and gas projects because the Recovery Plan’s Recovery Strategy, Criteria, and Actions do not recommend authorizing take for oil and gas activities within the CTS’ range.\textsuperscript{82} Moreover, as explained above, the authorization of take under the GCP for CTS is inconsistent with the Recovery Plans’ Recovery Strategy, Criteria, and Actions.

g. \textit{The GCP Would Authorize Take for Oil and Gas Projects that Worsen Climate Change, Which Threatens the Survival and Recovery of CTS, CRLF, and LYS.}

The GCP would authorize take of CTS, CRLF, and LYS for oil and gas activities within the 674,220-acre Planning Area in Santa Barbara County, including the Cat Canyon Oil Field where proponents of two new steam injection projects propose to drill nearly 500 new wells, tripling onshore oil production in the County.\textsuperscript{83} (GCP at 5) The significant greenhouse gas emissions (“GHG”) generated by these two projects alone will contribute to climate change impacts, such as increased droughts, fires, and floods, which directly affect recovery efforts for CTS, CRLF, and LYS.\textsuperscript{84} For example, the TerraCore project would emit 250,876 metric tons per year of CO2 equivalent (“MTCO2e”) and Aera’s project would emit 302,532 MTCO2e annually.\textsuperscript{85} By way of comparison, the County identifies GHG emissions over 1,000 MTCO2e to be a significant climate change impact.\textsuperscript{86} The emissions from new or expanded oil and gas

\textsuperscript{83} Santa Barbara County Planning & Development Energy & Minerals Division, Overview of Oil Operations (February 24, 2016), available at: https://www.sbcok.org/wp-content/uploads/2016/01/County-Oil-Gas-Briefing-2.24.16.pdf (Slide 14 showing 2016 production for multiple onshore oilfields); See also Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Redevelopment Plan at 2-1, 2-68 (November 2018); Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 2-33 – 2-34 (February 2019); Lara Cooper, Supervisors Get Update on Oil Production in Santa Barbara County, Noozhawk (July 21, 2015).
\textsuperscript{84} U.S. Fish and Wildlife Service, Recovery Plan for the California Red-legged Frog (Rana aurora draytonii) at 28 (May 28, 2002); See also U.S. Fish and Wildlife Service, Recovery Plan for the Santa Barbara County Distinct Population Segment of the California Tiger Salamander (Ambystoma californiense) at I-16 (December 12, 2016); U.S. Fish and Wildlife Service, Eriodictyon capitatum (Lompoc yerba santa) 5-Year Review: Summary and Evaluation at 16, 18 (February 8, 2011).
\textsuperscript{85} See e.g., Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 4.4-14 - 16 (February 2019); Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Redevelopment Plan at 4.4-21 (November 2018).
\textsuperscript{86} Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 4.4-13 and 4.4-14 (February 2019) (“The Santa Barbara County Environmental Thresholds and Guidelines Manual (Santa Barbara County, 2015b) specifies that: All industrial stationary-source projects shall be subject to a numeric, bright-line threshold of 1,000 MTCO2e per year to determine if greenhouse gas emissions constitute a significant cumulative impact. Annual GHG emissions that are equivalent to or exceed the threshold are determined to have a significant cumulative impact on global climate change unless mitigated.”)}
projects in Santa Barbara County would worsen these climate change impacts on CTS, CRLF, LYS, and their habitats. Issuing ITPs for oil and gas projects would be counter to the conservation of CTS, CRLF, and LYS given the significant climate change impacts from these fossil fuel energy projects.

h. The GCP Section Titled “Other Relevant Laws and Regulations” Must be Updated to Correct Omissions and Misstatements.

The GCP refers to the County of Santa Barbara as the Lead Agency under the California Environmental Quality Act (“CEQA”). The GCP omits specific cities (e.g., Carpinteria, Goleta) within the Planning Area which may also be CEQA Lead Agencies on oil and gas projects, including decommissioning. (GCP at 9)

Under Division of Oil Gas, and Geothermal Resources (DOGGR), the GCP should be revised to reflect the agency’s current name: California Division of Geologic Energy Management Division (“CalGEM”). (Id.)

Also, under DOGGR or CalGEM, “water disposal wells” are more accurately characterized as wastewater disposal wells. Water is generally not harmful to CTS, CRLF, and LYS, but oil operation wastewater contains toxic constituents. (Id.)

Under California Department of Fish and Game, the agency’s name was changed to California Department of Fish and Wildlife in 2013. (Id. at 11)

3. Critical Information is Omitted in the Discussion Regarding Environmental Setting and Covered Species.

The GCP purports to provide baseline information pertaining to the three covered species, but the discussion omits information that is directly relevant and necessary to support the subsequent impacts analysis and take assessment.

a. The GCP Lacks Requisite Information about the Existing Status of CTS and CRLF and Therefore Does Not Adequately Assess the Scope of Impacts to the Species.

The ESA requires an applicant for an ITP to submit an HCP that specifies “the impact which will likely result from such taking.” 16 U.S.C. § 1539(a)(2)(A)(i). The Service may not approve such a plan unless finding that “the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking,” and “the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.” 16 U.S.C § 1539(a)(2)(B)(ii) & (iv).

To inform this analysis, the regulations under the ESA require that an ITP application identify the “number, age, and sex of such species, if known.” 16 U.S.C. §1539(a)(2)(B)(ii), 50
C.F.R. 17.22(b)(1). “The impact of the taking cannot be clearly articulated without some baseline information about the presence and status of the species in the covered area, or a logical explanation of potential impacts based on habitat characteristics, carrying capacities, etc. and by taking into consideration likely future changes due to climate change effects or other causes.”

In order to understand the scope of impacts to endangered and threatened species, there is a host of critical information that must first be collected and assessed: (1) the preexisting status of those species in the covered areas—i.e., how many currently exist, where they live, and what the current numbers say about overall species health in the covered areas; (2) how many individuals and how much habitat are necessary to ensure species survival and recovery; (3) the nature of the project—i.e., how many individuals and how much habitat will be taken through the activities covered under a ITP, and where, exactly, the take will occur (especially relevant with CTS, which has six distinct metapopulations); and (4) the effect of such take relative to the species’ baseline and survival/recovery needs. Without knowing the foregoing details, the Service cannot fulfill its statutory gatekeeping responsibility of ensuring minimization and mitigation of impacts, and making sure that incidental takings will not appreciably reduce the likelihood of survival and recovery.

i. It is Unclear Which CTS and CRLF Recovery Criteria Have Been Met.

The GCP is unclear regarding which, if any, of the recovery criteria for CTS and CRLF under their respective recovery plans have been met. The CTS Recovery Criteria include preservation of 623 acres of unfragmented upland habitat and 1,628 acres of partially fragmented habitat around each of at least four preserved ponds in each metapopulation area (Criteria 1, 2, and 3). CTS Recovery Criterion 4 is to maintain an increasing population in each metapopulation for ten years. The CRLF Recovery Criteria include establishing a CRLF population where one has been extirpated (Criterion 4), and stable populations in core areas (Criterion 2). The GCP should quantitatively describe which of the CTS and CRLF Recovery Criteria have been met, how long they have been met, in which areas or populations they have been met, or describe how close other Criteria are to being achieved.

ii. The GCP Lacks Sufficient Species Information for CTS to Meet the Required Elements under Section 10 of the ESA.

In one paragraph, the GCP characterizes CTS as consisting of six distinct metapopulations with “a high potential for recovery and a high degree of threat in conflict with development.” The GCP provides a map purporting to outline the boundaries of

87 HCP Handbook at 7-4.
89 Id.
each metapopulation but admits that the Service “[does] not have data on the actual population size or trends” for the Santa Barbara CTS population. (Id. at 33) The GCP also claims to include “Table 1” identifying “approximately 60 known extant tiger salamander breeding ponds in Santa Barbara County (Service 2009) distributed across the six metapopulations,” but no such table appears in the GCP. (Id. at 35)

The GCP admits that data on “effective population size” could have been obtained based on “recent advances in molecular techniques,” but failed to apply such techniques. (GCP at 33) As a result, the GCP does not quantify the effective population size for any of the six CTS metapopulations. (GCP at 33-34) Studies have been conducted on the abundance of the species in other areas. A study in Monterey County found the number of breeding adults visiting a pond varied from 57 to 244 individuals. 91 A Contra Costa County breeding site showed a similar pattern of variation, suggesting that such fluctuations are typical. 92 Nevertheless, the GCP does not explain why surveys described by Searcy and Shaffer to “quantify California tiger salamander landscape use” in the Central Valley were not undertaken here to estimate CTS densities in the Planning Area.93

Finally, the GCP states that “larger vernal pools are more valuable for the conservation of the species than smaller ones,” without mapping out the location and size of such pools as part of its graphic. (Id.) Such information is essential to the baseline conditions, especially given that the GCP recognizes that the metapopulations are not interchangeable. (Id. at 34) In fact, a Monterey County CTS study of 16 breeding locations confirmed “genetic differences at almost every site.” (Id.)

iii. The Impacts Analysis in the GCP is Deficient Given That Baseline Information about CRLF is Omitted.

Similarly, the GCP acknowledges that CRLF “has been extirpated or nearly extirpated from 70 percent of its former range,” and currently occurs in only five populations over eight recovery units, with recovery strategies differing per recovery unit as opposed to overall range. (Id. at 43-44). As a result, recovery of the species under the Recovery Plan is largely focused on stabilizing existing populations and reestablishing additional populations in suitable habitat areas.94

Despite the shrinking range of this species, the entire “plan area is within the range of…and…contains suitable…habitat” for CRLF. (GCP at 60) The GCP, however, provides no

93 Christopher A. Searcy and H. Bradley Shaffer, *Calculating Biologically Accurate Mitigation Credits: Insights from the California Tiger Salamander* at 999 (August 2008).
discussion about the current distribution of the CRLF population throughout the Planning Area. Information about existing CRLF populations, distributional data of the species, and its habitat throughout the Planning Area is important to determine the likelihood that the species will occur at a project site. The CRLF Recovery Plan recognizes the importance of monitoring and surveying known CRLF populations in order to obtain the data necessary to conduct an adequate impacts analysis for the species.\textsuperscript{95} The Recovery Plan explains that “[a] better understanding of the demographics and distribution will give a fuller picture of population viability and threats to [CRLF] populations.”\textsuperscript{96}

Currently, the Western Ecological Research Center for the U.S. Geological Survey (“USGS”) is “using genetic techniques to characterize existing [CRLF] populations in the southern part of their range.”\textsuperscript{97} The USGS is employing these methods to determine genetic diversity within populations and whether any CRLF populations are genetically unique, recent population history, and effective population sizes.\textsuperscript{98} The efforts are intended to inform future conservation of CRLF by better understanding the magnitude of documented amphibian declines.\textsuperscript{99} This is but one example of a study tracking CRLF populations and collecting data on population densities for the species in southern California. In order to assess the threats to CRLF and causes of CRLF losses, the GCP must first provide the requisite baseline information about CRLF populations throughout the Planning Area. If this information truly cannot be collected, as alleged in the GCP, the grounds to support this claim must be set forth in the GCP. (GCP at 62)

The GCP also does not include a map depicting CRLF Recovery Units. This information is directly relevant to inform the impacts analysis and take assessment.

iv. Surveys and Other Information Gathering about LYS Individuals and Genetic Variability in Santa Barbara County Must Be Performed to Ensure that the Impacts Analysis is Adequate in the GCP.

The GCP admits that “[v]ery few surveys have been completed for [LYS] since it was federally listed in 2000.” (GCP at 47) As a result, there is little to no information about the long-term viability of LYS, the age of an individual plant, the breeding system of LYS, the number of ramets needed to sustain an individual plant, how long a ramet lives, or when a new ramet will sprout.\textsuperscript{100} One reason for the lack of surveys is “[b]ecause of its clonal habit (reproducing

\textsuperscript{95} U.S. Fish and Wildlife Service, \textit{Recovery Plan for the California Red-legged Frog (Rana aurora draytonii)} at 82 (May 28, 2002).

\textsuperscript{96} Id.


\textsuperscript{98} Id.

\textsuperscript{99} Id.

\textsuperscript{100} Magney at 8.
asexually such that all ‘individuals’ in a population are genetically identical), the number of genetically unique [LYS] individuals is difficult to count.” (GCP at 51) Given the lack of surveys for this species, “information on the distribution of [LYS] has remained relatively unchanged since the time of listing;” the only updated information being from a 2010 survey for the Vandenberg populations of LYS. (Id.) Moreover, with regards to this 2010 survey, the GCP dismisses the data as inconclusive, explaining that it has “no confidence in the total number of plants in existence since survey protocols were either not well documented or they varied in methodology from year to year, and there were too few monitoring events to draw any conclusions from.”

As recognized in the expert report by California Certified Consulting Botanist, David Magney, “information on the requirements and reproductively of the LYS are lacking, primarily because there have not been studies sufficient to make science-based conclusions.” Yet, the GCP nevertheless proposes to generate a conservation strategy for the species while simultaneously allowing up to 27.5 acres of habitat and 7.5 acres of critical habitat be destroyed by oil and gas activities. (GCP at 65) Given the dearth of information about the species, it is entirely unclear what information and data the GCP utilized to support the strategies and conclusions relied on for LYS, indicating that the GCP’s proposed conservation plan for LYS will not ensure the long-term survival and recovery of the species. These concerns are substantiated in the report by David Magney in which he concludes that “[t]here is no evidence that the proposed GCP will result in ‘better conservation’ of the LYS. … a conclusion by the USFWS that the GCP would improve conservation of this species is baseless and wishful thinking.” This is especially concerning when factoring in consideration of the impacts on LYS from future environmental changes due to climate change.

For the foregoing reasons, and as confirmed by Mr. Magney in his report, the Service must “determine how many individual plants exist before issuing a blanket take permit for the LYS. This is quite feasible as there are only five known populations, three of which occupy small areas. The largest known population is located in the middle of the active Orcutt Oil Field, and is at extreme risk from take under the proposed GCP.”

v. Detailed Species and Habitat Information Must be Set Forth in the GCP to Inform Section 7 Consultation.

Section 7 of the ESA requires all federal agencies to consult with the Services to ensure that “any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification” of critical habitat. 16 U.S.C. § 1536(a)(2). “Issuance of an incidental take permit by the Service, pursuant to section 10(a)(1)(B), constitutes a Federal

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101 Id. at 4.
102 Id. at 10.
103 Id. at 16.
104 Id. at 7-8.
105 Id. at 2.
action that is subject to the requirements of section 7(a)(2), and the Service must prepare an internal consultation to address the effects of the permit issuance.” (GCP at 7)

As recognized in the Handbook, “[d]etailed species and habitat information are also needed for the intra-Service section 7 consultation,” because “[a]ll covered species, listed or not, will be assessed under section 7 for direct, indirect, and cumulative effects and the likelihood of jeopardy, and for listed covered species, the destruction or adverse modification of critical habitat.…” Accordingly, the GCP may “serve[] as a biological evaluation and can greatly simplify the writing of the biological opinion (BO) by referencing the information from the HCP in the BO.” However, given the substantial omissions of specific species and habitat information for CTS, CRLF, and LYS in the GCP, the related Section 7 consultation will also be inadequate if relying upon the information in the GCP.

b. The GCP Improperly Relies on the Assumption that All LYS Seeds Will Germinate.

LYS is a state and globally imperiled species with some occurrences containing “one or only a few genetic individuals and have extremely limited seed production.” As few as 68 individual LYS remain in the world today in as small an area as 385 acres. “[T]he genetic variability of \textit{E. capitatum} is extremely limited, which also means that it has higher vulnerability, or lower ability, to adapt to changes in its environment, such as from disease or climate change.” The GCP claims that LYS “cannot produce viable seeds.” (GCP at 95) This is because LYS is self-incompatible and therefore uniconal stands of LYS cannot produce seed unless pollen is imported from another genetic individual. The GCP, however, contradicts itself by claiming that LYS seeds will germinate in open spaces. (GCP at 64) Of the six LYS stands, two are uniconal and cannot produce seeds. Thus the GCP does not adequately analyze which LYS stands can reproduce by seed and therefore the conclusion that all LYS will reproduce by seed is inaccurate.

4. The Analysis of Biological Impacts and Corresponding Take Assessment Violates the Requirements under Section 10 of the ESA and is Inadequate.

The analysis of biological impacts and take assessment for CTS, CRLF, and CRLF are fatally flawed in the GCP due to several omitted or unknown variables that are material to the

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106 HCP Handbook at 7-5.
107 Id.
109 Magney at 2, 16.
110 Id. at 11.
112 Id.; Magney at 2.
analysis under Section 10. These defects are irremediable given the inherent overly broad nature of the GCP, as discussed above.

a. The Take Assessment for CTS and CRLF Relies on a Habitat-Based Analysis that Contravenes the Requirements under the ESA.

The GCP does not contain a numerical estimate for take of individuals that will result from the permitted oil and gas activities. Instead, the GCP utilizes the less favorable “habitat as a proxy” method for assessing take for each species. (GCP at 55, 61). Take, however, must be expressed in measurable and enforceable terms.\footnote{HCP Handbook at 8-4.} “Congress has clearly declared a preference for expressing take in numerical form, and an Incidental Take Statement that utilizes a surrogate instead of a numerical cap on take must explain why it was impracticable to express a numerical measure of take.”\footnote{Although these cases pertain to Incidental Take Statements under Section 7 of the ESA, the requirements are also applicable to ITPs under Section 10. The courts have discussed the general similarity between Section 7 and Section 10. See, e.g., Nat’l Wildlife Fed., 128 F. Supp. 2d at 1286 (“In every respect except for this ‘best scientific and commercial data’ requirement, the no jeopardy finding required by ESA § 7(a)(2) is identical to the survival finding required under § 10(a)(2)(B)(iv).”). Moreover, the House Report relied upon in many of these cases states that under § 10, an ITP applicant must “specify the number of species likely to be taken” and that the Service will make its decision “under the same standard as found in Section 7(a)(2)”—“whether the taking would jeopardize the continued existence of the species.” H.R. Rep. No. 97-567 at 31. On its face, this language suggests that there is a preference for numerical take under both Section 7 and Section 10. Finally, the HCP Handbook also recognizes that the Service has the same responsibility under Section 7 as it does under Section 10. Handbook at 8-3.} \footnote{The Ninth Circuit’s decision in Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt. demonstrates the circumstances under which courts have found a numerical value for take to be impractical. 698 F.3d 1101 (9th Cir. 2012). The facts in that case are wholly distinguishable from the GCP. There, the court held that the use of “habitat characteristics” was a permissible surrogate for a numerical limit on the number of “eggs and fry” of threatened Lahontan cut-throat trout to be taken during the construction a natural gas pipeline. Id. at 1127. The court relied upon the House Report, which specifically listed number of fish eggs as an example for when a numerical value would be unavailable. Id., quoting H.R. Rep. No. 97-567, at 27 (1982). Based on the House Report, the court reasoned that the Incidental Take Statement need not explain why a numerical value could not be practically obtained. Id. As such, this holding is very narrow and not applicable to CTS and CRLF.} Or. Nat. Res. Council v. Allen, 476 F.3d 1031, 1037 (9th Cir. 2007); see also Nat. Res. Defense Council v. Evans, 279 F. Supp. 2d 1129, 1184 (N.D. Cal. 2003) (where “possible, the impact should be specified in terms of a numerical limitation on the federal agency or permittee or licensee.”); Miccosukke Tribe of Indians or Florida v. U.S., 566 F.3d 1257, 1274 (11th Cir. 2009) (“Congress wanted incidental take to be stated in numbers of animals, where practical, not in terms of habitat markers”). Expressing take in terms of acreage of habitat loss is not the type of numerical limitation Congress had in mind.\footnote{The Ninth Circuit’s decision in Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt. demonstrates the circumstances under which courts have found a numerical value for take to be impractical. 698 F.3d 1101 (9th Cir. 2012). The facts in that case are wholly distinguishable from the GCP. There, the court held that the use of “habitat characteristics” was a permissible surrogate for a numerical limit on the number of “eggs and fry” of threatened Lahontan cut-throat trout to be taken during the construction a natural gas pipeline. Id. at 1127. The court relied upon the House Report, which specifically listed number of fish eggs as an example for when a numerical value would be unavailable. Id., quoting H.R. Rep. No. 97-567, at 27 (1982). Based on the House Report, the court reasoned that the Incidental Take Statement need not explain why a numerical value could not be practically obtained. Id. As such, this holding is very narrow and not applicable to CTS and CRLF.} Or. Nat. Res. Council v. Allen, 476 F.3d at 1037–38; See also H.R. Rep. No. 97-567 at 27.

In the absence of a numerical measure, courts have held that “the Fish and Wildlife Service must establish that no such numerical value could be practically obtained.” Ariz. Cattle Growers’ Ass’n v. U.S. Fish & Wildlife Serv., 273 F.3d 1229, 1250 (9th Cir. 2001). Thus, a surrogate—in this case habitat as proxy—may be used so long as it is accompanied with an explanation as to why the use of a numerical measure of take would be impracticable. Or. Nat.
Res. Council, 476 F.3d at 1037. This explanation must describe a causal link between the surrogate and take of the covered species, explain why expression of numerical take is not practical, and set a clear limit for when the level of take is exceeded, if using a surrogate.\textsuperscript{116} There must also be a “rational connection between the surrogate and the taking of the species.” Wild Fish Conservancy v. Salazar, 628 F.3d 513, 531 (9th Cir. 2010); Az. Cattle Growers, 273 F.3d at 1250 (invalidating use of ecological conditions for failure to articulate rational connection to take). Here, the GCP fails to adequately explain (1) why using a numerical measure instead of habitat as a proxy would be impracticable, and (2) the rational connection.

To illustrate this point, in Oregon Natural Resources Council v. Allen, the Ninth Circuit held that an Incidental Take Statement violated the ESA for failing to explain why a numerical measure was infeasible. 476 F.3d at 1037. Although the Service’s Biological Opinion explained that the surveys were out of date, it did not state that the surveys could not have been updated. \textit{Id.} at 1038. The court determined that “[t]his does not establish the numerical data’s impracticability.” \textit{Id.} Similarly here, the GCP does not adequately explain why data that would provide a proper numerical measure is unavailable and cannot be obtained. To the contrary, the GCP admits that data on “effective population size” for CTS could have been obtained based on “recent advances in molecular techniques,” but such techniques were not applied. (GCP at 33-34) Moreover, the USGS is currently collecting data on CRLF populations in the southern part of their range by “using genetic techniques to characterize existing [CRLF] populations.”\textsuperscript{117} The study will enable USGS to determine effective population sizes, in relevant part.\textsuperscript{118} The efforts are consistent with the CRLF Recovery Plan’s recommendation to “[c]onduct quantitative assessments of representative populations” in each recovery unit.\textsuperscript{119} The CRLF Recovery Plan specifies that “[q]uantitative data needs include, but are not limited to, numbers of individuals per age class, reproductive rates, survival, recruitment rates, immigration and emigration rates.”\textsuperscript{120}

Thus, the GCP must adequately explain the impracticability of providing numerical data for the take assessment. If no explanation is provided in the GCP, the use of a habitat surrogate for the take assessment in the GCP is wholly inconsistent with the requirements under the ESA.

\textsuperscript{116} HCP Handbook at 8-3.
\textsuperscript{118} \textit{Id.}
\textsuperscript{119} U.S. Fish and Wildlife Service, \textit{Recovery Plan for the California Red-legged Frog} at 82 (May 18, 2002).
\textsuperscript{120} \textit{Id.}
b. The Searcy Model Does Not Account for Impacts on CTS from Spills, Noise, Vibrations, Night-lighting, Fires, or Climate Change.

The Searcy Model does not account for all impacts to CTS, including impacts from oil, wastewater, and chemical spills, fires, climate change, noise, vibrations, and lighting.\(^{121}\) These activities may result in harm to the species or the destruction of habitat. Except for Measure 20 to lessen the impact of oil spills, the GCP includes no mitigation for these impacts to CTS. (GCP at 68 – 98)\(^{122}\)

i. The Searcy Model Does Not Account for Climate Change Impacts from Oil and Gas Projects.

The Searcy Model does not account for climate change impacts on the species. As discussed herein, climate change harms amphibian species such as CTS. However, GHG emissions are not a factor in the Model, even though the CTS Recovery Plan identifies climate change as impacting the recovery of CTS.\(^{123}\) This is a major limitation of the Model and results in impacts that may not be adequately mitigated.

ii. The Searcy Model is Based on Drift Fence Surveys and Survivorship Figures from Different Populations in Different Locations.

The Searcy Model calculates the Central Valley tiger salamander’s reproductive values, impacts, and mitigation based on a site’s distance to a pond, survivorship, and densities.\(^{124}\) However, the densities were determined using drift fence surveys at Olcott Lake, over 350 km from Santa Maria, and the survivorship numbers are based on a single study in Monterey, over 220 km away.\(^{125}\) Olcott and Monterey are 225 km apart.\(^{126}\) Searcy and Schaffer advise that it will be necessary to “individually negotiate each mitigation plan” for each project rather than the broad programmatic use of the Model, like in the GCP.\(^{127}\) The GCP’s broad application of the Searcy Model also runs the risk of not accounting for region-to-region differences in CTS survivorship or habitat parameters. Studies to ascertain survivorship rates in Santa Barbara County populations are needed to inform and apply the Searcy Model appropriately to the Santa Barbara County CTS population.\(^{128}\)

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\(^{121}\) Christopher A. Searcy and H. Bradley Shaffer, *Calculating Biologically Accurate Mitigation Credits: Insights from the California Tiger Salamander*, (August 2008).

\(^{122}\) Santa Barbara County Planning and Development Department, *Proposed Final EIR for ERG West Cat Canyon Revitalization Plan* at 4.3-49 – 50, 4.3-55 (February 2019).


\(^{125}\) Id.; *See also Bumgarnder at 4-5.*

\(^{126}\) Id.

\(^{127}\) Id.

\(^{128}\) Id.
fence surveys underpinning the Searcy Model, are not proposed in the GCP. CTS surveys and habitat assessments in the Planning Area are necessary to ensure that the significant impact of permanent CTS take is accurately disclosed and sufficiently mitigated through the GCP.

iii. The Searcy Model is Based on a Single Habitat Parameter.

Searcy and Shaffer acknowledge that the Model is based on only one of numerous habitat parameters: distance from a pond’s shoreline. Other factors not considered include vegetation, topography, presence and density of predators, and presence and density of mutualistic species such as gophers which can increase CTS densities and alter distribution. These are site-specific factors that vary from project to project and region to region. In recommending site-specific as opposed to broad programmatic application of the Model, the authors advise that “[i]n principle, these and other biologically relevant factors could be included in mitigation calculations for individual species and landscapes.” It is clear from Searcy that habitat parameters differ by location. However, the GCP improperly applies the Searcy Model as if habitat parameters are the same at Olcott Lake, Monterey, and Santa Barbara County.

d. The Incidental Take Figures for CTS, CRLF, and LYS are Unsupported and Unexplained in the GCP, Thus Invalidating the GCP.

