

Response to Comment Letter S-1

Response to Comment S-1-1

The U.S. Fish and Wildlife Service (Service) acknowledges there are state-listed species, including fully protected species, analyzed in the Supplemental Draft Environmental Impact Statement (EIS) and Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) (see list of Covered Species and their legal designations in Table 1-1, Volume 1 of the Supplemental Draft EIS). The Service further acknowledges that the California Department of Fish and Game (CDFG) has jurisdiction to implement the California Endangered Species Act (CESA) and other provisions of the California Fish and Game Code (FGC). In general, it is the responsibility of an applicant to comply with state law, including CESA and fully protected species statutes provided in the FGC. The Service is not responsible for interpreting or administering state laws, and the issuance of a Federal incidental take permit (ITP) does not insulate an applicant from the requirements of state law.

The Service appreciates any additional opportunity to collaborate with CDFG and ensure that both ESA and CESA permitting requirements are met.

Response to Comments S-1-2 and S-1-3

In response to the comment, the Service has removed the reference in Chapter 6, List of Agencies and Organizations Consulted, that CDFG was consulted during preparation of the Supplemental Draft EIS. This change is reflected in the errata sheet provided in Chapter 2 of the Final EIS.

The Notice of Availability (NOA) of the Supplemental Draft EIS and TU MSHCP was published in the Federal Register (FR) on February 3, 2012 (5564 FR 7.23). An electronic copy of the Supplemental Draft EIS and TU MSHCP were provided on the Ventura Fish and Wildlife Office's website (www.fws.gov/ventura), and hard copies were available at both the Ventura Fish and Wildlife Office and the Kern County Library in Frazier Park, California. Copies of all documents were available through the 90-day public comment period which closed on May 3, 2012.

Response to Comment S-1-4

The *Tejon Mountain Village Environmental Impact Report* (TMV EIR) was a project-specific analysis and addressed only the Tejon Mountain Village Project (TMV Project) in the Tejon Mountain Village (TMV) Specific Plan Area (26,417 acres). The TU MSHCP and the associated analysis provided in the Supplemental Draft EIS considers a long-term HCP that encompasses a larger area (141,866 acres) and additional development envelopes beyond the TMV Project, including additional possible future development in West of Freeway, Lebec/Existing Headquarters, and Oso Canyon. As a result, the acreage of habitat loss associated with the TMV Project, as provided in the TMV EIR, is representative of only one of the development-related Covered Activities considered in the TU MSHCP. Of note, Plan-wide Activities, which are generally representative of continued uses on the Covered Lands, are also analyzed in the TU MSHCP, but no specific species habitat losses are attributed to those activities. Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, for additional information on the

differences between the proposed action considered in this EIS and the TMV Project considered in the TMV EIR (Kern County 2009).

Response to Comment S-1-5

Please refer to Response to Comment S-1-4. The TU MSHCP and Supplemental Draft EIS considered a Development Envelope of 8,817 acres to assess potential effects on biological resources, which included the Development Envelopes associated with TMV Planning Area (including the TMV Specific Plan Area, West of Freeway, and Oso Canyon) and the Lebec/Existing Headquarters Area. These envelopes are slightly larger than the development envelope (7,860 acres) used by Kern County to assess the effects of the TMV Project, which was limited to the TMV Specific Plan Area. The additional acres of modeled habitat for Tehachapi slender salamander lost under the TU MSHCP are attributable to these different development envelopes. Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, for additional information on the differences between the proposed action considered in this EIS and the TMV Project considered in the TMV EIR (Kern County 2009).

For clarification, the TU MSHCP would result in the loss of 143 acres (4%) of modeled habitat for Tehachapi slender salamander in the Covered Lands (see Table 4.1-3 in Volume I of the Supplemental Draft EIS). As provided in Appendix D of the TU MSHCP, modeled habitat for Tehachapi slender salamander includes broad-leafed upland tree-dominated communities, coniferous upland forest and woodland, scrub, chaparral, and scrub oak communities with a canopy greater than 40% that also meets the following criteria:

- within 150 feet on either side of a blue line stream,
- on north-facing slopes, and
- at elevations up to 5,000 feet.

The scrub and chaparral communities are included in the model because they may include yucca.

Response to Comment S-1-6

Please refer to Response to Comment S-1-5 regarding the differing Development Envelopes considered under the TU MSHCP and TMV Project. The additional acres of modeled habitat for willow flycatcher, least Bell's vireo, and western yellow-billed cuckoo lost under the TU MSHCP are attributable to these different development envelopes. Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, for additional information on the differences between the proposed action considered in this EIS and the TMV Project considered in the TMV EIR (Kern County 2009).

For clarification, the TU MSHCP would result in the loss of 8 acres (1%) of modeled breeding and foraging habitat for willow flycatcher, least Bell's vireo, and western yellow-billed cuckoo in the Covered Lands (see Table 4.1-3 in Volume I of the Supplemental Draft EIS).

Response to Comment S-1-7

Please refer to Response to Comments S-1-5 and S-1-6 for an explanation of the difference in impacts on suitable habitat from development considered in the TU MSHCP, as compared to the TMV EIR. As noted in Response to Comment S-1-1, it is the responsibility of the applicant to comply

with state law, including CESA and fully protected species statutes provided in the FGC. The Service is not responsible for interpreting or administering state laws and the issuance of a Federal ITP does not insulate an applicant from the requirements of state law.

Response to Comment S-1-8

Graphics illustrating the location and extent of modeled habitat for each of the TU MSHCP Other Covered Species are provided as Figure 3.1-9 through 3.1-34 in Section 3.1, Biological Resources, in Volume I of the Supplemental Draft EIS. Table 4.1-3 in Section 4.1, Biological Resources, in Volume I of the Supplemental Draft EIS, indicates the acres of modeled habitat that would be lost and conserved in the Covered Lands under the Proposed TU MSHCP Alternative. In preparing the Supplemental Draft EIS, the Service was guided by CEQ guidance that instructs agencies to prepare concise, meaningful documents (Council on Environmental Quality 2012). Including maps showing where these acreages of impacts would occur in the Covered Lands would have repeated information already provided in the Supplemental Draft EIS, and would have resulted in the addition of approximately 104 new figures (i.e., 26 Other Covered Species multiplied by four action alternatives). While the comparison of the provided maps and tables in the EIS may require additional review by a reader, the Service believes that the potential impacts of the proposed action and their respective locations have been fully disclosed.

