

Comment Set B



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825

IN REPLY REFER TO:
PPN 2723

November 27, 2000

Brad Wetstone, CPUC
Aspen Environmental Group
235 Montgomery Street, Suite 800
San Francisco, California 94104

Dear Mr. Wetstone:

Thank you for the opportunity to review the Supplemental Draft Environmental Impact Report (SDEIR) related to the NE San Jose Transmission Reinforcement Project (Project). The U. S. Fish and Wildlife Service (Service) previously submitted comments for this project, and is providing the following comments in evaluating new alternatives and changes to alternatives considered in the Draft Environmental Impact Report (DEIR).

SERVICE POLICY

When reviewing projects, the Service generally does not object to projects meeting the following criteria:

1. They are ecologically sound;
2. The least environmentally damaging reasonable alternative is selected;
3. Every reasonable effort is made to avoid or minimize damage or loss of fish and wildlife resources and uses;
4. All important recommended means and measures have been adopted, with guaranteed implementation to satisfactorily compensate for unavoidable damage; or
5. For wetland and shallow water habitats, the proposed activity is clearly water dependent and there is a demonstrated public need.

The Service may recommend the "no project" alternative for those projects which do not meet all of the above criteria, and where there is likely to be a significant fish and wildlife resource loss.

It is the regional policy of the Service to ensure no net loss of wetland acreage or value, whichever is greater. To offset unavoidable resource losses for acceptable projects, the Service recommends

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that appropriate mitigation be provided. The Council on Environmental Quality regulations for implementing the National Environmental Policy Act define mitigation to include: (1) avoiding the impact; (2) minimizing the impact; (3) rectifying the impact; (4) reducing or eliminating the impact over time; and (5) compensating for impacts. The Service supports and adopts this definition of mitigation and considers the specific elements to represent the desirable sequence of steps in the mitigation planning process. Accordingly, we maintain that the best way to mitigate for adverse biological impacts is to avoid them altogether.

PROJECT DESCRIPTION

The project purpose is to meet the projected electric demand in the cities of Fremont, Milpitas, San Jose, and Santa Clara. The project is located in the cities of Fremont and San Jose and includes a small unincorporated area of Santa Clara County. There is one substation alternative and five major transmission line alternatives identified in the SDEIR, which concludes the following:

1. The US DataPort Substation Alternative: This site is located immediately northwest of the proposed Los Esteros site, with similar environmental impacts. Both are environmentally superior to the Zanker Road and the Northern Receiving Station alternatives considered in the DEIR.
2. Northern Underground Alternative: This alternative is environmentally superior to the proposed route but the I-880-A Alternative (overhead) is superior to the Northern Underground Alternative.
3. Modified I-880-A Alternative: The reroute was not found to offer substantial advantages over the original route of the I-880-A Alternative. A different route, defined in Mitigation Measure V-3, is recommended if the I-880-A Alternative is selected in combination with either the proposed route through Bayside Business Park or the Underground through Business Park Alternative.
4. Modified I-880-B Alternative: The modified I-880-B Alternative is preferred over the DEIR's I-880-B Alternative.
5. McCarthy Boulevard Alternative Segment: This alternative segment is preferred over the original route.
6. Southern Underground Alternative: This alternative would have significant and unmitigable geologic impacts due to its location near Coyote Creek. Therefore, the proposed route is environmentally superior to this alternative.

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GENERAL COMMENTS

The Service acknowledges the efforts of the California Public Utilities Commission (Commission) to reduce the environmental impacts of the Project by adding additional alternatives to be considered. While we appreciate these efforts, the Service believes that further efforts could reduce the impacts at several segments that we have reviewed.

The selection of either the proposed Los Esteros Substation and the US DataPort substation should not affect biological resources as stated in the SDEIR. For the northern portions of the transmission line, the Modified I-880-B, and the Northern Underground Alternative are still the environmentally superior routes from the Service's perspective. We also recommend that if the Northern Underground Alternative proves infeasible, the I-880-A Alternative be modified to avoid crossing the salt pond south of the Pacific Commons Preserve and join the Modified I-880-B or Underground Through Business Park Alternatives.