The incidental take figures in the GCP for CTS, CRLF, and LYS are arbitrary and unsupported. A conservation plan will not withstand judicial scrutiny where “the factual basis

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130 Id.

131 Id.


133 Bumgardner at 5.


135 Bumgardner at 5.
for the agency’s assertions was either absent or masked by convoluted provisions.” Sw Ctr. For Biological Diversity v. Bartel, 470 F. Supp. 2d at 1149. In Southwest Center for Biological Diversity v. Bartel, the court invalidated a regional HCP and ITP because together they arbitrarily permitted 12% destruction of habitat. 470 F. Supp. 2d at 1146–47, 1155. The court held the Service had not properly analyzed the impact of 12% destruction of habitat, because the BiOp contained inconsistencies—in some places it said there would be no significant effect and in others that any net loss (including the 9% to 14% possible destruction) in habitat would be significant. Id. at 1147–48. The 12% figure also contradicted studies that the Service relied upon as well as one of the recovery plans. Id. at 1154–55. Therefore, the percentage of permitted habitat destruction provided by the Service was not supported by the evidence.

Despite the claimed lack of data for CTS, CRLF, LYS, and their habitats in the GCP, the total acreage of habitat loss permitted from oil and gas activities is calculated in the GCP for the three species. (GCP at 57-58, 63, 65) To use a habitat-based model, however, a conservation plan must, first, identify the minimum habitat requirements for the continued survival and recovery of the species and, second, explain the effect of acreage loss authorized under the plan on the species. See Sierra Club v. Norton, 207 F. Supp. 2d 1310, 1329 (S.D. Ala. 2002). In order to gain an understanding of the minimum habitat requirements, the GCP should have cited to or collected the “necessary data,” including science-based estimates of (1) “minimum population necessary for survival and recovery”;136 (2) “range-wide population,” and (3) “distribution within the range.”137 Id. Without this information for CTS, CRLF, and LYS, the take assessment in the GCP is arbitrary. The GCP also does not explain how indirect impacts to the three species, such as from spills of oil and produced water, fires, and contaminated oil-field runoff, are calculated and addressed using the habitat as a proxy model for take assessment.138

Furthermore, allowing for 27.5 acres of LYS habitat to be impacted “is a very large percentage of the known LYS distribution/area occupied.”139 Nowhere in the GCP is it disclosed how many individual plants would be lost from the permitted LYS habitat destruction under the GCP.140 Based on the information provided in the GCP, a host of questions arise, including, but not limited to, “how [is] the impact [] actually measured and what [are] the end results[?] Is the

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136 CTS Recovery Plan Recovery Actions 5.1 (Priority 2) and 6.1 (Priority 1) recommend conducting population viability and effective population surveys, but these surveys were not undertaken in the Planning Area to inform the GCP and are not required of GCP applicants. U.S. Fish and Wildlife Service, Recovery Plan for the Santa Barbara County Distinct Population Segment of the California Tiger Salamander (Ambystoma californiense) at III-9 – III-10 (December 12, 2016). Effective population surveys can be used to estimate population sizes and trends. (GCP at 33) This has been done for the Central Coast DPS of CTS, but not yet for the Santa Barbara County DPS. (Id.)

137 The GCP also fails to require applicants to conduct burrow surveys. Burrow surveys would have helped to estimate upland population densities relative to distance from breeding ponds. U.S. Fish and Wildlife Service and California Department of Fish and Wildlife, Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander (October 2003), available at: https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/cts_survey_protocol.pdf.

138 Bumgardner at 3.

139 Magney at 16.

140 Id.
impact the loss of number of individual plants? Loss of ramets? Loss of occupied habitat? Loss of suitable habitat?”\(^{141}\)

As discussed in the attached expert report by David Magney,

“Loss of 27.5 acres of LYS, the amount allowed under the proposed GCP, represents approximately 7.1% of the known area occupied by LYS. Since ‘take’ of just one individual is prohibited under the Endangered Species Act without a permit, the loss of one individual is considered significant. Expand that to 7.1% of the entire species and the severity is magnified accordingly. This is a large percentage, especially since very little is known about the growth, reproduction, and viability of the LYS, or each population. Since nothing is known about the feasibility of translocation of LYS, or what is required to establish a new population, stating that this loss does not represent a significant and unmitigable impact is not supported by any evidence.”\(^{142}\)

The GCP also erroneously claims that no impacts to aquatic habitats for CTS and CRLF are allowed under the GCP. (GCP at 59, 63) However, “[i]ndirect impacts associated with changes in the upslope watershed of individual aquatic breeding sites could result in reduced CTS recruitment” at ponds, and “[t]he GCP’s use of upland habitat as a proxy for individual ‘take’ does not address potential changes in the value of aquatic habitat from Permittee caused or induced indirect impacts.”\(^{143}\) Given the importance of aquatic habitat to the survival and recovery of CTS and CRLF, the failure to evaluate these impacts in the GCP is a glaring omission.

Finally, the numerical take figures for vehicles using access roads for CTS and CRLF are not explained and therefore do not appear to be based in fact. (GCP at 57-58, 63, 65) According to the attached expert report, it is entirely “unclear in the GCP as to how these take limits were formulated and biologically justified.”\(^{144}\) The GCP also fails to define “access roads” as it applies to this take assessment.\(^{145}\) Finally, there are many challenges with monitoring and reporting roadkill for CTS and CRLF to estimate take, yet none are acknowledged or assessed in the GCP.\(^{146}\) “[R]oad-killed individuals of very small species such as CTS and CRLF are generally under-counted due to a variety of factors including, but not limited to, condition of carcass, removal by scavengers, type of road, vehicle speed, experience of individuals charged with finding and recording roadkills, and potential issues with self-reporting. The GCP does not address any of these latter issues.”\(^{147}\) Thus, the incidental take figures in the GCP for CTS, CRLF, and LYS are arbitrary and capricious.

\(^{141}\) Id. at 10.
\(^{142}\) Id. at 16-17.
\(^{143}\) Bumgardner at 2.
\(^{144}\) Id. at 4.
\(^{145}\) Id.
\(^{146}\) Id.
\(^{147}\) Id.
d. The GCP Would Result in a Net Loss of CTS Critical Habitat.

Critical habitat is the area that is essential to the conservation of the species and which may require special management considerations or protections. 16 U.S.C. § 1532(5)(A). The GCP would allow permanent loss of 152 acres of designated critical habitat without replacement. (GCP at 58 – 78) Permanent loss of 152 acres of CTS critical habitat is a significant unavoidable loss allowed by the GCP because it is a permanent net loss of essential habitat.

e. The GCP Does Not Limit Take and Impacts to CRLF Habitat Which is Not Designated Critical Habitat.

The GCP limits permanent impacts in each CRLF critical habitat Unit to between one and 119 acres, totaling 355 acres, and allows take of double the acreage for temporary impacts. (GCP at 63) However, the GCP does not limit take of CRLF habitat in locations outside of designated critical habitat. CRLF Critical Habitat constitutes around 35,426 acres of the Planning Area’s total 674,220 acres. (GCP at 59 and 63) The lack of a limit on take of CRLF within the remaining 638,794 acres creates a double standard in the analysis. The GCP limits the loss of LYS and CTS habitats in both critical habitats and other habitat areas, but take for CRLF habitat is subject to a loophole in the GCP. (GCP at 58 and 65)

f. The GCP will Result in a Net Decrease in the Acreage of CTS and CRLF Upland Habitats in Conflict with the Recovery Plans.

The GCP will result in a net loss of CTS and CRLF upland habitat acreage because the GCP allows the permanent loss of 675 acres of CTS upland and dispersal habitat, and 355 acres of CRLF upland critical habitat. (GCP at 57, 63). The GCP does not include creation of any new CTS or CRLF upland or dispersal habitat or restoration of former habitat. Thus, the GCP’s approach will result in net on-the-ground losses of habitat acreage. Easements and protection of existing habitats do not compensate for the permanent net loss of up to 675 acres of CTS upland habitat, and up to 355 acres of CRLF critical habitat. Moreover, there is no guarantee that the proposed mitigation measures in the GCP are feasible, as explained herein and in detail the attached expert reports.

g. The GCP’s Permanent Net Loss of CTS and CRLF Upland Habitats Conflicts with the Recovery Plans’ Recovery Actions.

The GCP sets forth maximum allowable permanent take of 675 acres of CTS habitat, including 152 acres of designated CTS critical habitat and 355 acres of permanent take of CRLF habitat. (GCP at 57 to 63) These losses are inconsistent with the CTS and CRLF Recovery Plans. The CRLF Recovery Plan focuses on:

“1) protecting existing populations by reducing threats; 2) restoring and creating habitat that will be protected and managed in perpetuity; 3) surveying and monitoring
populations and conducting research on the biology of and threats to the subspecies; and 4) reestablishing populations of the subspecies within its historic range.”

The CRLF Recovery Plan also requires that populations throughout the range are stable before delisting can be approved.

Similarly, the CTS Recovery Plan Recovery Criterion 4 requires that each CTS Metapopulation must increase over the same ten-year period before delisting can occur. The GCP is inconsistent with this Criterion because the GCP permanently reduces the acreage of CTS habitat by up to 675 acres, and does not require population surveys to track compliance with Criterion 4.

Taken together, the GCP results in a net loss of CTS and CRLF habitat, and the loss of at least some of the individual CTS and CRLF located in those habitats, because compensatory mitigation primarily protects existing habitats. The GCP at 75-80) Therefore, faced with permanent loss of up to 675 acres of CTS habitat and up to 355 acres of CRLF critical habitat, populations may not increase and, in fact, may decrease. The net loss of CTS and CRLF habitats represents a significant impact of the GCP. Such losses are inconsistent with the Recovery Plans and would fail to minimize take to the maximum extent practicable.

h. The GCP May Result in a net Loss of LYS Stands and LYS Critical Habitat.

The GCP may result in the continued loss of LYS. The range of LYS has been severely reduced from 22,239 acres originally to 8,649 acres by 1988 and has since been further degraded and fragmented. (GCP at 46) The Service designated critical habitat on November 7, 2002. There has been an 8.5% decrease in the total number of individual LYS on Vandenberg Air Force Base since 2006. (GCP at 51) No new populations were identified during 2010 surveys on Vandenberg Base. (GCP at 47)

Despite the declines observed with LYS in the County, the GCP proposes to allow the removal of up to 27.5 acres of LYS stands, including 7.5 acres of designated critical habitat. (GCP at 64 – 65) This would represent up to a 7.1% decrease in the acreage of LYS causing a significant unavoidable impact. “All or some of the populations are at risk of destruction from vegetation clearing, oil and gas exploration and extraction, urban development, agriculture (including over-grazing), too frequent wildfires (CNPS 2001), competition from invasive exotic

149 Id. at v.
150 U.S. Fish and Wildlife Service, *Recovery Plan for the Santa Barbara County Distinct Population Segment of the California Tiger Salamander (Ambystoma californiense)* at iv (December 12, 2016) (“Effective population size (Ne) in the metapopulation shows an overall positive trend across 10 years.”)
152 Magney at 16-17.
plants (D’Antonio et al. 1993) and animals (feral pigs), and/or climate change (Myers et al. 2019). (CNPS RPP 2020) Indirect impacts of the GCP also threaten LYS: “Climate change could render conditions at each of the five populations inhospitable for the continued existence of LYS if they become too dry to support normal growth and reproduction since the most recent climate change model for Santa Barbara County modeled a significantly hotter and drier climate by 2050 (Myers et al. 2019).” Finally, altered fire regime, i.e., more frequent, more intense, and/or out-of-season fires, remains one of the most significant threats to LYS. This impact can lead to a dominance of invasive exotic plant species which further change the fire regime and threaten LYS and it habitat.

Although mitigation involves a 3:1 replacement by acreage, this ratio is too low given the rarity of LYS and problems encountered trying to propagate it. David Magney recognized in his report that “[t]he USFWS provides no evidence that any of the generic proposed mitigation measures will actually work for LYS, so viability of this approach is highly questionable.” As a result, LYS replacement under the GCP may not provide any offset of the 27.5-acre reduction because the GCP does not require creation or restoration of LYS stands, and propagation and restoration of LYS is uncertain.

Furthermore, the Service has the “option” of requiring permanent protection for LYS restoration sites, indicating that such sites may not be permanently protected. As of now, there are no restoration sites available, and the feasibility of obtaining such sites is questionable. As such, the GCP would likely result in a net loss of LYS and LYS critical habitat.

i. Runoff from Oil and Gas Project Roads is a Significant Threat to CTS and CRLF but the GCP Does Not Sufficiently Address this Impact.

Oil and other contaminants in runoff from oilfield roads, which are sometimes paved with the local tar-like crude, can be so toxic they have been known to contaminate breeding ponds and kill and deform CTS and western spadefoot toad, a California Species of Special Concern in the Planning Area. The impacts from contaminated runoff on CTS and CRLF, however, are not disclosed in the GCP.

153 Id. at 4-5.
154 Id. at 7-8.
155 U.S. Fish and Wildlife Service, Eriodictyon capitatum (Lompoc yerba santa) 5-Year Review: Summary and Evaluation at 9, 11, 18 (February 8, 2011).
156 Id. at 11.
157 Id. at 11.
158 Id. at 10
159 Id. at 11.
160 Magney at 13-14.
161 Id. at 16-17.
The CTS Recovery Plan states:

New technologies for extracting oil from shale that underlies most of Santa Barbara County have significantly increased the number of oil extraction operations in the county in recent years (Santa Barbara County Planning and Development 2013). Oil and other contaminants in runoff from roads have been detected in adjacent ponds and have been linked to die-offs of, and deformities in, California tiger salamanders and spadefoot toads, and die-offs of invertebrates that form most of both species’ prey base (Sweet 1993). Several known breeding ponds occur along secondary roads and highways in northern Santa Barbara County and may be threatened by oil and other contaminants from road runoff.163

The GCP incorrectly claims that ponds will not be impacted by the activities covered under the plan.164 (GCP at 59 and 63) The GCP, however, fails to sufficiently address runoff from oilfield roads into breeding ponds, and the resulting CTS mortality and deformation that has been documented in the County.165 The GCP merely discloses that CTS may be impacted by “landscape pollution (via hydrological changes),” but does not describe the impact of polluted runoff from oilfield roads on individual CTS and their breeding habitat. CRLF are also threatened by stormwater runoff containing high levels of sediment.166 Moreover, this problem will be substantially exacerbated if the two Cat Canyon oil and gas development projects are approved. For example, the TerraCore Project proposes to pave ninety-one acres of new roads, and the Aera Project would grade six million cubic yards of soil.167

In failing to address the impacts to breeding ponds in the GCP from oilfield runoff and the resulting damage to CTS and CRLF, these impacts remain a significant impact that illustrates take is not adequately minimized under the GCP.

j. The GCP Does Not Adequately Address the Noise and Vibration Impacts from Covered Activities to CTS and CRLF from the Covered Activities, as Well as to Ground Squirrels That Create Burrow Habitat for These Species.

The GCP fails to minimize take of CTS and CRLF that may be caused by noise and vibrations from oilfield construction, drilling, and operations. Substantial changes in foraging and anti-predator behavior, reproductive success, densities, and community structure has been documented in various wildlife species that was attributed to “acoustical masking” of auditory

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163 Id.
164 Bumgardner at 2.
165 U.S. Fish and Wildlife Service, Recovery Plan for the Santa Barbara County Distinct Population Segment of the California Tiger Salamander (Ambystoma californiense) at I-18 (December 12, 2016); See also Bumgardner at 2-4.
167 Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 2-11, 2-17 (February 2019); See also Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Redevelopment Plan at 2-38 (November 2018).
signals by chronic noise.\textsuperscript{168} “Noise can cause some species to leave the area and can disrupt foraging, breeding, or other activities.”\textsuperscript{169} Researchers have also found no evidence of habituation to chronic noise in ground squirrels (prairie dogs), indicating chronic noise may be a permanent impact to populations living in affected areas.\textsuperscript{170}

As recognized in the attached report by Michael Bumgardner:

There are other environmental effectors such as noise, vibration, or lighting that may also result in indirect impacts to CTS or CRLF (Rich and Longcore 2006), Barber et al. 2010, Feuka et al. 2017). These effectors can be reasonably expected to occur and 'bleed' to offsite adjacent lands. The GCP does not address these April 30, 2020 Page 3 impacts, the amount of land that must be protected to offset these types of impacts, or other means of avoiding, minimizing, or compensating for these impacts.\textsuperscript{171}

Furthermore, California ground squirrels and other burrowing animals may also be affected by noise and vibration generated by oil and gas activities. These species create and maintain the burrow systems that serve as refugia for CTS and CRLF during the dry season.\textsuperscript{172} If noise causes squirrels to vacate an area, this could result in loss of burrow habitat for CTS.\textsuperscript{173} The GCP mentions that noise and vibrations adversely affect CTS and CRLF (See e.g., GCP at 59), but fails to address the impact of noise on ground squirrels as an impact on CTS burrow habitat. (\textit{Id}. at 59-60)

\textit{k. The GCP Does Not Adequately Analyze the Impacts of Nighttime Lighting on Migrating and Dispersing CRLF and CTS.}

The GCP does not adequately disclose or minimize the impacts of nighttime lighting on CTS and CRLF. Drilling operations occur 24 hours per day, typically over the course of several

\begin{itemize}
  \item \textsuperscript{169} Santa Barbara County Planning and Development Department, \textit{Draft EIR for Aera East Cat Canyon Redevelopment Plan} at 4.3-73 (August 2018); \textit{See also} Letter from Lawrence Hunt, Lawrence Hunt and Associates Biological Consulting to Nancy Minick, Planner, Santa Barbara County Planning and Development Department (August 2, 2018) (hereafter referenced as “Hunt 2018") (Attachment E); \textit{See also} Letter from Lawrence Hunt, Lawrence Hunt and Associates Biological Consulting to Santa Barbara County Planning Commission at 6 (March 7, 2019) (hereafter “Hunt 2019(a)") (Attachment F).
  \item \textsuperscript{170} Shannon, G., et al., \textit{Road traffic noise modifies behaviour of a keystone species} at 135-141 (2014).
  \item \textsuperscript{171} Bumgardner at 2-3.
  \item \textsuperscript{172} U.S. Fish and Wildlife Service, \textit{Recovery Plan for the Santa Barbara County Distinct Population Segment of the California Tiger Salamander} (Ambystoma californiense) at I-6 (December 12, 2016); \textit{See also} U.S. Fish and Wildlife Service, \textit{Recovery Plan for the California Red-legged Frog} (Rana aurora draytonii) at 14 (May 28, 2002).
  \item \textsuperscript{173} \textit{Id.}
\end{itemize}
Drilling at night requires lighting, which is very bright and constant. In addition to lights required for nighttime drilling, the Cat Canyon projects, for example, will generate a lot of nighttime lighting for construction and security. Lighting would also be required at some of the tank batteries. The central processing facility will have night lighting next to Cat Canyon Creek. Creeks are wildlife movement corridors. Studies show that arachnids, insects, amphibians, raptors, and mammals that are active at night avoid or abandon lighted areas, thus potentially creating impediments to migration for species like CTS and CRLF that migrate at night. There also is evidence that night-lighting may affect dispersal of adult and juvenile salamanders and frogs moving through upland habitats. However, the GCP does not disclose these significant impacts and therefore provides no avoidance or minimization standards or mitigation measures to address these impacts.

1. Control of Burrowing Gophers and Ground Squirrels Can Cause Take of CTS and CRLF, Which is Not a Covered Activity and Also Not Identified as an Impact of the GCP, and There are No Measures to Mitigate these Impacts.

The GCP discloses that eradication of ground squirrels and pocket gophers harms CTS under “Threats and the Decline of California Tiger Salamander,” but the GCP fails to attribute these impacts to the oil and gas activities and does not mitigate these impacts. (See e.g., GCP at 14-27, and 36-37) Pocket gopher and ground squirrel are present in Santa Barbara County oil fields, including the Cat Canyon Oil Field. Burrows created by these species form important habitat for CTS. However, routine oilfield maintenance in the Cat Canyon Oil Field has involved “removing small mammal burrows that could be used by CTS and [western spadefoot toad].” Activities to control burrowing animals may harm CTS. (GCP at 36-37) For this reason, the Recovery Action 1.5 in the CTS Recovery Plan seeks to “reduce California ground squirrel and Bota’s pocket gopher eradication efforts deemed to threaten the Santa Barbara

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174 Santa Barbara County, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 4.3-55 (February 2019) (Noting that well drilling cannot be halted at night).
175 Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Redevelopment Plan at 4.3-60 (November 2018).
176 Santa Barbara County, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan (noting that well drilling cannot be halted at night) at 2-24 (February 2019).
178 Burngardner at 2-3; See also Rich, C. and T. Longcore, Ecological consequences of artificial night-lighting at 458 (2006); See also Hallmann, C.A. et al., More than 75 percent decline over 27 years in total flying insect biomass in protected areas at 28-38, (2017); See also Grubisic, M., et al., Insect declines and agroecosystems: does light pollution matter? at 20-25, (2018); See also Hunt 2018 at 6-7.
180 Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Redevelopment Plan at 4.3-17 (August 2018).
181 Id. at 4.3-28.
182 Garcia and Associates, Biological Assessment United California, California and Bradley Energy Project at 23 (June 25, 2015).
County California tiger salamander on protected lands, and other areas as feasible.\textsuperscript{183} The GCP’s minimization measures, however, omit a requirement to reduce oilfield ground squirrel and gopher control efforts where practicable in order to minimize take and protect CTS. Therefore, this significant impact is not mitigated and the GCP may result in unnecessary take of CTS by way of enabling burrowing animal control programs.

m. \textit{The GCP Omits Impacts to CTS and CRLF Caused by Proposed Detention Basins.}

Detention basins act like vernal pools by filling up after rains and attracting wildlife like CTS and CRLF. However, subsequent maintenance on these basins can harm these species. Oil and gas projects may involve the construction of detention basins on the project site for operations. For example, the Aera East Cat Canyon Redevelopment Project would construct sixteen detention basins.\textsuperscript{184} Basins fill with water seasonally to help mitigate peak discharges and flooding impacts.\textsuperscript{185} Basins also collect sediment to reduce erosion.\textsuperscript{186} However, CRLF have been known to colonize sediment basins.\textsuperscript{187} Moreover, flood control maintenance, which includes sediment removal, is a threat to CRLF.\textsuperscript{188} CTS and CRLF may be attracted to these seasonal sediment basins during breeding season, then harmed during basin maintenance.\textsuperscript{189} This is a potentially significant source of take, but the GCP does not disclose or minimize this impact.

n. \textit{The GCP Omits Information and Data on Oil Spills in the Planning Area.}

Oil, chemical, and polluted wastewater spills from tanks, pipelines, wells, seeps, trucks, and other facilities present significant and unavoidable impacts on species including CTS, and CRLF, LYS. and their habitats.\textsuperscript{190} The GCP omits important information about the impacts of

\begin{footnotesize}
\begin{enumerate}

\item Santa Barbara County Planning and Development Department, \textit{Draft EIR for Aera East Cat Canyon Oil Field Redevelopment Plan} at 4.9-22 (November 2018).

\item \textit{Id.}

\item Santa Barbara County Planning and Development Department, \textit{Draft EIR for Aera East Cat Canyon Oil Field Redevelopment Plan} at 4.9-21 - 22 (November 2018).

\item U.S. Fish and Wildlife Service, \textit{Recovery Plan for the California Red-legged Frog} at 20 (May 18, 2002); \textit{See also} California State Parks Department, \textit{Area 5 Restoration (Hollister Hills SVRA)} (April 9, 2020), available at: http://www.ohv.parks.ca.gov/?page_id=25697.


\item Letter from Lawrence Hunt, Lawrence Hunt and Associates Biological Consulting to Kathryn Lehr, Planner, Santa Barbara County Planning and Development Department at 10 (January 28, 2019). (hereafter referenced as “Hunt 2019(b)” (Attachment G).

\item Santa Barbara County Planning and Development Department, \textit{Proposed Final Environmental Impact Report for West Cat Canyon Revitalization Plan} at 4.3-49 – 4.3-50 (February 2019); \textit{See also} Santa Barbara County Planning
\end{enumerate}
\end{footnotesize}
spills, including the frequency and volume of spills. This relevant information is available and must be quantified to support the impacts analysis in the GCP. For example, the environmental impact reports for the two Cat Canyon projects estimate that at least four spills will occur per year.\textsuperscript{191} Information on spill history in the Planning Area is available in the staff reports for the semiannual Santa Barbara County Board of Supervisors Oil Briefings.\textsuperscript{192} The GCP is deficient for omitting this important information.

\subsection*{5. The GCP Does Not Analyze Impacts from Wildfires Started by Oil and Gas Operations.}

Fires started by oilfield operations, including climate change-driven fires of “inappropriate season, intensity, severity, or frequency,” cause numerous impacts to listed species. (GCP at 93) Recently in 2019, the Woolsey Fire in Ventura County wiped out CRLF populations in the Santa Monica Mountains.\textsuperscript{193} As discussed in more detail in comments on the EA below, wildfires started by oil and gas projects, including oil tanker truck accidents, impact the GCP’s covered species, but these impacts are not adequately addressed in the GCP. Fires started by oilfield operations also threaten other listed species, as discussed in detail below. However, the GCP does not consider, discuss, or disclose the threat of take by oilfield-started wildfires.

The GCP does not mitigate the impacts of the taking of CTS, CRLF, and LYS to the maximum extent practicable. To issue an ITP, the Service must find that the habitat conservation plan minimizes and mitigates the impacts of incidental take “to the maximum extent practicable.” 16 U.S.C. § 1539(a)(2)(B)(ii). “It is not just the quantity of take that needs to be minimized and mitigated, rather it is the ‘impacts of the taking’ that must be minimized and mitigated. … Impacts of the taking depend on the specific situation and could include more than just the loss of individuals or loss of habitat.”\textsuperscript{194} The requirement under the ESA to minimize and mitigate the impacts of take on listed species is intended to ensure that conservation plans meaningfully contribute to the recovery of the species by providing a net conservation benefit.

\begin{itemize}
\item \textsuperscript{191} The number of spills was calculated based on the Aera and ERG Projects EIRs which estimate that PetroRock, ERG, and Aera would cumulatively result in 6 spills per year. With PetroRock withdrawing its application, cumulative spills would be reduced by roughly 33% to four spills per year.
\item \textsuperscript{192} Board of Supervisors Agenda Letter from Glenn Russell, Ph.D., Director, Santa Barbara County Planning and Development Department to Santa Barbara County Board of Supervisors Regarding Briefing on Oil and Gas Development in Santa Barbara County (July 21, 2015).
\item \textsuperscript{194} HCP Handbook at 9-29.
\end{itemize}
To demonstrate that the impacts are minimized and mitigated to the maximum extent practicable, the GCP must “1. estimate the type and amount of take expected from covered activities, and the impacts of such taking on the species and/or its habitat; 2. determine from a biological perspective how conservation measures in the HCP will minimize the impacts of the taking on the species’ status and/or its habitat; and 3. determine from a biological perspective how conservation measures in the HCP will mitigate the remaining impact of the taking on the species’ status and/or its habitat.” If impacts are not fully offset under the proposed minimization and mitigation measures, the Service has the burden to demonstrate that additional mitigation is not practicable.