Response to Comment S-1-9

As described in the Supplemental Draft EIS, “take” of condors, as contemplated under the TU MSHCP, would be in the form of habituation, that is, the circumstances where a condor becomes attracted to development or other human activity and becomes unresponsive to measures incorporated into the plan to deter such condor/human interaction such that its “normal behavioral patterns are disrupted”, thereby creating a “likelihood of injury” to an individual bird.

The process for determining the amount of take anticipated to occur over the permit term evolved over the course of discussions with Tejon Ranch, spanning approximately 12 years. In general, the number was derived from the Service’s experience with previous undesirable interactions between humans and condors, and included anticipated increases in the free-flying condor population over the duration of the proposed 50-year ITP term.

Response to Comment S-1-10

The anticipated take of four condors is not related to the number of condors known to use the Covered Lands, nor is it related to the number of condors that were captive-reared. Substantially more than four condors regularly use the Covered Lands; often nearly all of the southern California subpopulation uses Tejon Ranch at a given time. As discussed in Response to Comment S-1-9, the Service determined that four is a reasonable number of condors that could become habituated and require temporary or permanent removal from the wild over the proposed 50-year ITP.

The Service is not aware of evidence to suggest that captive-reared condors are more likely to become habituated than parent-reared condors. Captive-reared, parent-reared, and wild-fledged condors have engaged in activity with the potential to result in habituation. In the earlier years of the reintroduction program, when there were no adult birds in the wild, groups of juvenile condors exhibited significant behavioral problems, including habituation to humans and human structures. These behaviors, although not absent from the current groups of condors in the wild, have generally

diminished. The Service attributes the general change in condor behavior to the varying age classes of condors in the wild, particularly the existence of breeding adults. Recently released juveniles seem more likely to engage in behaviors leading to habituation than adults. However, variables such as food reward in association with humans (positive reinforcement) or use of effective hazing (negative reinforcement) has a profound impact on whether or not a condor becomes habituated (and needs to be removed from the wild).

Response to Comment S-1-11

The removal of up to four condors from the wild, while necessarily conjecturally, is a conservative but reasonable assumption used to analyze the effects of the proposed permit. Over 50 years, any such removal is not anticipated to negatively affect the overall recovery strategy for the California condor. Please refer to Master Response 1C, California Condor Take and Habituation, in Volume II of the Supplemental Draft EIS, for a discussion of the potential effects of habituation on the condor population.

Response to Comment S-1-12

As stated in Response to Comment S-1-10, captive-reared condors have not proven to be more prone to habituation than other condors. At this time, the continuation of the captive breeding program is necessary to increase the wild condor populations because the mortality rate in the wild is exceeding the natural population growth rate. Releases of captive-reared condors are a regular part of the recovery program and, mainly because of the increase of adult condors in the wild that can serve as mentors to young birds, examples of condors removed from the wild as a result of habituation are no longer common.

Additionally, condors removed from the wild are not necessary for captive breeding. All condor founder genes are represented in all wild and captive populations. For the purposes of analyzing the effects of the proposed permit, the Service conservatively assumed that up to four habituated condors could be removed from the wild over the 50-year permit term. The condors could be temporarily removed and subsequently released at a later date, or they could exhibit such severely damaging behavior that they would be removed permanently. It is not possible, however, to determine today whether or not a condor removed from the wild in the future would be fit for subsequent release. Any future decision to remove a condor would be made at the discretion of, and solely by the Service, based on the particular circumstances presented. Any such removal would be considered a recovery action and would be carried out by Service personnel holding a Federal recovery permit under Section 10(a)(1)(A) of the ESA.

Response to Comment S-1-13

The Service considers the potential for the permanent removal of a condor from the wild as a result of habituation to be low. Permanent removal of a condor from the wild would occur only in the most extreme circumstances when aversion training to eliminate negative behaviors is not successful. Relatively few condors have needed to be permanently removed from the wild in recent years due to the increased use and effectiveness of hazing techniques in potential habituation situations, as well as the growing presence of mature adult birds in the wild that are less likely to engage in undesirable behaviors and can serve as models for juvenile birds. The TU MSHCP has numerous avoidance, minimization, and mitigation measures to reduce the potential for habituation to occur.

Nevertheless, Section 8.1, Funding of Mitigation, in the Implementing Agreement, provides that in the event the permittee receives notice from the Service that a California condor nonlethal incidental take has occurred, the permittee shall pay the estimated costs of capture, care and translocation of that condor. The objective of imposing these costs is to ensure that the applicant, Tejon Ranchcorp (TRC), remains responsible for the consequential costs related to any such action. Such costs will be guaranteed by a rolling letter of credit, as provided for in Section 9 of the TU MSHCP. This mitigation includes all costs related to temporary treatments and any permanent care costs, if necessary.

Where a condor is permanently removed from the wild, there is no viable "replacement" in terms of condors that could be released but otherwise would not be. However, the Service has determined that, while somewhat conjectural, take of up to four condors due to habituation over a 50-year time span is a reasonable but conservative assumption for Federal permitting purposes, given the expanding condor population and the Service's experience with previous undesirable interactions between humans and condors, as well as the minimization and avoidance measures proposed in the TU MSHCP. As described in Response to Comment S-1-11 is not anticipated that removing four condors from the wild over 50 years would have a substantial effect on the population, particularly if the removal is temporary.

Response to Comment S-1-14

It is not the intent of the measure providing funding for the purchase of additional global positioning system (GPS) transmitters to "offset" the take of condors as a result of habituation. Rather, and as stated in Section 4.4.3 of the TU MSHCP, this measure is intended to "contribute to the conservation and recovery of the California condor." Specifically, this measure will allow for the continuous, real-time monitoring of the location of wild, free-flying California condors in southern California so that the recovering population can be better managed to meet recovery goals. At current prices, the \$150,000 that would be provided prior to the issuance of any grading permits affecting suitable condor foraging or roosting habitat (Section 4.4.3.4 of the TU MSHCP) would provide for the purchase of approximately 36 transmitters. As noted in the TU MSHCP, an additional \$25,000 per year, for 10 years, would be provided to assist in transmitter operations, maintenance, and/or replacement.

Response to Comment S-1-15

All free-flying condors wear radio transmitters (many with GPS features), which allows for the tracking of foraging, roosting, and feeding locations. The Service does not currently have plans to alter this practice and will assess the feasibility and need to maintain the transmitters purchased by TRC as the end of the 10-year monitoring period nears.

Response to Comment S-1-16

As summarized in Table 2-3 in Volume I of the Supplemental Draft EIS, TRC would provide funding to install additional GPS satellite tracking transmitters on condors currently not carrying such devices. These additional transmitters would be used to monitor condors known to use the Covered Lands. Similar to condors currently carrying transmitters, the Service expects these condors to use the Covered Lands, Tejon Ranch, and many other areas of the condor's range in southern California.

