

Comment Letter F1



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



In Reply Refer To:  
 FWS-SD-14B0190-15CPA0249

MAY 29 2015

Ms. Ashley Gungle  
 County of San Diego  
 Department of Planning and Development Services  
 5510 Overland Avenue, Suite 310  
 San Diego, California 92123

Subject: Draft Environmental Impact Report for the Proposed Jacumba Solar Energy Project, San Diego County, California

Dear Ms. Gungle:

We have reviewed the draft Environmental Impact Report (DEIR) for the proposed Jacumba Solar Energy project dated April 16, 2015. The applicant, Jacumba Solar LLC, proposes to construct and operate an approximately 20 megawatt (MW) photovoltaic solar project with 2,253 fixed-tilt solar panels, an onsite substation, and a battery storage facility capable of storing 10 MW of energy. The proposed project would be constructed on 108 acres of land 3 miles east of the community of Jacumba Hot Springs and immediately north of the Mexican border. The proposed project occurs within the plan boundary of the draft East County Multiple Species Conservation Program (MSCP). We provided comments on the Notice of Preparation of the DEIR in a letter dated October 6, 2014 (FWS-SD-14B0190-15CPA0001).

The primary concern and mandate of the U.S. Fish and Wildlife Service (Service) is the protection of fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and threatened and endangered animals and plants occurring in the United States. As such, we are responsible for administering the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Bald and Golden Eagle Protection Act, as amended (16 U.S.C. 668) (BGPEA); and the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712) (MBTA). The County of San Diego (County), Service, and the California Department of Fish and Wildlife (Department) entered into a planning agreement in 2008 (renewed and amended in 2014) for the development of MSCP plans to address regional conservation needs and future planned development in north and east County. The planning agreement includes an interim review process to ensure that projects do not compromise conservation objectives prior to the completion of the MSCP plans. Our comments are based on the information provided, our knowledge of sensitive species and declining vegetation communities in the County, and our participation in regional conservation planning efforts.

Potential Impacts to Birds and Bats

The DEIR acknowledges the potential for bird and bat collisions associated with construction and operation of the project. In our October 6, 2014 letter, we recommended that the applicant work with the Service to develop a Bird and Bat Conservation Strategy (BBCS) to address mortality risks and adaptive management strategies to reduce threats to birds and bats. The DEIR does not propose to develop a BBCS but rather proposes a Worker Response Reporting System (WRRS) to address bird and bat mortality. The

F1-1

F1-2

Response to Comment Letter F1

U.S. Fish and Wildlife Service  
 Karen A. Goebel, Assistant Field Supervisor  
 May 29, 2015

F1-1

Comment noted. This comment does not address the adequacy of the DEIR, therefore no further response is required.

The County concurs with this statement regarding the U.S. Fish and Wildlife Service's (USFWS's) mandate and responsibilities; however, the County would like to provide the following clarification regarding the MSCP planning process and the Proposed Project's compliance with the interim review process.

The Planning Agreement referred to by the commenter expired in November of 2013; however it was extended 180 days until May 18, 2014. The County has been following the interim review process and has participated in a meeting with wildlife agencies on January 15, 2015 related to the Project. In addition, the Applicant has met with wildlife agencies to discuss the project and biological resources on December 9 and 19, 2013.


From the onset of project processing in 2013, the Proposed Project has integrated landscape-level conservation planning through consideration of the County's 2009 draft MSCP Focused Conservation

