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United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008

AUG 0 8 2013

In Reply Refer To:
FWS-13B0374-13TA0369

Mr. Robert Sleppy
California Department of Corrections and Rehabilitation
Office of Facility Planning, Construction, and Management
9838 Old Placerville Road, Suite B
Sacramento, California 95827

Subject: Draft Environmental Impact Report for the Proposed Level II Infill Correctional Facilities Project (SCG # 2012122038) at the Richard J. Donovan Correctional Facility, San Diego County, California

Dear Mr. Sleppy:

We have reviewed the draft Environmental Impact Report (DEIR) for the Proposed Level II Infill Correctional Facilities project dated June 2013. Our review focuses on the proposal to construct a single, 792-bed facility within the grounds of Richard J. Donovan Correctional Facility (RJD) in southern San Diego County, California (Volume 2 of the DEIR) which occurs within the area of responsibility of the Carlsbad Field Office of the U.S. Fish and Wildlife Service (Service). Although our comments focus on the preferred alternative, they are also applicable to the proposed larger complex discussed for the RJD.

Our primary concern and mandate is the protection of public fish and wildlife resources and their habitats. We have legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. We are responsible for administering the Migratory Bird Treaty Act (MBTA), Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d *et seq.*), and the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*).

F1-1

The existing RJD is located on approximately 780 acres owned by the State of California on the north eastern area of Otay Mesa in San Diego County. RJD is bounded by two Otay River tributary canyons: O'Neal Canyon to the north and Johnson Canyon to the south. The majority of the RJD infill site is previously disturbed, undeveloped land that was used for agricultural purposes prior to construction of the existing prison. The infill site now includes an approximately10-foot by 20-foot concrete pad, a fitness area, and an active firing range.

The preferred project alternative includes the construction of a single, level II infill correctional facility. The facility would generally be pentagonal in shape, cover approximately 35 acres, and include three separate housing units and associated support structures. The facility would be enclosed by double cyclone fencing with a lethal electrified fence located between the two.

Three types of lighting fixtures would be installed at the infill sites: perimeter light standards, high-mast light standards, and pole- and wall-mounted lighting fixtures. The perimeter light standards would be 30 feet tall with fixtures mounted at the top and angled downward and inward toward the facility and perimeter security zones. Additional height would be added to the berms of the firing range, for protection against ricochets, by constructing railroad tie walls on top of the existing berms.

We offer the following comments and recommendations to assist you in avoiding, minimizing, and adequately mitigating project-related impacts to biological resources, and to ensure that the project is consistent with regional habitat conservation planning efforts. Our main concerns with the proposed project include: 1) the adequacy of the biological surveys; 2) the lack of appropriate mitigation to offset potential impacts to biological resources from construction and operation of the proposed project including the extension of the lethal electrified fence; 3) potential ongoing impacts to migratory bird species; and 4) the assessment of potential impacts based on the inaccurate depiction of the project's location relative to the County of San Diego (County) Multiple Species Conservation Plan Subarea Plan (MSCP).

F1-1 cont'd

The DEIR indicates that the thresholds identified in the County's Environmental Impact Report Format and General Content Requirements where used to determine the level of significance of environmental impacts. There is a specific reference in the DEIR that the technical studies for traffic, air quality, and noise-related impacts were prepared in an effort to be consistent with the County's reporting criteria/guidelines. However, in the area of biological resources, the DEIR is not consistent with the County's requirement for assessment of impacts to biological resources. The extent of the analysis of potential impacts to biological resources appears to have been based on limited information derived from a single reconnaissance survey on May 9, 2013, and biological database searches. We recommend that a biological technical report be prepared for the project consistent with the County's biological standards (or criterion) for evaluating the significance of impacts to biological resources. This report would likely necessitate further field investigations to appropriately identify the onsite biological resources so that an adequate assessment of potential project related impacts can be made.

F1-2

The DEIR incorrectly concludes that developing a level II infill correctional facility at the infill site would not have a substantial adverse effect on any sensitive natural community identified in local or regional plans, policies, regulations, or by the Wildlife Agencies. It goes on to state that non-native grasslands within the project footprint do not support sensitive wildlife species due to the area being regularly mowed and managed. However, this conclusion minimizes the biological importance of the non-native grasslands on site for burrowing owls (*Athene cunicularia hypugaea*), raptors, and raptor prey species. Non-native grasslands provides nesting/foraging habitat, not only for burrowing owls, but as foraging habitat for variety of other raptor species [e.g., golden eagle (*Aquila chrysaetos*), red-tailed hawk (*Buteo jamaicensis*), northern harrier (*Circus cyaneus*), kestrel (*Falco sparverius*), white-tailed kite (*Elanus leucurus*), great horned owl (*Bubos virginiana*), loggerhead shrike (*Lanius ludovicianus*)], as well as several important raptor prey species that are mentioned in the DEIR [e.g., ground squirrels

F1-3

(*Otospermophilus beecheyi*), San Diego black-tailed jackrabbit (*Lepus californicus bennettii*)]. Raptor foraging areas are rapidly disappearing in the County, primarily due to development.