Response to Comment S-1-17

As noted in Response to Comment S-1-1, it is the responsibility of an applicant to comply with state law, and to ensure that any proposed mitigation is compatible with CESA permitting requirements.

In developing the EIS and TU MSHCP, the Service specifically considered how continued grazing on the ranch at levels comparable to the yearly historic average (approximately 14,500 head of cattle) could increase grazing density and the potential for overgrazing, given that some acreage of land would be removed from grazing to allow for development activities. Section 3.4 of the TU MSHCP states that livestock grazing occurs ranch-wide on approximately 259,000 of the 270,000 acres associated with Tejon Ranch. Under the current management scenario, the number of cattle on the ranch ranges from 8,000 to 17,000, with a yearly average of 14,500 head. Section 7.2.1 of the TU MSHCP states that grazing would continue at light-to-moderate levels and that the maximum allowable stocking level would be 14,500 head of cattle. TRC determined that this historic average would represent the maximum stocking level and current condition proposed in the TU MSHCP to account for the loss of some grazing acreage to development. Specifically, development of 5,533 acres under the TU MSHCP represents a 2.1% reduction in available grazing land (259,000 acres); limiting the number of cattle allowed to graze on the ranch to 14,500 head represents an approximate 15% reduction from historical highs (17,000 head). When considering the potential loss of 11,680 acres within the Centennial Specific Plan Area (on the ranch but outside the Covered Lands) as a result of the Centennial Project, and assuming conservatively that the full plan area is grazing habitat and would be developed, the total combined loss of 17,213 acres (i.e., TU MSHCP and Centennial Project) would represent a cumulative 6.6% reduction in available grazing land in the ranch. Under these assumptions, it is not anticipated that the loss of 6.6% of available grazing land would reduce the ability for the ranch to support a grazing program with a stocking level 15% lower than historic highs.

Additionally, the TU MSHCP requires that the grazing management plan meet the Covered Species goals and objectives, which include preserving Covered Species suitable habitat. Finally, Section 7.3.2 in the TU MSHCP states:

...principles to be incorporated in the grazing management plan include assurance that grazing continues to occur at existing or reduced levels and incorporation of grazing management techniques that have been shown to be consistent with high levels of biological diversity and robust species populations. The grazing management plan will incorporate monitoring requirements to ensure that these principles are carried out.

Therefore, the grazing management plan could allow for lower stocking levels on the Covered Lands portion of the ranch, changes in seasonal rotation and pasture management, and establishment of selective cattle exclusions, as necessary to protect and manage biological resources. As stated previously, the Service generally considers that the continued grazing of 14,500 head of cattle would not result in overgrazing (acknowledging that stocking levels may vary year to year because of rainfall or other rangeland conditions), and is appropriate to maintain currently available livestock food sources for condors. A permanent drop in this level that is substantially below the historic average would not be consistent with current practices or TRC's commitments under the TU MSHCP. This drop could also reduce the available food sources for condors and, therefore, trigger reevaluation of the permit by the Service.

Response to Comment S-1-18

As provided in Response to Comment S-1-7, it is the responsibility of the applicant to comply with state law, and to ensure that any proposed mitigation is compatible with CESA permitting

requirements. In general, however, the TU MSHCP requires that the TU MSHCP Mitigation Lands be protected in perpetuity consistent with the species goals and objectives provided in the plan. In general, it is anticipated that the TU MSHCP conservation measures would result in improved habitat quality for Covered Species through practices such as fencing of riparian areas and seasonal exclusions and rotation.

To the extent that CDFG imposes additional requirements on the TU MSHCP Mitigation Lands, then the more stringent requirements would prevail, so long as any enhancement measures proposed by CDFG are also compatible with the Federal Endangered Species Act (ESA), the ITP, and any applicable recorded conservation easement restrictions.

Response to Comment S-1-19

Comment noted. The Service appreciates any additional opportunity to collaborate with CDFG and ensure that both ESA and CESA permitting requirements are met.

Response to Comment S-1-20

The Service disagrees that management of the TU MSHCP Mitigation Lands would be deferred. The Interim Ranchwide Management Plan (RWMP) (Appendix B to the TU MSHCP), is currently in place and governs management of the TU MSHCP Mitigation Lands until the final RWMP is in place. Under the terms of the TU MSHCP, the RWMP must be reviewed and approved by the Service during the permit term to assure that the measures it contains—which could also include enhancement proposed by the Conservancy—are consistent with the ITP, the terms of the TU MSHCP, and the provisions of all recorded conservation easements over the Covered Lands. In addition, the public access plan, another component of the RWMP, must continue to be provided to the Service for review and approval even after the permit term, for as long as the Service requests, to ensure the plan is consistent with the ESA and the terms of all recorded conservation easements over the Covered Lands.

While the aspiration behind the TU MSHCP broadly is to support the recovery of the Covered Species to the greatest extent practicable, active restoration is not a requirement of the TU MSHCP. The issuance criteria for a HCP under the ESA require that the issuance of the ITP does not "appreciably reduce the likelihood of survival and recovery of the species in the wild" and that mitigation should be commensurate with the impacts (HCP Handbook:3-19-3-20). More than 90% of the Covered Lands would be conserved in Open Space under the TU MSHCP. Further, with the exception of modeled wintering habitat for bald eagle, the ratios of land that would be preserved in Open Space relative to land affected by proposed development activities are very high, ranging from 4:1 (white-tailed kite modeled foraging habitat) to 160:1 (Tehachapi buckwheat modeled habitat), with an average ratio of 42:1 and median (mid-point) ratio of 17:1. In addition, many of the conservation measures provided in the TU MSHCP are expected to result in enhanced suitable habitat. For example, implementation of the grazing management plan would likely result in enhancement of riparian and wetlands habitat and Tehachapi slender salamander habitat because exclusion fencing in riparian areas would be part of the management approach (TU MSHCP Section 7.2.1). The Service will formally evaluate the adequacy of the mitigation provided under the TU MSHCP in light of the permit issuance criteria under Section 10(a)(2)(B) of the ESA when it makes a decision on TRC's permit application.

Response to Comment S-1-21

For HCPs, the Service may only allow impacts to occur prior to the actual implementation of the mitigation if the HCP provides legal or financial assurances that the permittee will fulfill the HCP's obligations. The HCP Handbook, page 3-22, states, "Sometimes, the HCP applicant may need to conduct activities prior to the time when replacement habitats can be provided. This is acceptable so long as the HCP provides legal or financial assurances that the permittee will fulfill the HCP's obligations." The key factor is not the timing of mitigation so much as the assurance of the mitigation. *Sierra Club v. Marsh*, 816 F.2d 1376, 1385 (9th Cir. 1987). However, the Service must take into account any additional impacts from a delay in implementing mitigation in evaluating whether an HCP will minimize and mitigate the impacts of take to the maximum extent practicable under Section (10)(a)(2)(b)(ii) of the ESA prior to reaching a permit decision.