	<p>Area (FCA) map; consideration of other regional projects and their potential interrelationship with the Proposed Project and conservation planning in the Jacumba area; and coordination with regional conservation stakeholders. See Draft EIR Section 2.2.2 for a discussion of regional planning efforts considered in the analysis. The cumulative projects within the biological resources cumulative study area are identified in Section 2.2.4 of the DEIR (page 2.2-72).</p> <p>The East County Multiple Species Conservation Program (ECMSCP) Plan Area is the most recently delineated area, least planned area to date, and last to be mapped of the County’s three MSCP Subregional Plan areas. Vegetation mapping and plant and wildlife surveys conducted for the Proposed Project contributes data to the regional planning effort.</p> <p>The County would also like to note that the context of cumulative projects in the region is changing (see responses to comments O5-36 through O5-38).</p> <p>The Proposed Project would not preclude or prevent the preparation of the ECMSCP because the Proposed Project has been designed in accordance with the preliminary conservation objectives outlined in the Planning Agreement. Potential impacts to habitat connectivity and wildlife corridors are discussed in Section 2.2, Biological Resources, of the DEIR. The</p>
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	<p>project stays away from the gaps in the International Border Fence and is designed to work with existing wildlife movement opportunities. It provides a configuration that is condensed into one corner of the project site and provides for conservation of large blocks of open space adjacent to existing Bureau of Land Management (BLM) lands and provides for further buffering of a fence opening to the west of the project site. Accordingly, there is substantial evidence to support the biological expert’s opinion that the project will not have a significant impact on wildlife movement.</p> <p><b>F1-2</b> The County has determined that potential impacts related to avian collisions associated with the solar panels are less than significant (DEIR page 2.2-46 thru 2.2-48) from a “pseudo lake effect”. Potentially significant impacts associated with avian collisions that could result from the gen-tie line are mitigated to less than significant with the inclusion of Mitigation Measure M-BI-13. While it would be too speculative to conclude that the project would have a significant impact due to the pseudo-lake effect, and a Bird and Bat Monitoring Program is not warranted, the County notes that the measure M-BI-15 includes a Worker Response and Reporting System, which will also cover the solar panels for the convenience of the County tracking and as a public benefit to provide additional data.</p>
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<p>Ms. Ashley Gungle (FWS-SD-14B0190-15CPA0249) 2</p> <p>WRRS would rely on incidental observations made by site personnel to report bird and bat carcasses during construction and routine maintenance activities rather than qualified biologists conducting systematic sampling to document potential impacts. We recommend development of a monitoring program that includes at a minimum: 1) searches by trained biologists during construction and operations; 2) a statistically valid sampling design for bird and bat mortality; 3) searcher efficiency trials; and 4) adaptive management protocols to be implemented if substantial mortality is identified. Proposed protocols should be reviewed by the County, the Department, and the Service.</p> <p>The DEIR acknowledges that the project site is likely used for golden eagle foraging and proposes to mitigate impacts through conservation of 181 acres of land north of the proposed solar arrays. While we agree that the proposed conservation area currently supports suitable foraging habitat for golden eagles, we are concerned that the proposed project in conjunction with the existing ECO substation may preclude use of this area for golden eagle foraging. Golden eagles are known to be sensitive to human disturbance and may not utilize foraging grounds adjacent to developed land. We recommend a targeted analysis of the viability of the proposed conservation area for golden eagle foraging to accurately assess the value of the conservation area for mitigating the loss of foraging habitat. We recommend site-specific surveys to document existing use of the proposed conservation area for golden eagle foraging prior to project construction. Survey results could provide a baseline to analyze the effects to golden eagle foraging following project construction.</p> <p><u>Regional Planning and Cumulative Impacts</u></p> <p>We have worked cooperatively with the Department, County, and private entities on the development of MSCP plans to balance development and wildlife conservation within the region. Currently, the draft East County MSCP identifies a framework using Focused Conservation Areas (FCAs) to designate recommended areas for conservation (within FCA) or development (outside FCA). In general, the goals for regional planning within the project vicinity are to expand existing wildlife protection by adding to large expanses of protected lands [e.g., Bureau of Land management (BLM), Department, and California State Parks] and to facilitate wildlife movement, primarily between Mexico and the north through Interstate 8.</p> <p>We are concerned about the County's recent approach to regional planning for wildlife conservation within the draft East County MSCP plan area. Recently approved and planned developments (e.g., Soitec Solar and Chapman Solar Ranch) would be constructed predominately within FCAs and have the potential to constrain regional conservation objectives such as conservation of core areas and wildlife movement corridors. Development within the plan area should proceed in way that maintains flexibility to implement alternative reserve design(s) that can meet regional conservation objectives if projects are to be constructed within FCAs that compromise the anticipated conservation goals. Thus, while the proposed Jacumba Solar Energy project is consistent with the current draft East County MSCP in that it would be constructed outside of the FCAs, the County should ensure that the project and future proposals do not preclude implementation of a functional reserve design within the plan area, particularly if development within the FCAs continues. In addition, we are concerned that the ongoing operation of solar projects cumulatively may indirectly impact the function of the FCAs and other conserved lands to protect sensitive bird species including targeted avian species (Exhibit D of the Planning Agreement) by acting as an ecological "sink" that attracts birds and subjects them to mortality. Evidence from existing solar facilities suggests that birds may be drawn to solar panels or ancillary features, and bird mortality has been observed. We recommend that the final EIR include an analysis of the potential for indirect impacts from the operations of the project, individually and cumulatively, on bird populations and the</p>	<p>F1-2 Cont.