A decision is arbitrary “if the agency has ... entirely failed to consider an important aspect of the problem.” Nat’l Wildlife Fed’n v. Babbitt, 128 F. Supp. 2d at 1291–92; Motor Vehicle Manufs. Ass’n v. State Farm Automobile Ins. Co., 463 U.S. 29, 43 (1983). For the reasons set forth below, the GCP fails to consider the practicability and enforceability of the measures identified to minimize and mitigate impacts, and does not explain why additional measures are infeasible, rendering the determination arbitrary that the impacts are minimized and mitigated to the maximum extent practicable.

a. The Avoidance Standards in the GCP are Toothless and Illusory.

The GCP contains a list of “Measures to Avoid and Minimize Impacts,” many of which are caveated with the requirement that they will only be implemented “to the maximum extent feasible,” “to the extent feasible,” “to the extent practicable,” “at the discretion” of a Service-approved biologist, or with certain exceptions. (GCP at 70-74) Qualifying these measures in such a manner severely restricts the effectiveness and force of the measures to ensure adequate minimization and mitigation of impacts. This is especially true with regards to Measure 2, stating that applicants “will site all impacts away from known and potential [CTS] and [CRLF] breeding habitats, avoid high quality upland and dispersal habitat, and avoid habitats supporting [sic] [LYS] to the maximum extent feasible.” (GCP at 70) At the same time, the GCP is premised on the concept that “[c]omplete avoidance of federally-listed species and their associated habitats is not practical or feasible for most oil and gas industry activities within the Planning Area,” and that curtailment of “exploration, storage, remediation, development, and transportation of crude oil, natural gas, and petroleum products” in order to avoid take “would not meet the needs of project proponents.” (Id. at 13) Thus, under the GCP, if an applicant unilaterally determines that the proposed avoidance measures are not possible on a given site, such measures can be circumvented in favor of mitigation.

The Southern District of California enjoined a regional ITP under similar circumstances, recognizing that “the duty to ‘avoid’” was “toothless” and “utterly otiose.” Sw. Ctr. for Biological Diversity v. Bartel, 470 F. Supp. 2d at 1140-41. The court determined that “each avoidance standard allows the . . . [project applicant] to unilaterally determine that a particular

195 Id. at 9-28.
196 Id. at 9-33.
development project cannot avoid the vernal pools on the proposed construction site,” and applicants “have a strong financial interest” against avoidance where avoidance will impede them from “obtaining the highest financial return on expensive real estate.” *Id.* at 1140. Thus, the court reasoned that applicants could simply “proclaim that avoidance . . . is not possible on the site, and thus shift their attention to providing [] mitigation.” *Id.* at 1141.

The GCP admits that similar risks are present here with regards to the stated avoidance standards. However, an ITP must not be issued unless the applicant “will . . . minimize . . . the impacts of a taking.” 16 U.S.C. § 1539(a)(2)(B)(ii) (emphasis added). This required finding cannot be made upon unenforceable commitments. *Klamath-Siskiyou Wildlands Ctr.*, 99 F. Supp. 3d at 1054. Therefore, the GCP must set forth “concrete, objective criteria to enforce” avoidance measures to site impacts away from CTS and CRLF breeding habitats, avoid high quality upland and dispersal habitats for CTS and CRLF, and avoid habitats supporting or surrounding LYS to the maximum extent feasible. (*Id.*; GCP at 70)

b. The 3:1 Mitigation Ratio for LYS is Severely Inadequate in the GCP to Mitigate the Impacts from Take.

As discussed above with regards to the GCP’s unsupported incidental take figures, this GCP will not withstand judicial scrutiny where “the factual basis for the agency’s assertions was either absent or masked by convoluted provisions.” *Sw Ctr. For Biological Diversity v. Bartel*, 470 F. Supp. 2d at 1149.

As confirmed by David Magney’s report, “[a] 3:1 impact to mitigation ratio is too low” because (1) it does not provide incentive to avoid the impact in the first place, and (2) habitat restoration or translocation have not proven to be effective.{{$197$}} Additionally, “a 3:1 mitigation ratio (mitigation: impact) is a low ratio considering the rarity of LYS,” and the limited genetic variability of LYS, which creates greater vulnerability and a reduced ability to adapt to changes in the environment.{{$198$}}

There are also issues with the enforceability of the GCP requirement for a 3:1 replacement of LYS, as evidenced by oil operations in Solomon Hills. The GCP states that “trimming and removal of LYS does not occur frequently” at the Solomon Hills site. (GCP at 49) However, LYS was trimmed and/or removed for oilfield maintenance in 2007 and/or 2008, and again in 2010 within the 2,239-acre Solomon Hills Critical Habitat Unit.{{$199$}} (GCP at 51 – 52) These removals were not reported to the Service or mitigated, highlighting a concern that enforcement of the GCP’s mitigation for unavoidable impacts to LYS may be inadequate.{{$200$}}

{{$197$}} Magney at 10.

{{$198$}} *Id.* at 10-11.


{{$200$}} *Id.*
On August 31, 2010, the California Department of Fish and Wildlife (“CDFW”) issued a letter to the Orcutt Oilfield operator Breitburn, referring to a 2008 notice Breitburn provided to CDFW concerning LYS trimming and/or removal that occurred during 2008. However, Breitburn did not notify the Service of the 2007 or 2008 trimming and/or removals either before or after the fact. The failure to report past trimming and/or removal of LYS by oil operators underscores the concern that LYS may be trimmed or removed but not reported, and that enforcing the GCP’s 3:1 replacement for LYS may be infeasible.

The 2006 Mitigated Negative Declaration (“MND”) approved by Santa Barbara County for Breitburn’s Orcutt Hill Diatomite Project required a 10:1 replacement of impacted LYS. The Service noted in its 2015 comment letter that, “To our understanding, this mitigation has never been enforced onsite.” In 2016 the County denied the oilfield expansion proposed by Breitburn’s successor, Pacific Coast Energy Company (“PCEC”), but approved the Seep Can Management Alternative to manage preexisting seeps. The Conditions of Approval for this Alternative require “replacement of impacted Lompoc Yerba Santa at a 10:1 ratio for past impacts and a 3:1 ratio for future impacts (Condition No. 15, MM Bio-2f).” Although the County approved PCEC’s 2017 Habitat Restoration Plan, the plan omits Breitburn’s 2007-2008 and 2010 LYS trimming and/or removals, and only mitigates for the impacts of PCEC’s 100 seep cans, and at 3:1. Given this, it appears that prior LYS removals and/or trimming in 2007, 2008, and/or 2010 not associated with seep cans, and which were not reported to the Service, have not been mitigated through creation or restoration of compensatory habitat and planting of LYS at a 10:1 ratio as required in the 2006 Mitigated Negative Declaration, 2016 Environmental Impact Report (“EIR”), and County Conditions of Approval for the Seep Can Only Alternative. Based on evidence in the record, no LYS mitigation has been implemented for the 2007, 2008, and 2010 LYS removals and/or trimming. As a result of this history, enforcement of the GCP’s mitigation measure for 3:1 replacement of LYS cannot be assured, and therefore the GCP does not adequately mitigate LYS take.

c. The GCP Fails to Minimize Take to the Maximum Extent Practicable Because the GCP Allows Substantial Habitat Loss Which Is Inconsistent with the CTS and CRLF Recovery Plans.

The GCP is designed to allow take of CTS, CRLF, and LYS up to maximum acreages for each species, which the EA describes as “consistent with the” CTS and CRLF Recovery Plans and the LYS 2011 5-Year Review. (EA at 1-1) However, the CTS and CRLF Recovery Plans do
not set forth a maximum allowable acreage of impact. Instead, the CTS Recovery Strategy involves “alleviating the threat of habitat loss and fragmentation,” and conservation of remaining habitat. The CRLF Recovery Strategy involves protecting, restoring, creating, monitoring, surveying, and reestablishing CRLF. None of the Recovery Actions in the CRLF Recovery Plan result in loss of habitat or critical habitat. The GCP, however, would allow permanent take of 675 acres of CTS upland habitat, including 152 acres of federally designated CTS critical habitat, and temporary take of 1,254 acres. The GCP would allow permanent take of 355 acres of CRLF critical habitat and 710 acres of temporary impacts. As discussed below, the GCP does not cap take of CRLF habitat located outside of designated CRLF critical habitat. The GCP would also authorize permanent take of 27.5 acres of LYS habitat, including 7.5 acres of critical habitat. As discussed further below, LYS has already shown a decline in Santa Barbara County, including an 8.5% decline on Vandenberg Air Force Base from 2006 to 2010. Such significant losses of vital habitat areas are not consistent with the CTS and CRLF Recovery Plans and the GCP does not minimize take of the three species to the maximum extent practicable.

d. The GCP’s Measures 7 - 9 to Minimize Vehicle-Strike Take on Access Roads are Unclear, and the Take Limit is Unenforceable.

Roadkill is a significant form of take in the Santa Maria Metapopulations for CTS. The GCP provides take coverage from vehicle-strikes on access roads to three CTS and ten CRLF per year for all permittees in the Planning Area. There is no biological justification for the take limits of three CTS and ten CRLF on access roads. However, as discussed below, there may be many more mortalities before these take limits are reached, and they are unenforceable.

i. The Take Limits for Vehicle-strikes Present Challenges Because it is Difficult to Identify, Count, and Track Vehicle-strike Take.

Counting take from this activity will present challenges that could lead to exceeding take limits because an unknown and potentially considerable percentage and number of dead or injured CTS and CRLF may never be found or recorded on or near access roads. Drivers who strike a CTS or CRLF may never know they hit one. CTS, for example, are similar in color to

208 Id. at iii.
210 Id. at 61-72.
212 U.S. Fish and Wildlife Service, Recovery Plan for the Santa Barbara County Distinct Population Segment of the California Tiger Salamander (Ambystoma californiense) at I-17 (December 12, 2016); See also Hunt 2019(a) at 6.
213 Bumgardner at 4.
asphalt and small. Biologists report having to drive slow to see CTS on the road. Even if a driver caused take of a CTS or CRLF and saw it happen, the driver or other oilfield personnel may not have the expertise to identify the species and document the CTS or CRLF roadkill. Specimens also may be unidentifiable after being stricken, may be off of the road deceased, or may have left the scene injured and not found or scavenged before being documented. In fact, the GCP admits that “encountering dead or injured individuals is unlikely.” (GCP at 62) Given difficulties counting take, there could be take of many CTS and CRLF before the limits of the respective three and ten reported takes are reached. Therefore, the proposed GCP vehicle-strike take limits may be unknowingly exceeded and result in a significant impact to the conservation of these species.

The GCP’s and ITP’s proposed vehicle-strike take limits of three CTS and ten CRLF would “provide take coverage for access roads.” (GCP at 58 and 63) The GCP must define “access roads.” Specifically, the GCP must explain which private and or public roads and/or road segments are considered access roads and thus covered. The GCP is therefore unenforceable with respect to vehicle-strike take of CTS and CRLF.

e. The GCP Does Not Require Redesign to Avoid Take Where Practicable and Instead Relies on “Capture and Relocation,” Which Causes Mortality of CTS and CRLF, to Mitigate Impacts.

i. The Cat Canyon Projects Have Not Been Redesigned to Avoid or Minimize Take.

Aera’s East Cat Canyon Revitalization Project is one of several projects intending to utilize the GCP, but the project has not been designed or redesigned to avoid CTS and CRLF upland and dispersal habitat. Instead, the Service submitted comments to the County Planning and Development Department, dated February 26, 2018, in which the Service concluded that Aera’s proposed compensatory mitigation was sufficient based on the Searcy Model:

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214 Id.
215 Id.
216 Id.
217 Id.
218 Id.
219 Letter from Amber Conway, Project Manager, SCS Tracer Environmental to Santa Barbara County Planning and Development at 1 (June 3, 2014) (Describing ERG Project in original permit application as, “233 new thermal wells” and related equipment); See also Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 2-1 (February 2019).
“For each proposed Project alternative, a corresponding conservation area was proposed to proportionally compensate for Project related impacts, including oak tree removal. Each conservation area was more than sufficient for CTS mitigation purposes.”\(^{220}\)

However, compensatory mitigation under the Searcy Model only addresses habitat loss and deficit wedges, not the significant impacts to species from oil spills, spill cleanups, oil and gas operation-started wildfires, roadkill, noise, lighting, or climate change.\(^{221}\) As such, oil and gas projects covered by the GCP will not be redesigned to avoid or minimize take.

\[\text{ii. Measure 12 (Capture and Relocation) Causes Take.}\]

When projects are proposed within CTS and CRLF habitat, workers will resort to trying to capture some of the animals prior to construction by digging into ground squirrel and gopher tunnel complexes. (GCP at 72) Capture and relocation under Measure 12 may result in mortalities, however, due to handling, stress, being relocated into unsuitable habitat or habitat that is at carrying capacity, lack of familiarity with the release habitat, and increased risk of predation. (GCP at 54-55 and 60). As Lawrence Hunt of Hunt and Associates Biological Consulting stated in a letter regarding the ERG Draft EIR:

> If listed species are found, then the area is either flagged for avoidance or the individual(s) is captured and relocated to suitable habitat out of harm’s way. This measure may work for special-status plants but will not work for animals, particularly CTS and CRLF and small mammals, which have demonstrated high fidelity for refugia and microhabitat features and will return to the capture point or die trying (Villasenor et al., 2009; AECOM, 2010; Ford et al., 2013).\(^{222}\)

Capture and relocation should lessen direct mortality but may still result in significant mortality.\(^{223}\)

In addition, the GCP does not require sufficient means to track and monitor capture and relocation. (See comments regarding Section 6 Processing and Implementation below.) Specifically, the capture and relocation measure (Measure 12 on page 72) suffers from the following additional shortcomings:

- Does not require photo-documenting and recording each relocation to track take.
- Does not require recording coordinates of capture and release locations.
- Does not authorize collecting tissue samples from dead or injured animals for DNA analysis if provided for by the Service or CDFW.

\(^{220}\) Letter from Lena Chang, Acting Assistant Field Supervisor, U.S. Fish and Wildlife Service, to Kathryn Lehr, Planner, Santa Barbara County Planning and Development Department (February 26, 2018).

\(^{221}\) Id.

\(^{222}\) Hunt 2018 at 9-10.

\(^{223}\) Bumgardner at 6.
• Does not adequately explain tracking of relocation takes.
• Does not provide for adequate monitoring of relocated CTS and CRLF and/or relocation sites to better estimate post-relocation survival rates.

Furthermore, Measure 12 is deficient and may lead to mortality because CTS migrate in a unidirectional route between breeding habitats and upland refugia.\(^{224}\) Capture and relocation can place CTS outside of their route such that they will never make it back to their pond or refugia.\(^{225}\)

\(\textit{f. The GCP Does Not Avoid and Minimize Take of CTS, CRLF, and LYS by Siting Development in Areas Outside of Occupied and Suitable Habitat Whenever Feasible.}\)

The GCP’s Goal 1, Biological Objective 1.3, for CTS and CRLF emphasizes the importance of siting oil and gas projects outside of both occupied and suitable habitats to conserve and recover the species. (GCP at 6 and 70) With regards to LYS, Goal 3, Objective 3.2 states, “Site project impacts in areas unoccupied by the Lompoc yerba santa to the maximum extent feasible.” (GCP at 67) In line with these goals and objectives, Measure 2 provides that, “applicants will site all development away from known and potential California tiger salamander and California red-legged frog breeding habitats, avoid high quality upland and dispersal habitat, and avoid habitats supporting and immediately surrounding Lompoc yerba santa to the maximum extent feasible.” (GCP at 70) It is feasible to avoid the species, including LYS.\(^{226}\)

However, the GCP fails to ensure that oil and gas development will be sited to avoid or minimize take to the maximum extent practicable. As discussed further under Section 6 (Permitting and Implementation) below, the GCP does not require redesign to avoid take where feasible, so it does not adequately minimize take.

\(\textit{g. Objectives 1.4 and 3.4 to Restore Disturbed Areas to Original Conditions Should Specify Aggressive Timeframes for Restoration.}\)

GCP Biological Objective 1.4 for CTS and CRLF and Biological Objective 3.4 for LYS are to restore disturbed areas to original conditions, as feasible. (GCP at 66, 67) The GCP, however, does not evaluate or disclose a timeframe for restoration. A timeframe is important because restoration is likely required only upon decommissioning.\(^{227}\) The two Cat Canyon projects, if authorized, will not be decommissioned for thirty to fifty years or more after approval.\(^{228}\)

\(\textit{224 Id.}\)
\(\textit{225 Id.}\)
\(\textit{226 Id. at 3.}\)
\(\textit{227 Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 2-10 (February 2019) (Describing soil remediation at time of “decommissioning.”)}\)
\(\textit{228 Id. at 2-5 (February 2019); See also Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Oilfield Redevelopment Project at 2-2 (November 2018).}\)
h. **The GCP Fails to Require Permanent Protection of Habitat Restoration Sites to Ensure Take is Mitigated, Resulting in Inadequate Compensation.**

The GCP states that the Service has the “option” of requiring permanent protection of habitat restoration sites required to mitigate unavoidable impacts. (GCP at 26; See also: GCP Measure 22 at 74, and GCP at 81) Permanent protection is essential because without it, the restoration sites may be cleared and developed in the future. Failure to provide permanent protection would mean that the GCP will not mitigate take to the maximum extent practicable. For example, in 2011, the former Bixby-Cojo Ranch (now Dangermond Preserve) disked a mitigation site for federally endangered Gaviota tarplant in the Planning Area.\(^{229}\) The County had not required permanent protection of the mitigation site and did not issue a violation.\(^{230}\) The GCP must require permanent protection of habitat restoration sites to ensure adequate mitigation of take.

i. **Measure 5’s Signage to Protect All Covered Species’ Habitats Must Apply to Occupied and Suitable Habitats and Be Installed at Sufficient Intervals.**

Measure 5 appropriately requires signage to protect “All Covered Species’ habitats” during construction. (GCP at 71) However, Measure 5 fails to specify that signage must be installed to protect all habitats for covered species, rather than only habitats known to be occupied. It is difficult to determine whether burrows are occupied. Therefore, Measure 5 is deficient because it does not include signage to protect suitable upland habitats from grading and construction in order to minimize take and impacts to CTS and CRLF.

Measure 5 also fails to specify the distance between the “No Entry” signs, such as 100 feet or less, to ensure crews and equipment do not unintentionally enter habitat areas and cause unnecessary take.

j. **Measure 8 Insufficiently Limits Nighttime Traffic to Protect CTS and CRLF.**

Nighttime traffic is a significant threat to wildlife including breeding migrant and dispersing CTS and CRLF during rains, with kill rates in one study as high as “25 to 72%” of all CTS crossing the road. (GCP at 54) More than half the CTS observations on some roads are of

\(^{229}\) Notice of Violation Letter from Heather Johnston, South Central Coast District Enforcement Officer, California Coastal Commission to Carl Steinberg, California Canyon Oaks LLC, California Coastal Oaks LLC, and California Mountain Gardens LLC (July 11, 2011).

\(^{230}\) Letter from Kimberly McCarthy, Zoning Enforcement Program, Santa Barbara County Planning and Development Department to California Ocean Oaks LLC, California Canyon Oaks LLC, California Mountain Gardens LLC, and Coastal Management Resources LLC (April 23, 2011).
dead and dying CTS.\textsuperscript{231} Such mortality has been found to have the potential to cause local extinctions in related species. (\textit{Id.}) Limiting construction traffic during nights under Measure 8 will not minimize roadkill because drilling and oil tanker deliveries must continue twenty-four hours per day for seven days per week.\textsuperscript{232} GCP Mitigation Measure 8 says that “all hauling activity within habitat for covered species will be restricted to daylight hours,” but this measure is likely not feasible. In the Final EIR for the ERG Project, Mitigation Measure BIO-2m was modified to clarify that nighttime traffic and CTS and CRLF roadkill cannot be substantially reduced due to the need for day and night oil and salt deliveries, worker safety, security, and spills.\textsuperscript{233}

To minimize the potential for mortality of wildlife, including listed CTS, routine construction, operations, and maintenance activities shall be conducted during daylight hours only to the maximum extent feasible (defined as the hours after sunrise and before sunset). Allowed nighttime work activities shall be limited to well drilling, significant well workovers (which in part include replacement of the well liner), and repair/replacement of critical equipment necessary to maintain overall facility operation/throughput. Nighttime vehicle activities shall be limited to LCO deliveries, export of blended crude (until such time the FPP is operational), bulk salt deliveries for the Soft Water Plant, and nighttime operator facility reconnaissance to ensure safe operations. Nighttime traffic shall only also be allowed for activities required for facility and worker safety and emergencies, including security and law enforcement patrols and oil release response and clean-up activities. For planned nighttime work, such as well drilling and workovers, prior notification a request shall be submitted to County P&D for review and approval and work shall not commence without prior P&D approval.\textsuperscript{234}

Furthermore, Measure 8 applies only during construction. (GCP at 71) It does not apply during operations, which can last for thirty to fifty or more years. During operations, Aera’s project would add 523 vehicle trips per day, including 190 oil tankers truck trips day and night in and around CTS and CRLF habitat in the Santa Maria Valley.\textsuperscript{235} Many of the trucks will also use Highway 166, endangering CRLF in the Cuyama River.\textsuperscript{236} The ERG Project would entail 126 tanker trips each day.\textsuperscript{237} For these reasons, GCP Measure 8 is infeasible and does not sufficiently minimize vehicle-strike take.

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\textsuperscript{232} Santa Barbara County Planning and Development Department, \textit{Proposed Final EIR for ERG West Cat Canyon Revitalization Plan} at 4.8-15 (February 2019).
\textsuperscript{233} \textit{Id.} at 4.3-55.
\textsuperscript{234} \textit{Id.}
\textsuperscript{235} Santa Barbara County Planning and Development Department, \textit{Draft EIR for Area East Cat Canyon Redevelopment Plan} at 4.10-13 (November 2018).
\textsuperscript{236} \textit{Id.}
\textsuperscript{237} Santa Barbara County Planning and Development Department, \textit{Proposed Final EIR for ERG West Cat Canyon Revitalization Plan} at 4.10-19 (February 2019).
k. **The GCP refers to Measure 10 in Section 3 of the Main Report.**

The Footnote to the unnamed table on Page 80 of the GCP refers to Measure 10 in Section 3 of the Main Report, but we are unable to locate this Measure.

l. **Measure 11 Fails to Specify Sufficient Time for Preconstruction Surveys.**

Measure 11 requires preconstruction surveys “immediately prior to the onset of any ground disturbance” to relocate CTS and CRLF. (GCP at 71) Measure 13 requires burrow excavation surveys “until it is certain that the burrows are unoccupied,” or covering burrows with steel plates during construction. (GCP Measure 13 at 73) Effective burrow excavation surveys needed to capture and relocate CTS and CRLF during or prior to construction are time intensive because they involve careful hand digging of gopher and ground squirrel burrows to capture CTS and CRLF. “Based on their life history, it is unlikely a salamander would be found during preconstruction monitoring and surveys unless the surveys included actions such as burrow excavation, pitfall traps and drift fencing.” Mitigation Measure BIO-13 in the Final EIR for the ERG West Cat Canyon Project requires focused pre-construction surveys within twenty-four hours of construction. This is insufficient time to complete focused surveys for CRLF and CTS which require careful burrow excavation. Biologists conducting burrow excavation must not be rushed or take will not be minimized. Moreover, it is infeasible to conduct effective borrow excavation using only hand tools; therefore, Measure 13 does not ensure that take of CTS is minimized to the maximum extent practicable. Accordingly, GCP Measures 11 and 13 are flawed because they do not set forth any time for burrow excavation surveys to ensure CRLF and CTS take is minimized to the maximum extent practicable.

m. **Measures 12, 13, 14, and 17 Fail to Specify How Much Time Will be Provided for CTS or CRLF to Vacate A Work Area Before Work May Resume.**

Measures 12, 13, 14, and 17 involve Capture and Relocation but fail to provide the timeframe to provide CTS and CRLF with an opportunity to vacate a work site. (GCP at 72 - 73) By failing to specify a timeframe, these Measures will not sufficiently minimize take.

n. **Mitigation Measure 20 for Oil Spills is Reactive and Therefore Will Not Avoid Impacts on Species from Spills.**

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238 Letter from Gregg Erickson, Regional Manager, Bay Delta Region, California Department of Fish and Wildlife to Ms. Crystal Acker, Planner, Sonoma County Permit and Resource Management Department at 2 (March 6, 2020).

239 Santa Barbara County Planning and Development Department, *Proposed Final EIR for ERG West Cat Canyon Revitalization Plan* at 4.3-87 (February 2019).

240 Bumgardner at 6-7.

241 Id.

242 The GCP incorrectly cites to Measure 17 instead of Measure 18 in the last full paragraph on Page 79.
Mitigation Measure 20 does not minimize or mitigate oil spill-related take to the maximum extent practicable because it cannot prevent or reduce the frequency of spills and is merely reactive. (GCP at 73-74) The two Cat Canyon projects will cumulatively result in approximately four oil and or polluted wastewater spills per year, or 120 to 200+ spills during the 30 – 50+ year lifetime of the projects.\(^ {243} \) Based on state spill averages, every year an average of around 160 barrels would be spilled from these two projects, which does not even account for spills resulting from existing operations in the County.\(^ {244} \) The ERG Final EIR and the Aera Draft EIR identify spills as a significant unavoidable impact to water and to biological resources, including CTS and CRLF.\(^ {245} \) The only measure in the GCP proposed to directly address the significant unavoidable impacts of oil and waste spills on CTS and CRLF is to prepare an Emergency Response Action Plan (“ERAP”) to try to limit the damage after-the-fact, but this Measure is already required in the County EIRs for the Cat Canyon oil projects.\(^ {246} \) (GCP at 73-74) More importantly, Measure 20 does not avoid a significant impact to CTS and CRLF because it includes no proactive measures such as project redesigns, alternative siting, or automatic pipeline valve shutoffs to avoid or minimize spill related take.\(^ {247} \) Measure 2 seeks to have applicants plan to avoid breeding and high quality upland habitats, but as discussed below there is no implementation measure to ensure avoidance and minimization alternatives are adequately considered. (GCP at 70) Spills and spill cleanups cause take.\(^ {248} \) These impacts are inadequately mitigated because Measure 20 does not mandate preventative measures.