Pursuant to the Implementing Agreement, conservation easements over the 47,871 acres of Initial Mitigation Lands will be required prior to initiation of construction of the TMV Project, and easements covering the 56,523 acres of Established Open Space within the Remaining Mitigation Lands shall be recorded in accordance with the schedule for execution and recordation of conservation easements contained in the Ranchwide Agreement, but in no event shall the recording of easements be extended beyond the permit term. Additionally, the Service has revised the Implementing Agreement to allow TRC to increase the amount of Initial TMV Planning Area Open Space land to coordinate the conservation easement with CDFG, if needed (see Chapter 2, Supplemental Draft EIS Errata, of this Final EIS). As discussed in Section 9 of the TU MSHCP, TRC will develop a tracking system to record all additions to the TU MSHCP Mitigation Lands, including placement of conservation easements on open space lands, and will provide separate, segregated financial assurance that is adequate to fund all mitigation measures related to incidental take, including the tracking and reporting requirements. The 12,229 acres of TMV Planning Area Open Space Lands within the Remaining Mitigation Lands shall be preserved in perpetuity as open space through an easement or other appropriately restricted conveyance prior to expiration of the permit term. Preservation of these areas will occur in phases concurrent with proposed development as the actual boundaries of the development area and open space are finally determined. Conservation easements ensuring the permanent conservation of 47,871 acres of Initial Mitigation Lands will be in place prior to construction of the TMV Project, which would directly and indirectly (within 0.5 mile of the development envelope) affect 5,082 acres within the TMV Specific Plan Area. The TMV Project constitutes the vast majority of land-disturbing activity under the TU MSHCP.

Response to Comment S-1-22

Please refer to Response to Comment S-1-21. As explained in that response, impacts may occur prior to the implementation of mitigation, as long as the HCP provides legal or financial assurances that the permittee will fulfill the HCP's obligations. However, the TU MSHCP does include annual monitoring requirements that will provide information about both development impacts and the amount of land added to the open space system. Section 7.3.1 of the TU MSHCP describes the compliance monitoring requirements intended to track the status of TU MSHCP implementation. These requirements include, inter alia, monitoring both impacts to the Covered Lands and modeled habitat as a result of Covered Activities that occurred during the prior year and the status of lands added to the open space system. Such information must be included in an annual monitoring report. The TU MSHCP also requires effectiveness monitoring that will assess biological conditions in the open space system resulting from implementation of the conservation plan for Other Covered Species and provide information needed to implement the adaptive management strategy (see Section 7.3.2 in the TU MSHCP), and specific compliance and effectiveness monitoring requirements related to the California condor (see Sections 4.5.1 and 4.5.2 in the TU MSHCP).

Section 9.1 of the Implementing Agreement recognizes these commitments and specifies that, each year, TRC must submit two annual monitoring reports (or one combined report) consistent with the requirements of Sections 4.5 and 7.3 of the TU MSHCP.

Response to Comment S-1-23

Under the ESA, prior to approval of an HCP, the Service must make findings to ensure that funding sources and levels proposed by the applicant are reliable and will meet the purposes of the HCP, and that measures to deal with unforeseen circumstances are adequately addressed. As discussed in Section 9 of the TU MSHCP, TRC will provide separate, segregated financial assurances that are adequate to fund all mitigation measures related to incidental take that require out-of-pocket funding and a tracking system to record all additions to the open space preserve, including placement of conservation easements on TMV Planning Area Open Space Lands.

Consistent with the Service's obligations to ensure adequate funding, Section 8.2, Funding Security, of the Implementing Agreement provides the following:

Permittee shall, not later than 30 days prior to the initiation of the construction of the TMV Project, provide for financial assurance as described in Section 9 of the TU MSHCP in a form acceptable to the Service as a written guarantee of its performance of all take minimization and take mitigation measures requiring the expenditure of funds for the California condor and Other Covered Species.

Moreover, the Implementing Agreement provides the following.

In addition to the specific guarantee for California condor mitigation as provided above, execution of the Permit by Permittee will be authorized by a resolution of both Permittee and its parent company, Tejon Ranch Co., a Delaware corporation. These resolutions will acknowledge Permittee's responsibility for and duty to expend all sums contemplated and necessary to implement Permittee's obligations under the TU MSHCP. The resolutions will also provide for annual certifications by TRC's Chief Financial Officer, or equivalent officer, to the effect that such funds have been budgeted and approved by all necessary corporate action.

The Implementing Agreement further requires TRC to provide an annual budget and scope of work outlining all components of the TU MSHCP to be implemented during the fiscal year accompanied by a certification that funds required of the Permittee to perform duties under the TU MSHCP have been authorized and are available. Failure to implement all of its duties under the TU MSHCP for any reason, funding considerations or otherwise, could result in violation of the ITP; enforcement action, including penalties under ESA Section 9 and Section 11; and suspension or revocation of the ITP. The Service believes the funding source and assurances are sufficient to ensure that the mitigation requirements are met, including the recording of the conservation easements.

TRC and the easement holders will be responsible for adhering to the terms of the conservation easements in perpetuity. The Service understands that the Ranchwide Agreement includes a funding mechanism for the Conservancy to oversee the land that would become subject to the easements. As set forth in the Ranchwide Agreement, there is initial money for Conservancy operations and long-term funding will be provided by transfer fees from sales in the development areas. However, the TU MSHCP does not require active management of conserved lands beyond the measures provided for during the permit term. Therefore, a permanent funding source for perpetual management of the TU MSHCP Mitigation Lands is not a part of the TU MSHCP.

Response to Comment S-1-24

Please refer to Response to Comment S-1-17 above. The TU MSHCP requires that the TU MSHCP Mitigation Lands be protected in perpetuity, consistent with the special goals and objectives, many of which will not only protect, but also enhance the TU MSHCP Mitigation Lands. In addition, as discussed in Response to Comment S-1-23, the Service must make findings regarding the funding levels and sources proposed by the applicant, and the TU MSHCP and Implementing Agreement provide various financial assurances.