SPECIFIC COMMENTS

For the reader, we have separated the project into northern and southern portions. Both portions would effect trust resources of the United States, including birds protected under the Migratory Bird Treaty Act, and threatened and endangered species. The northern portion has the potential to affect Service lands within the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge), and the Southern portion would affect lands and waters that were created as mitigation for other development projects in the area.

Southern Area

McCarthy Boulevard Alternative

The McCarthy Boulevard Alternative still places the line between high bird use areas from milepost 6.7 to milepost 5.6 and avoids the high value habitat area from milepost 5.6 to milepost 4.7. This alternative reduces the impacts to a great blue heron rookery, located near milepost 5.1.

Southern Underground Alternative

The Service appreciates the addition and consideration of the Southern Underground Alternative (Southern), as the route itself is the best way to avoid bird collisions in an area with known high bird use. This route does not divide two areas used extensively by migratory birds, as does the proposed route. The land considered for the Southern alternative on the east side of Coyote Creek is currently empty and for sale. Based on information presented in the SDEIR and discussions with representatives from Aspen Environmental Group and the Commission, a bored crossing beneath Coyote Creek may not be possible due to liquefaction potential in the unstable bay muds.

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The Service recommends that the Commission look into the potential of utilizing the Southern Underground Alternative, crossing the creek aboveground (Southern route). Whether the line should continue aboveground or be placed underground along McCarthy Boulevard should not matter biologically, as east of the creek there are no areas of high bird use, nor records of sensitive species. This option would prevent the impacts of locating the line between two areas of high bird use, namely the Coyote Creek mitigation site and the waste water treatment ponds operated by the City of San Jose. Although crossing Coyote Creek is problematic, the Service believes that if a bored crossing is eliminated, this alternative, which would entail vegetation management, would involve less impact in the long term than the other alternatives.

The overhead along the Southern route was not considered in either the DEIR or SDEIR, though the McCarthy Boulevard segment would have similar visual impacts. A somewhat similar route (Overhead Route Through Milpitas) was reviewed in the SDEIR. This alternative was not considered the California Public Utilities Commission in their SDEIR assessment for the following three reasons: (1) The McCarthy Ranch retail development would be impacted by the project; (2) Coyote Creek would have to be crossed, and substantial amounts of vegetation would have to be cleared; (3) and there is insufficient space for an overhead line to be installed on the north side of Highway 237 between the I-880/Highway 237 interchange and the west side of Coyote Creek. The Highway off-ramp, retail development and intensive activities by the US Army Corps of Engineers in and around Coyote Creek use the available space of this area.

The Service believes that if the Southern Route was reviewed as an aboveground alternative, the points made above for the Overhead route through Milpitas may not be significant for the following reasons: First, the southern route aboveground would not affect the McCarthy Ranch retail section, as it is on the east (opposite) side of McCarthy Ranch Road; Second, crossing Coyote Creek may not be a significant impact. More information is needed than "substantial amounts of vegetation would have to be cleared". For instance, is there a height limit to the vegetation at the crossing? Also, could the towers be made taller at this point in order to permit increased heights of vegetation? These details could help with determining what effects this type of activity would have on the San Francisco Bay Bird Observatory and its studies; Third, more information is needed as to the type of activities is the Corps of Engineers doing, completed, or considering in the area in question. Also, the selection of a crossing would not necessarily be adjacent to the interchange, regardless of the selection of the substation, crossing Coyote Creek likely would be north of the Highway 237 interchange.

In the absence of complete information in this sensitive area, the reviewer cannot determine the entire impact of one route over another.

Northern Area

The northern area routes would affect the Refuge. In order for the Refuge to issue or approve a Right-of-Way over the Refuge and the Pacific Commons Preserve for which the Refuge will have a conservation easement, the proposed transmission line would need to be compatible with the

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conservation mission of the National Wildlife Refuge System and the purposes of the Refuge pursuant to the National Wildlife Refuge System Improvement Act of 1997.