F1-3 cont'd

As acknowledged in the DEIR, burrowing owls have been observed on the proposed project site. Otay Mesa is one of the few remaining areas of the County where a breeding burrowing owl population remains. The "mowed" grasslands on the proposed project site represent suitable nesting as well as a foraging habitat for burrowing owls which more commonly forage in very short grassland and disturbed lands in the Otay Mesa area. Grasslands are considered a sensitive resource within the southern portion of the County and the cumulative impacts to this habitat type have been significant.

The proposed project at RJD would result in approximately 79 acres of impacts to non-native grassland consisting of permanent impacts to 35 acres and temporary impacts to 44 acres (from the construction staging area). The project may also result in ongoing indirect edge effects to adjacent habitat areas from the proposed facility lighting. We are concerned that the DEIR does not identify adequate mitigation measures to address the impacts of the proposed project to burrowing owls and the cumulative net loss of non-native grasslands that support raptor foraging/nesting habitat on Otay Mesa.

F1-4

We have worked closely with the County on developing a conservation strategy for burrowing owls and their habitat on Otay Mesa. Conservation and mitigation for project related impacts to non-native grasslands should be consistent with the habitat-based approach of the County's MSCP where species benefit through the conservation of occupied and suitable habitat. Consistent with the County's Burrowing Owl Strategy (see Attachment A to the County's Report Format and Content Requirements for Biological Resources), we recommend that unavoidable impacts to non-native grassland be mitigated at a ratio of 1:1 (i.e., suitable or occupied by burrowing owls) with at least half of the acreage being conserved on Otay Mesa. The strategy also includes recommendations regarding enhancement and management of the land for burrowing owls that should be considered.

F1-5

Table 3.2-3 of the DEIR evaluates the potential for special status species to occur in the vicinity of the RJD project site and states that there are no CNDDB records for golden eagles within five miles of the proposed infill site, although they could forage in the grasslands on site. Please be aware that there are three pairs of eagles that nest on Otay Mountain. One pair of eagles nests within O'Neil Canyon within approximately three miles of the RJD project site. The other two pairs have nests within four and seven miles of the site, respectively. Therefore, the project site has a high probability of being utilized for foraging by golden eagles and potential impacts to golden eagle foraging habitat should be addressed from both the stand point of the proposed project as well as cumulative losses.

F1-6

The DEIR does not adequately address potential impacts to vernal pools and federally listed fairy shrimp that are known to occur on Otay Mesa [i.e., San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Riverside fairy shrimp (*Streptocephalus woottoni*)]. The reconnaissance survey conducted on May 9. 2013, may not have detected areas of ponding within the project site

F1-7

because most pools in San Diego County are typically dry in May. In addition, mowing of the site may preclude the detection of vernal pool plant species.

The project site is located on Stockpen soils and, as shown in Appendix 2B of the DEIR, was historically covered by mima mound topography indicative of vernal pools. With the cessation of agriculture disking (i.e., soil disturbance), vernal pools have slowly been recovering on Otay Mesa and areas of ponding may support San Diego fairy shrimp and/or Riverside fairy shrimp even if there is no vegetation in the pools. Although pools and/or fairy shrimp may not have been observed on the proposed project site in the past, we recommend that the site be evaluated for the presence of vernal pools/ponded areas. This assessment should be conducted in areas that support appropriate soils and occur during the rainy season in order to detect ponding. Should ponding occur, we recommend focused surveys be conducted for both the San Diego fairy shrimp and Riverside fairy shrimp in accordance with the Services' survey guidelines for these species.

F1-7 cont'd

The DEIR reports that the RJD is located within an area depicted by the County's MSCP as a "take authorized" area. The California Department of Corrections and Rehabilitation (CDCR) is not signatory to the MSCP; therefore, does not receive the benefits of the plan in terms of receiving species coverage. It should also be noted that this designation (i.e., "take authorized area") for the RJD correctional facility appears to be a mapping error and we are currently working with the County to resolve this issue. Irrespective, the DEIR cannot rely on the County's MSCP designation of "take authorized area" to assess the significance of the proposed project impacts nor to mitigate for either project or cumulative impacts. However, we do strongly recommend that the DEIR include the specific measures, as recommended in this correspondence, to offset impacts to biological resources in order to be consistent with regional conservation planning efforts.