The following is per the HCP Handbook (page 3-20) and case law (e.g., *Spirit of the Sage Council et al. v Kempthorne*, 511 F. Supp. 2d 31 (D.D.C. 2007); *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Service*, 202 F. Supp 2d 594 (W.D. Tex. 2002)),

Issuance of a section 10 permit must not "appreciably reduce" the likelihood of the survival and recovery of the species in the wild. Note that this does not explicitly require an HCP to recover listed species, or contribute to their recovery objectives outlined in a recovery plan. This reflects the fact that HCPs were designed by Congress to authorize incidental take, not to be mandatory recovery tools.

Thus, while the TU MSHCP does protect a high proportion of the Covered Lands to meet this standard, it is not required to take the additional steps, such as implementing active recovery programs or measures, to meet this standard. Thus, funding for recovery program measures is not included in the TU MSHCP.

Response to Comment S-1-25

Section 15.2 of the Implementing Agreement provides that TRC may not transfer ownership or control of TU MSHCP Mitigation Lands to a third party (other than another Federal agency, if the Service determines, in writing, that transfer to another Federal agency would not compromise the effectiveness of the TU MSHCP) unless a conservation easement, in a form approved by the Service, is recorded on the land pursuant to Section 5.1.1(e) of the Implementing Agreement. Section 5.1.1(e) provides that conservation easements include management and reporting requirements. Thus, any transfer of the TU MSHCP Mitigation Lands to a third party would carry with it the same management responsibilities as are currently required of TRC. As discussed in Response to Comment S-1-23, such responsibilities include the provision of adequate funding to support management activities.

Similarly, Section 5.1.5 of the Implementing Agreement specifies that TRC may propose to transfer to another party ownership of a portion of the Covered Lands and/or responsibility for the Covered Activities on it, along with the associated take authority. Such a transfer application would be reviewed, and approved or denied, by the Service. Any transfer of Covered Lands or responsibility for Covered Activities must also be subject to the TU MSHCP and ITP terms, including financial assurances.

Response to Comment S-1-26

The objectives for setbacks for golden eagles were developed cooperatively between the TU MSHCP consultant team and Service staff, with assistance from Dr. Peter Bloom, PhD, who has extensive experience with golden eagles in southern California and the effects of such activities on the behaviors of nesting eagles. Available scientific literature on the issue of nest setbacks was also reviewed. Spatial and temporal buffer zones are typically suggested as a means to minimize the

effects of recreational and other human activities on breeding raptors. Recommendations range from 0.13 to 1.0 mile depending on the terrain and nest location (Richardson and Miller 1997). However, a viewshed approach has been suggested as a more realistic application to buffering active nest sites since flushing distances (from nests, perches, roosts) of adult eagles can be reduced when the eagles are visually shielded (by vegetation and/or topographical features) from human activities. A viewshed approach to managing disturbances may require less protected area than standardized buffer zones (Camp et al. 1997).

For the TU MSHCP, such a viewshed approach to addressing potential development-related disturbances on nesting eagles was used. An analysis was conducted within the relevant development area for all active nests to determine the viewshed of an adult eagle that was incubating, brooding, or otherwise roosting or perching on or near the nest tree. The analysis conducted using geographic information system (GIS) technology took into consideration topography; vegetation cover; height, elevation, and distance from the nest tree; and nest height. The analysis included distances measured at 0.25, 0.5, and 1.0 mile from the nest. A maximum of 1.0 mile was used since that is the outer range of buffer zones listed in the literature as appropriate for golden eagles (Richardson and Miller 1997).

The resulting setbacks used for the TU MSHCP include a required viewshed analysis such that no development within the viewshed of a nest shall occur within 0.5 mile of the nest (Section 7.1.1.2.4, Objective 6.2). This is consistent with the recommendation by CDFG, and would attenuate noise and vibration from development activities. Between 0.5 and 1.0 mile of an active nest, development within a nest viewshed must be low-density development (e.g., mountain residential), and homes must be sited to minimize visibility to golden eagle nests. Objective 9.2 states that trail use will be restricted from between 0.25 and 0.5 mile from an active eagle nest during the nesting season. While it was determined that trails can be developed and recreational activities can occur beyond 0.25 mile of an active nest, activities and use will not occur between 0.25 and 0.5 mile during the nesting season, whether or not such activities are within the nest viewshed, ultimately providing a 0.5-mile setback from the active nest. This is consistent with the 0.5-mile setback distance suggested by CDFG.

The commenter is incorrect that the TUMSHCP assumes nesting eagles would only be affected by Covered Activities while on a nest or in line of sight of a Covered Activity. Section 7.1.1.2.4 of the TUMSHCP describes measures that would be implemented to avoid direct impacts on golden eagles and nests and minimize indirect impacts on golden eagles. These measures address preservation of large blocks of modeled breeding/foraging habitat including habitat surrounding known golden eagle nests, disturbance buffers around nests, potential impacts on individuals, and the integrity of territories. These measures account for a variety of golden eagle habitat use beyond the immediate vicinity of a nest, and encompass the areas in which golden eagles would be expected to be in transit and perching.

Response to Comment S-1-27

The 0.25-mile setback for peregrine falcons in Objective 4.2 (Section 7.1.1.2.1 in the TU MSHCP) is for construction activities related to development (e.g., mass grading) while the 1,000-foot setback in Objective 6.2 relates to long-term operational activities such as recreational activities, which would not be expected to have the same level of potential indirect effect (e.g., loud noise, levels of human activity). Having different buffer setbacks for these very different types of potential indirect effects is appropriate.

The 0.5-mile buffer for peregrine falcon recommended by the commenter is not based on any empirical data that can be applied to peregrines as a whole. Comrack and Logsdon (2008) note that

many peregrines at least attempt to nest in urban settings but that nesting success is more limited by nest site structure than direct human disturbance. Peregrines in remote settings are more reactive to human disturbance (Comrack and Logsdon 2008).

Since peregrine nesting on Tejon Ranch has not been documented, any new birds that are attracted to and attempt to nest on site most likely would be individuals more habituated to human activities such as ongoing ranch activities. There is evidence that peregrine falcons tend to select nest sites based on past experience. Tordoff et al. (2003) report that peregrines tend to select nest sites similar to their fledge site (e.g., smokestacks and buildings compared to cliffs), although males and females differ on their tendency to do so, with males more likely to show similarities. Also, as the peregrine population has grown, this tendency to select similar sites has become less pronounced (Tordoff et al. 2003).