In addition, Measure 20 also only applies to oil spills. The GCP omits prevention or mitigation measures for chemical and toxic wastewater spills. Since these spills may occur in different areas with different resources and contain hazardous materials with different impacts than oil, it is necessary for the GCP to require an ERAP for oil, wastewater, and chemical spills. Preventative measures should also be required.

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\(^ {243} \) Number of spills (four) estimated by multiplying the projected six spills per year by 66% to account for the withdrawal of the PetroRock Application. See Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 4.9-35 – 4.9-35 (February 2019); See also Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Oil Field Redevelopment Plan at 4.9-33 (November 2018).

\(^ {244} \) Id.; Average volume of two remaining projects’ spills (160 Barrels per year) was estimated by multiplying 240 barrels per year by 66% to account for the withdrawal of the PetroRock application.

\(^ {245} \) Santa Barbara County Planning and Development Department, Proposed Final Environmental Impact Report for ERG West Cat Canyon Revitalization Plan at 4.3-49 – 4.3-50; 4.9-16 – 4.9-17 (February 2019); See also Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Oil Field Redevelopment Plan at 4.3-56 – 4.3-58; 4.9-15 – 4.9-16 (November 2018).

\(^ {246} \) See e.g., Santa Barbara County Planning and Development Department, Proposed Final Environmental Impact Report for West Cat Canyon Revitalization Plan at 4.3-50 (February 2019).

\(^ {247} \) Id.

\(^ {248} \) Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 4.3-49 - 50 (February 2019).
o. **Measure 23 Fails to Require Timely Notification of Injured CTS and CRLF.**

Measure 23 is deficient because it allows up to seventy-two hours to report injured CTS and CRLF. (GCP at 74; See also GCP at 108) Seventy-two hours is too long to report injuries to these species because injured wildlife may perish in this time. Injured wildlife need heat and hydration within twenty-four hours. Moreover, Measure 23 fails to require permittees to take injured wildlife to an emergency veterinary hospital for treatment, which must be required to minimize take. As a result, GCP Measure 23 is insufficient to mitigate take by preventing mortalities.

p. **There is a Risk that Permittee-Responsible Mitigation for Oil and Gas Activities May Not Adequately Mitigate Take of CTS, as Evidenced by the Proposed Aera Project.**

Mitigating loss of CTS habitat by setting aside existing habitat is inadequate to mitigate take if the conservation area is small or narrow, or if there is a net loss of habitat. For example, Aera’s East Cat Canyon Project Conservation Area is configured such that it will not adequately compensate for loss of habitat. CTS Pond SISQ-19 is located outside the southeast corner of the Aera East Cat Canyon site. The proposed Conservation Area includes land north of SISQ-19 along a thin section of land that widens northward. “The SISQ-19 lies just beyond the southeast corner of the project site. Given the geometry of the proposed Conservation Area, it is not clear that it will mitigate impacts to CTS dispersal caused by project build-out. The easement conserves open space north of SISQ-19 via a narrow strip of land that gradually widens northward, but habitat fragmentation will occur northwest and west of SISQ-19 in the project area under the proposed project scenario.” As shown in Figure 2 below, it contains only a small portion of SISQ-19’s upland habitat. Moreover, where the conservation area widens in its northern section, is beyond the 1.3-mile CTS range so it offers no compensatory habitat for CTS in this wider area. Furthermore, upland habitat to the northwest and west of SISQ-19 in the Aera project area will be developed and fragmented under the proposed project, resulting in a permanent net loss of upland habitat surrounding SISQ-19. This example demonstrates that permittee-responsible mitigation under the GCP is insufficient where it provides insufficient

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249 Phone call between Julia Parker, Director of Operations, Santa Barbara County Wildlife Care Network, and Brian Trautwein, Environmental Analyst/Watershed Program Coordinator (April 20, 2020).
250 Id.
251 Santa Barbara County Planning and Development Department, *Draft EIR for Aera East Cat Canyon Redevelopment Plan* at 4.3-30 (Figure 4.3-8a) (November 2018).
252 Hunt 2019(b) at 9-10.
253 Id.; See also Santa Barbara County Planning and Development Department, *Draft EIR for Aera East Cat Canyon Redevelopment Plan* at 2-12 (Figure 2-6) (November 2018).
254 Id. at 4.3-30.
compensation, is beyond the species dispersal range, or results in a net loss of upland habitat.
q. The GCP does not Require Specific Equipment to Minimize Take During Project Development.

The GCP does not require any specialized equipment to minimize take of CTS and CRLF during exploration, construction, production of oil and gas, or decommissioning. As a result, the GCP does not minimize and avoid impacts to listed species to the maximum extent practicable.

r. The GCP Omits Measures to Avoid and Minimize Take During Pipeline Construction.

The GCP lacks measures to minimize the impact of pipeline construction on sensitive habitats. Measure 2 requires that applicants must site their projects to avoid habitats to the maximum extent feasible. (GCP at 70) However, the GCP fails to include measures to effectuate this goal such as project-specific avoidance-based alternatives analyses to ensure pipelines placement minimizes take to the maximum extent practicable. The failure to specify measures to minimize take caused by pipeline construction demonstrates that the GCP fails to avoid and minimize take to the maximum extent practicable.

s. Temporary and Permanent Impacts to CRLF Dispersal Habitat are Not Adequately Mitigated.

The GCP assigns an eighty percent reduction in the requirement to compensate for temporary loss of CRLF dispersal habitat. (GCP at 62 and 79) Thus, a temporary loss of dispersal habitat can be replaced at only .2:1. For permanent impacts to CRLF dispersal habitat, the GCP invokes a sixty percent reduction when calculating the mitigation-to-impact ratio (.4:1).

Dispersal habitats serve a critical function in the conservation and recovery of CRLF. Dispersal habitat is one of the Primary Constituent Elements of the CRLF.255 “[H]abitat fragmentation, occurs when remaining populations are isolated because the links between habitat patches have been destroyed.”256 “The destruction of upland dispersal habitat can result in the increased isolation of breeding populations. … fragmentation can result in decreased heterozygosity and inbreeding depression.”257 Given the importance of dispersal corridors at maintaining long-term genetic exchange and CRLF viability, and in order to minimize impacts associated with take, unavoidable temporary and permanent impacts and mitigation for CRLF dispersal habitats should have been calculated at higher than twenty percent and forty percent, respectively. Loss of dispersal habitat remains a significant unavoidable impact but is not

257 Id. at 8.
disclosed as such. By utilizing such low mitigation ratios for CRLF dispersal habitat, the GCP fails to mitigate take to the maximum extent practicable.

t. The CTS Mitigation and Conservation Account has Not Been an Effective Tool for Compensating for Habitat Losses.

The GCP proposes continued use of the East and West Santa Maria CTS Metapopulations Mitigation and Conservation Account. (GCP at 76 – 77) According to the Service, this Account has not been a successful tool for mitigating impacts to CTS and may be closed.258 Given this, the GCP must not rely on the Conservation Account to minimize or compensate take.

u. The Uncertainties and Challenges with Mitigation Banks for CTS are Not Disclosed in the GCP and thus the Feasibility of this Mitigation is Insufficiently Analyzed.

As defined in the Service’s guidance document on conservation banks dated May 2, 2003, “[a] conservation bank is a parcel of land containing natural resource values that are conserved and managed in perpetuity, through a conservation easement held by an entity responsible for enforcing the terms of the easement, for specified listed species and used to offset impacts occurring elsewhere to the same resource values on non-bank lands.”259 A bank may be created through the “(1) acquisition of existing habitat; (2) protection of existing habitat through conservation easements; (3) restoration or enhancements of disturbed habitat; (4) creation of new habitat in some situations; and (5) prescriptive management of habitats for specified biological characteristics.”260 However, “[t]he important point in establishing a bank is to site banks in appropriate areas that can reduce the threat of fragmentation and provide management measures that address other threats that a species might encounter, ….”261

i. The GCP Must Specify Which Conservation Banks are Approved by the Service to Provide Compensation for Impacts to CTS.

Under the GCP, a permittee is permitted to “purchase credits from an approved conservation bank commensurate with the required mitigation, to provide compensation for

258 Personal Communication between Rachel Henry, HCP Coordinator, Jenny Marek, Deputy Field Supervisor, Steve Henry, Field Supervisor, and Chris Diel, Recovery Permit Coordinator, United States Fish and Wildlife Service; Tara Messing, Staff Attorney, Elizabeth Fisher, Staff Attorney, and Brian Trautwein, Environmental Analyst/Watershed Program Coordinator; and Wendy Motta, District Representative for Congressmember Salud Carbajal, in Santa Barbara (March 3, 2020).
260 Id.
261 Id. at 4.
[unavoidable] impacts to [CTS].” (GCP at 76) However, the GCP does not provide any information about which conservation bank(s) are Service-approved to fulfill this mitigation requirement. It is therefore unknown if the conservation bank must be within the same CTS metapopulation as the impacts or even in the County. In addition, the parameters for purchasing mitigation credits from CTS mitigation bank(s) must be disclosed in the GCP to ensure that the mitigation measure will meaningfully conserve the species.

ii. The Ranch Upon Which the La Purisima Conservation Bank Exists is for Sale, Complicating Mitigation under the GCP.

The ranch which hosts the La Purisima Conservation Bank is for sale, threatening the viability of the Bank.262 There are multiple noncontiguous parcels which form the Bank.263 To the extent that a sale of the ranch would complicate the Bank’s value and success, the GCP should disclose the pending sale and discuss the implications for mitigating impacts to CTS.

iii. The GCP Omits Critical Information about the La Purisima Conservation Bank in Order to Evaluate the Success of the Bank.

The GCP provides no information about the successes or challenges with the La Purisima CTS Mitigation Bank, which was established over six years ago, but nevertheless relies on this bank to mitigate unavoidable impacts to CTS.264 (GCP at 76) Two metrics are utilized to measure the success of a conservation bank: (1) ecological measures and (2) economic measures.265 “Ecological metrics of conservation bank success are important in determining whether banks are meeting ecological performance goals.”266 These measures include, but are not limited to, linkage to existing conservation areas, preserving ecologically valuable private lands, increasing the number of preserved acreage, meeting Recovery Plan criteria, maintaining a stable or growing population, profitability, and more.267 The GCP is entirely silent as to whether the La Purisima Bank is reaching any ecological or economic metrics to demonstrate success. Based on the discussion in the GCP, it is entirely unknown which metrics, if any, the Service is tracking to determine the success of the La Purisima Bank. In failing to set forth this information

262 Santa Barbara Land Trust, La Purisima Conservation Bank, available at: https://www.sblandtrust.org/portfolio-item/la-purisima-conservation-bank/.
263 Personal Communication between Rachel Henry, HCP Coordinator, Jenny Marek, Deputy Field Supervisor, Steve Henry, Field Supervisor, and Chris Diel, Recovery Permit Coordinator, United States Fish and Wildlife Service; Tara Messing, Staff Attorney, Elizabeth Fisher, Staff Attorney, and Brian Trautwein, Environmental Analyst/Watershed Program Coordinator; and Wendy Motta, District Representative for Congressmember Salud Carbajal, in Santa Barbara (March 3, 2020).
266 Id.
267 Id. at 20.
in the GCP, the mitigation measure is unproven in terms of feasibility and adequacy to mitigate impacts from covered activities.

Finally, the U.S. Army Corps of Engineer’s Regulatory In-lieu Fee and Bank Information Tracking System (“RIBITS”) provides information about the status of the La Purisima Conservation Bank, including a credit ledger summary. The summary identifies available credits, withdrawn credits, released credits and potential credits—none of which is disclosed or assessed in the GCP. The GCP must evaluate the credit availability for the La Purisima Conservation Bank in the discussion on mitigation banks for CTS given that the analysis relies on this bank to mitigate unavoidable impacts on CTS from oil and gas activities.

v. The Adaptive Management Strategy in the GCP May Not Ensure that the Biological Goals and Objectives in the Conservation Strategies for the Species are Achieved.

i. The Adaptive Management Strategy in the GCP for LYS has the Potential to Result in a Massive and Significant Loss of LYS Plants or Ramets.

The GCP would allow a 20% loss of the number of LYS ramets or the area occupied by LYS due to changed or unforeseen circumstances before adaptive management actions may be implemented. (GCP at 89 - 90) This “threshold is far too high (bar is too high) and would put [] this species at risk of extinction.” Not enough information is known about LYS viability to set such a high threshold.

ii. Adaptive Management for CTS Regarding Surveys May Never be Triggered.

CTS adaptive management requires annual surveys over five-year periods to determine whether ten or fewer larvae are captured in a number of ponds. (GCP at 87) The GCP refers to annual range-wide surveys. However, there is no evidence of annual surveys to count CTS larvae in the Planning Area in the GCP. This trigger would never be met if there are not five consecutive years of surveys. Given funding limitations and access to private ponds, it likely this trigger will never be met even if the CTS population drops significantly because there may never be five consecutive years of surveys in enough ponds to trigger adaptive management.

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269 Id.
270 Id. at 15.
271 Magney at 15.
iii. The CRLF Adaptive Management Strategy Relies on Populations at Two South County Preserves but Includes No Reference Populations in the Central or North County.

Adaptive management for CRLF is triggered by fifty percent reductions in CRLF populations at locations such as Arroyo Hondo and Baron Ranch (Arroyo Quemada). (GCP at 89) However, these reference populations are on the South Coast in adjacent canyons. The GCP is flawed because it does not include representative reference populations from central and north County areas, or criteria for identifying representative regional reference populations, such as existing preserved open spaces and ponds or private mitigation banks, to reflect regional population dynamics. (See GCP at 69). Given the lack of north and central County reference population triggers, the GCP fails to minimize take to the maximum extent practicable.

iv. The Adaptive Management Strategy under the GCP is Severely Constrained by the Voluntary Nature of Any Additional Conservation and Mitigation Measures.

The adaptive management measures are voluntary under the GCP. (See e.g. Id. at 85-90) Terms in the GCP such as “can” and “should” characterize the elements of adaptive management as optional. (Id. at 85, 87-90) The GCP fails to include enforceable language such as “must” and “shall” to ensure implementation of measures, including adaptive management, to minimize the impacts of take to the maximum extent practicable.

If adaptive measures are not implemented due to their voluntary nature, CTS and CRLF take will increase and the GCP will fail to avoid, minimize, and mitigate the impacts of take to the maximum extent practicable. As the California Coastal Commission points out, the GCP “would constrain future options for avoidance, monitoring, and mitigation measures.”272 The limitation to those options that impose no additional costs to an applicant without the applicant’s consent is especially troublesome.273

x. The GCP Fails to Protect Species from Changed and Unforeseen Circumstances

The application of the No Surprises Rule will result in reasonably foreseeable future impacts and harm that will not be mitigated or minimized. Given the long duration of the GCP, these impacts may be quite severe, which is unacceptable given the imperiled status of these species. In addition, no additional measures will be required unless the permittees agree. (GCP at 90-91)

272 Letter to Stephen P. Henry from Kate Huckelbridge regarding Draft Environmental Assessment and Draft General Conservation Plan for Oil and Gas Activities in Santa Barbara County, CA, at 2 (May 4, 2020).
273 Id.
i. The No Surprises Rule May Prohibit Additional and Necessary Conservation and Mitigation Measures.

The No Surprises Rule provides that upon issuance of an ITP, the permittee “may remain secure regarding the agreed upon cost of conservation and mitigation,” assuming that the terms of the plan are being implemented.\textsuperscript{274} 50 C.F.R. § 17.22(b)(5); 50 C.F.R. § 17.32(b)(5). The No Surprises Rule provides such assurances in the case of changed or unforeseen circumstances. \textit{Id.} Given the twenty-year duration of ITPs under the GCP, unforeseen and changed circumstances may arise that require adaptive management. (GCP at 90-97) If additional conservation and mitigation measures are needed to account for changed circumstances, the permittee must implement the measures provided for in the plan. 50 C.F.R. § 17.22(b)(5)(i)-(ii). However, to the extent that “such measures were not provided for in the plan’s operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.” \textit{Id}. Moreover, with regards to unforeseen circumstances, no “additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee” is required. 50 C.F.R. § 17.22(b)(5)(iii).

The GCP identifies “reasonably-foreseeable [changed] circumstances and their anticipated effects on the covered species,” but then states that “Applicants should identify up-front the range of possible operating conservation program adjustments that could be implemented as new information or data is obtained. This range defines the limits of what resource commitments may be required of the applicant.” (GCP at 91) The GCP’s proposed approach for mitigating for changed circumstances is inconsistent with ESA regulations, which require changed circumstances to be “provided for in the plan,” and improperly defers to the discretion of the permittee who has no incentive to be inclusive regarding changed circumstances. 50 C.F.R. § 17.22(b)(5)(ii). Moreover, the approach may lead to inconsistencies among permittees with regards to which additional conservation and mitigation measures may be required. The GCP’s reliance on the applicant to identify the range of changed circumstances further heightens concerns that impacts from covered activities may not be mitigated to the maximum extent practicable.

As recognized by the California Coastal Commission, “if pursuing [the GCP] would constrain future options for avoidance, monitoring, and mitigation measures under the ‘No Surprises’ rule, then perhaps the ‘no project’ alternative you describe, which is to continue to review oil and gas proposals in association with individual HCPs, could be a more environmentally beneficial alternative.”\textsuperscript{275}

\textsuperscript{274} 63 Fed.Reg. 8859, 8867.
\textsuperscript{275} Letter to Stephen P. Henry from Kate Huckelbridge regarding Draft Environmental Assessment and Draft General Conservation Plan for Oil and Gas Activities in Santa Barbara County, CA, at 2 (May 4, 2020).
ii. The Twenty-five Percent Total Cover Trigger for Addressing Invasive Exotic Plants in LYS Stands is Too High to Minimize Take of LYS.

The GCP uses twenty-five percent total cover as a trigger for implementing remedial action to address invasion of new invasive exotic plants. (GCP at 96) Once an invasive exotic plant species covers twenty-five percent of the ground in an area supporting LYS, the problem is already significant.\textsuperscript{276} This is because the exotic species’ seed bank will be substantial.\textsuperscript{277} If “an invasive plant-fire regime cycle” becomes established, then “restoration to preinvasion conditions becomes more difficult (Brooks et al. 2004).”\textsuperscript{278} Given this, the GCP fails to minimize the impacts of LYS take to the maximum extent practicable.

iii. Fires are an Impact of the GCP and Not a “Changed Circumstance.”

The GCP improperly treats fires as a “changed circumstance,” not an impact of the GCP. (GCP at 92-93) However, the GCP will ultimately lead to increased oil and gas activities, more fires, and a greater threat of fire to the species covered under the GCP. By failing to evaluate the impacts from fires on the species and instead identifying these disasters as “changed circumstance,” the GCP fails to avoid and minimize take by oilfield-started fires to the maximum extent practicable and does not mitigate the significant impacts of oilfield-started fires on listed plant species.

iv. The List of Changed Circumstances in the GCP is Too Limited and Will Prevent the Implementation of Additional Mitigation and Conservation Measures that May Be Necessary in the Future.

The list of changed circumstances in the GCP is also too limited and must include additional changed circumstances, including, but not limited to, emergency repairs or maintenance, especially if such activities require habitat clearing, expansion of the three species’ range in the County, new diseases impacting the species, and new scientific or commercial data related to survey protocols, species range, habitat delineation, etc.

y. Mitigation Measure Numbering in the GCP does not Track with the Numbering in the EA.

The GCP mitigation measures do not appear to track with the EA’s references to mitigation measures. Some appear to be off by one. (See e.g.: GCP Measures 18 and 21)

\textsuperscript{276} Email from Karen Flagg, Restoration Ecologist, to Brian Trautwein, Environmental Analyst / Watershed Program Coordinator, EDC (March 25, 2020).

\textsuperscript{277} Id.

\textsuperscript{278} U.S. Fish and Wildlife Service, \textit{Eriodictyon capitatum (Lompoc yerba santa) 5-Year Review: Summary and Evaluation} at 11 (February 8, 2011).
6. Permit Processing and Implementation under the GCP is Intended to Streamline Permitting but Must Still Comply with Section 10 and Section 7 of the ESA.

   a. Required Information to Meet All Issuance Criteria Pursuant to Section 10 is Improperly Omitted from the GCP and Deferred to the Individual Project Packages.

   The Policy for implementing a general conservation plan makes clear that this approach must comply with existing statutory and regulatory authorities. Consequently, a general conservation plan must “specify the amount of take anticipated, avoidance and minimization measures, mitigation required, and any other measures necessary to meet the issuance criteria as required by section 10(a)(2)(B) of the Act.” To ensure consistency with the ESA, the Policy mandates that a “GCP will include everything that a traditional HCP has EXCEPT the names of an applicant or the future permittees.” The Policy “stress[es] that the only difference between the GCP and a traditional HCP is that the Service develops the GCP under which individual ITPs can then be issued to landowners, instead of an applicant doing so.”

   This GCP is a significant departure from the type of plan envisioned under the Policy. Here, much of the information gathering and analysis under Section 10 is deferred until after an individual applicant submits its “Permit Application Package.” The GCP, for example, does not include maps and a discussion of the locations of impacts, evaluation of the duration of proposed covered activities, discussion of current and proposed oil and gas projects in the County, estimation of typical size and frequency of operation or maintenance activities, or description and analysis of the survey results for the covered species. (Id.) This information is instead to be included in the individual project package. (Id.) The scope, magnitude, and complexity of this GCP is the very reason why the Policy limits the use of a general conservation plan “to activities that the Service has the expertise and ability to analyze.” The GCP is not legally permitted to circumvent the requirements of Section 10 by deferring the necessary information gathering and analysis until after an applicant submits their project package. Such an approach is entirely inconsistent with the Policy and the ESA.

   b. The GCP Must Not Allow an Applicant to Piecemeal the Significant Environmental Impacts of an Oil and Gas Project When Applying for an ITP.

   The GCP permits an applicant for newly-constructed oil and gas projects to include construction, operation, and maintenance activities for a project within the same permit application, or to submit an individual project package for each activity. (GCP at 100)

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279 GCP Policy at 2.
280 Id. at 3.
281 Id. (emphasis in original)
282 Id. at 4.
283 Id.
piecemealed approach under the latter option is extremely problematic. If an applicant is able to artificially sever a single project into many little activities, the impacts analysis along with the minimization and mitigation measures will likewise be disjointed. Although cumulatively the impacts may have disastrous consequences for the species, the applicant is able to hide these impacts by chopping up the project. Furthermore, funding assurances may be inadequate if the costs to implement the minimization and mitigation measures are not assessed as a whole. The GCP must ensure that improper piecemealing of projects is not permitted.

c. The Permit Application Package Does Not Require Protocol-level Surveys Which are Needed to Document CTS and CRLF.

The Application Package must contain survey results, but the GCP fails to specify the type of surveys or the need for protocol-level surveys. Mere reconnaissance-level surveys are inadequate for surveying fossorial species such as CTS and CRLF because they do not involve actively searching for CTS or CRLF in their burrows, or conducting protocol-level drift fence surveys. The Service and CDFW developed protocol-level surveys for CTS and CRLF to consistently assess presence and absence to ensure conservation of the species. It is essential that the GCP require the Service’s approved protocol-level surveys and population density surveys to establish baseline population estimates. Reconnaissance-level surveys would generate insufficient or inaccurate information and may lead to the GCP’s underestimation of take and failure to sufficiently minimize and mitigate take.

d. Reporting Fails to Specify How Take is Tracked and How Data is to be Publicly Displayed.

The GCP requires tracking and reporting of the number of CTS or CRLF that are subject to take due to the GCP, including take by vehicle-strike (when known). However, the GCP does not require or clarify how capture and relocation take is to be tracked, and how monitoring results for capture and relocation will be tracked and reported, including where take information is stored and whether it is available to the public on a website.

e. GCP Implementation Does Not Require Applicants to Demonstrate That Projects Avoid and Minimize Take to the Maximum Extent Practicable.

The GCP’s Biological Goals and Objectives emphasize avoidance and minimization of impacts to the species’ habitat areas. However, GCP implementation does not

285 Id.
include a clear mechanism to ensure that alternative siting and designs are considered to minimize take whenever practicable. (GCP at 103 – 106) Specifically, under Permit Implementation, the GCP list of permittee responsibilities omits an analysis of alternative siting and designs to minimize take and impacts to LYS, CTS, and CRLF habitats.\(^{287}\) (GCP at 103) Annual reports described also fail to require reporting of consideration of alternative siting and designs that could feasibly avoid or minimize take. (GCP at 103-104) While the Permit Application Packages will include the applicants’ lists of appropriate minimization measures, these measures may not include alternative siting and design options or otherwise demonstrate that avoidance or further minimization was infeasible. (Id. at 99) Without including an analysis in the Individual Permit Packages of the feasibility of alternative siting and designs to avoid or minimize impacts to LYS, CTS, and CRLF habitats, the GCP does not sufficiently minimize take when practicable. (GCP at 99-100)

Instead, the GCP requires the Package to include details about compensatory habitat mitigation including information on compensatory mitigation calculations, compensatory mitigation funding assurances and payments, and proof of endowments and land acquisitions. (GCP at 99 – 102) Thus, the GCP’s focus is primarily on compensatory mitigation instead of avoidance. As described, implementation of the GCP will not ensure that take is avoided or minimized to the maximum extent practicable.

\(f. \quad \text{The GCP Does Not Provide Adequate Information or Analysis Necessary to Support Consultation under Section 7.}\)

As explained above, Section 7 of the ESA requires that the Service engage in an intra-agency consultation to ensure that issuance of the ITP will not result in jeopardy to a listed species.\(^{288}\) 16 U.S.C. § 1536(a)(2). If an action is likely to adversely affect a listed species or designated critical habitat, the Service must develop and issue a Biological Opinion that reaches a jeopardy or no jeopardy finding. 16 U.S.C. § 1536(b)(3)(A). In the context of the approval of an HCP, the Service must carry out an intra-agency consultation to ensure that issuance of the ITP will not result in jeopardy to a listed species.\(^{289}\)

The “no jeopardy” standard under Section 7 is nearly identical to the finding required under Section 10 that the taking “will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.” 16 U.S.C. § 1539(a)(2)(B). However, it is unlikely that a determination under Section 7 could be properly issued based on the available information and analysis in the GCP. Given the numerous omissions and deficiencies identified herein, the GCP fails to provide the requisite information and analysis to support a determination under Section 7 that the issuance of an ITP will not result in jeopardy to the three listed species.

\(^{287}\) For example, see David Magney’s comment that avoidance of LYS is feasible given the species’ rarity and the fact that it occupies discrete and small areas. Magney at 3.