F1-8

The DEIR proposes to address impacts from the expansion of the existing electrical fence consistent with the same three tiered approach identified in the Statewide Electrical Fence Habitat Conservation Plan although the proposed project is not a covered activity under this plan. While we agree that the measures associated with the first two tiers (e.g., clearing of vegetation in the vicinity of the fence, vertical netting, anti-perching wire) are appropriate to minimize impacts to migratory bird species and other wildlife species from the electrical fence expansion, we disagree with the mitigation proposed for "Tier 3". Targeting restoration and enhancement of habitat within the Sacramento Valley will not offset unavoidable impacts to wildlife species at RJD. Rather, we recommend that the conservation and management of CDCR land in O'Neal Canyon be considered. This area supports native habitat and associated species and is of great importance to the biological integrity of Otay Mesa, particularly in light of the continued development of the mesa and the conservation efforts of the County's MSCP. We would like to meet with you to discuss potential options for conserving this area in perpetuity.

F1-9

As you may be aware, the Service is the principal Federal agency charged with protecting and enhancing populations and habitat of migratory bird species (e.g., waterfowl, shorebirds, birds of prey, songbirds) that spend all or part of their lives in the United States. Currently, the list of

F1-10

migratory bird species protected by the MBTA Act includes more than 1000 species (50 CFR Part 10.13). Because of the potential for the expanded electric fence to impact migratory birds, we recommend you contact Mr. Thomas Dietsch of the Service's Migratory Bird Program at 760-431-9440, extension 214 to discuss the preparation of a "Bird and Bat Conservation Strategy" that would not only include avoidance and minimization measures but would also establish a monitoring and reporting program.

F1-10

We appreciate the opportunity to comment on the DEIR and request that a meeting be scheduled to formulate an effective mitigation strategy prior to certification of the final EIR. If you have questions regarding the content of this letter or to schedule a meeting, please contact Ms. Susan Wynn of this office at 760-431-9440 extension 216.

F1-11

Sincerely,

for Karen A. Goebel
Assistant Field Supervisor
U.S. Fish and Wildlife Service

cc:
Gail Sevrens, California Department of Fish and Wildlife, San Diego, CA
Mike Thomas, U.S Fish and Wildlife Office, Sacramento, CA
Thomas Dietsch, U.S. Fish and Wildlife, Migratory Bird Program, Carlsbad, CA
Mindy Fogg, County of San Diego Planning and Development Services, San Diego, CA

Letter F1 Response

U.S. Department of Interior, Fish and Wildlife Service
Karen A. Goebel, Assistant Field Supervisor
August 8, 2013

F1-1 Introductory remarks to the comment letter are noted. The comment provides a brief summary of comments that are provided later within the letter. Responses to detailed comments are provided below as bracketed in Letter F1.

F1-2 CDCR, as a state agency, is not obliged to follow local guidelines related to evaluation procedures or CEQA determinations; as within any other environmental document, CDCR is required to base its conclusions on substantial evidence. The formulation of thresholds of significance is within a lead agency's discretion under CEQA Guidelines Section 15064(d). That stated, CDCR largely used San Diego County significance thresholds in the EIR. With regard to the format of the information, all the technical information included in the EIR is in the body of the document; a separate technical report would be redundant.

Further, there is a misperception regarding the extent of field work relied upon for the DEIR's conclusions. The analysis relies on field studies conducted both for this project and a prior project proposed by CDCR on the same site. Table 3.2-3 of Volume 2 of the DEIR provides a discussion of the potential for occurrence of 27 special-status wildlife species on the RJD Infill Site. As shown in this table, the "Potential for Occurrence" column references the various dates when surveys were conducted, including April 2009, June 2009, and May 2013 for grasshopper sparrow (*Ammodramus savannarum),* and January 2013 for northern harrier *(Circus cyaneus*), and white-tailed kite (*Elanus leucurus),* among others. Protocol-level surveys for burrowing owl were conducted on the site on April 11, May 9, May 31, and June 28, 2013 in accordance with California Department of Fish and Wildlife (CDFW) guidelines (2012). Surveys were conducted for other nesting raptors and sensitive wildlife species after conclusion of the burrowing owl surveys on these dates.

Focused rare plant surveys were conducted on May 9, 2013 and a follow-up survey was conducted on August 23, 2013 to determine the species of *Grindellia* observed during the initial survey. No individuals were found, and based on the survey during the potential blooming period for the plant, it was concluded that this species cannot reasonably be expected to occur in the project area.

Protocol surveys for listed branchiopod species were conducted in 2009 for a proposed project that included the current RJD Infill Site, as well as additional areas to the west of the infill site (EDAW/AECOM 2009). Protocol surveys are typically valid for one year. However, the 2009 report documents that no suitable habitat to support branchiopods is present on the currently proposed RJD Infill Site, and the biological resource surveys in 2013 confirmed that conditions have not changed since the 2009 surveys. The RJD Infill Site does not support suitable habitat for listed branchiopod species.