Response to Comment S-1-28

In response to this comment, TRC has revised the conservation measures for southwestern willow flycatcher, least Bell's vireo, and western yellow-billed cuckoo. Specifically, for development-related construction activities and other Covered Activities involving permanent ground disturbances (e.g., grading for infrastructure and trails), protocol-level surveys will be conducted for least Bell's vireo, and southwestern willow flycatcher, and focused surveys will be conducted for western yellow-billed cuckoo during the breeding season prior to any construction activities, and survey results will be submitted to CDFG. If active nests of any of these species are detected, TRC will consult with CDFG regarding the appropriate buffer. Such consultation would allow for a determination whether authorization will be needed under CESA. Regarding other Covered Activities, such as grazing management and public recreation, no direct impacts on active nests of these species are anticipated. Preactivity surveys for these activities are not proposed under the TU MSHCP. All changes to these conservation measures are reflected Chapter 2, Supplemental Draft EIS Errata, of this Final EIS.

Response to Comment S-1-29

This comment suggests the Service assume that a colony size of as many as 150 tri-colored blackbirds may occur on Covered lands. This recommendation is based in part on observations presented by a DFG staff member in May 2008, in which approximately 100 individual tri-colored blackbirds were observed around Castac Lake (Connolly pers. comm.).

As noted by the commenter, the Supplemental Draft EIS indicates that a small colony of adult individuals (approximately 15) was observed nesting and foraging around Castac Lake during field surveys in May 2007. Small numbers of tri-colored blackbird were also observed in 1999, 2000, 2001, 2003, and 2004 around the lake and once in a marshy area at the upper end of Rising Canyon (Impact Sciences, Inc. 2004). Tri-colored blackbirds were also observed nesting in 2005 in the northwest corner of Castac Lake (Jones and Stokes 2006). Although the numbers provided in the Supplemental Draft EIS represent a smaller population than observed by DFG staff in 2008, the Service believes the overall conclusion of the effects analysis in Section 4.1, Biological Resources, in Volume I of the Supplemental Draft EIS and Section 6 of the TU MSHCP remain unchanged. The population of tri-colored blackbirds in California was estimated at 357,000 birds in 2011 (UC Davis 2011), so even assuming a loss of a nesting population of 150 individuals (an order of magnitude greater than the 15 nesting individuals observed in 2007), the loss would affect only 0.04% of the California population. It is unlikely that the entire nesting population would be lost on the Covered

Lands because 68% (198 acres) of modeled primary nesting habitat and 94% (17,373 acres) of modeled foraging habitat would be conserved in Open Space.

Response to Comments S-1-30 and S-1-31

The TU MSHCP and Supplemental Draft EIS have been updated to reflect that eviction of a burrowing owl during the nonbreeding season will be completed in accordance with the CDFG Staff Report on Burrowing Owl Mitigation dated March 7, 2012, rather than the prior report dated October 17, 1995. This change is reflected in t Chapter 2, Supplemental Draft EIS Errata, of this Final EIS, as well as Objective 4.2 of the TU MSHCP.

As provided in the TU MSHCP conservation measures, alternative burrow sites would be provided for this species, in accordance with the CDFG protocol, prior to evacuation of burrows in areas where burrowing owls have been observed.

Response to Comment S-1-32

The commenter is correct in noting that conservation measures for several species in the TU MSHCP allow for capture and relocation of individuals that may be affected by Commercial and Residential Development Activities. These species include Tehachapi slender salamander, western spade-foot, yellow-blotched salamander, Tehachapi pocket mouse, coast horned lizard, and two-striped garter snake. For those special status species, TRC has agreed to submit a salvage plan prior to grading for review and approval by CDFG, and has revised the TU MSHCP conservation measures to reflect the same. Changes to these conservation measures are reflected in Chapter 2, Supplemental Draft EIS Errata, of this Final EIS.

As noted in Response to Comment S-1-1, it is the responsibility of the applicant to comply with all state laws, including CESA and fully protected species statutes provided in FGC.



DEPARTMENT OF FISH AND GAME

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CHARLTON H. BONHAM, Director



Comment Letter S-1

May 3, 2012

Roger Root
Assistant Field Supervisor
United States Fish and
Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003

Subject: Tehachapi Upland Draft Multiple Species Habitat Conservation Plan
and Supplemental Draft Environmental Impact Statement
FWS-R8-2011-N270; FF08E00000-FXES11120800000F2-112

Dear Mr. Root:

The Department of Fish and Game has reviewed the of Supplemental Draft Environmental Impact Statement (SEIS) for the Tejon Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) announced by the United States Fish and Wildlife Service (USFWS) in a Notice of Availability the Federal Register on February 3, 2012. The TU MSHCP is proposed by Tejon Ranchcorp (TRC), a landowning subsidiary of the Tejon Ranch Company, to obtain incidental "take" coverage for a 50-year duration through the Federal Endangered Species Act Section 10 for 27 Covered Species. "Take" would occur as a result of the development of approximately 5,533 acres within the Tejon Mountain Village (TMV) project area in addition to certain ongoing ranch activities, within the Tehachapi Uplands portion of the Tejon Ranch. TU MSHCP Covered Lands encompass 141,886 acres of the 270,365 acre Tejon Ranch, located in southern Kern County approximately 30 miles south of Bakersfield and 60 miles north of Los Angeles.

The TU MSHCP Covered Species include eight State-listed species and six fully protected species, including the State endangered and fully protected California condor (*Gymnogyps californianus*) and bald eagle (*Haliaeetus leucocephalus*); State endangered least Bell's vireo (*Vireo bellii pusillus*), willow flycatcher (*Empidonax traillii* - all subspecies), and Western yellow-billed cuckoo (*Coccyzus americanus occidentalis*); State threatened Tehachapi slender salamander (*Batrachoseps stebbinsi*) and striped abode lily (*Fritillaria striata*); and the fully protected ringtail (*Bassariscus astutus*), golden eagle (*Aquila chrysaetos*), American peregrine falcon (*Falco peregrinus anatum*), and white-tailed kite (*Elanus leucurus*). The TU MSHCP also proposes the "take" of ten State Species of Special Concern. The Department has questions regarding the

Conserving California's Wildlife Since 1870

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proposed impacts to Covered Species and the measures described to avoid, minimize, and mitigate for the "take" authorized through the TU MSHCP. We also have recommendations for additional measures to reduce impacts to species over which the Department also has jurisdiction.

Department Jurisdiction

Fully Protected Species: The Department has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. "Take" of any fully protected species is prohibited and the Department cannot authorize their "take", with limited exceptions for research purposes. Several fully protected species are included in the TU MSHCP Covered Species list. "Take" is not limited to lethal means; "take" is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, kill," or any attempt to do so.