\(^{288}\) HCP Handbook at 3-15.

\(^{289}\) Id.
7. **The Discussion of Costs to Implement the GCP is Inadequate.**

Congress enacted the ESA to “halt and reverse the trend toward species extinction, whatever the cost.” *Tenn. Valley Authority v. Hill*, 437 at 184. Section 10 of the ESA requires that “the applicant [] submits to the Secretary a conservation plan that specifies... (ii)... the funding that will be available to implement such steps.” 16 U.S.C. § 1539(a)(2)(A)(ii), See also 50 C.F.R. § 17.22(b)(1)(iii)(B). The GCP misstates this statutory requirement as obligating a future applicant to ensure that adequate funding will be provided. (GCP at 110) Although a project-specific analysis of funding sources will be necessary upon receipt of an Individual Project Package, the GCP is statutorily required to specify “the funding that will be available to implement” the steps to minimize and mitigate the impacts of the covered activities. 16 U.S.C. § 1539(a)(2)(A)(ii).

a. **The GCP Fails to Adequately Discuss the Costs Associated with Fully Implementing the Actions Described in the GCP.**

As discussed above, a general conservation plan must meet the same standards as a traditional HCP under the Policy, which includes specifying the funding available.\(^{290}\) The GCP is legally deficient in failing to include the requisite analysis and instead deferring this discussion to the Individual Project Package. (GCP at 110) Other general and multi-species conservation plans acknowledge that project-specific analysis will be required later, but nevertheless provide an explanation of the funding obligations as required by Section 10. For example, the General Conservation Plan for the Desert Renewable Energy Conservation Plan includes a detailed discussion of applicant funding assurances as well as the Service’s funding assurances.\(^ {291}\) The plan also refers to “a detailed analysis of land acquisition costs and of costs to implement non-acquisition mitigation measures.”\(^ {292}\) Furthermore, the Lower Colorado River Multi-Species Conservation Program’s Final Habitat Conservation Plan “provides an estimate of the cost for implementing” the plan.\(^ {293}\) The costs, which are summarized in a table, include “program administration; land acquisition; planning, design, and engineering; habitat creation; environmental compliance; fish augmentation; conservation area management and maintenance; additional law enforcement and firefighting staff; existing habitat maintenance; Topock Marsh pumping; research, monitoring, and adaptive management; remedial measures; and water acquisition.”\(^ {294}\) Each cost category is explained along with a discussion of how the costs were derived.\(^ {295}\) The assumptions made in the plan’s costs analysis are clearly stated in the plan as well.\(^ {296}\)

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\(^{290}\) GCP Policy at 6.


\(^{292}\) *Id.*

\(^{293}\) *Id.* at 7-1

\(^{294}\) *Id.*

\(^{295}\) *Id.*

\(^{296}\) *Id.*
In contrast, the GCP omits any cost analysis for implementing the actions described therein. To the extent that the required cost information is not within the Service’s expertise, the Handbook recognizes that “[a]n economist may be useful to help calculate costs…or to help develop funding assurance measures.” In order to comply with the requirements under Section 10, the Service may need to consult with outside expertise to ensure that the analysis is legally and factually sufficient.

Finally, the GCP is silent as to the Service’s funding assurances for administering the GCP, i.e., staff time to review Individual Project Packages, etc. Although the GCP is intended to streamline the permitting process, staff time and resources will be used to implement the GCP, which must be accounted for in the discussion of funding.

b. The GCP Must Disclose the Oil Operators that Financially Contributed to the GCP Development.

Although the Service drafted the GCP, several oil companies provided the necessary funds to initiate this process. In the interest of transparency and full disclosure, the GCP must identify the names of each company that contributed financially to the GCP as well as the dollar amount provided by each company to the Service.

B. The Service Violated NEPA by Failing to Prepare an EIS and by Issuing an Inadequate EA.

The primary purposes of NEPA are to “encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 U.S.C. § 4321. As with other federal agencies, the Service must protect the environment for future generations; ensure “beneficial uses of the environment without degradation, risk to health or safety, or other undesirable or unintended consequences;” provide a healthy environment for all people; “restore and enhance the quality of the human environment;” and avoid or minimize any possible adverse effects on the environment. 42 U.S.C. § 4331; 40 C.F.R. § 1500.2(f). These responsibilities are implemented by ensuring an analysis and consideration of potential environmental impacts before action is taken. Kleppe v. Sierra Club, 427 U.S. 390, 409-10 (1976); Robertson v. Methow Valley Citizens, 490 U.S. 332, 349-50 ((1989); 42 U.S.C. § 4332(C).

If a proposed action may result in adverse effects on the environment, the lead agency must prepare a detailed EIS. 42 U.S.C. § 4332(C); 40 C.F.R. § 1502.3. The EIS must address the environmental impact of the action, unavoidable adverse environmental impacts, alternatives to the proposed action, the relationship between local short-term uses and the maintenance and

297 HCP Handbook at 3-12.
enhancement of long-term productivity, and any irreversible and irretrievable commitment of resources that would result. 42 U.S.C. § 4332(C).

An EIS is required in this case because the GCP and activities proposed thereunder will result in significant adverse effects on the environment. In addition, even if an EA were appropriate, the Draft EA prepared in this case is inadequate because it fails to address the full scope of activities that may occur and fails to analyze all of the possible environmental consequences. In addition, the EA does not include an adequate discussion of alternatives, mitigation measures, or cumulative impacts.

1. An EIS is required.

The EA admits that the proposed action will result in significant unavoidable impacts. (EA at 2-16, referencing GCP Section 5 and Appendix A) Section 5 of the GCP identifies “Measures to Mitigate Unavoidable Impacts.” (GCP at 75-85) The fact that the action will cause unavoidable impacts requires preparation of an EIS.

Moreover, the proposed GCP is a major federal action significantly affecting the quality of the human environment, thus requiring the Service to prepare an EIS. 42 U.S.C. § 4332(C). Preparation of an EIS is critical to ensure that an agency takes a “hard look” at potential environmental consequences before taking action. Kleppe, 427 U.S. at 409-10. Without an EIS, “there may be little if any information about prospective environmental harms and potential mitigating measures.” Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 23 (2008).

An EIS must be prepared if there are “substantial questions” regarding whether the action may have significant impacts; a plaintiff need not show that significant effects will in fact occur. Ocean Advocates v. U.S. Army Corps of Eng’rs, 402 F.3d 846, 864–65 (9th Cir. 2005); Idaho Sporting Congress, 137 F.3d 1146, 1150 (9th Cir. 1998) (overruled on other grounds by The Lands Council v. McNair, 537 F.3d 981 (2008)); Klamath Siskiyou Wildlands Ctr. v. Boody, 468 F.3d at 562. As the Court noted in Klamath Siskiyou Wildlands Ctr., the threshold for requiring an EIS is a “low standard.” Id.

The NEPA regulations set forth criteria that must be considered when determining whether an action may significantly affect the environment. 40 C.F.R. § 1508.27. In making this determination, an agency must consider “both context and intensity.” Id. Context refers to the setting of the proposed action. Id. § 1508.27(a). As explained in American Rivers v. Federal Energy Regulatory Commission, the consideration of context “depends on the action’s effects in the immediate locale, rather than in the broader ecosystem or world as a whole.” 895 F.3d 32, 50 (D.C. Cir. 2018). In this case, the fact that the proposed action would occur in an area covered with designated critical habitat for at least three listed species requires preparation of an EIS.

Intensity “refers to the severity of the impact” and requires analysis of ten specific factors. 40 C.F.R. § 1508.27(b). The presence of any single factor may be enough to demonstrate that the action is significant. Ocean Advocates, 402 F.3d at 865. Here, several factors are met.
a. An EIS is Required Because the GCP May Adversely Affect Endangered and Threatened Species and Their Critical Habitats.

First, an EIS is required because the GCP “may adversely affect an endangered or threatened species, or its habitat that has been determined to be critical under the [ESA].” § 1508.27(b)(9). The GCP itself notes numerous potential impacts to endangered and threatened species. CTS will be impacted by loss of upland habitat and critical habitat; disruption of normal behavior patterns; spills or leaks of chemicals, fuels, and lubricants; damage to burrows; vehicle strikes; roads that fragment habitat and cause migratory obstacles; capture and relocation activities; crushing and collision; impacts to breeding habitat; increased habitat fragmentation; and changes in vegetation community. (GCP at 53-55, 57-59) CRLF will be impacted by equipment and vehicle strikes; crushing and collision; ground disturbance; accidental spills; loss of critical habitat; disruption by noise and vibrations; disruption of normal behavior patterns; habitat loss/conversion and fragmentation; attraction of predators by trash; exposure to infections, pathogens, and parasites; and capture and relocation activities. (GCP at 59-62) LYS will be impacted by loss of individual plants and habitat; changes in hydrology and erosion; increases in the abundance of nonnative species; dust; loss or change in the abundance of pollinators; road maintenance activities; ground disturbance; vehicles crushing plants; habitat fragmentation. (GCP at 64-65)

The GCP also admits the activities allowed pursuant to the plan would result in unavoidable adverse impacts to CTS, CRLF, LYS, and their habitats. (GCP at 75) As discussed herein, the measures proposed to compensate for such unavoidable impacts are woefully inadequate.

Comments by scientific experts confirm the adverse effects that would result if the GCP is approved and oil and gas activities proceed based on the GCP. Magney notes the extremely rare and vulnerable status of LYS, and the lack of any known, effective mitigation to ameliorate such harm: “The limited distribution and size of the LYS populations are so small that any loss of individual represents a significant impact, and the USFWS has provided no evidence that impacts to LYS can reasonably be considered likely to be mitigable.”

Bumgardner identifies unavoidable impacts which the GCP omits. “Nonetheless, the failure to address specific unavoidable impacts appears to be a substantive omission, particularly where certain impacts can be considered reasonably likely to occur (e.g., oil spills, fires, mosquito abatement, etc.).” He also describes indirect impacts omitted by the GCP, including reduction of the hydroperiod of CTS breeding ponds, and oilfield runoff.

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298 Magney at 18.
299 Bumgardner at 6.
300 Id. at 2.
b. An EIS is Required Because the Proposed Action will Affect an Ecologically Critical Area.

Second, the proposed action will affect an “ecologically critical area.” 40 C.F.R. § 1508.27(b)(3). The GCP would allow oil and gas development in areas that are currently designated as critical habitat under the ESA. Such areas are inarguably “ecologically critical.” In addition to critical habitat for CTS, CRLF, and LYS, the proposed activities would impact critical habitat for southern California steelhead and tidewater goby. The proposed GCP would impact critical habitat for the endangered La Graciosa thistle which occurs in and around the Guadalupe, Santa Maria Valley, Orcutt, and Casmalia Oilfields. The GCP would affect critical habitat for endangered Vandenberg Monkeyflower in the Lompoc Oilfield. Other “ecologically critical areas” would also be impacted, including but not limited to, San Antonio Creek, Barka Slough, Sisquoc River, Santa Maria River, Cuyama River, Gaviota Creek, Carpinteria Creek, Arroyo Hondo Creek, Zaca Creek, Coal Oil Point Reserve, and Arroyo Hondo Preserve. These areas are near roads and highways that could be used for trucking oil and could be impacted by spills under the GCP. To the extent activities occur in the Santa Barbara Coastline area, Gaviota State Park, El Capitan State Beach, Refugio State Beach, Marine Protected Areas including Campus Point SMCA, Goleta Slough SMCA, Kashtayit SMCA, Naples SMCA, Point Conception SMR, coastal streams and estuaries including Carpinteria Salt Marsh, Goleta Slough, and Devereux Slough, and environmentally sensitive habitat areas such as marine mammal haul outs, oak woodlands, bishop pine forests, riparian habitats, coastal wetlands, maritime and other types of chaparral, and other habitats within the Gaviota Coast Plan area would also be impacted.

303 State Water Resources Control Board, GeoTracker Map, available at: https://geotracker.waterboards.ca.gov/map/?CMD=runreport&myaddress=Sacramento; See also California Department of Fish and Wildlife, BIOS Website Map, available at: https://apps.wildlife.ca.gov/bios/?al=ds752.
304 State Water Resources Control Board, GeoTracker Map online at https://geotracker.waterboards.ca.gov/map/?CMD=runreport&myaddress=Sacramento; See also 80 Fed. Reg. 48142.
305 Department of Conservation Division of Land Resource Protection, Santa Barbara County Important Farmland Map (January 2018).
307 California Department of Parks and Recreation, El Capitan State Beach, available at: https://www.parks.ca.gov/?page_id=601.
308 California Department of Parks and Recreation, Refugio State Beach, available at: https://www.parks.ca.gov/?page_id=603.
309 California Department of Fish and Wildlife, CDFW Marine Region News, available at: https://cdfw.maps.arcgis.com/apps/webappviewer/index.html?id=c00c82e1f32a49e99c747e2411e3439e.
310 The California Coastal Act defines as “environmentally sensitive area” as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.” Pub. Res. Code Section 30107.5.
311 Santa Barbara County Planning and Development Department, Gaviota Cast Plan at 2-15 – 16 (November 17, 2018).
c. An EIS is Required Because the Effects on the Environment are Highly Controversial.

Third, the effects on the environment are “highly controversial.” 40 C.F.R. § 1508.27(b)(4). Controversy is demonstrated when “a substantial dispute exists as to the size, nature, or effect” of the action. Sierra Club v. U.S. Forest Serv., 843 F.2d 1190, 1193-94 (9th Cir. 1988) (emphasis in original) (internal quotations omitted). A substantial dispute exists when evidence presented “casts serious doubt upon the reasonableness of an agency’s conclusions.” Nat’l Parks & Conservation Ass’n v. Babbitt, 241 F.3d 722, 736-37 (9th Cir. 2001). Several organizations, individuals, agencies, and scientists have raised concerns about the potential effects on the environment if these activities are allowed to proceed.312

The potential impacts to endangered and threatened species are highly controversial because these species are threatened with extinction and determined to warrant the utmost protection to ensure their survival and recovery. In addition, the GCP’s net loss of designated critical habitat results in a highly controversial effect because it is a permanent loss of habitat that the Service has determined is essential to the conservation and recovery of CTS, CRLF, and LYS. As discussed above, the permanent loss of 152 acres of CTS critical habitat, 355 acres of CRLF critical habitat, and 7.5 acres of LYS critical habitat with no known replacement demonstrates a substantial dispute with the EA’s finding of no significant effect.

In addition to effects on the identified listed species, the activities authorized under the GCP would significantly affect other special-status plants and wildlife for a total of thirty-seven special status plant species and sixty-seven special-status wildlife species in the Cat Canyon Oilfield alone,313 in addition to impacts to water quality,314 air quality and public health.315

d. An EIS is Required Because the Potential Impacts are Highly Uncertain or Involve Unique or Unknown Risks.

Fourth, the potential impacts on the environment are “highly uncertain or involve unique or unknown risks.” 40 C.F.R. § 1508.27(b)(5); Nat’l Parks & Conservation Ass’n. v. Babbitt, 241 F.3d at 732-33; Sierra Club v. U.S. Forest Service, 843 F.2d at 1194. Proponents of the main oil and gas development projects that would benefit from the GCP propose the use of cyclic steam injection, which involves the injection of highly toxic chemicals and water under pressure. They also propose to inject toxic wastewater into aquifers that are currently protected under the Safe Drinking Water Act. The potential effects on groundwater and other important resources is of great concern and raises uncertain, unique, or unknown risks.

312 See, for example, comments submitted by David L. Magney and Michael Bumgardner.
313 See e.g., Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 4.3-31 – 40 (February 2019).
314 Id. at 4.9-16 – 17.
315 Letter from Alicia Roessler, Staff Attorney, Tara Messing, Staff Attorney, and Brian Trautwein, Environmental Analyst/Watershed Program Coordinator to Nancy Minick, Planner, Santa Barbara County Planning and Development Department Energy, Minerals, and Compliance Division at 29-39, 75, 115-116 (August 3, 2018).
With respect to the covered species, there is substantial uncertainty regarding the current status of the populations. The EA itself states that the number of CTS that will be taken cannot be estimated because no density estimate is available for the planning area.\textsuperscript{316} (EA at 56) However, presence can be determined by conducting protocol-level surveys.\textsuperscript{317} Drift fence and pitfall trap surveys as described by Searcy and Shaffer to “quantify California tiger salamander landscape use” in the Central Valley would have helped estimate CTS densities in the Planning Area, but were not undertaken.\textsuperscript{318} Similar uncertainty exists as to LYS. As Magney points out, “The size of the populations of LYS are generally unknown, in particular as to the number of individual plants, and at least one population (Santa Ynez Mountains) was seriously overstated.”\textsuperscript{319} The GCP defers surveys until after approval of the plan. (GCP at 99, stating “survey results for the Covered Species” or notification of assumed presence must be included in Permit Application Package)

Such studies must be completed before significant environmental damage may occur. \textit{Nat’l Parks & Conservation Ass’n.}, 241 F.3d at 736; see also \textit{Sierra Club v. U.S. Forest Service}, 843 F.2d at 1195 (the purpose of an EIS “is to obviate the need for such speculation by insuring that available data are gathered and analyzed prior to the implementation of the proposed action”); \textit{Ocean Advocates}, 402 F.3d at 870-71 (requiring agency to gather data and conduct analysis in an EIS); \textit{Blue Mountains Biodiversity Project v. Blackwood}, 161 F.3d 1208, 1213 (9th Cir. 1998).

In addition, the EA fails to adequately address impacts from climate change. As discussed above, there is a substantial amount of scientific literature demonstrating that climate change adversely impacts species, and specifically amphibian survival. The CTS Recovery Plan also provides a discussion of climate change impacts on amphibians, including CTS.\textsuperscript{320} The UN’s Global Assessment discusses the impacts of climate change on ecosystems and species, and the Final Summary for Policy Makers was released in 2020.\textsuperscript{321} The EA should use this information to guide its assessment of the GCP’s climate change impacts stemming from authorizing take for oil and gas projects.

Uncertainty regarding proposed mitigation measures also requires preparation of an EIS. \textit{Nat’l Parks & Conservation Ass’n.}, 241 F.3d at 733-35 (uncertainty regarding the ability of the

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\textsuperscript{316} Bumgardner at 3.


\textsuperscript{318} Christopher A. Searcy and H. Bradley Shaffer, \textit{Calculating Biologically Accurate Mitigation Credits: Insights from the California Tiger Salamander} at 999 (August 2008).

\textsuperscript{319} Magney at 17.


Park Service to offset the environmental impact required preparation of an EIS. In this case, there is substantial uncertainty whether the proposed payments would actually result in adequate mitigation for impacts to CTS, CRLF, and LYS. There is also uncertainty whether adequate conservation sites are available for acquisition.

For example, there is uncertainty regarding mitigation because there is only one CTS mitigation bank for one of six metapopulations, and mitigation is supposed to occur in the metapopulation that is impacted.\(^{322}\) There is uncertainty regarding the La Purisima CTS Mitigation Bank because it is for sale, it contains non-contiguous parcels, and there are mineral rights in intervening areas that could be developed.\(^ {323}\) The Conservation Account is uncertain, does not work for CDFW, and has not been very effective.\(^ {324}\) Furthermore, Bumgardner testifies that CTS mitigation is uncertain because:

- Other environmental factors that could affect the predictions of the Searcy and Shaffer model (e.g., geospatial distribution of suitable burrows, barriers to movement, presence of local roads and associated vehicle volumes, etc.) may all significantly bias the results of the model toward predictions of less impact and the subsequent requirement for less mitigation. Therefore, the model, by itself, does not appear to adequately predict the amount of compensation land that would be required to fully offset the loss or disturbance of habitat authorized under a Permit.\(^ {325}\)

- Mitigating CRLF take is also uncertain in its reliance on “payment of mitigation fees into a mitigation account.” (GCP at 78) In addition, the reliance on measures to mitigate impacts to LYS by relocation and propagation are unrealistic and speculative given that efforts to date have not proven to be successful.\(^ {326}\) Not only are these proposed mitigation measures unlikely to be effective, but the reliance on mitigation banks, credits, or offsite acquisitions to mitigate impacts to LYS is equally unfounded.\(^ {327}\)

- Finally, there is uncertainty whether the proposed ratios are adequate to mitigate the harm that will occur.\(^ {328}\) Uncertainty regarding mitigation measures is further discussed above in comments on the GCP’s minimization and mitigation measures.

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\(^ {322}\) Personal Communication between Rachel Henry, HCP Coordinator Jenny Marek, Deputy Field Supervisor, Steve Henry, Field Supervisor, and Chris Diel, Recovery Permit Coordinator, United States Fish and Wildlife Service; Tara Messing, Staff Attorney, Elizabeth Fisher, Staff Attorney, and Brian Trautwein, Environmental Analyst/Watershed Program Coordinator; and Wendy Motta, District Representative for Congressmember Salud Carbajal, in Santa Barbara (March 3, 2020); See also Hunt 2019(b) at 13.

\(^ {323}\) Id.

\(^ {324}\) Id.

\(^ {325}\) Bumgardner at 5.

\(^ {326}\) Magney at 9-18.

\(^ {327}\) Id. at 13-14, 17.

\(^ {328}\) Id. at 10-11.
e. **An EIS is Required Because the GCP Would Establish a Precedent for Future Actions with Significant Effects.**

Fifth, the GCP would “establish a precedent for future actions with significant effects.” 40 C.F.R. § 1508.27(b)(6). We are not aware of any other GCPs in California that support new oil and gas development in areas that would affect threatened and endangered species. The proposed GCP would establish a precedent for additional oil and gas development throughout the State by providing a mechanism to take listed species and avoid the individual ITP/HCP process. In particular, this GCP would set a precedent for allowing activities that would harm threatened and endangered species without requiring avoidance or adequate mitigation.

f. **An EIS is Required Because the GCP Would Result in Cumulatively Significant Impacts.**

Sixth, the GCP would allow actions that will lead to cumulatively significant impacts on the environment. 40 C.F.R. § 1508.27(b)(7); Sierra Club v. U.S. Forest Service, 843 F.2d at 1194-95. For example, the ERG Cat Canyon project EIR finds that cumulative biological resource impacts, noise impacts, and surface and groundwater resources impacts from eighteen oil and gas projects and twenty-three other projects are “significant and unavoidable.” As discussed further below under Section 5 Cumulative Impacts, the EA improperly omits numerous cumulative projects.

g. **An EIS is Required Because the GCP Threatens Violations of Federal, State, and Local Laws and Requirements for the Protection of the Environment.**

Finally, the GCP “threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.” 40 C.F.R. § 1508.27(b)(10). In addition to federal ESA protections for CTS, CRLF, and LYS, the GCP would result in harm to other federally protected species such as southern California steelhead, arroyo toad, tidewater goby, and unarmored three-spined stickleback.

The GCP would also violate the California ESA due to the resulting harm to state-listed species such as least Bell’s vireo, southwestern willow flycatcher, unarmored three-spine stickleback, and La Graciosa thistle. The GCP may also harm the state-endangered blunt-nose leopard lizard which occurs in the Cuyama Valley of northeast Santa Barbara County and may occur along oil and gas trucking routes within and outside of the Planning Area. In addition,

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329 Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 3-3 – 3-8, 4.3-80 – 81, 4.8-24 – 25, 4.9-34 – 35 (February 2019).
330 See e.g., Id. at 4.3-37 – 38.
331 Id. at 4.3-20 - 23, 4.3-31 – 40.
332 U.S. Fish and Wildlife Service, Blunt-nosed Leopard lizard Species Account, available at: https://www.fws.gov/sacramento/es_species/Accounts/Amphibians-
the GCP threatens a violation of California’s Fully Protected Species law, which prohibits take of ringtail cat which is a fully protected mammal pursuant to the California Fish and Game Code.333

Activities that would be allowed in the Santa Barbara Coastline area threaten harm to environmentally sensitive habitats, water quality, marine and coastal resources, and recreation, in violation of the California Coastal Act.

The GCP also threatens violations of the Santa Barbara County Comprehensive Plan, including the Hazardous Waste Element (Goal 7-1 and Policy 7-1), Conservation Element (Oak Tree Policy 1 and Oak Tree Protection Development Standard 1), Land Use Element (Land Use Development Policy 10; Hillside and Watershed Protection Policies 1, 2, 7; Streams and Creeks Policy 1; Flood Hazard Area Policies 1 and 2; Visual Resources Policy 2, Parks/Recreation Policy 4; Historical and Archaeological Site Policy 2), Safety Element (Hazardous Facility Safety 3-1: Siting), Seismic and Safety Element (Fire Protection and Prevention Goal 1), Safety Element Supplement (Gas Pipeline Safety Policy 4-B: Safe Operations, and Energy Element (Policy 4.3).

To the extent activities occur in the Santa Barbara Coastline area, they threaten violations of the Santa Barbara County Local Coastal Program and its protections for environmentally sensitive habitats, water quality, marine and coastal resources, and recreation.

Any violations of the California Coastal Act and/or the Santa Barbara County Local Coastal Program would also violate the CZMA which requires consistency with the state’s Coastal Management Program. 16 U.S.C. § 1456(c)(1)(A).

Oil spills would potentially violate protections afforded by the Clean Water Act.

Impacts to nesting birds may constitute violations of the Migratory Bird Treaty Act.

2. The EA Fails to Comply with NEPA.

Even if an EA is appropriate in this case, the Draft EA fails to meet several basic NEPA requirements. As such the EA fails to take a “hard look” at the potential environmental impact of the proposed action. Save the Yaak Committee v. Block, 840 F.2d 714, 717-19 (9th Cir.1988); Nat’l Parks & Conservation Ass’n., 241 F.3d at 730. In this case, the EA fails to adequately consider all potential activities and impacts, relies on speculative and inadequate mitigation measures, and unduly constrains the scope of alternatives.

Reptiles/blunt_nosed_leopard_lizard/documents/blunt-nosed_leopard_lizard.pdf; See also California Department of Fish and Wildlife, Approved Survey Methodology for Blunt-nosed Leopard Lizard (Revised, October 2019).
333 California Department of Fish and Wildlife, Fish and Game Code 4700; See also California Department of Fish and Wildlife, Fully Protected Species, available at: http://www.dfg.ca.gov/wildlife/nongame/t_e_spp/fully_pro.html; See also: Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 4.3-39 (February 2019).
a. **The Scope of the EA is Incomplete and Inconsistent.**

i. The Timeframe is Inappropriately Limited.

The EA evaluates impacts over a twenty-year timeframe. (EA at 1-1, 2-6) The GCP, however, has a longer timeframe, as it applies for up to twenty years “after Permit issuance.” (GCP at 6) Thus, a permit could issue in ten or twenty years from now, and cover activities for an ensuing twenty years. The EA must be revised to evaluate impacts over the potential life of the GCP and the activities authorized under the GCP.