The Service's Compatibility Regulations (50CFR Parts 25, 26 & 29 as amended, 2000) state that actions such as Right-of-Ways will only be issued for projects that are compatible with both the Refuge System mission and the purpose of the Refuge. The National Wildlife Refuge System Mission is "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans." (111 Stat 1252, dated Oct. 9, 1997) The stated purposes for which the Refuge was established are: "...for the preservation and enhancement of highly significant habitat...for the protection of migratory waterfowl and other wildlife, including species known to be threatened with extinction, and to provide opportunity for wildlife oriented recreation and nature study..." (86 Stat 399, dated June 30, 1972). Though some alternative routes for the proposed transmission line might be determined to be compatible (see comments below) mitigation measures would need to be developed between Pacific Gas & Electric Company and the Refuge to minimize and/or offset unavoidable impacts that would result from implementation of these alternatives.

Based on the information in the SDEIR/DEIR, it appears that the Refuge would not authorize a Right-of-Way for the Proposed Alternative. Based on impacts to the Refuge, the alternatives for which the Refuge could issue a Right-of-Way on Refuge lands would be either the I-880-A Alternative or the Northern Underground Alternative. Both these alternatives would place the transmission line along an existing access Right-of-Way, parallel to the Refuge boundary along Interstate 880. This would keep the transmission line from bisecting the Refuge which would degrade its ecological integrity and, at least, minimize impacts to existing Refuge natural resources and the features being developed as a part of the Pacific Commons Mitigation Project.

The portion of the I-880 Alternative that crosses the Refuge would still have the potential for bird strike and predator perch impacts because the lines would remain above the ground. These would be minimized by the placement of the line along the edge of the Refuge opposite from the most likely flight path from the Refuge towards the adjacent vernal pools, salt ponds, and San Francisco Bay. The Northern Underground Alternative would eliminate the bird strike and predator perch impacts. Therefore, the Northern Underground Alternative would be preferred over the I-880-A Alternative. If the Northern Underground Alternative proves not feasible, the Refuge would authorize the I-880-A Alternative route across the Refuge.

Looking beyond just the impacts to the Refuge, the Service would prefer a combination of alternatives that would protect the Refuge property and avoid impacts to off-Refuge wildlife including endangered species by not crossing salt ponds with heavy water bird use and avoiding impacts to the Coyote Creek Lagoon (Mitigation Pond), which is adjacent to the Bayside Business Park. From the Refuge's perspective, this would be the environmentally preferred route. The alternatives that come closest to fulfilling these requirements would be a combination of the Northern Underground Alternative and the Modified I-880-B Alternative. If the Northern

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Underground Alternative is infeasible for geotechnical reasons, the I-880-A Alternative would be the next best choice in combination with the Modified I-880-B or the Underground Through the Business Park. The I-880-A Alternative would be improved if it would be rerouted to avoid crossing the salt pond to the south of the Pacific Commons Preserve. This could be accomplished by rerouting the I-880-A Alternative along existing streets such as Cushing and Fremont Boulevard to meet the I-880-B Alternative or the Underground Through the Business Park Alternative.

IMPACTS AND MITIGATION

Northern Impacts

South of the Pacific Commons parcel, the Proposed Project route does not cross Refuge property. However, the proposed route does pass adjacent to the Refuge's Coyote Creek Lagoon (Mitigation Pond), which is adjacent to the Bayside Business Park. This area of the Refuge has a number of significant resources that would be impacted if the transmission line is built on the proposed route. The Coyote Creek Lagoon is heavily used by gulls, waterfowl and shorebirds, some of which are federally listed. These birds would be susceptible to bird strike if the proposed route would be built. The towers and lines would also provide predator perches in an area that, currently, does not have such perches. The Refuge "Mouse Pasture" located just south of the Lagoon, provides habitat for the endangered salt marsh harvest mouse as well as nesting burrowing owls. The proposed route would create predator perches which could impact both federally listed threatened and endangered species and the burrowing owl. The proposed route would also impact the Refuge's Coyote Creek recreation trail along the Coyote Creek Lagoon. These significant impacts would be eliminated or at least reduced if either of the following two alternatives were approved instead of the Preferred Alternative: Underground Through Business Park Alternative and Modified I-880-B Alternative.

Southern Impacts

There are six identified significant features for waterfowl identified within the SDEIR (pg 64). Of those six significant features, four of the features overlap at several points between milepost 4.7 and 6.7. This segment of overlap is the area from the Substation (Los Esteros or US DataPort) to Dixon Landing Road. This segment coincides with the Southern and McCarthy Boulevard Alternatives. As stated on page 66 of the SDEIR, "where bird collision risk is highest, the preferred mitigation would be to relocate the line to a lower risk area."