State Incidental Take Permit: The Department can issue an Incidental Take Permit (ITP), pursuant to Section 2081 of the Fish and Game Code, for project-related take of listed species, but not for fully protected species. We are working on the terms of an ITP for the TMV development covering Tehachapi slender salamander, willow flycatcher, least Bell's vireo, and Western yellow-billed cuckoo. Any impacts resulting in the "take" of these species outside the defined TMV development area would not have "take" coverage under the California Endangered Species Act (CESA); likewise, "take" of any listed species not covered by an ITP would be unlawful pursuant to CESA. Because 2081 permits must demonstrate compliance with the "fully mitigate" standard, they often add requirements beyond those routinely included in HCPs.

Department Communication

The Department would like to provide clarification regarding our previous communications with USFWS related to the TU MSHCP. We disagree with information provided in SEIS Chapter 6, which states that Department staff was consulted, presumably in preparation of the TU MSHCP and EIS/SEIS. Beginning with the protective order requested by TRC associated with their lawsuit against USFWS, the Department was not consulted and was therefore not aware of the content of the 2009 draft TU MSHCP until it was available to the public. Due to the concurrent release of both the TMV draft Environmental Impact Report (EIR) and nearby Frazier Park Estates draft EIR we were unable to provide comments to USFWS during the review period. The Department has not been consulted since that time to discuss TU MSHCP treatment of State-listed, fully protected, and other sensitive species that are proposed Covered Species. As a result, this letter represents our first written correspondence

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S-1-1 | since commenting on the Notice of Intent (letter dated April 25, 2008) and is our first
cont. | opportunity to provide specific comments and recommendations regarding Project
S-1-2 | impacts and proposed avoidance, minimization, and mitigation measures. The
Department would also like to note that we were not notified of the availability of the
current draft TU MSHCP for public review. Our comments below are based on our
efforts to review the considerable amount of information contained in the TU MSHCP,
SEIS, and Implementation Agreement during a substantially abbreviated review period,
and may not constitute the entirety of our eventual comments.

Project Impacts

S-1-3 | The acreages of Covered Species impacts in the TU MSHCP don't match the acreages
disclosed in the TMV Environmental Impact Report (EIR) certified by Kern County, and
it is therefore not clear where all anticipated permanent habitat loss will occur,
specifically for species to be covered by the Department-issued ITP for TMV. The
Department would appreciate additional clarification to understand this discrepancy.
S-1-4 | The TU MSHCP states that 143 acres of suitable habitat for Tehachapi slender
salamander would be permanently lost, while the TMV EIR disclosed only 108 acres of
permanent habitat loss, which the Department understands was since increased to
114 acres with the inclusion of chaparral (including yucca) habitat. Also for willow
flycatcher, least Bell's vireo, and Western yellow-billed cuckoo, the TU MSHCP states
S-1-5 | that 8 acres each of suitable habitat would be permanently lost, while the TMV EIR
disclosed only 6 acres of permanent habitat loss for those species. It is not clear what
activities contribute to the additional acreages and where those activities would be
located. If the loss of suitable habitat exceeds what is permitted by the Department for
S-1-6 | TMV, or if those additional areas are outside of TMV, it is possible that unauthorized
"take" under CESA could result. The Department does not currently have sufficient
information to determine whether that potential take could be avoided.

S-1-7 | Maps showing where acreages of impacts would occur relative to the Covered Species
suitable habitat would help illustrate and facilitate understanding of the many acreages
presented and calculations described in the text. It is not clear how the Department can
thoroughly evaluate the effects of activities whose locations are not currently disclosed.

Condor Recovery Measures

S-1-8 | The TU MSHCP does not explain the process of determining for how many condors
"take" would be approved. It is unclear what the significance of four condors is and
S-1-9 | whether this number is related either to the number of condors known to use the
Covered Area or an assessment of those that were captive-reared and presumed more
S-1-10 | likely to become habituated to human activity. It is also not clear how the removal of

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- S-1-10 cont. | four individuals from the wild fits into the context of species recovery. While the Department supports efforts to prevent the conflict caused by habituation of condors to humans, the potential for captivity of four wild condors would necessitate that their continued genetic contribution would be through captive breeding. Because captive bred condors are more likely to become habituated to humans, this proposal appears counterintuitive and a more thorough discussion of this proposal seems warranted.
- S-1-11 |
- S-1-12 | It is not clear whether the objectives of condor mitigation measures are intended to include the replacement of individuals potentially removed from the wild or any compensation for the value of the efforts that allowed those individuals to be released initially. Calculated mitigation costs that are identified as the responsibility of TRC appear to be limited to those associated with the proposed taking of condors. In addition it is not clear what precisely is offset, relative to the "take" that could result from the TU MSHCP proposed 50-year term, by TRC providing \$156,000 for the purchase of supplemental GPS transmitters. It would help to know how many transmitters could be purchased with that amount and how many additional condors would therefore be outfitted and contribute to the ongoing collection of positional and behavioral data;
- S-1-13 |
- S-1-14 | further, it is not clear whether those individuals could continue to be monitored following the 10-year transmitter replacement period for which TRC would provide \$26,000 annually, or if those individuals would only be temporarily monitored. Finally, it is not clear whether the additional transmitters would be used to monitor condors known to use the TU MSHCP Covered Area, specifically the TMV project site, such that
- S-1-15 | behavioral changes and other development-related impacts to those individuals could be more immediately detected.

Mitigation Lands

- S-1-16 | For areas in the TU MSHCP Mitigation Lands where mitigation for the ITP issued by the Department could occur, we are concerned that the proposed management of the Mitigation Lands could potentially be incompatible with CESA permitting requirements for full mitigation. For example, the TU MSHCP states that grazing will continue at a level of 14,500 head of cattle over Tejon Ranch. This amount presumably would remain the same following the permanent loss of a stated 5,533 acres in the Covered Area, and potentially (though it is not clear) also following development and permanent habitat loss within the overall 11,680-acre proposed Centennial Specific Plan area. The TU MSHCP does not address the resulting presumed increase in grazing density, potential for overgrazing impacts, and need for measures to ensure that remaining habitats that are preserved as mitigation are grazed appropriately. Any open space lands approved as mitigation for the Department's ITP will need to be managed such that existing habitats for ITP Covered Species are not only protected but enhanced in perpetuity. The Department has previously recommended coordination between
- S-1-17 |
- S-1-18 |

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S-1-18 | agencies to help ensure that both ESA and CESA permitting requirements can be met,
cont. | and we remain available to address these concerns.