In addition, the oil and gas development projects that would utilize the GCP are planned to last much more than twenty years. The Aera project, for example, would last thirty to fifty years, and the TerraCore (formerly ERG) project would last approximately forty years. Both project EIRs reference the GCP.

The EA must be revised to address the reasonably foreseeable impacts to listed species over the full expected life of the oil and gas development activities. *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067, 1078 (9th Cir. 2011) (court rejected five-year timeframe when coal bed methane wells were expected to produce over a twenty-year period).

ii. The Affected Area is Unclear.

The EA states that the GCP applies to “non-Federal oil and gas activities in Santa Barbara County, California.” (EA at 1-1) The GCP is inconsistent in terms of the geographic extent of the proposal, stating on the one hand that the plan is focused on oil and gas activities “within northern Santa Barbara County, California” (GCP at 4), and on the other hand stating that the Planning Area of the GCP “consists of the Santa Maria Valley, San Antonio Creek, Lompoc Valley, Santa Ynez Valley, and a portion of the Santa Barbara Coastline” (GCP at 5). The EA must provide a clear and consistent description of the location of the proposed activities.

iii. The List of Species Considered in the EA is too Narrow.

The GCP acknowledges that other species could be affected by oil and gas development activities covered by the GCP. (GCP at 12) The EA omits an analysis of such potential impacts, however, instead deferring to separate review of individual HCPs. (EA at 2-3) Because such

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334 Santa Barbara County Planning and Development Department, *Draft EIR for Aera East Cat Canyon Redevelopment Plan* at 2-2 (August 2018).
335 Santa Barbara County Planning and Development Department, *Proposed Final EIR for ERG West Cat Canyon Revitalization Plan* at 2-5 (February 2019).
336 Santa Barbara County Planning and Development Department, *Draft EIR for Aera East Cat Canyon Redevelopment Plan* at 4.3-34 (August 2018); See also Santa Barbara County Planning and Development Department, *Proposed Final EIR for ERG West Cat Canyon Revitalization Plan* at 4.3-29 (February 2019).
impacts are a reasonably foreseeable consequence of the GCP, they must be evaluated and disclosed in the EA.

The Final EIR for one of the Cat Canyon projects identifies species that are omitted from the EA, including endangered southern California steelhead (listed in EA Section 3 Affected Environment but not in Section 4 Environmental Consequences), arroyo toad, tidewater goby, unarmored three-spine stickleback, longhorn fairy shrimp, and Vandenberg monkeyflower which occur in the Planning Area. Additional species, including the Gaviota tarplant (*Deinandra increscens* ssp. *villosa*), La Graciosa thistle (*Cirsium scariosum* var. *longcholepis*), and Vandenberg Monkeyflower (*Diplacus vandenbergensis*) also occur in the Planning Area. Blunt-nosed leopard lizard still occurs in the Cuyama Valley and may occur along tanker truck haul routes such as Highway 166 inside and outside the Planning Area.

Other species are listed in EA Table 3-1 but are not considered in the impact analysis, including Gambell’s watercress, and Gaviota tarplant. These species could be affected by spills, spill response, seeps, stormwater runoff, fires ignited by oil and gas operations, and/or habitat loss e.g. well pad and road construction resulting from the GCP.

iv. The Scope of the EA is Incomplete and Omits a Discussion of all Direct, Indirect, and Cumulative Impacts.

An EA must discuss the need for the proposal, alternatives, environmental impacts of the proposed action, and alternatives. 40 C.F.R. § 1508.9. The scope of an EA is similar to that of an EIS. *D’Agnillo v. U.S. Dep’t of Housing and Urban Development*, 738 F. Supp. 1443, 1447 (S.D.N.Y. 1990) (holding that “[w]hile the regulations do not specifically address how an agency is to determine the appropriate scope of an EA, some guidance may be found in the provisions that relate to the scope of EIS’s”). As such, an EA must include an assessment of impacts, including direct, indirect, and cumulative impacts.

In this case, the EA excludes a discussion of most impacts because it says the GCP would not “directly” result in approval of any oil and gas development. (EA at 1-7) However, it is reasonably foreseeable that approval of the GCP will result in new oil and gas development in Santa Barbara County (in fact, the proponents of the Cat Canyon projects are already relying on the approval of the GCP). Therefore, the EA must be revised to include an assessment of all direct, indirect, and cumulative impacts caused by such activities. For example, the construction and operation of pipelines and other infrastructure located outside the Planning Area are directly related to the “covered activities” and must be analyzed as part of the proposed action.

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337 Santa Barbara County Planning and Development Department, *Proposed Final EIR for ERG West Cat Canyon Revitalization Plan* at 4.3-31, 4.3-20 - 23 (February 2019).
338 Magney at 3.
340 Santa Barbara County Planning and Development Department, *Proposed Final EIR for ERG West Cat Canyon Revitalization Plan* at 4.3-49 – 50.
Light crude oil must be trucked in to blend with the thick crude produced at some Planning Area oil and gas operations so it can be transported to refineries. More than 200 tankers per day would go in and out of the County loaded with crude just for the two Cat Canyon projects. The GCP, however, does not cover inter-County infrastructure such as pipelines and highways. (GCP at 14) By authorizing take for oil and gas activities, the GCP will ultimately result in more tanker crashes, like the March 21, 2020 crash that spilled 4,500 gallons of crude into the Cuyama River. The EA does not disclose the GCP’s direct and indirect impacts of oil tanker accidents, including spills and fires in habitats within and outside of the Planning Area.

The GCP does not cover wildfires started by oil and gas operations despite evidence showing that fires occur when oil and gas projects are authorized. As discussed below, oilfield fires in the Planning Area have occurred over the last four years, and wildfires have been known to wipe out CRLF populations. The EA fails to analyze the GCP’s direct and indirect impacts of fires started by oil and gas operations including tanker accidents.

Fires started by oilfield operations, including climate change-driven fires of “inappropriate season, intensity, severity, or frequency” cause numerous impacts to listed species. (GCP at 93) Recently in 2018, the Woolsey Fire in Ventura County wiped out CRLF populations in the Santa Monica Mountains. Wildfires started by oil and gas projects, including tanker accidents, impact the GCP’s covered species but are not adequately addressed in the GCP. The 2016 Cat Fire Incident in the Cat Canyon Oil Field started “when unknown equipment or powerline issue caused a non-exempt fuse to open and emit sparks or burning material, or Parallel Groove Connector became overheated and emitted the sparks or burning material into grass and vegetation located at the base of the pole.” The operator at the time, ERG, failed to clear vegetation around the pole allowing the fire to spread, triggering a violation of Public Resources Code Sections 4292 and 4296. This is just one of two wildfires started by ERG in the past several years. The cause of the 2017 Lease Fire “was determined to be electrical arcing from private ERG electrical transmission lines.” The 2019 Rig Fire also burned in the

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341 Santa Barbara Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 2-10 – 11 (February 2019).
342 Id. at 4.10-15 (“[D]uring project operations, the Project would result in a net increase of 78 daily round truck trips over existing conditions when the FPP is unavailable (156 one-way; 126 one-way trips exporting blended produced oil and 30 one-way trips associated with the delivery of light crude oil)); See also Id. at 3-1 – 3-2; Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Redevelopment Plan at 4.10-22 (November 2018).
345 Id.
346 Santa Barbara County Fire Department, Cat Fire Incident Report at 2 (June 27, 2016).
347 Id. at 1.
348 Santa Barbara County Fire Department, Lease Fire Incident Report (NFIRS-1 Basic) at 2 (December 5, 2017).
Cat Canyon Oilfield and reports associated the fire with powerlines. The 2019 Harris Grade Fire burned in the Lompoc Oilfield. The GCP describes clearing power pole ROWs on pages 20 and 35, but the GCP cannot ensure clearing is done. Harm or death to species caused by oil and gas operation-started fires is not a covered activity, is not disclosed, and is not minimized or mitigated in the GCP.

Fires started by oilfield operations also threaten other listed species. Fires denude slopes exposing soil to erosion which threatens creeks and rivers with sedimentation. Sedimentation following the Tea and Jesuita Fires increased sedimentation by several orders of magnitude. Sedimentation caused by fires threatens steelhead, can smother red-legged frog eggs, and “decrease the holding capacity” of CTS breeding ponds. (GCP at 93) Similarly, ash, debris, and sedimentation from fires threatens other listed fish, including tidewater goby and unarmored three-spine stickleback. The Copper Fire eliminated unarmored three-spine stickleback from San Francisquito Canyon north of Los Angeles, one of a handful of creeks in the world where this species exists, including San Antonio Creek which is threatened by oil spills under the GCP.

Fire may also adversely affect LYS by allowing invasion of exotic ice plant. While some studies have shown that LYS exhibits vigorous growth after fires, experts such as Dr. Dennis Odion, a Vegetation Ecologist at Southern Oregon University, have recommended weeding ice plant seedlings for two to three years after fires in LYS stands to protect them from ice plant invasions. Increased human-caused fires have been documented as a threat to the species, including “proliferation of nonnative species concurrent with a reduction in the number of native species.” The increase in nonnative species resets the fire frequency and “a shorter fire return interval than the one that naturally occurs could negatively impact native plant species by destroying plants before seed set occurs or destroying the seed bank.” Given this, there is evidence that increased fire-frequency, including oilfield-started fires, threaten LYS with take. However, the GCP does not identify fire as an impact of the GCP and fails to minimize or mitigate the threat of take by wildfire.

352 Id.
353 Id.
354 Id.
355 Id.
356 Id.
357 Id.
Oil, chemical, and polluted wastewater spills from tanks, pipelines, wells, seeps, trucks, and other facilities present significant and unavoidable impacts on species including CTS, and CRLF, and LYS and their habitats. For example, the environmental impact reports for the two Cat Canyon projects estimate that at least four spills will occur per year. Spills would average an estimated 156 - 160 barrels of oil or produced water per year.

Spills threaten harm to the federally endangered unarmored three-spine stickleback, tidewater goby, and other special-status species in San Antonio Creek and Barka Slough. According to Hunt in his comments regarding the ERG Draft EIR,

Barka Slough, which although truncated at its upstream end by agriculture, remains the largest freshwater marsh in Santa Barbara County. Remnant populations of a number of special-status aquatic and aquatic-associated species, including tidewater goby (Eucyclogobius newberryi), threespine stickleback (Gasterosteus aculeatus), arroyo chub (Gila orcutti), California red-legged frog (Rana draytonii), western pond turtle, and two-striped garter snake (Thamnophis hammondii) still occur at now-isolated sites scattered throughout the floodplain area of the Los Alamos Valley (Hunt, pers. observ.), and attest to their historically widespread occurrence.

There are at least eight oilfields which drain into San Antonio Creek. Tidewater goby has been documented five miles upstream from the San Antonio Creek mouth in the vicinity of the Four Deer, Lompoc, Jesus Maria, Orcutt, Harris Canyon NW, Barham Ranch, Los Alamos, and Careaga Canyon Oilfields. Nevertheless, these species are omitted from the analysis. (EA Table 3-1 at 3-12 – 3-13) Spills could also impact tidewater goby critical habitat in Winchester Canyon-Bell Canyon, Gaviota Creek, four Hollister Ranch streams, and the Santa Maria River.

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358 Santa Barbara County Planning and Development Department, Proposed Final Environmental Impact Report for West Cat Canyon Revitalization Plan at 4.3-49 – 4.3-50 (February 2019); See also Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Oil Field Redevelopment Plan at 4.3-56 – 4.3-58 (November 2018).
359 The number of spills was calculated based on the Aera and ERG Projects EIRs which estimate that PetroRock, ERG, and Aera would cumulatively result in 6 spills per year. With PetroRock withdrawing its application, cumulative spills would be reduced by roughly 33% to 4 spills per year.
360 With PetroRock withdrawing its application, cumulative spill volumes would be reduced by roughly 33% to 156 – 160 barrels per year. Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 4.9-34 – 4.9-35 (February 2019); See also Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Oil Field Redevelopment Plan at 4.9-33 (November 2018).
361 U.S. Fish and Wildlife Service, Unarmored Three-spine Stickleback (Gasterosteus aculeatus williamsoni) 5-Year Review: Summary and Evaluation at 7 (May 29, 2009); See also Hunt 2018 at 7-8.
362 Hunt 2018 at 7-8.
363 California State Water Resources Control Board, GeoTracker; Map with Oilfield Boundaries, available at: https://geotracker.waterboards.ca.gov/map/?CMD=runreport&myaddress=Sacramento.
Endangered southern California steelhead, steelhead critical habitat, and endangered arroyo toad in the Sisquoc River and other watersheds would be at risk due to increased oil tanker traffic. According to Hunt in comments regarding the Aera Draft EIR,

With a projected project life of 30 to 50 years, an unknown fraction of 2,700 to 4,500 barrels (113,400 to 189,000 gallons) of oil will be spilled, which could enter drainages and directly affect biological resources downstream of the project site. The impact analysis should be expanded to include biological resources in drainage reaches downstream of the project site and potentially-affected portions of the Sisquoc and Santa Maria rivers.\textsuperscript{366}

If the TerraCore project is approved, many more tankers trucks would travel on Highway 166, where a tanker crashed on March 21, 2020.\textsuperscript{367} (See Figure 1 below.) This road is a long, windy, remote two-lane highway that follows the Cuyama River. It is well-known for accidents. The March 21, 2020 accident spilled approximately 4,500 gallons of crude oil into the flowing Cuyama River near Twitchell Reservoir, oiling at least two CRLF.\textsuperscript{368} Nine California-protected western pond turtles were oiled.\textsuperscript{369} The western pond turtle is undergoing review by the Service as “a candidate for listing” under the ESA.\textsuperscript{370} Oil tanker accidents are not a covered activity, but would increase substantially as a result of new oil and gas projects, and cause harm to listed species, such as CTS, CRLF, LYS, arroyo toad, steelhead, tidewater goby, and unarmored three-spine stickleback.\textsuperscript{371} The GCP does not sufficiently disclose or analyze the impacts to the species survival from these non-covered activities.

\textsuperscript{366} Hunt 2019(b).
\textsuperscript{367} Tom Bolton, Executive Editor, \textit{Tanker Truck Leaks Crude Oil into Cuyama River After Crash on Highway 166}, Noozhawk (March 21, 2020), available at: https://www.noozhawk.com/article/tanker_leaking_crude_oil_into_cuyama_river_after_crash_on_highway_166.
\textsuperscript{369} Id.
\textsuperscript{370} UCLA Institute of Environment and Sustainability, \textit{Western Pond Turtle at-risk species assessment Practicum Project 2019}, available at: https://www.ioes.ucla.edu/project/western-pond-turtle-at-risk-species-assessment/2
v. The EA Fails to Identify Regulatory Requirements Pertaining to the Santa Barbara Coastline.

The GCP includes five areas, including the “Santa Barbara Coastline.” (GCP at 5) Accordingly, the EA must be revised to identify the CZMA as an applicable regulatory requirement. (EA at 1-8) Pursuant to the CZMA, any federal agency activity “that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.” 16 U.S.C. § 1456(c)(1)(A). In this case, the GCP must be reviewed by the California Coastal Commission to ensure that it is consistent with the State’s certified coastal management program.

b. The Statement of Purpose and Need is Unlawfully Narrow and Misleading.

An EA must include a discussion of the need for the proposal. 40 C.F.R. § 1508.9(b). “The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. § 1502.13. The statement of purpose and need must not be so narrow as to preclude consideration of a
reasonable range of alternatives. *City of Carmel-by-the-Sea v. Dept. of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997).

The EA defines the purpose of the proposed action as increasing efficiency, standardizing compliance, ensuring consistency, and incorporating established maximum allowable impacts. (EA at 1-5) According to the EA, the GCP would provide a programmatic mechanism and eliminate the need for individual HCPs. (EA at 1-6) The EA identifies the need for better conservation of CTS, CRLF, and LYS. (*Id.*)

As written, however, the purpose of the GCP is not to protect the three identified listed species, but rather to allow private oil and gas development projects to proceed despite their impacts to the species. Although the EA professes that the purpose and need is to ensure compliance with the ESA and provide for “better conservation” of the species, the species would actually be better protected and conserved without the massive increase of oil and gas development proposed by the private companies and allowed by virtue of the GCP.\(^{372}\)

If the goal of the GCP is truly to provide better conservation of CTS, CRLF, and LYS, the GCP and EA should be revised to eliminate threats to these species and focus on recovery. This statement would be consistent with the ESA. Alternatives that achieve this purpose would focus on specific project review to ensure complete information and analysis, and could also prohibit oil and gas development activities in areas inhabited by the species or essential to their conservation and recovery.

c. *The Description of the Proposed Action is Incomplete.*

According to the EA, the Planning Area encompasses 674,200 acres (approximately 1,053 square miles). (EA at 2-1) The EA, however, fails to identify more specifically where the proposed oil and gas development activities would occur. Without this information, it is impossible to ascertain the potential impacts or determine whether the EA completely and adequately disclosed such potential impacts.

In addition, the proposed Planning Area includes the Santa Barbara Coastline, and yet there is absolutely no discussion of potential activities or impacts located within this area in the EA. Why is this area included? The EA must describe the activities that may occur in this area, as well as the impacts that would result.

d. *The Discussion of Alternatives is Misleading and Unlawfully Narrow.*

Despite the importance of alternatives to informed decision-making, the EA dispenses of this discussion in one page. (EA at 2-17) The EA evaluates only the No Action Alternative (as

\(^{372}\) See Magney at 16 (“There is no evidence that the proposed GCP will result in ‘better conservation’ of the LYS.”).
required by law) and summarily rejects any other alternatives, in clear violation of NEPA. In addition, the discussion of the No Action Alternative in the EA does not match the No Action Alternative in the GCP and contains false and misleading information.

i. The No Action Alternative is Inconsistent and Misleading.

The GCP states that “[t]he only alternative to the proposed incidental taking we considered is for project proponents to avoid any actions that could result in take of federally-listed species.” (GCP at 13) The GCP goes on to state that “[t]his is synonymous with a no-action alternative, in which the project proponent would modify their [sic] project to avoid take of listed species altogether.” (Id.)

The EA should likewise identify the No Action Alternative as avoiding any actions that could result in take of listed species. Instead, the No Action Alternative in the EA would allow activities that could result in take of federally-listed species, but would require the project proponent to apply for individual ITPs. (EA at 2-17) This alternative should be evaluated separate from the No Action Alternative. Under this alternative, applications for individual ITPs would be subject to project-specific review. Such permits would impose limits for take and appropriate mitigation measures. Therefore, the statement in the EA that there would be “no defined maximum impact limits” without the GCP is incorrect and misleading. (EA at 2-17) In fact, the Service would still be required to impose maximum impact limits. As the California Coastal Commission notes, requiring individual HCPs would actually be environmentally preferential, given the long duration of the GCP and the limitations on addressing changed or unforeseen circumstances.373

Similarly, the statement that there would be no cohesive planning is not true, given the fact that any proposed take must be reviewed with reference to the effect on the species as a whole, and to compliance with the adopted Recovery Plan. Accordingly, the EA must be revised to note that individual proposed ITPs and HCPs must ensure full compliance with the ESA.

ii. The Range of Alternatives is Woefully Inadequate.

NEPA requires that agencies consider appropriate alternatives that will avoid or minimize adverse effects on the environment. 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1500.2(e). EAs should be held to the same standard as EISs, because the requirement to consider alternatives in an EA specifically references and incorporates section 102(2)(E) of the statute. See 40 CFR §1508.9(b); see also Native Ecosystems Council v. U.S. Forest Serv., 428 F.3d 1233, 1245 (9th Cir. 2005). The requirement to consider alternatives is “the heart” of NEPA review. Center for Biological Diversity v. National Highway Transportation and Safety Administration, 538 F.3d 1233, 1245 (9th Cir. 2005). In CBD v. NHTSA, the court rejected an EA on the grounds

373 Letter to Stephen P. Henry from Kate Huckelbridge regarding Draft Environmental Assessment and Draft General Conservation Plan for Oil and Gas Activities in Santa Barbara County, CA, at 2 (May 4, 2020).
that it failed to consider an adequate range of alternatives. Despite the fact that five alternatives were discussed, all of the alternatives were “hardly different” from the option that was ultimately adopted. Id. at 1218-19.

In this case, the EA does not consider any alternatives (other than the No Action alternative). The lack of a range of alternatives deprives the decision-makers of options to consider or adopt.

iii. The EA Fails to Consider an Alternative that Avoids or Lessens Take.

The GCP dismissed an alternative that would avoid federally-listed species and their habitats on the grounds that such an alternative “is not practical or feasible for most oil and gas industry activities within the Planning Area.” (GCP at 13) As noted above, the EA did not even attempt to analyze such an alternative, so there is no basis for this conclusion. For example, it may be feasible to site oil and gas development in a manner that avoids take of LYS because the species occupies “discrete and generally small areas.” Accordingly, well pads, roads, and pipelines can easily be sited to avoid LYS.

Nor does the EA analyze a reduced take alternative. The GCP would allow permanent removal of 675 acres of CTS upland habitat, 355 acres of CRLF Critical Habitat, and 27.5 acres of LYS stands. (EA at 2-8 – 2-14; GCP at 57 - 65) The EA is deficient for failing to evaluate an alternative that minimizes take.

e. The EA Omits Critical Information from the Description of the Affected Environment.

An EA must accurately describe the baseline environmental conditions in order to properly assess the project’s impacts. Oregon Natural Desert Association v. Rose, 921 F.3d 1185, 1190, 1192 (9th Cir. 2019) (EA rejected for failing to assess the actual baseline conditions in the area). Not only does the EA fail to include the necessary information regarding the affected environment, by referring back to the GCP, but the information contained in the GCP and EA is incomplete and inaccurate.

i. The EA Omits the Estimated Number of CTS and CRLF in the Planning Area, and Protocol-Level Surveys and Population Density Surveys were not Undertaken.

The EA fails to sufficiently disclose the Affected Environment, including the estimated number of CTS and CRLF in the Planning Area. (See e.g., EA at 2-8, 2-10, and 4-7) The Service and CDFW have adopted protocol-level survey methodologies for both species, but these

374 Magney at 3.
375 Id.
surveys have not been performed as part of the EA’s analysis.\textsuperscript{376} Other surveys to estimate the baseline populations and densities in the Planning Area and inform the EA have not been undertaken.\textsuperscript{377} For example, methods of surveying for CTS involve burrow excavation, and fiber-optic scope surveys during which flexible scopes are fed into burrows in an effort to document the number of CTS and/or CRLF underground in upland areas.\textsuperscript{378} These surveys were not undertaken to inform the EA with estimated CTS and CRLF populations and densities in the five Planning Area units.

The EA itself notes that the Service “cannot predict the number of individual CTS that would be incidentally subject to take, because no density estimate (i.e., the number of CTS per acre) has been calculated for the Planning Area.” (EA at 2-8) The EA’s Affected Environment Section is deficient because no density estimates were calculated in the Planning Area to inform the EA.

Using habitat as a proxy for individual numbers to assess take of CTS and CRLF has a significant shortcoming. Absent Planning Area protocol-level surveys and other surveys to determine densities and survivorship, the GCP is uncertain about which upland and dispersal habitats are inhabited or the densities present. Instead, surveys to inform the Model occurred in different populations over two hundred kilometers apart, and over two hundred kilometers from Santa Maria.\textsuperscript{379} Without knowing the distribution and densities of CTS and CRLF in the Planning Area, the GCP cannot account for regional differences between Santa Barbara and Central Valley populations and habitats, and the Searcy Model cannot be calibrated to equate acreage of habitat to an estimated number of animals present in the Planning Area or in a project area. As a result, it may “bias the results.”\textsuperscript{380} Areas with relatively high densities that are not known due to lack of adequate surveys could be developed with insufficient compensatory mitigation based on a model-predicted lower density.

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\textsuperscript{377} Surveys to estimate CTS’s Central DPS densities were undertaken by Searcy and Shaffer. Christopher A. Searcy and H. Bradley Shaffer, \textit{Calculating Biologically Accurate Mitigation Credits: Insights from the California Tiger Salamander}, Vol. 22, No. 4 Conservation Biology at 999 (August 2008).


\textsuperscript{379} \textit{Id.}; \textit{See also}: Bumgardner at 4-5.

\textsuperscript{380} Bumgardner at 5.
ii. The EA Omits the Estimated Number of LYS in the Planning Area.

The EA fails to substantiate the number of plants that exist in the Planning Area. The EA must identify the existing status and condition of the species, including the number of potentially affected plants. This should be feasible, given the fact that “there are only five known populations, three of which occupy small areas.” Simply identifying the acres of habitat does not provide the same information.

iii. The EA Fails to Identify Other Federally Listed Species in the Planning Area that may be Affected by Oil and Gas Development Activities.

The EA notes that approximately fourteen federally listed species “have been identified or have the potential to occur within the Planning Area.” The EA, however, fails to identify the other eleven species or consider which ones may be impacted by oil and gas development in the Planning Area.

The EA fails to identify the federally endangered unarmored three-spine stickleback and tidewater goby which occur in San Antonio Creek near the Four Deer, Orcutt, Lompoc, Barham Ranch, Los Alamos, Jesus Maria, Harris Canyon, and Careaga Canyon Oilfields. Tidewater gobies occur in several other estuaries and freshwater rivers and streams in the Planning Area, including the Santa Ynez River and in critical habitat in the Santa Maria River. The EA also omits the federally endangered arroyo toad which occurs in the Sisquoc River downstream from the Cat Canyon Oilfield. Suitable habitat for the longhorn fairy shrimp occurs in Cat Canyon Oilfield, but this species is also omitted. The endangered blunt-nosed leopard lizard still occurs in the Cuyama Valley within the Planning Area, and potentially occurs along tanker truck routes in Kern County. These federally threatened and endangered species

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381 Magney at 2.
382 Id.
383 Id.
384 The three-spine unarmored stickleback is a listed as federally endangered, state endangered, and as a Fully Protected Species pursuant to the California Fish and Game Code which means no permit can be issued to take this species; take is prohibited. California Department of Fish and Wildlife, Fully Protected Species, available at: http://www.dfg.ca.gov/wildlife/nongame/t_e_spp/fully_pro.html; See also: Santa Barbara County Planning and Development Department, Final EIR for ERG West Cat Canyon Revitalization Plan at 4.3-31 (February 2019).
385 California State Water Resources Control Board, GeoTracker Website Map with Oilfield Boundaries, available at: https://geotracker.waterboards.ca.gov/map/?CMD=runreport&myaddress=Sacramento.
387 Santa Barbara County Planning and Development Department, Final EIR for ERG West Cat Canyon Revitalization Plan at 4.3-29 and -32 (February 2019).
388 Id. at 4.3-31.
are at risk due to the GCP because of habitat loss, stormwater runoff, spills from tankers, pipelines, wells, tanks, and other facilities, fires started by oil and gas operations, and/or vehicle-strike.