The suggested mitigation provided in the SDEIR (pg 68) recommends marking the line and directs PG&E to conduct a three-year monitoring program to determine the extent of collisions at each segment of the route.

Marking the line with bird flight diverters would reduce the risk of daytime collisions, but as stated in the SDEIR, "a large number of bird collisions would still occur. Loss of special status bird

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species and other birds protected by the Migratory Bird Treaty Act, even if reduced between 57 and 89 percent, would be considered a significant and unavoidable impact.” While the Service disagrees with the statement that the impact is unavoidable, bird flight diverters would not provide enough protection to reduce bird collisions during low light conditions such as at night or on foggy days. Most collisions with power lines occur at night (Hartman et al. 1992). The Service has asked for a copy of the citations that provides these estimates of bird collision reductions, but has had no help from either Aspen or the CPUC. These estimates may be for completely different conditions and completely different species and may have no similarity to the Project.

If the segment of the route between milepost 4.7 and 6.7 was found to have a significant amount of bird collisions, aside from marking the line with bird flight diverters, the preferred alternative to reduce these collisions would be to place the line underground. If the soils are geologically unstable in this area, underground placement of the line may not be possible. The only other alternative that could be considered would be to move the line to an area that has a low likelihood of risk, which would be on the east side of Coyote Creek. Again, the answer is already stated on page 66 of the SDEIR, “where bird collision risk is highest, the preferred mitigation would be to relocate the line to a lower risk area.” Rather than deal with line construction in an area with a high collision risk and the chance of having to relocate the line in the future, without other mitigation alternatives due to unstable geologic conditions it would make more sense to build the line in an area with a lower risk of bird strikes.

RECOMMENDATIONS

Based on the information provided in the SDEIR, the Service believes that bird collisions can be reduced significantly if the proposed line is aligned, from either the Los Esteros Substation or the US DataPort Substation, crossing Coyote Creek aboveground following the Southern route on currently empty land along McCarthy Boulevard. The line would then continue northward using the Modified I-880-B, and the Northern Underground Alternative to the Newark Substation. We also recommend that if the Northern Underground Alternative proves infeasible, the I-880-A Alternative be modified to avoid crossing the salt pond south of the Pacific Commons Preserve and join the Modified I-880-B or Underground Through Business Park Alternatives.

The CPUC is proposing a three-year monitoring study to determine the significance of bird collisions with project facilities. There are a number of biases that could influence this proposed study, such searching ability (search bias), scavenger removal (scavenger removal bias), the area that can be searched within the transects (habitat bias), and the number of birds that could strike a powerline but continue flying outside the transects (crippling bias).

The Service recommends that the CPUC look into the further development of a bird/powerline collision detection system that has had some preliminary work performed on it. This detection system could reduce those biases. If this detection system proved reliable, this system could be used on future projects to determine impacts. The citation for this study is: Smith, J.R. and J.T.

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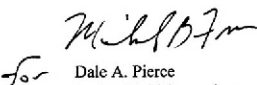
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Schletz. 1991 Bird/powerline collision detection system. Prepared for Pacific Gas and Electric (PG&E), San Ramon, California. Report 009.4-91.10

The Service recommends that the Commission identify what mitigation measures will be implemented at each segment of the route, if, after the three-year monitoring effort, the number of bird collisions was found to be significant.

Appropriate mitigation for the proposed project would include development of habitat that will compensate for habitat loss, the direct loss of birds through collisions with the project facilities, and predator perch impacts. If you have any questions regarding these comments, please contact Clyde Morris of the Don Edwards National Wildlife Refuge at (510) 792-0222, or Richard Smith in the Wetlands Branch at (916) 414-6580.

Sincerely,


Dale A. Pierce
Acting Field Supervisor

cc: ARD (ES), Portland, OR
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Refuge Mgr., SFBNWR, Newark, CA
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REFERENCES:

Hartman, P., S. Byrne, and M. Dedon. 1992. Bird Mortality in Relation to the Mare Island 115-kV Transmission Line: Final Report. Prepared for Department of the Navy, Western Division. June.

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