F1-3 The commenter incorrectly states that Volume 2 of the DEIR did not consider grassland to be habitat at the RJD site. The second paragraph on page 3.2-3 of Volume 2 of the DEIR states:

> Annual grassland provides habitat for a wide variety of wildlife species. Some of the common wildlife species observed or expected on the infill site include lesser goldfinch (*Carduelis psaltria*), red-tailed hawk (*Buteo jamaicensis)*, Cassin's kingbird (*Tyrannus vociferans*), savannah sparrow (*Passerculus sandwichensis*), western meadowlark (*Sturnella neglecta*), house finch (*Carpodacus mexicanus*), mourning dove (*Zenaida*

> *macroura*), gopher snake (*Pituophis catenifer*), western fence lizard (*Sceloporus occidentalis*), Botta's pocket gopher (*Thomomys bottae*), California ground squirrel (*Spermophilus beecheyi*), raccoon (*Procyon lotor*), desert cottontail (*Sylvilagus audubonii*), and coyote (*Canis latrans*).

In addition, Impacts 3.2-2a and 2b describe the importance of grassland as, "nesting habitat for northern harrier."

To provide more information related to the importance of nonnative grasslands in response to this comment, the following text is added as the second paragraph on page 3.2-3, Volume 2, of the DEIR. This information does not alter the conclusions in the DEIR with respect to the significance of the project on biological resources.

> Nonnative grassland provides an important resource to various wildlife species. Native wildlife utilizes nonnative grasslands as foraging habitat, especially raptors such as the burrowing owl, golden eagle (*Aquila chrystaeos*), northern harrier (*Circus cyaneus*), kestrel (*Falco sparverius*), and great-horned owl (*Bubo virginianus*). Nonnative grassland also provides habitat for other species, such as the loggerhead shrike (*Lanius ludovicianus*). Nonnative grassland is an important resource that provides habitat for raptor prey species including Audubon's cottontail (*Sylvaligus audobonii*), ground squirrel (*Spermophilus beecheyi*), and black-tailed jackrabbit (*Lepus californicus bennettii*). Within the eastern part of Otay Mesa, where the RJD Infill Site is located, nonnative grassland is a declining resource for these wildlife species and has a particular importance because it is one of the few remaining areas of the County where a breeding burrowing owl population remains.

F1-4 Please refer to Response to Comment F1-3, regarding grassland habitat importance and burrowing owls.

The cumulative effects on special-status plants, raptors (including northern harriers and burrowing owls), and grasshopper sparrow are discussed in the last paragraph on page 4-6 of Volume 2 of the DEIR. Specifically, the DEIR states:

> Many past and ongoing projects have resulted in loss of special-status species populations that could occur on the RJD Infill Site, as well as known suitable and potential habitat for these species. For some of these species, such as California gnatcatcher, losses have been substantial. Because of the large amount of suitable and potentially suitable habitat that has been lost in the area, a significant cumulative impact on special-status species exists.

The DEIR goes on to explain that the project would result in significant impacts to burrowing owl. However, Mitigation Measure 3.2-2b, which would include preconstruction surveys, avoidance measures, coordination with CDFW, and potential relocation of individuals, was included to reduce project-level impacts to a less-than-significant level, and the level II infill correctional facility's incremental contribution to the cumulative impact on special-status species would not be considerable. The comment also provides a general statement regarding adequacy of mitigation, which is responded to in greater detail in Response to Comment F1-5.

F1-5 As explained in Response to Comment F1-2, protocol-level surveys for burrowing owl were conducted on the site on April 11, May 9, May 31, and June 28, 2013 in accordance with CDFW guidelines (2012). The commenter states that CDCR should mitigate for the loss of burrowing owl habitat and mitigation should be consistent with the County's MSCP and the Burrowing Owl Conservation Strategy. As a result of this comment, Mitigation Measure

3.2-2b on page 3.2-21 of Volume 2 of the DEIR has been revised to be consistent with the County's MSCP and the Burrowing Owl Conservation Strategy as follows:

CDCR will obtain a qualified biologist to conduct additional surveys of the site for the presence of burrowing owls. These surveys will be conducted in all areas of suitable habitat on and within 500 feet of the project site during the spring, winter, and 30 days prior to construction to determine the presence/absence of breeding and/or wintering owls. If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction survey, the site will be re-surveyed.

Habitat-based Mitigation

The loss of nonnative grassland will be mitigated through conservation of nonnative grassland. The County's BMO specifies a 0.5:1 replacement ratio for nonnative grassland unless occupied by burrowing owls, which increases the mitigation ratio to 1:1. Because the site is located in east Otay Mesa, which has a current and historical presence of burrowing owls, and because of the increasing scarcity of nonnative grassland, the site is considered to be occupied and is therefore subject to the 1:1 mitigation requirement. Current project plans indicate that 35 acres of grassland would be permanently covered for a 792-bed facility (the proposed project); under the proposed infill alternative for RJD approximately 55 acres of grassland would be permanently covered for a 1,584-bed facility.