Other listed plant species are also present in the Planning Area, including *Deinandra increcens* ssp. *villosa*, *Cirsium scariosum* var. *longcholepis*, and *Diplacus vandenbergensis*.

The EA is inadequate due to the omission of these federally listed species as part of the Affected Environment.

iv. The EA Mischaracterizes and Omits Special-status Species.

The EA describes “general wildlife,” including “common species,” Threatened and Endangered Species, and Non-covered Sensitive Species. (EA at 3-5 - 3-11). However, some species the EA refers to as “common” are protected by the State of California, including coast horned lizard, mountain lion, arroyo chub, western pond turtle, western mastiff bat, western red bat, fringed myotis, and hoary bat.

The EA omits State-listed and Fully Protected Species discussed above. The EA omits other State-protected wildlife species including the silvery legless lizard, coast patched-nose snake, two-striped garter snake, San Diego woodrat, American badger, and western spadefoot toad, which are California State Species of Special Concern. These species are threatened by oil and gas development in the Planning Area but were improperly omitted from the EA.

v. The EA Omits Marine Species, Including Federally Listed Marine Species Adjacent to the Planning Area.

The EA limits its analysis to the Planning Area; however, GCP impacts can occur outside of the Planning Area. Oil or other hazardous materials spills from pipelines and tankers can enter drainages, rivers, and the ocean. Spills such as the 2015 Refugio Oil Spill that originated on land but spread to the Pacific Ocean may impact federally listed marine species including southern sea otter, blue whale, and pink abalone. In response to the Refugio Oil Spill, over 1,000

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391 California Department of Fish and Wildlife, Office of Spill Prevention and Response, *OSPR Liaison Update #9, Cuyama River Incident* (April 1, 2020).
392 Thomas D. Lorenson, U.S. Geologic Survey, *The USGS response to the May 19, 2015 Plains All American Pipeline 901 oil spill near Refugio State Beach, California, USGS.*
393 Magney at 3.
394 Santa Barbara County Planning and Development Department, *Final EIR for ERG West Cat Canyon Revitalization Plan* at 4.3-31 - 40 (February 2019).
395 Id.
396 Id.
calls to CDFW documented over 300 sightings of oiled wildlife.\textsuperscript{400} According to the most recent report regarding the natural resource damages from the Refugio Oil Spill, the incident killed hundreds of birds, marine mammals, and other wildlife.\textsuperscript{401} The EA is deficient for not setting forth marine resources, including federally listed marine species, as part of the Affected Environment and in Table 3-1.

vi. The EA Fails to Use the Service’s Definition of Wetlands and Omits One- and Two-parameter Wetlands.

The EA discusses potential impacts to wetlands in Section 3.4, but it defines wetlands narrowly and inconsistent with Service Policy. The Service uses the following definition:

“\textit{WETLANDS} are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes;
\textsuperscript{1} (2) the substrate is predominantly undrained hydric soil;\textsuperscript{2} and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.”\textsuperscript{402}

The Service’s definition requires that \textit{only one of three} wetland attributes (or parameters) must be present to be a wetland: hydrology, soils, or vegetation. However, the EA considers only those wetlands exhibiting \textit{all three} wetland parameters: hydrology, soils, and vegetation. (EA at 3-14). The EA is deficient because it does not utilize the Service’s one-parameter wetland definition and omits one- and two-parameter wetlands from the Affected Environment.

vii. The Affected Environment Section Contains Geographical Errors.

The EA lists the Orcutt River on page 3-7. This may to be a reference to Orcutt Creek. The EA misrepresents the Barka Slough as an estuary. (EA at 3-15) Barka Slough is one of the

\textsuperscript{400} California Department of Fish and Wildlife, \textit{Refugio Oil Spill: Summary of Recommendations from the Office of Spill Prevention and Response} at 25 (May 2016).
\textsuperscript{401} \textit{Refugio Beach Oil Spill Natural Resource Damage Assessment Update}, available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157739&inline.
largest freshwater marshes in the region and is located several miles inland from the San Antonio Creek Estuary. 403

f. The EA Discussion of Environmental Consequences Fails to Disclose the Complete Range and Extent of Impacts that will Result if the GCP is Approved.

An EA must evaluate the potential impacts of the proposed action and alternatives. (40 C.F.R. § 1508.9(b).) The Draft EA fails to fulfill the requirements of NEPA because it does not consider all the potential activities that may occur; limits the timeframe, breadth of listed species that may be impacted, and other impacts that could result if the GCP is approved; and fails to assess both direct and indirect effects.

The EA also improperly relies on separate environmental review under the California Environmental Quality Act (“CEQA”) to assess impacts from the oil and gas projects that will utilize the GCP. (EA at 4-5) The fact that local and state agencies must comply with CEQA does not relieve the Service of the requirement to disclose these significant direct and indirect impacts in the EA. Environmental review must occur early in the process “to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.” 40 C.F.R. § 1501.2, Idaho Sporting Congress, Inc. v. Alexander, 222 F.3d 562, 567-68 (9th Cir. 2000). Accordingly, the Service must conduct complete environmental review before taking action on the proposed GCP.

i. The GCP Will Result in a Significant Unmitigated Net Loss of Designated Critical Habitat for the CTS.

The EA discloses in Table 2-2 the Maximum Allowable Permanent Impacts to six CTS Critical Habitat Units (152 acres total). As discussed above in comments on the GCP, the GCP allows removal of CTS critical habitat which is not replaced in-kind with new critical habitat. (EA at 2-9) This net loss of critical habitat acreage is a significant and unavoidable impact because it is a permanent impact to an essential habitat. The EA fails to identify this loss as a significant impact.

ii. The EA Claims that No Impacts to CTS Breeding Habitat Would be Authorized, However, the EA Omits Oil Road Runoff Impacts and Reduced Hydroperiod Impacts to CTS Breeding Habitat.

The EA states that “aquatic features (PCE 1) would not be adversely affected because no impacts to aquatic habitats would be permitted under the proposed GCP.” (EA at 4-9; see also EA at 4-11) The EA also claims that “the GCP may result in beneficial affects [sic] to PCE 1

because aquatic habitats would be protected.” (EA at 4-9) However, the EA’s conclusory statements overlook the following indirect impacts to CTS aquatic and breeding habitats: altered runoff patterns in watersheds, and increased non-point source pollution including sediment, oil, and grease entering ponds and creeks. For instance, as discussed in more detail in comments on the GCP, the CTS Recovery Plan states that stormwater runoff from oilfield roads resulted in mortality and deformation of CTS and the western spadefoot toad in the Planning Area.\textsuperscript{404} Bumgardner identifies other impacts to breeding ponds including reducing ponds’ hydroperiod to less than twelve contiguous weeks by modifying ponds’ watersheds and reducing surface and subsurface flows into the pond.\textsuperscript{405} The EA is deficient for not identifying this documented form of take and significant impacts to breeding CTS, CTS breeding habitats, CTS prey base, and western spadefoots.

iii. The EA Omits Impacts to One- and Two-parameter Wetlands.

As discussed above in comments regarding the GCP and the EA’s Affected Environment section, the EA defines wetlands much more narrowly than the Service’s definition. The EA uses the U.S. Corps of Engineers definition – the narrowest of all wetland definitions in our region. Under the Corps’ definition, an area must exhibit all three wetland parameters: soil, plants, and hydrology. Under the Service’s definition, however, an area qualifies as a wetland if only one parameter is met. As a result, the EA omits impacts to all one- and two-parameter wetlands. Such wetlands often constitute the majority of wetlands on parcels in Santa Barbara. For example, the 2008 Final EIR for Santa Barbara Ranch identifies a much greater number and acreage of one- and two-parameter wetlands than three-parameter wetlands.\textsuperscript{406} The EA’s omission of impacts to all one- and two-parameter wetlands renders it deficient.

iv. The EA Does not Adequately Disclose the Significant Impacts of Noise, Vibrations, and Night-lighting on CTS, CRLF, and Other Wildlife.

As discussed above in the comments on the GCP, the EA does not adequately disclose the impacts of lighting on wildlife movement, nesting, and foraging. The EA fails to identify potentially significant impacts to CTS, CRLF, other listed species, special-status species, and general wildlife from noise and vibrations. For example, the TerraCore West Cat Canyon Project will result in significant impacts from nighttime noise to surrounding neighbors.\textsuperscript{407} This noise could significantly impair intraspecies communications by masking auditory signals and may

\textsuperscript{405} Bumgardner at 2.
\textsuperscript{406} Santa Barbara County Planning and Development Department, \textit{Final EIR for Santa Barbara Ranch}, Figure 3.4-2 (2008).
\textsuperscript{407} Santa Barbara County Planning and Development Department, \textit{Proposed Final EIR for ERG West Cat Canyon Revitalization Plan} at 4.8-15 (February 2019).
reduce reproduction in amphibians and reptiles.\textsuperscript{408} The EA is deficient for omitting noise, vibration, and lighting impacts on CTS and CRLF.

\textbf{v. The EA does not Limit Impacts to CRLF Habitat that is not Designated Critical Habitat.}

CRLF critical habitat constitutes 35,426 of the Planning Area’s 674,220 acres. (EA at 2-10) The GCP caps take of CRLF within this 35,426-acre critical habitat. (EA Table 2-3 at 2-11) However, the EA does not cap take of CRLF in the remaining 638,794 acres outside of designated critical habitat. In contrast, the GCP does cap take for LYS outside designated critical habitat areas.\textsuperscript{409} (EA Table 2-4 at 2-14) The lack of a cap on CRLF take outside designated critical habitat means that the GCP could result in substantial loss of CRLF habitat in the remaining 638,794 acres. The failure of the EA to consider or analyze the impact of allowing take outside designated CRLF critical habitat is a significant omission.

\textbf{vi. The EA Inconsistently Reports No Impacts to LYS.}

The EA’s description of impacts to LYS states that “no impacts to designated critical habitat for LYS would be covered under the proposed GCP.” (EA at 4-12) On the other hand, the EA identifies “impacts to 7.5 acres of LYS habitat which could occur within the boundary of designated critical habitat as shown in Table 2-4.” (Id.) This substantive inconsistency confuses the impact analysis and renders the EA deficient.

In fact, impacts to LYS would be significant due to the few numbers and locations of the plant, the existing threats, the amount of plants that would be taken and the difficulties with propagating LYS, and impediments to expansion and migration.\textsuperscript{410} As Magney states, “The limited distribution and size of the LYS populations are so small that any loss of individual represents a significant impact.”\textsuperscript{411} Moreover, there is no evidence that such impacts can be mitigated.\textsuperscript{412}

\textbf{vii. The EA Omits the Impacts of Take Caused by Tanker Truck Accidents and Spills.}

The EA discusses mitigating the impacts of oil spills (but not chemical or polluted wastewater spills) and spill cleanups pursuant to an ERAP. (EA at 4-4) However, this impact is limited to spills from “oil drilling, oil wells, and/or oil pipelines.” (Id.) The EA omits the impacts of take caused by tanker truck accidents resulting in oil spills, explosions, and fires. Tanker

\textsuperscript{408} Andrea Simmons and Peter Narins, \textit{Effects of Anthropogenic Noise on Amphibians and Reptiles} (August 21, 2018).
\textsuperscript{409} The GCP does not address take for CTS outside designated critical habitat because the entire Planning Area overlaps with CTS critical habitat. (EA at 2-8)
\textsuperscript{410} See Magney.
\textsuperscript{411} Magney at 18.
\textsuperscript{412} Id.
trucks may also haul chemicals which may require different responses than crude oil, and thus may require a different ERAP. Tanker trucks drive on roads and highways following and crossing major rivers and streams which support listed species both within and outside of the Planning Area as discussed above. As noted above, on March 21, 2020, an oil tanker crash spilled 4,500 gallons of oil into the Cuyama River, oiling at least two CRLF during CRLF breeding season.\textsuperscript{413} Given this recent accident and spill, there is no excuse for the EA to omit tanker accidents and spills and their impacts on CTS, CRLF, LYS, and other fish, wildlife, and vegetation.

\textbullet\quad \textbf{viii. The EA Omits the Significant Environmental Impacts of Fires Caused by Oil and Gas Activities Which May Take CTS, CRLF and LYS and Impact Other Special-status Species and Habitats.}

The EA fails to disclose and evaluate take and impacts to CTS and CRLF habitats and LYS stands caused by wildfires started by oil and gas operations. For instance, as discussed above, the 2016 Cat Fire, 2017 Lease Fire, 2018 Rig, and 2019 Harris Grade Fire started in North County oilfields, and were linked to oilfield electrical equipment.\textsuperscript{414} Like oil spills, these fires are not lawful activities and therefore cannot be covered by the GCP but result in take which must be disclosed in the EA.

As discussed above, in 2018 the Woolsey Fire in the Santa Monica Mountains wiped out several populations of CRLF and was a “major setback for” CRLF.\textsuperscript{415} Frequent fires eliminate chaparral and shrubland communities where LYS is found.\textsuperscript{416} “Fires more than once every 20 years, or during the cool season by prescribed fire, can eliminate chaparral by first reducing its biodiversity through the loss of fire-sensitive species, then by converting it to non-native weedlands (called type-conversion).”\textsuperscript{417} The potentially significant impacts of oilfield-started wildfires, including take of CTS, CRLF, and LYS, are not disclosed in the EA, nor are they minimized or mitigated by any measure in the GCP. Omission of take and significant unavoidable impacts caused by oil and gas operation-started wildfires renders the EA deficient.

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\textsuperscript{413} California Department of Fish and Game Office of Oil Spill Prevention and Response, \textit{OSPR Liaison Update #10, Cuyama River Incident – Final Update} (April 3, 2020).
\textsuperscript{414} Santa Barbara County Fire Department, \textit{Cat Fire Incident Report} at 2 (June 27, 2016); \textit{See also} Santa Barbara County Fire Department, \textit{Lease Fire Incident Report (NFIRS-1 Basic)} at 2 (December 5, 2017); \textit{Brush Fire Near Sisquoc Stopped at Two Acres} (September 15, 2019), available at: \url{https://www.edhat.com/news/brush-fire-near-sisquoc-stopped-at-two-acres}; \textit{Powerlines the Cause of Harris Grade Fire}, (July 16, 2019), available at: \url{https://www.edhat.com/news/power-lines-the-cause-of-harris-grade-fire}.
\textsuperscript{416} Emma C. Underwood, et al., \textit{Global Change and the Vulnerability of Chaparral Ecosystems}, (October 2018).
\textsuperscript{417} California Chaparral Institute, \textit{Loss of Chaparral}, available at: \url{www.californiachaparral.org/threatstochaparral.html}. 
ix. The EA Omits Impacts Outside of Santa Barbara County.

The GCP could result in spill-related, oilfield fire-related, and vehicle-strike take of CRLF and other listed wildlife species outside the County; however, the EA’s discussion of impacts is limited to resources in “The Planning Area” in “Santa Barbara County.” (EA at 4-2, 4-5, and 4-10) The GCP does not cover take caused by linear infrastructure which extends beyond the County line, such as some pipelines and oil tankers on highways. (GCP at 14) However, out-of-County impacts are one ultimate result of the GCP. The EA’s omission of impacts outside of the Planning Area, including fires and spills from tanker crashes and oil field operations, pipeline spills, and increased traffic outside the County is a serious flaw in the EA.

x. The EA’s Analysis of the GCP’s Climate Change Impacts is Deficient.

The EA omits the impacts of take associated with climate change caused by authorized oil and gas projects’ GHG emissions. The 674,220-acre Planning Area for the GCP covers the Cat Canyon Oil Field where proponents of two new steam injection projects propose to drill nearly 500 new wells, tripling onshore oil production in the County.\(^{418}\) (GCP at 5) The significant GHG emissions generated by these two projects alone will contribute to climate change impacts, such as increased droughts, fires, and floods, which directly affect recovery efforts for CTS, CRLF, and LYS.\(^{419}\) For example, the TerraCore project would emit 250,876 metric tons per year of CO2 equivalent (“MTCO2e”) and Aera’s project would emit 302,532 MTCO2e annually.\(^{420}\) By way of comparison, the County identifies GHG emissions over 1,000 MTCO2e to be a significant climate change impact.\(^{421}\) The emissions from new or expanded oil

\(^{418}\) Santa Barbara County Planning & Development Energy & Minerals Division, Overview of Oil Operations (February 24, 2016), available at: https://www.sbcod.org/wp-content/uploads/2016/01/County-Oil-Gas-Briefing-2.24.16.pdf (Slide 14 showing 2016 production for multiple onshore oilfields); See also Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Redevelopment Plan at 2-1, 2-68 (November 2018); Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 2-33 – 2-34 (February 2019); Lara Cooper, Supervisors Get Update on Oil Production in Santa Barbara County, Noozhawk (July 21, 2015).


\(^{420}\) See e.g., Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 4.4-14 - 16 (February 2019); Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Redevelopment Plan at 4.4-21 (November 2018).

\(^{421}\) Santa Barbara County Planning and Development Department, Proposed Final EIR for ERG West Cat Canyon Revitalization Plan at 4.4-13 and 4.4-14 (February 2019) (“The Santa Barbara County Environmental Thresholds and Guidelines Manual (Santa Barbara County, 2015b) specifies that: All industrial stationary-source projects shall be subject to a numeric, bright-line threshold of 1,000 MTCO2e per year to determine if greenhouse gas emissions constitute a significant cumulative impact. Annual GHG emissions that are equivalent to or exceed the threshold are determined to have a significant cumulative impact on global climate change unless mitigated.”)
and gas projects in Santa Barbara County would worsen these climate change impacts on CTS, CRLF, LYS, and their habitats.

Globally, GHG emissions have doubled since 1980, increasing global temperatures by at least 0.7 degrees Celsius.\textsuperscript{422} Even more alarming, the County’s average temperature has increased by 2.3 degrees Fahrenheit, placing it among the fastest warming locations in the country.\textsuperscript{423} Amphibians have thin, highly permeable skin\textsuperscript{424} and typically prefer moist environments.\textsuperscript{425} These species are thus disproportionately impacted by warmer and dryer summertime conditions.\textsuperscript{426} According to a recent UN report, forty percent of amphibian species are currently in danger of extinction, including CTS.\textsuperscript{427} (GCP at 40) The GCP explains how climate change is already adversely affecting CTS and other amphibians:

Global amphibian declines have been increasingly attributed to factors resulting from global climate change over the last decade (Corn 2005, Wake 2007, Reaser and Blaustein 2005). Factors such as epidemic disease (Pounds et al. 2006), changes in breeding phenology (Terhivuo 1988; Gibbs and Breisch 2001; Beebee 1995), changes in environmental conditions such as leaf litter (Whitfield et al. 2007), increased evaporation rate (Corn 2005, but see Pyke and Marty 2005), increased frequency of storm events and drought (Kagarise-Sherman, and Morton 1993) and ultraviolet radiation (Blaustein et al. 1998) have been identified to affect amphibian persistence. Diseases, such as the amphibian chytrid fungus, may become more virulent in changing climatic conditions (Pounds et al. 2006). Warmer temperatures have been linked to earlier breeding in some amphibians (Blaustein et al. 2001, Beebee 1995). Changes to the hydroperiod of ephemeral ponds due to changing weather patterns have significant implications for the diversity of amphibians that rely on those ponds for breeding (Corn 2005). Ultraviolet radiation has been shown to have negative effects on amphibian eggs and embryos around the world (Blaustein et al. 1998). (GCP at 40)


\textsuperscript{425} Id.at I-6.

\textsuperscript{426} Inside Ecology, \textit{Amphibians and Climate Change} (March 2, 2018), available at: https://insideecology.com/2018/03/02/amphibians-and-climate-change/.

\textsuperscript{427} Id.
Additionally, biological invasions are forecast to increase as the effects of climate change on ecosystems become widespread.\textsuperscript{428} Climate change disturbs habitats and facilitates the establishment of invasive species, thereby impacting the local biodiversity.\textsuperscript{429} One consequence of nonnative species invasion of particular concern for the CTS is hybridization—the cross-breeding between invasive and native species—a phenomena that has been proven to accelerate greatly during periods of warming.\textsuperscript{430} In 2014, research determined that climate change-induced invasive hybridization could lead to extinction for many species.\textsuperscript{431} This is particularly relevant in the Cat Canyon Oil Field due to the ongoing invasion of exotic tiger salamanders in the Planning Area, as discussed in the GCP. (GCP at 38) Climate change may further accelerate this impact on CTS.\textsuperscript{432}

Leading CTS biologists Searcy and Schaffer conducted a 2016 analysis of how models predicted climate change impacts on CTS. Unfortunately, they found that four separate projections “showed a significant decrease in habitat suitability.”\textsuperscript{433} The Santa Barbara CTS fared particularly unfavorably in the modeling.\textsuperscript{434} Finally, with respect to the Recovery Plan’s identification of invasive salamanders noted just above, Searcy and Schaffer point to the current “hybrid swarm” threat in Santa Barbara County and how climate change is expected to worsen this threat.\textsuperscript{435}

Climate change will also affect LYS as conditions become too dry to support normal growth and reproduction.\textsuperscript{436} If areas that currently support LYS become uninhabitable, it will be more difficult for LYS as compared to some species to migrate to survive due to limitations on seed viability and successful propagation.\textsuperscript{437} In addition, there “likely unsurmountable barriers to its successful migration northward or upward in elevation.”\textsuperscript{438} Migration is limited because the soils in which LYS grow are highly restricted and lacking, and because urban and agricultural development blocks paths for migration.\textsuperscript{439} Therefore, any impacts from climate change will only exacerbate the perilous condition of LYS.

\textsuperscript{428} Scholes, R. J., et al., \textit{IPCC Working Group II Assessment Report 5 Chapter 4 Terrestrial and Inland Water Systems}, Intergovernmental Panel on Climate Change (2014).
\textsuperscript{433} Christopher Searcy and Brad Schaffer, \textit{Do Ecological Niche Models Accurately Identify Climatic Determinants of Species Ranges?} at 432 (February 22, 2016).
\textsuperscript{434} \textit{Id.}
\textsuperscript{435} \textit{Id.}
\textsuperscript{436} Magney at 7-8.
\textsuperscript{437} \textit{Id.} at 8.
\textsuperscript{438} \textit{Id.} at 15-16.
\textsuperscript{439} \textit{Id.} at 16.
Increased fire frequency caused in part by climate change may further reduce LYS stands in chaparral through a process known as type-conversion. (GCP at 49)\(^{440}\) The GCP itself finds that wildfire can extirpate entire uniclonal populations. (GCP at 50) Nonnative “iceplant and veldt grass have both followed fire into the chaparral habitat and have been displacing Lompoc yerba santa.”\(^{441}\) Therefore, while the EA lacks information about the effects of climate change on LYS, there is ample evidence demonstrating that climate change increases fire frequency which can extirpate the two uniclonal LYS populations, and cause invasion of nonnative plants into LYS stands further degrading them and reducing their size.

We know enough about the effects of climate change to understand that LYS, CTS, and CRLF are already subject to or will be adversely affected by these changes. The oil and gas projects that would benefit from the GCP will exacerbate climate change and adversely impact LYS, CTS, and CRLF. Authorizing take for oil and gas projects does not help to conserve these species and instead increases long-term climate change threats to them. The EA fails to disclose and minimize these significant impacts.

Moreover, the biological impacts from climate change catalyzed by fossil fuel energy development, for which the GCP would provide take authorization, are not limited to the CTS, CRLF, and LYS. Changes in temperatures, precipitation, food sources, and predator-prey patterns are disrupting cyclical biological events and species’ ranges in terrestrial ecosystems worldwide.\(^{442}\) Recent research published in *Nature Climate Change* found that climate change is already affecting more than 700 species of threatened or endangered mammals and birds.\(^{443}\) One million species of plants and animals are now at risk of extinction due to climate change.\(^{444}\) Based on the foregoing, the failure to adequately analyze the impacts on CTS, CRLF, and LYS in the EA is a significant omission.

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\[^{440}\text{California Chaparral Institute, Loss of Chaparra (April 5, 2020), available at:\ www.californiachaparral.org/threatstochaparral.html; See also California Native Plant Society Calscape (April 11, 2020), available at: https://calscape.org/Eriodictyon-capitatum-().}\]


\[^{442}\text{Singer, M.C., Shifts in Time and Space Interact as Climate Warms, Vol.114, Proceedings of the National Academy of Sciences at 12848–12850 (2017).}\]


The EA fails to disclose the GCP’s direct and indirect impacts and potential take of endangered steelhead, arroyo toad, tidewater goby, unarmored three-spine stickleback, blunt-nosed leopard lizard, and longhorn and vernal pool fairy shrimp. The EA claims, “there would be beneficial impacts to noncovered species” because “avoidance, minimization, and mitigation measures from the proposed GCP – intended for CTS, CRLF, and LYS – also apply to the other noncovered species cross the Planning Area.” (EA at 4-14) However, the EA provides no explanation whatsoever regarding how the GCP’s measures would allegedly apply to these seven listed but noncovered species and the other listed species in EA Table 3-1.

The EA’s Affected Environment section acknowledges that the federally endangered steelhead is present. (EA at 3-7) Steelhead critical habitat has been designated below dams in almost all significant waterways, including the Sisquoc and Santa Maria Rivers downstream from the Cat Canyon Oilfield.\(^ \text{445}\) Arroyo toad occurs in the Sisquoc River downstream from the Cat Canyon Oilfield.\(^ \text{446}\) Oil spills, toxic wastewater spills, and other hazardous liquids spills – while unlawful and thus not covered by the GCP – could enter the Sisquoc River where they could significantly impact steelhead and arroyo toad.\(^ \text{447}\) However, the impact of spills on steelhead and arroyo toad in the Sisquoc and Santa Maria Rivers is omitted from EA Section 4 - Environmental Consequences. As discussed further below, GCP Measure 20 is intended to mitigate the impact of spills after-the-fact, but the ERAP does not avoid or substantially minimize the significant unavoidable effects of spills on arroyo toad and steelhead.\(^ \text{448}\)

The EA omits federally endangered unarmored three-spine stickleback within San Antonio Creek.\(^ \text{449}\) (See e.g., EA Table 3-1 Federally Listed Species with Potential to Occur within the GCP Planning Area) Federally endangered tidewater goby occurs in many estuaries, lagoons, and streams in the Planning Area, including designated critical habitat,\(^ \text{450}\) but the goby is also omitted from the EA. “Although usually associated with lagoons and estuaries, the tidewater goby has been documented in slack freshwater habitats as far as 5 miles upstream from San Antonio lagoon in Santa Barbara County.”\(^ \text{451}\) This ability to migrate five miles up San

\(^ {446}\) Santa Barbara County Planning and Development Department, Final EIR for ERG West Cat Canyon Revitalization Plan at 4.3-32 (February 2019).
\(^ {447}\) See e.g., Id. at 4.3-49.
\(^ {448}\) Id. at 4.3-49 – 50.
\(^ {449}\) U.S. Fish and Wildlife Service, Unarmored Three-spine Stickleback (Gasterosteus aculeatus williamsoni) 5-Year Review: Summary and Evaluation at 7 (May 29, 2009).
\(^ {451}\) Id.
Antonio Creek places tidewater goby in the vicinity of at least eight oilfields, and places it at risk from oil and wastewater spills in the Planning Area. These species are threatened by oil and wastewater spills from production, processing, storage, and transportation of oil by pipeline or truck within the Planning Area. With respect to truck and pipeline transport, take can occur both inside and outside of the Planning Area, but impacts to these endangered fish are omitted from the EA.\textsuperscript{452} The unarmored three-spine stickleback and tidewater goby are also threatened by frack-outs during hydraulic directional drilling (“HDD”) proposed to install a natural gas line under San Antonio Creek to support oil and gas operations.\textsuperscript{453}

Vernal pool and longhorn fairy shrimp are threatened by the GCP’s authorization of construction and operation of oil and gas projects, including habitat loss from construction, mowing, and off-road vehicles, and crushing of cysts in dry ponds.\textsuperscript{454} Blunt-nosed leopard lizards are at risk due to the oil and gas development and vehicle-strike under the GCP. Considering effects on other species of endangered lizards, oilfield-started fires and increased fire frequencies worsened by climate change may also threaten the endangered blunt-nosed leopard lizard.\textsuperscript{455}

The EA’s failure to disclose significant impacts to southern California steelhead, arroyo toad, unarmored three-spine stickleback, tidewater goby, vernal pool and longhorn fairy shrimp, and blunt-nosed leopard lizard renders the EA deficient and undermines the public’s right to a fair and transparent analysis.