</p> <p>F1-3</p> <p>F1-4</p> <p>F1-5</p>	<p><b>F1-3</b> The County disagrees with the commenter's assertions that additional golden eagle surveys should be conducted. The commenter "recommends" that additional studies are conducted, as they "...could provide a baseline to analyze the effects to golden eagle foraging following project construction." These recommendations extend beyond those that are required by the County for CEQA findings.</p> <p>The sensitivity mentioned by the commenter is more likely to affect nesting activities. Information obtained by Wildlife Research Institute (WRI) was—WRI 2013, as cited in County of San Diego 2014 and WRI 2010, as cited in California Public Utility Commission (CPUC) and BLM 2011—used to determine whether any extant nests occurred within 4,000 feet of the Project site in order to satisfy County Guidelines. The determination was no. County guidelines and findings of significance do not require additional eagle foraging studies to be conducted, because the review of data identifies that there are no nests within 4,000 feet of the Project site. Such studies would be required in order to obtain an eagle take permit or to obtain a Special Purpose Utility (SPUT) permit. The County does not believe that either would be required. Moreover, there are several examples for California that demonstrate that golden eagles can adjust to nesting in relatively close proximity to residential development as long as the eagles have suitable foraging habitat. Even though there are no nests close</p>
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	<p>to the open space preserve, it provides suitable foraging habitat for golden eagles, as the commenter has acknowledged, and the operation of PV panels is likely to cause fewer indirect effects in adjacent areas.</p> <p>Breeding surveys for wide-ranging species with large territories like golden eagles are appropriately conducted at a coordinated regional level, spearheaded by a single entity. While not specified in the WRI report, the golden eagle territories described in the report include known territories within at least a 10-mile buffer of the Project site. Therefore, the golden eagle survey report follows the survey guidelines provided by the USFWS (Pagel et al. 2010); and the DEIR analyzes the potential impacts to golden eagles using the County of San Diego’s guidelines for determining significance, in accordance to CEQA guidelines.</p> <p>In addition, the San Diego Association of Governments has recently engaged the U.S. Geological Survey (USGS) to do a robust survey such as the USFWS recommends. The study is starting with coastal areas first and will work eastward, coordinating (as the USFWS recommends) with other agencies and local government, primarily the County, to minimize the kinds of problems associated with duplicative studies.</p> <p><b>F1-4</b> Comment noted. This comment does not address the adequacy of the DEIR, therefore no further response</p>
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<p>Ms. Ashley Gungle (FWS-SD-14B0190-15CPA0249) 3</p> <p>implications of establishing an effective conservation strategy for avian species within the East County MSCP.</p> <p>The DEIR uses the Peninsular Range within the California Floristic Province and the Carrizo Creek watershed as the study area to assess cumulative impacts to biological resources. A more appropriate scale for the cumulative impacts analysis would be the renewable energy corridor generally defined by the community of Jacumba to the east, the Mexican border to the south, the community of Campo to the west, and the northern border of the Peninsular Range Eco-Subregion. At this scale, a more appropriate analysis can be conducted for the cumulative impacts of foreseeable projects on vegetation communities, golden eagles, migratory birds, and wildlife habitat and movement. We are particularly concerned about the potential for cumulative impacts of renewable energy projects on golden eagles and migratory birds in the region, and we recommend a specific analysis of the effects of existing and reasonably foreseeable impacts on these bird species.</p> <p>In summary, the potential impacts to migratory birds, bats, golden eagles, and regional conservation planning have not been adequately addressed in the DEIR. We recommend that the County and the applicant work with the Service and the Department to develop measures that will adequately protect birds and bats, particularly as these impacts relate to the MBTA and BGEPA. We also recommend that the County work with the Department and Service to ensure that the conservation goals identified in the draft East County MSCP plan area can be achieved in light of the recent surge of development proposals, particularly renewable energy projects. We recommend that these issues be addressed prior to certification of a final EIR.</p> <p>We appreciate the opportunity to comment on the DEIR. If you have any questions regarding these comments or our recommendations, please contact Eric Porter in our office (760-431-9440, extension 285; eric_porter@fws.gov).</p> <p>Sincerely,            Karen A. Goebel          Assistant Field Supervisor</p> <p>cc:          Ed Pert, California Department of Fish and Wildlife, San Diego, CA</p>	<p>is required.</p> <p><b>F1-5</b> Please refer to Response to Comments F1-2, F1-3 and F1-6 with regards to the analysis of Project’s alleged cumulative and indirect impact on avian species. Potential impacts to habitat connectivity and wildlife corridors are discussed in Section 2.2, Biological Resources, of the DEIR. The Project avoids the gaps in the International Border Fence and is designed to work with existing wildlife movement. It provides a configuration that is condensed into one corner of the Project site and provides for conservation of large blocks of open space adjacent to existing BLM lands and provides for further buffering of a fence opening to the west of the project site. Additionally, as noted by Comment Letter O4, the Project has also avoided the local Focused Conservation Area (FCA). Accordingly, there is substantial evidence to support the biological expert’s opinion that the Project will not have a significant impact on wildlife movement.</p> <p><b>F1-6</b> The DEIR Figure 2.2-8 identifies the cumulative area considered for the Jacumba Solar Project cumulative analysis and encompasses the suggested southern, eastern and western boundaries in this comment. The northern limit of the peninsular range eco-subregion is not included because of the changing species and subspecies types experienced throughout the range and the considerable distance in potentially cumulative</p>
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	<p>projects from those identified in the DEIR to those in Riverside County and beyond. Please refer to Responses to Comments F1-2 and F1-3 regarding the impacts analysis to golden eagle and migratory birds.</p> <p><b>F1-7</b> Comment noted. This comment summarizes the comments raised in the letter which are responded to in responses to comments F1-1 through F1-6 above.</p>
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