Mitigation will be primarily (1/2 or more) on property located within east Otay Mesa. Potential locations include State-owned land, primarily within O'Neal Canyon, under the control of the CDCR, or on privately-owned land in the area. The intent of the mitigation measure is to provide adequate habitat replacement, as agreed to by Wildlife Agencies. Once a location has been selected, CDCR will, in coordination with the Wildlife Agencies, arrange for the designation of the acreage as replacement habitat, as appropriate, and develop a set of actions related to the preservation of the replacement habitat, as necessary. The actions will be subject to approval by the appropriate wildlife agencies, and will vary depending on the condition of the ultimate mitigation lands. Actions may include restoration of degraded habitat within the conservation site. This potentially includes soil decompaction, seeding, exotic plant control, monitoring and long-term maintenance.

Construction Mitigation

CDCR will implement the following measures to reduce impacts on burrowing owl:

- CDCR will retain a qualified biologist to conduct focused breeding and nonbreeding season surveys for burrowing owls in areas of suitable habitat on and within 1,500 feet of the infill site. Surveys will be conducted prior to the start of construction activities and in accordance with Appendix D of CDFW's Staff Report on Burrowing Owl Mitigation (2012). Two of four surveys to be conducted during the 2013 breeding season were conducted on April 11 and May 9. A pair of burrowing owls have initiated a nest site within the existing firing range. Two additional surveys will be conducted on May 31, 2013 and June 28, 2013, which will determine if the nesting attempt is successful. CDCR will consult with CDFW regarding protection buffers to be established around the occupied burrow and maintained throughout construction. If occupied burrows are present that cannot be avoided or adequately protected with a no-disturbance buffer, a burrowing owl exclusion and relocation plan will be developed in consultation with CDFW. Owls will be relocated outside of the impact area using passive or active methodologies developed *i*n consultation

with CDFW and may include active relocation to MSCP preserve areas if approved by CDFW and the County preserve managers. No burrowing owls will be excluded from occupied burrows until the burrowing owl exclusion and relocation plan is approved by CDFW.

- During the breeding season (February 1 through August 31), any occupied burrows will not be disturbed/destroyed and will be provided with a 150- to 1,500-foot protective buffer unless a qualified biologist verifies through noninvasive means that either: (1) the birds have not begun egg laying, or (2) juveniles from the occupied burrows are foraging independently and are capable of independent survival. The size of the buffer will depend on the time of year and level of disturbance as outlined in the CDFW Staff Report (2012, pg 9).The size of the buffer may be reduced if a broad-scale, long-term, scientifically--rigorous monitoring program is implemented to ensure burrowing owls are not detrimentally affected. Once the fledglings are capable of independent survival, the owls will be relocated outside the impact area and the burrow will be destroyed to prevent owls from reoccupying it.

- ~~If active burrows would be destroyed by development of the infill facility outside of the breeding season, CDCR will obtain an administrative permit under the MSCP and comply with the measures in the exclusion and relocation plan. Because the infill site is within an MSCP take authorized area, impacts to covered species, including burrowing owl, have been compensated through creation of the MSCP preserves and no further compensatory mitigation would be required. Implementation of the MSCP conserves approximately 5,770 acres of potential burrowing owl habitat and 4,000 acres of known suitable burrowing owl habitat.~~

- If the destruction of occupied burrows is unavoidable, existing unsuitable burrows will be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a minimum ratio of 2 new burrows for every removed burrow within the conserved nonnative grassland on east Otay Mesa (the ultimate location of which is still being determined). A monitoring plan will be developed and include success criteria, remedial measures, and the submittal of an annual report to the local offices of each wildlife agency. Success criteria shall include confirmation of burrowing owl use of the site and/or confirmation of successful breeding. *Additional success criteria will be agreed upon by the wildlife agencies.*

- After burrowing owls have been confirmed absent or removed from the infill site, they will be discouraged from entering or occupying the disturbed areas. To accomplish this, CDCR will prevent ground squirrels from occupying the infill site early in the planning process by disking or plowing the entire infill site to destroy any ground squirrel burrows to discourage both ground squirrel and owl use of the site. Any pipes within the site will be capped to discourage owl use. Also, construction equipment and construction areas will be monitored for owl use. If owls are found, onsite passive relocation techniques approved by the CDFW, will be used to encourage owls to move to alternative burrows outside of the disturbance area.

Post-Construction Mitigation

- After all construction activity has ceased within the construction staging area and the proposed infill facility has been activated CDCR shall, to the degree feasible, return areas disturbed by construction activities to pre-project conditions through habitat restoration. The post-construction restoration will occur immediately after

the construction staging area is no longer needed and the facility has been activated so that nonnative grasses and forbs may re-colonize the site. Restoration of these areas will improve the likelihood that burrowing owls, raptors, and black-tail rabbits will again be able to use the remaining grassland habitat.