S-1-19 | Details regarding management of the Mitigation Lands are effectively deferred until the
creation and approval of the Tejon Ranch's Ranch Wide Management Plan (RWMP). It
is not clear whether or to what extent the RWMP would enhance the Mitigation Lands
for TU MSHCP Covered Species, and whether Mitigation Lands could therefore be
managed only according to current practices. The TU MSHCP tends to refer to
preservation of lands and maintaining current stewardship, and does not indicate
whether recovery goals associated with the management of Mitigation Lands include
species population increases, range expansions, enhanced connectivity of habitats or
subpopulations, or other measurable results based on management primarily for the
benefit of the Covered Species. It appears that the proposed management of the
Mitigation Lands could be based solely on the value of protecting large blocks of land
without enhancement, replacement, or compensation to mitigate for species "take."

S-1-20 | It is also not clear whether the proposed plan for placing conservation easements over
Mitigation Lands would guarantee that mitigation occurs in advance of "take." The
TU MSHCP identifies 47,871 acres of initial mitigation acreage to be placed under
easement prior to initiating Covered Activities, with the remainder 56,423 acres placed
under easement prior to the end of the 50-year TU MSHCP term. Within this framework
it is not clear whether the placement of the remainder of Mitigation Lands under
easement could be delayed until near the end of the TU MSHCP term, after "take" has
exceeded that mitigated by the initial. The annual tracking of development impact
acreages and easement acreages could be used to ensure and demonstrate that
mitigation acreage, as demonstrated through land protection and management, is
keeping up with the amount of "take," as approximated by acreages lost or disturbed
due to Covered Activities.

S-1-21 |

S-1-22 | The mechanism described to provide funding for mitigation requirements under the
TU MSHCP requires annual spending approval from TRC's board of directors. Because
the conservation easements would be permanent and therefore require funding in
perpetuity for their management, it is not clear that funding would necessarily be
guaranteed each year and for the long term. While the TU MSHCP demonstrates that
TRC's current financial assets and liabilities allow ample funding opportunity, the
in-perpetuity management of Mitigation Lands requires that ample funds are available
beyond the predictable future. The estimated costs in the TU MSHCP don't describe
management actions intended to enhance and increase populations of the 27 Covered
Species as part of a recovery effort, and it is not known how the cost estimates would
increase after factoring in those management actions. Also, in the potential future event

S-1-23 |

S-1-24 |

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S-1-24 cont. | that any Mitigation Land area changes ownership, it is not clear whether the responsibility for management funding would become uncertain.

Other Species Impacts and Mitigation

S-1-25 | **Fully Protected Raptors:** The Department has recommendations to enhance the avoidance measures proposed for nesting golden eagles and peregrine falcons. The Department doesn't agree that impacts to nesting golden eagles can necessarily be avoided using a 0.25 buffer of the viewshed of the nest. This measure appears to assume that nesting eagles would only be affected by Covered Activity disturbances while on the nest and if an eagle is within the activity line of sight. It does not take into account impacts to eagles in transit or perched in the territory but not on the nest. The TU MSHCP also does not appear to have evaluated the impacts of noise and vibration disturbance. The Department recommends a 0.5 mile no-disturbance buffer around golden eagle nests, with the potential for increasing the buffer if nesting eagles show signs of agitation.

S-1-26 | The TU MSHCP appears to contain conflicting measures to avoid impacts to peregrine falcon nests, stating first that nests will be buffered by 0.25 miles and then later at 1,000 feet. It is not clear what avoidance is intended, but the Department recommends a 0.5-mile no-disturbance buffer if a peregrine falcon nest is found.

S-1-27 | **State Listed Songbirds:** The Department anticipates issuance of an ITP for TMV that would cover willow flycatcher, least Bell's vireo, and Western yellow-billed cuckoo. The TU MSHCP describes an initial 500-foot buffer around any nests of these species. For areas covered by our ITP, any variance from that buffer distance would be allowed according to specific ITP conditions. If any nests of those listed species are detected outside the area covered by our ITP, the Department recommends maintaining a minimum 500 foot no-disturbance buffer around each nest. The Department does not recommend reducing that buffer; instead, we recommend consultation regarding the potential need for ITP coverage under CESA. Prior to a TU MSHCP Covered Activity that is not covered by the Department's ITP, we recommend that pre-construction surveys are protocol level in nature and that survey results are submitted to the Department.

S-1-28 | **Tricolored Blackbird Colony:** The Department does not concur with the means of estimating the number of tricolored blackbirds that would be lost if Covered Activities resulted in the loss of the Castac Lake nesting colony. The TU MSHCP reports that 15 individuals were detected during surveys in 2007. Colony sizes fluctuate within-year and among years, according to on-site and off-site breeding habitat and environmental conditions. The Department is aware of a larger number of tricolored blackbirds

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S-1-28 | composing the colony around Castac Lake, and recommends that an estimated number
cont. | of at least an order of magnitude larger than the current estimate be used.

S-1-29 | **Burrowing Owl:** The Department agrees with measures proposed to avoid burrowing
owl nests. In the event that an occupied burrow during the non-breeding season cannot
be avoided, eviction of the owl(s) could proceed; the Department recommends referring
to our 2012 Staff Report of Burrowing Owl Mitigation
(<http://www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf>) for a survey

S-1-30 | protocol, burrow exclusion information, and mitigation measures. Because eviction of
owls from an occupied burrow is an impact, opportunities to help mitigate the permanent
loss of owls from the site, for example the installation of artificial burrows if warranted,
should be identified.

S-1-31 | **Salvage:** As an avoidance measure for several species, the TU MSHCP prescribes
removing individuals from the area of Covered Activity. For State-listed species
covered by a State ITP, salvage activities would be required along with defined
minimization measures. Without State "take" coverage, these salvage activities would
be unpermitted "take"; for State Species of Special Concern, authorization from the
Department is also necessary. A biologist's Scientific Collecting Permit specifically
does not authorize moving animals out of harm's way, but the Department's regional
office can review a proposal to salvage species of concern and approve those actions.
Such a proposal would describe any trapping or capture methods, recipient site
information, release strategy, and any temporary housing of salvaged animals.

If you have any questions regarding these comments, please contact Linda Connolly,
Staff Environmental Scientist, at the address provided on this letterhead or by telephone
at (559) 243-4014, extension 242.

Sincerely,



Jeffrey R Single, Ph.D.
Regional Manager

cc: Kathy Perkinson
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ec: Linda Connolly
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DATE: 5/3/12 _____ **PAGE 1 OF 8** _____

TO: Roger Root, Assistant Field Supervisor _____

USFWS _____

FAX: (805) 644-3958 _____ **PHONE:** _____

FROM: Linda Connolly _____

INSTRUCTIONS: Attention: Tehachapi Upland Draft MSHCP/SEIS Comments _____

Original to follow by mail. _____