\textit{xii. The EA Omits Impacts to Special-status Species not Listed as Federally Endangered or Threatened.}

The EA fails to disclose impacts to State-protected special-status species which are not federally listed, such as the western pond turtle\textsuperscript{456} and two-striped garter snake.\textsuperscript{457} The EA omits the GCP’s impacts to other special-status species which were improperly excluded from the EA, such as the ringtail, silvery legless lizard, San Diego woodrat, and American badger.\textsuperscript{458} These

\textsuperscript{452} Santa Barbara County Planning and Development Department, \textit{Proposed Final Environmental Impact Report for West Cat Canyon Revitalization Plan} at 4.3-49 – 4.3-50 (February 2019). See also: Santa Barbara County Planning and Development Department, \textit{Draft EIR for Aera East Cat Canyon Oil Field Redevelopment Plan} at 4.3-56 – 4.3-58 (November 2018).
\textsuperscript{453} Santa Barbara County Planning and Development Department, \textit{Draft EIR for Aera East Cat Canyon Redevelopment Plan} at 4.3-104 (November 2018).
\textsuperscript{456} Santa Barbara County Planning and Development Department, \textit{Proposed Final Environmental Impact Report for West Cat Canyon Revitalization Plan} at 4.3-33 (February 2019).
\textsuperscript{457} Id.
\textsuperscript{458} Id. at 4.3-39 – 40.
species could be significantly impacted by oil spills, oilfield-started wildfires, roadkill, habitat loss, and crushing during construction. The EA omits these significant impacts to these special-status species.

xiii. The EA Results in Net Loss of Habitat for Special-status Species.

The GCP results in a net loss of habitat for listed, State-protected, and other species, causing a significant unavoidable adverse impact which is omitted in the EA. As discussed above in comments on the GCP, the GCP would authorize permanent take of up to 675 acres of CTS upland habitat, 355 acres of CRLF designated critical habitat, 27.5 acres of LYS. (EA at 2-8 to 2-14) In exchange, the GCP identifies Compensatory Mitigation including a Mitigation Bank, CTS and CRLF Mitigation and Conservation Accounts, and Permittee-Responsible Mitigation. (GCP at 76 - 81) All of these measures involve existing habitat but do not offset the loss of habitat acreage by creating or sufficiently restoring upland habitat as described in the CTS Recovery Plan. Therefore, even when existing habitat is placed under an easement as mitigation for habitat loss, there is a net loss in habitat acreage for CTS, CRLF, LYS, other federally listed species, State-protected species, and general wildlife. The EA omits this significant unavoidable impact of net habitat loss.

xiv. The EA Omits the Impacts and Take of Threatened and Endangered Estuarine and Marine Species Caused by Oil Spills from Trucks and Pipelines.

As discussed above in comments on the GCP and the EA’s Affected Environment section, oil or wastewater spills that begin onshore at GCP-authorized oil and gas facilities and reach offshore, or come from trucking accidents along the coast, may impact listed marine species such as sea otter, federally endangered white abalone, and blue whale. The EA improperly limits its analysis to terrestrial environments and omits impacts to marine species.

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xv. The EA Improperly Concludes Beneficial Impacts to Vegetation and Wildlife by Relying on Speculative Mitigation Measures.

The EA concludes that the GCP may result in beneficial impacts for vegetation and general wildlife, but this conclusion is based on an illogical analysis. (EA at 4-4 and 4-6) The EA reaches this incorrect conclusion by relying on speculative mitigation measures. In fact, the GCP does not result in beneficial impacts to vegetation and wildlife from authorizing oil and gas projects. Instead, the GCP will result in take of endangered and threatened species by allowing activities that will cause harm to species and their habitats from oils spills, construction, habitat loss, stormwater runoff, fires, vehicle-strikes, etc.

The GCP will result in permanent loss of 675 acres of CTS upland habitat, including 152 acres of critical habitat, 355 acres of CRLF critical habitat, and 27.5 acres of LYS, including 7.5 acres of critical habitat. The Aera East Cat Canyon Project will result in a permanent loss of 201.4 acres of vegetation and would result in the removal of hundreds of oak trees, causing a significant unavoidable impact. The Aera and TerraCore Projects will result in an estimated four spills per year causing significant unavoidable adverse impacts to biological resources even after mitigation measures are implemented. While the GCP includes measures to mitigate and compensate for these losses, the measures do not avoid the adverse impacts and do not make oil spills, fires, and habitat loss beneficial biological impacts.

xvi. The EA Incorrectly Concludes that the GCP will Result in Beneficial Impacts by Confusing Administrative Benefits with Environmental Benefits.

The EA touts a “standardized approach” and “greater consistency” with regards to implementing avoidance and minimization measures for native vegetation and general wildlife. (EA at 4-4 and 4.6) However, greater consistency and a standardized approach do not necessarily ensure that the impacts are mitigated any more than they would be by using HCPs for individual projects (the No Action Alternative, EA at 2-17). Greater consistency and a standardized approach make issuing permits more efficient, which is part of the GCP’s purpose. (EA at 1-5) These administrative benefits are not biological benefits, which this GCP does not provide for the reasons stated herein. In fact, as stated above, individual ITPs and HCPs would provide more thorough analysis and greater protection for listed species.

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463 Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Oil Field Redevelopment Plan at 4.3-57, 4.3-89 - 90 (November 2018).
464 Santa Barbara County Planning and Development Department, Proposed Final Environmental Impact Report for West Cat Canyon Revitalization Plan at 4.3-49 – 4.3-50 (February 2019); See also Santa Barbara County Planning and Development Department, Draft EIR for Aera East Cat Canyon Oil Field Redevelopment Plan at 4.3-56 – 4.3-58 (November 2018).
xvii. The EA’s Discussion of Habitat Fragmentation is Deficient.

The EA does not sufficiently discuss the impacts of the GCP on wildlife movement corridors. The EA refers to “fragmentation” but does not analyze the impacts of oil and gas activities on wildlife movement. (EA at 4-5) In his comments regarding the Aera and ERG EIRs, Hunt finds these impacts may be significant.\(^{465}\) The EA is deficient in its assessment of wildlife movement impacts.

xviii. The EA Omits Significant Impacts on Oak Woodlands and Coastal Sage Scrub.

Oil and gas activities under the GCP may result in removal of over a thousand mature oak trees and over a hundred acres of coastal sage scrub.\(^{466}\) One project in Cat Canyon would remove up to 1,504 mature oak trees.\(^{467}\) The EA discusses impacts to vegetation and objectives to restore damaged areas. However, this discussion is inadequate because it does not address the temporal habitat impacts which may last decades until project decommissioning.

g. The Discussion of Cumulative Impacts is Improperly Narrow.

An EA must assess the cumulative impacts of a proposed action. Kern v. U.S. Bureau of Land Mgmt., 284 F.3d 1062, 1076-79 (9th Cir. 2002) (“Given that so many more EAs are prepared than EISs, adequate consideration of cumulative effects requires that EAs address them fully” (quoting Council on Environmental Quality, Considering Cumulative Effects Under the National Environmental Policy Act 4 (Jan.1997)); Hall v. Norton, 266 F.3d 969, 978 (9th Cir. 2001); Te-Moak Tribe v. US DOI, 608 F.3d 592, 602-603 (9th Cir. 2010); Sierra Nevada Forest Protection Campaign v. Weingardt, 376 F.Supp.2d 984, 991 (E.D. Cal. 2005).

A cumulative impact “is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

In this case, the EA fails to identify other past, present, and reasonably foreseeable future actions that may impact CTS, CRLF, and LYS. For example, the EA omits the approved Santa Barbara County Cultivation GCP which allows take of 5,325 acres of CTS habitat in the same

\(^{465}\) Hunt 2019(b) at 8-9; \textit{See also} Hunt 2019(a) at 6.
\(^{466}\) Hunt 2019(b) at 10-12.
\(^{467}\) \textit{Id.}
area as the Oil and Gas GCP. The EA also omits the proposed Los Alamos, Santa Barbara County Cultivation GCP listed in the Federal Register on April 9, 2020. The EA also omits the proposed Los Alamos, Santa Barbara County Cultivation GCP listed in the Federal Register on April 9, 2020.469

LYS are already at risk of destruction from vegetation clearing, oil and gas exploration and extraction, urban development, over-grazing, wildfires, invasive plants, feral pigs, and climate change.470 CTS are at risk from habitat loss, alteration, and fragmentation from cultivation activities, urban growth including roads which form obstacles or barriers, vehicle-strikes, disease, burrowing animal control, oil production, contaminants, runoff from oil roads, and drought and climate change.471

The Santa Barbara County Hoop Structures Ordinance will allow hoop structures to touch the ground and block the migration of CTS. The proposed mitigation measures requiring 12-inch gaps to allow CTS movement through such structures was rejected.472

The EA also fails to consider the cumulative effects of Santa Maria’s Las Flores Landfill Project located west of the Cat Canyon Oilfield and south of the Santa Maria Valley Oilfield.473

The EA omits the May 2017 Final Habitat Conservation Plan for Laguna County Sanitation District Facilities Construction, Operation, and Maintenance, Western Santa Maria Valley, Santa Barbara County, California. This ongoing project is in the Planning Area and affects CTS and CRLF.474

The EA also omits several CTS HCPs approved for North County projects including:

- Campbell Home Ranch California Tiger Salamander HCP475

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468 U.S. Fish and Wildlife Service, General Conservation Plan for Cultivation Activities Santa Barbara County, California at 31 (September 2019).
470 Magney at 4-5, 7.
472 Memorandum from Dan Klemman, Deputy Director, Long Range Planning Santa Barbara County Planning and Development Department, to Santa Barbara County Board of Supervisors regarding Revisions (RV01) to the Final Environmental Impact report (17EIR-00000-00004)) – Hoop Structures Ordinance Amendment: Planning and Development Case Number 17ORD-00000-00005 at 5 – 8 (April 9, 2019).
474 Santa Barbara County Public Works Department Laguna County Sanitation District, Final Habitat Conservation Plan Laguna County Sanitation District Facilities Construction, Operation, and Maintenance Western Santa Maria Valley, Santa Barbara County, California (May 2017), available at: https://www.fws.gov/ventura/docs/LagunaCountyHCP/HabitatConservationPlan.pdf.
475 Department of the Interior, U.S. Fish and Wildlife Service, Federal Register Vol. 82, No. 195, Receipt of Application for Incidental Take Permit; Draft Low-Effect Habitat Conservation Plan for the California Tiger Salamander; Campbell Home Ranch, Santa Barbara County, California at 47243 (October 11, 2017).
• Rice Ranch Development Project HCP\textsuperscript{476}  
• La Purisima Golf Course Solar Array Project\textsuperscript{477}  
• East Clark Avenue HCP\textsuperscript{478}  
• Curletti Farm Project\textsuperscript{479}  
• Phillips 66 HCP\textsuperscript{480}

There is another HCP proposed by FWS for the Oak Hills Estates in Santa Barbara County.\textsuperscript{481}

The EA does not explicitly consider the cumulative effects of the ExxonMobil SYU Restart and Trucking Project, which would result in Class I (unmitigated) impacts to special-status species and habitats, including CRLF and CTS.\textsuperscript{482} The Plains Pipeline may impact CRLF and CTS, but the EA does not identify these as cumulative projects.\textsuperscript{483} The EA also omits "several oil and gas projects near Garey that are currently under construction or proposed."\textsuperscript{484} The EA is unclear whether these oil and gas projects are intended to be captured in Section 5.1.1 on pages 5-1 - 2.

\textit{h. The Mitigation Measures are Inadequate to Reduce Impacts to an Insignificant Level.}

Mitigation measures in an EA must be real, effective, and enforceable. \textit{Friends of Back Bay v. United States Army Corps of Engineers,} 681 F.3d 581, 589 (4th Cir. 2012). An EA must

\textsuperscript{476} Department of the Interior, U.S. Fish and Wildlife Service, \textit{Federal Register} Vol. 82, No. 196, Receipt of Application for Incidental Take Permit; Draft Low-Effect Habitat Conservation Plan for the California Tiger Salamander; Rice Ranch Development Project, Santa Barbara County, California at 47572 (October 12, 2017).
\textsuperscript{477} Department of the Interior, U.S. Fish and Wildlife Service, \textit{Federal Register} Vol. 82, No. 196, Receipt of Application for Incidental Take Permit; Draft Low-Effect Habitat Conservation Plan for the California Tiger Salamander; La Purisima Golf Course Solar Array Project, Santa Barbara County, California at 47571 (October 12, 2017).
\textsuperscript{478} Department of Interior, U.S. Fish and Wildlife Service, Incidental Take Permit TE38360D-0 (July 1, 2019).
\textsuperscript{479} Department of the Interior, U.S. Fish and Wildlife Service, \textit{Federal Register} Vol. 82, No. 195, Receipt of Application for Incidental Take Permit; Draft Low-Effect Habitat Conservation Plan for the California Tiger Salamander and the California Red-Legged Frog; Curletti Farming Project, Santa Barbara County, California, at 47243 (October 11, 2017);
\textsuperscript{480} Department of the Interior, U.S. Fish and Wildlife Service, \textit{Federal Register} Vol. 82, No. 213, Receipt of Application for Incidental Take Permit; Draft Low-Effect Habitat Conservation Plan for the California Tiger Salamander; Phillips 66 Line 300 Project, Santa Barbara County, California at 52428 (November 6, 2017).
\textsuperscript{482} Draft Supplemental Environmental Impact Report for the ExxonMobil Interim Trucking for Santa Ynez Unit (SYU) Phased Restart Project, Santa Barbara County EIR No. 19EIR-00000-00001 (April 2019) at 4.3-32.
\textsuperscript{484} Santa Barbara County Planning and Development Department, \textit{Proposed Final EIR for ERG West Cat Canyon Revitalization Plan} at 4.3-80.
provide assurances that mitigation measures will be adequate to render potential impacts “so minor as to not warrant an EIS.” Nat’l Parks & Conservation Ass’n., 241 F.3d at 734. Rather than discuss mitigation measures in the EA, the document refers back to the GCP. (EA at 2-16)

The proposed “Measures to Avoid and Minimize Impacts” in the GCP are vague and consequently ineffective to assure adequate mitigation. Many measures are caveated with the requirement that they will only be implemented “to the maximum extent feasible,” “to the extent feasible,” “to the extent practicable,” “at the discretion” of a Service-approved biologist, or with certain exceptions. (GCP at 70-74) These caveats render such measures hypothetical and uncertain.

In addition, the proposed 3:1 ratio for LYS is too low to adequately mitigate for impacts, especially given the rarity of the species and the uncertainty regarding the viability of the proposed mitigation measures.\textsuperscript{485} In addition, the limited genetic variability of LYS creates greater vulnerability and reduced ability to adapt to changes in the environment, such as from disease or climate change.\textsuperscript{486} Breeding opportunities are very limited because successful pollination can only occur from other plants.\textsuperscript{487} Accordingly, the loss of even a few plants will have a significant effect that will be extremely difficult to mitigate. Moreover, translocation or planting of LYS has not proven effective and should not be relied upon for mitigation.\textsuperscript{488} Simply funding research does not mitigate the sure loss of LYS.\textsuperscript{489} As such, these measures do not assure adequate mitigation.

The EA fails to analyze the feasibility of avoiding take. As discussed above, avoidance of LYS is feasible given the small and discrete populations.\textsuperscript{490} Avoidance is also the most cost-effective approach to protecting covered species.\textsuperscript{491}

Measures to mitigate harm to CTS are also inadequate. Some measures require excavation of burrows or relocation of CTS, which may have negative consequences.\textsuperscript{492} (GCP at 72-73) None of these measures are quantified or evaluated to ensure they will be effective in avoiding or mitigating impacts.

To the extent the GCP relies on a 1:1 ratio for CTS, such “mitigation” would result in a net loss of habitat in the amount disturbed or destroyed. In Foundation for North American Wild Sheep v. U.S. Dept of Agric., 681 F.2d 1172, 1181-82 (9th Cir. 1982), the court held that a proposal to mitigate impacts to sheep by translocating them from another area was inadequate to mitigate for the project’s adverse impacts because it would result in a reduction in sheep in the

\textsuperscript{485} Magney at 10.
\textsuperscript{486} Id. at 11.
\textsuperscript{487} Id.
\textsuperscript{488} Id. at 11-12.
\textsuperscript{489} Id. at 12.
\textsuperscript{490} Id. at 3.
\textsuperscript{491} Id. at 9.
\textsuperscript{492} Bumgardner at 6.
area from which the sheep were transplanted. Similarly here, the species will be reduced in the affected area where the oil and gas development activities occur, even if they are maintained elsewhere.

Bumgardner raises concerns about mitigation ratios for CTS by pointing out that the Model may undervalue habitat closer to ponds and overvalue habitat further from ponds because the Model gives all adults equal reproductive values, when in reality adult CTS closer to ponds have greater value. The proposed ratios in the GCP fail to account for this difference in value and function of habitat.

Finally, the “Measures to Mitigate Unavoidable Impacts” rely on “compensatory” mitigation such as buying credits for a mitigation provider (mitigation bank), paying mitigation fees, or establishing a mitigation site. None of these options guarantee timely or adequate compensation. In addition, the EA does not identify any specific projects or sites for the proposed compensatory mitigation. There is only one proposed location for a mitigation bank for CTS in the County, and the ranch upon which it exists is for sale, threatening its viability. In addition, this site is for only one metapopulation area at Purisima Hills. The other five metapopulation areas can’t use it for mitigation. Moreover, the CTS conservation account has not been effective to mitigate impacts to CTS.

There is no current mitigation bank for LYS, and it is unlikely that one will be successfully created. The sites on Vandenberg Air Force Base are not eligible, and it would be prohibitively expensive to acquire and attempt to implement a mitigation project on private land. Moreover, as explained above, such an attempt would likely not be successful. As such, these measures are illusory and cannot be relied upon to mitigate the significance adverse impacts to these threatened and endangered species.

i. The Adaptive Management Measures are Inadequate.

The adaptive management approach will cause further harm to the listed species. For example, the GCP would allow a 20% loss of the number of LYS ramets or the area occupied by LYS due to changed or unforeseen circumstances before adaptive management actions may be

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493 Id. at 5; See also Christopher A. Searcy and H. Bradley Shaffer, Calculating Biologically Accurate Mitigation Credits: Insights from the California Tiger Salamander at 1000-1004 (August 2008).
494 Santa Barbara Land Trust, La Purisima Conservation Bank, available at: https://www.s blandtrust.org/portfolio-item/la-purisima-conservation-bank/.
495 Personal Communication between Rachel Henry, HCP Coordinator, Jenny Marek, Deputy Field Supervisor, Steve Henry, Field Supervisor, and Chris Diel, Recovery Permit Coordinator, United States Fish and Wildlife Service; Tara Messing, Staff Attorney, Elizabeth Fisher, Staff Attorney, and Brian Trautwein, Environmental Analyst/Watershed Program Coordinator; and Wendy Motta, District Representative for Congressmember Salud Carbajal, in Santa Barbara (March 3, 2020).
496 Magney at 13, 17.
497 Id. at 13-14.
implemented. (GCP at 89 - 90) This “threshold is far too high (bar is too high) and would put [] this species at risk of extinction.”

In addition, the adaptive management trigger for invasive weed species is too high. The trigger does not occur until the invasive species reaches 25%. (GCP at 96) By that time the problem is out of hand because the seed bank will be full of weed seeds, and it will be difficult to control the invasive plants. Moreover, adaptive management measures do not need to be implemented if the permittee chooses not to.

The adaptive management trigger for CRLF would be based on populations of two adjacent south county creeks: Arroyo Quemada (Baron Ranch) and Arroyo Hondo. (GCP at 89) There is no central or north county reference populations, so there is lack of geographic representation in the reference streams. As a result, north county populations could be crashing but no adaptive management would be triggered if the two south county populations remained above 50%. (?Id.)

CTS adaptive management requires annual surveys over five-year periods to determine whether ten or fewer larvae are captured in a number of ponds. (GCP at 87) The GCP refers to annual range-wide surveys. However, there is no evidence of annual surveys to count CTS larvae in the Planning Area in the GCP. This trigger would never be met if there are not five consecutive years of surveys. Given funding limitations and access to private ponds, it likely this trigger will never be met even if the CTS population drops significantly because there may never be five consecutive years of surveys in enough ponds to trigger adaptive management.

The EA fails to disclose the impacts that will result due to the inadequacies of the adaptive management triggers and requirements.

j. The Measures to Address Changed and Unforeseen Circumstances Will Result in Significant Impacts.

The EA fails to address the reasonably foreseeable impacts that may occur as a result of changed circumstances. The GCP references several threats to listed species, but limits the applicability of mitigation to address such threats. (GCP at 90-96) The same holds true for unforeseen circumstances. (GCP at 97) In both instances, the GCP requires consent by the permittee to implement measures to mitigate harm. This requirement renders the measures illusory and speculative.

In addition, the trigger to remediate invasion of new invasive weed species is too high. The trigger does not occur until the invasive species reaches 25%. (GCP at 96) By that time the

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498 Id. at 15.
499 Email from Karen Flagg, Restoration Ecologist, to Brian Trautwein, Environmental Analyst / Watershed Program Coordinator, EDC (March 25, 2020).
problem is out of hand because the seed bank will be full of weed seeds, and it will be difficult to control the invasive plants.500

   k. The EA Fails to Disclose the Irreversible and Irretrievable Commitment of Resources

   NEPA requires consideration of “any irreversible or irretrievable commitments of resources which would be involved with the proposal should it be implemented.” 40 C.F.R. § 1502.16. The EA states that irretrievable resource commitments “involve the loss in value of an affected resource that cannot be restored as a result of the action, such as extinction of a threatened or endangered species.” (EA at 6-1) Nevertheless, the EA improperly relies on two rationales for determining that “the long-term viability of all three species would not be adversely affected.” (Id.)

   First, the EA relies on the assertion that the GCP would not itself result in the direct approval of oil and gas activities in Santa Barbara County. (Id.) As noted above, however, the GCP would authorize activities that will take listed species. The GCP itself admits that the proposed activities will result in significant and unavoidable impacts to these threatened and endangered species.

   Second, the GCP relies on illusory and inadequate mitigation measures to conclude that such impacts will be minimized. For the reasons discussed above, the GCP will adversely affect species that are already considered at the brink of extinction, and thus will further their demise. Such an effect will cause an “irreversible and irretrievable commitment of resources” which must be disclosed under NEPA.

   l. The EA Fails to Adequately Assess the Short-Term Use of the Environment in Comparison to Long-Term Productivity and Impacts.

   NEPA also requires agencies to consider the relationship between the short-term uses of the environment and long-term productivity. 40 C.F.R. § 1502.16. The GCP would allow a broad scope of construction and operational activities that will affect the environment. The effects of these activities will be long-lasting (up to fifty years and perhaps even longer). The EA minimizes these long-term impacts by relying on the mitigation measures proposed in the GCP. (EA at 7-1) As discussed above, the mitigation and compensatory measures set forth in the GCP are inadequate to ensure the long-term conservation of species that are protected under the ESA and will negatively impact the long-term productivity of valuable and irreplaceable ecosystems.

500 Id.
Furthermore, the EA fails to address the long-term cumulative effects on climate change to which the GCP would contribute by facilitating new and expanded oil and gas development in Santa Barbara County at a time when the County must reduce its GHG emissions.

IV. Conclusion

For the foregoing reasons, we urge the Service to not go forward with the GCP process. The GCP does not achieve the most basic requirements for a conservation plan under Section 10 of the ESA. 16 U.S.C. § 1539(a)(2)(A)(i)-(iv). The GCP omits the required information and analysis mandated under Section 10 and therefore approval of this GCP would be in violation of the ESA.

Furthermore, the preparation of an EIS under NEPA is required here because the GCP and the oil and gas activities proposed thereunder will result in significant adverse effects on the environment. The EA prepared in this case is inadequate because it fails to address the full scope of activities that may occur and fails to analyze all of the possible environmental consequences. In addition, the EA does not include an adequate discussion of alternatives, mitigation measures, or cumulative impacts.

Thank you for your consideration of these comments. We look forward to working with the Service to ensure protection of endangered and threatened species in our region.

Sincerely,

Linda Krop    Tara Messing    Brian Trautwein
Chief Counsel    Staff Attorney    Environmental Analyst

Attachments:


B— Letter from Michael Bumgardner, biological consultant, to Stephen Henry, U.S. Fish and Wildlife Service, regarding expert opinion on the U.S. Fish and Wildlife Service’s Oil & Gas General Conservation Plan and Draft Environmental Assessment for the California tiger salamander and California red legged frog (April 30, 2020)
C— Resume of David Magney

D— Resume of Michael Bumgardner

E— Letter from Lawrence Hunt, Lawrence Hunt and Associates Biological Consulting to Nancy Minick, Planner, Santa Barbara County Planning and Development Department (August 2, 2018)

F— Letter from Lawrence Hunt, Lawrence Hunt and Associates Biological Consulting to Santa Barbara County Planning Commission at 6 (March 7, 2019)

G— Letter from Lawrence Hunt, Lawrence Hunt and Associates Biological Consulting to Kathryn Lehr, Planner, Santa Barbara County Planning and Development Department (January 28, 2019)