The primary measures to complete the restoration of nonnative grassland disturbed through construction include, but are not limited to, removal of any construction lay down materials such as gravel, trash cleanup, remedial grading (to restore pre-construction grades and de-compact soil), erosion control, seeding, and maintenance (e.g., invasive exotic plant control) and monitoring to verify the restoration is successfully completed. Seed of nonnative grassland species is expected to persist in the seedbank during and after construction; however, low density seeding with nonnative grassland species is recommended to supplement the restoration process and erosion control. Weed control will only focus on particular problematic invasive exotics (e.g., fennel, artichoke thistle, tocolate/star-thistle, mustard, etc.) that can degrade the function of nonnative grassland. The site shall be surveyed on an annual basis by a qualified biologist for a period of three years after construction to evaluate the functionality of the restoration area. CDCR will implement additional measures, based on the recommendations of the survey effort, to ensure restoration of the area.

Significance after Mitigation

The inclusion of habitat-based mitigation for the loss of nonnative grassland habitat and foraging area, and implementation of various measures to protect individuals if they are found, would reduce impacts on raptors to a less-than-significant level. ~~Implementing Mitigation Measures 3.2-2a and 3.2-2b would reduce significant impacts on northern harrier, burrowing owl, and other raptors to a **less-than-significant** level because it would ensure that these species are not disturbed during nesting so that construction would not result in nest abandonment and loss of eggs or young.. Because the RJD Infill Site is within a take authorized area of the MSCP, loss of burrowing owl and northern harrier habitat removed from the infill site has been compensated through creation of hardline preserves, including O'Neal Canyon to the northeast, that preserve high-quality habitat for these species in perpetuity.~~

F1-6 At the time the DEIR was published, no documentation or records were available that indicated the presence of nesting golden eagle within 5 miles of the project site. Nonetheless, based on the information presented by USFWS in this comment, the EIR has been modified to include golden eagles in its discussion of potential impacts to raptors based on the information provided in the comment letter.

The text on page 3.2-20 has been revised as follows:

Impact 3.2-2a: Impacts on Raptors [Single Facility]

Based on a review of the vegetation on and near the infill site, large ornamental trees on the infill site along the north side of Donovan State Prison Road could provide potential nest sites for white-tailed kite and common raptors, such as red-tailed hawk, red-shouldered hawk, American kestrel, and great horned owl, which are protected under Section 3503.5 of the Fish and Game Code. Golden eagles are not expected to nest on the project site because the trees are not of sufficient size to support nesting eagles and in light of the daily level of activity resulting from ongoing prison operation, including the adjacent firing range and heavily-used access road to the facility. Three golden eagle nests are known by USFWS staff to occur within 7

miles of the project site on Otay Mountain and could potentially, on occasion, forage in the grasslands on the site (USFWS 2013). The approximately 72 acres of annual grassland habitat onsite could also provide nesting habitat for northern harriers, which are ground-nesting raptors.

During surveys of the infill site, a pair of burrowing owls were observed in May 2013 occupying a burrow in the firing range. No other burrowing owl or sign of burrowing owl were observed on the infill site. The grassland vegetation on the infill sites was taller (between 12 and 36 inches) and denser than is typically suitable for burrowing owl, which tend to prefer sparsely vegetated, open habitats. No other raptors are currently nesting on the project site. An unoccupied stick nest was observed during surveys on April 11 and May 9, 2013 surveys in a eucalyptus tree along Donovan State Prison Road. Although a red-tailed hawk and a white tailed kite were observed foraging on the infill site, neither species perched on or near the nest tree and neither exhibited behavior typical during breeding (e.g., vocalizations, circling). Additional focused surveys will be conducted as the 2013 breeding season progresses for burrowing owls and other nesting raptors. Although no other raptors besides burrowing owl are currently nesting on the infill site, there is suitable nesting habitat and raptors could nest on the site in the future.

Construction of the single, level II infill correctional facility at the RJD Infill Site would require removal of approximately five nonnative eucalyptus and Chinese tallow trees that are landscaping along the existing entrance road. If trees, burrows, or grassland vegetation would be removed during the raptor breeding season (February–August), and if an active nest were present, mortality of eggs and chicks could result. In addition, construction on the infill site could disturb active nests near the construction site or in trees or other vegetation not yet removed from the infill site, potentially resulting in nest abandonment by the adults and mortality of chicks and eggs. Burrowing owls need burrows at all times to survive and displacing individuals from their burrows can result in indirect impacts such as predation, increased energetic costs, increased stress, and risks associated with having to find and compete for burrows, all of which can lead to take or reduced reproduction.

Construction of a single, level II infill correctional facility at the RJD Infill Site may disturb nesting raptors located on or near the infill site, resulting in nest abandonment by adult birds and abandonment of chicks and eggs, causing mortality. The potential loss of an active raptor nest and the loss of a burrowing owl would be considered significant.

Mitigation Measures

Mitigation Measure 3.2-2a

CDCR will implement the following measures to reduce impacts on nesting raptors (white-tailed kite, northern harriers, and common raptors, such as red-tailed hawk, red-shouldered hawk, American kestrel, and great horned owl):

- Tree removal will be completed outside of the breeding season (between September 1 and February 15).

- For construction activities occurring between February 16 and August 31, consistent with CDFW protocol, CDCR will retain a qualified biologist to conduct preconstruction surveys for nesting raptors (white-tailed kite, northern harriers, and common raptors, such as red-tailed hawk, red-shouldered hawk, American kestrel,

and great horned owl) to identify active nests on and within 500 feet of the infill site. The surveys will be conducted no more than 30 days before the beginning of construction activities that could remove trees or otherwise disturb nesting raptors.

- If active nests are found, impacts on nesting raptors will be avoided by establishing a 500-foot buffer around the nests. No development activity will commence within the buffer area until a qualified biologist confirms that any young have fledged and the nest is no longer active. The size of the buffer may be adjusted if a qualified biologist, in consultation with CDFW, determines that such an adjustment would not be likely to adversely affect the nest. Monitoring of the nest by a qualified biologist will be required if the activity has potential to adversely affect the nest.

- Loss of grassland habitat used for foraging by raptors will be compensated by providing a 1:1 replacement ratio as outlined in Mitigation Measure 3.2-2b.

Please refer to Response to Comment F1-5 for revised mitigation measures associated with habitat-based mitigation.

F1-7 Wet-season protocol surveys for listed branchiopod species were conducted in 2008-2009 for a proposed project that included the current project site, as well as additional areas to the west of the existing prison (EDAW/AECOM 2009). Protocol surveys are typically valid for one year. However, the 2009 report documents that no suitable habitat to support branchiopods is present on the currently proposed project site and site surveys in 2013 confirmed that conditions have not changed since the 2009 surveys. Transects of the entire project site were walked during January and May 2013 by a qualified biologist/wetland specialist and no evidence of vernal pools, seasonal wetlands, or other habitat for branchiopods was observed. This is consistent with previous surveys of the site. The project site does not support suitable habitat for listed branchiopod species. This and additional supporting information was presented to USFWS and CDFW in a memorandum requested by USFWS as part of a September 20, 2013 meeting with CDCR to discuss comments on the DEIR (refer to Response to Comment F1-9 below for further clarification).

F1-8 The comment states that CDCR is not a signatory to, and does not have take authority under the County of San Diego's Multiple Species Conservation Program (MSCP). The DEIR reported that the site was covered by the MSCP because it is shown as within the MSCP on maps prepared by the County, which is the local agency with responsibility for MSCP implementation. The text of the DEIR (second paragraph under sub-heading "San Diego County Multiple Species Conservation Program," on page 3.2-15 of DEIR Volume 2) has been updated to accurately reflect the project's relationship to the MSCP, as follows:

San Diego County Multiple Species Conservation Program

The San Diego County Multiple Species Conservation Program (MSCP) (1998) is a comprehensive, long-term habitat conservation plan which addresses the needs of multiple species and the preservation of natural vegetation communities in San Diego County. The MSCP addresses the potential impacts of urban growth, natural habitat loss and species endangerment and creates a plan to mitigate for the potential loss of Covered Species and their habitat due to the direct impacts of future development of both public and private lands within the MSCP area. The MSCP is a subregional plan under the Natural Communities Conservation Program, which will be implemented through local subarea plans. The County's Subarea Plan and its associated Implementing Agreement establish the conditions under which the County, for the benefit of itself and of public and private landowners and other land development project proponents within its Subarea boundaries, will receive from the

U.S. Fish and Wildlife Service (USFWS) and CDFW certain long-term take authorizations (and an acknowledgment that the MSCP satisfies conditions established in the Section 4(d) Special Rule for the coastal California gnatcatcher) which will allow the taking of certain Covered Species incidental to land development and other lawful land uses which are authorized by the County. The MSCP provides coverage for 85 species.

The RJD Infill Site is within the MSCP area, South County Subarea, for which a Subarea Plan was approved in 1997, but CDCR is not a signatory to the MSCP. The RJD Infill Site is within an area identified as a "take authorized area," but USFWS indicates this is a misidentification. Because CDCR is not a participant in the MSCP, this error has no meaningful effect. ~~Preservation of habitat as a part of the MSCP was designed to offset impacts within such areas to mitigate for the loss of any covered plant and animal species. Development in take authorized areas, as identified in the MSCP and County Subarea Plan, may proceed consistent with the terms of the MCSP with no further biological mitigation~~. Immediately west of RJD is the Otay Ranch Open Space Preserve, which is identified as a "hardline preserve area" in the MSCP, indicating that the land has been dedicated as open space in perpetuity. The infill developments do not include any uses that would be adjacent to the preserve.

San Diego County Biological Mitigation Ordinance

The County's Biological Mitigation Ordinance (BMO) enables the County of San Diego to implement the MSCP described above, and sets out specific mitigation requirements for impacts to covered species. The ordinance states that no project requiring a discretionary permit shall be approved unless a finding is made that the project is consistent with the MSCP, the County Subarea Plan, and the provisions of this ordinance. However, the ordinance sets forth a number of exemptions including an exemption for take authorized areas identified in the MSCP. ~~Because the infill site is within a take authorized area, it is exempt from the measures outlined in the BMO.~~ The County's MSCP Subarea Plan and BMO provide specific criteria for project design, impact allowances, and mitigation requirements. The criteria contained within the BMO do not replace those required by the MSCP. All projects within the MSCP boundaries must conform to the MSCP requirements. Although the CDCR property is not covered, CDCR has reviewed the mitigation requirements of the MSCP to provide a solid foundation for the mitigation of biological resource impacts discussed in this section.

Page 3.2-18 of DEIR Volume 2 has been modified as follows:

Habitat conservation plan: ~~The RJD Infill Site is located within a take authorized area of the adopted South County Subarea of the San Diego County MSCP. Areas designated for take authorization under the MSCP were considered as likely to be developed in the foreseeable future. Loss of covered plant and animal species within take authorized areas have been offset through the preservation in perpetuity of habitat within MSCP hardline preserve areas, such as the Otay Ranch Open Space Preserve, with no additional mitigation requirements.~~ RJD is misidentified as a take authorized area in the adopted MSCP. Nonetheless, ~~D~~development and operation of a level II infill correctional facility at the RJD Infill Site would not result in development or uses adjacent to MSCP preserve lands ~~and all development would occur within take authorized areas~~. Therefore, development and operation of a level II infill correctional facility at the RJD Infill Site would not conflict with the provisions of the adopted MSCP. ~~If covered species are not observed during focused surveys, then no~~

~~further participation in the MSCP is necessary as part of the development of level II correctional facilities at the RJD Infill Site~~ If covered species are observed on the RJD Infill site, then avoidance and minimization measures will be implemented as described below~~, including coordination with the MSCP through the administrative permit process~~. This issue is not discussed further.

Survival of species: The infill site provides limited value to wildlife species and development of the site would not eliminate any habitat important to the long-term survival of any species or community and would not substantially reduce the number or restrict the range of any species. This issue is not discussed further.

With regards to implementation of mitigation that is consistent with regional conservation planning efforts, please refer to Response to Comment F1-5 for modifications to Mitigation Measure 3.2-2b.

F1-9 With regards to the commenter's request to consider the O'Neal Canyon or other nearby areas for habitat conservation, the sixth paragraph on page 3.2-25, in Volume 2 of the DEIR, is modified as follows:

> Tier 3: These mitigation measures compensate for residual wildlife mortality impacts. CDCR will contribute funds to an existing non-profit organization that creates and manages habitat enhancement areas that would improve opportunities for reproductive success of birds likely to be adversely affected by the infill facility. Based on the mortality of sensitive species at RJD for ten years between June 2002 and June 2012, bird species that may be adversely affected include, but are not limited to, American kestrels, barn owl, burrowing owls, great horned owls, and tricolored blackbird. Mechanisms for implementing the mitigation will be similar to those previously utilized by CDCR for the Statewide and Six Prison Electrified Fence Projects and may include additional funding for a project to which CDCR has already contributed as part of these existing projects. ~~The Sacramento valley~~ O'Neal Canyon or elsewhere in the Otay Mesa region will be targeted, but mitigation could be implemented at federal, state, or private lands located anywhere in California if the lands support a large percentage of the species at risk of electrocution at the infill site. The amount of funding contributed would depend on the acreage of habitat that would benefit from the mitigation. The mitigation acreage required would be determined based on the anticipated annual mortality of native birds and the area required to support an equivalent number of individuals of the species at greatest risk of electrocution.

CDCR is currently investigating the feasibility of dedication of areas within O'Neal Canyon that are not necessary for prison operation as permanent open space or a similar preservation status. CDCR has no plans to build correctional facilities within the canyon. The commenter's request for a meeting with CDCR is noted and was conducted with USFWS and CDFW representatives on September 20, 2013 at CDFW's San Diego offices.

F1-10 With regards to monitoring the lethal electrified fence impacts to migratory birds, Mitigation Measure 3.2-5 in Volume 2 of the DEIR, states the following: "A monitoring program consistent with the monitoring program established in the Statewide Electrified Fence HCP (CDC 1999b) would be developed to document wildlife mortality and ensure compliance with Tier 1 and Tier 2 measures." A monitoring program would be implemented consistent with previous monitoring efforts for other prison facilities and in coordination with USFWS.

F1-11 Contact information for the comment letter is noted.