

Comment Letter S2



State of California – Natural Resources Agency  
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EDMUND G. BROWN JR., Governor  
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May 28, 2015

Ms. Ashley Gungle  
 County of San Diego Planning and Development Services  
 5510 Overland Avenue  
 San Diego, CA 92123  
 Email: Ashley.Gungle@sdccounty.ca.gov

**Subject: Draft Environmental Impact Report, Jacumba Solar Major Use Permit, Mountain Empire Subregional Plan, San Diego County (SCH # 2014091034).**

Dear Ms. Gungle:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Draft Environmental Impact Report (DEIR) and Biological Resources Report (Biological Report) for the Jacumba Solar (Project) Major Use Permit. The County of San Diego (Lead Agency) is the lead agency for the DEIR under the California Environmental Quality Act (CEQA).

The Project is located within the Mountain Empire Subregional Plan area of unincorporated San Diego County and would develop approximately 108 acres of the 304 acres of the Project site. The DEIR will evaluate a 20-megawatt (MW), fix-tilt, photovoltaic (PV) solar energy facility. The Project would construct approximately 81,108 PV panels fitted to 2,253 fix-tilt racks, and underground direct current collection system. The Project would also construct a 110-foot by 215-foot collection substation, a 138 kV overhead transmission line, and a 10 MW capacity battery energy storage system.

The Department previously commented on the Project Notice of Preparation (October 9, 2014); we are providing subsequent comments on the DEIR to assist in refine the DEIR. The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act, [CEQA] Guidelines § 15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act ([CESA] Fish and Game Code § 2050 *et seq.*) and Fish and Game Code section 1800 *et seq.*

**Bird and Bat Mortality Monitoring.**

The Department is concerned with the DEIR's proposed mitigation measure M-BI-14 which proposes to implement a Worker Response Reporting System (WRRS)<sup>1</sup>. According to the measure, the WRRS would make site personnel responsible for recording and collecting

<sup>1</sup> Dudek for County of San Diego Department of Planning and Development Services, April 2015. *Draft Jacumba Solar Energy Project Environmental Impact Report.*

*Conserving California's Wildlife Since 1870*

S2-1

S2-2

## Response to Comment Letter S2

California Department of Fish and Wildlife  
 Betty J. Courtney, Environmental Manager 1  
 May 28, 2015

**S2-1** Comment noted. This comment does not address the adequacy of the DEIR, therefore no further response is required.

**S2-2** Please see response to comment F1-2. Fish and Game Code Sections 3503, 3503.5, and 3513 concern the unlawful take of birds, including nests and eggs. No significant Avian species impacts are identified for the solar facility. However, measure M-BI-15 provides a reporting program for observing incidental diseased avian species that involves recordation (i.e., photographs, logs), rather than any direct contact with the species by unpermitted personnel. Only people with USFWS Special Purpose Utility Permit and CDFW Scientific Collecting Permits (SCPs) are authorized to come into contact with the species. As stated in mitigation measure M-BI-15, in the event of an injury, CDFW and County Staff will be notified.

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information on incidental bird and bat species found dead or injured within the Project site during construction and operation activities<sup>2</sup>. Avian bird and bat monitoring plans and protocols are typically implemented for a number of reasons including the collection of statistically valid mortality studies, to evaluate and monitor the effects of project development on avian species, inform decision makers and the Department, and to facilitate adaptive management of a project's impacts to bird and bat species. The Department is concerned that untrained, site personnel, rather than trained avian or biological monitors, would implement a monitoring program. The Department is supportive of training site personnel to be able to *incidentally* report avian mortalities to an onsite avian biologist. However, non-biological monitors, or untrained site personnel should not be relied upon in lieu of full-time avian biologists. A statistically valid monitoring program is critical to minimizing the Project's effect. For this reason the Department considers M-BI-15 inadequate as written and recommends the following:

- a) requiring a full-time avian biologist during construction activities;
- b) requiring a statistically valid model and sampling design for bird and bat mortality;
- c) requiring trained searchers (e.g. biological/avian monitors) during construction or post-construction monitoring;
- d) requiring searcher efficiency trials and a searcher certification program. Searchers who do not meet minimum efficiencies will not be utilized for monitoring or reporting purposes; and,
- e) and requiring an adaptive management protocol which identifies triggers and actions prior to construction. The adaptive management protocol should be reviewed and approved by the Lead Agency, the Department and the U.S. Fish and Wildlife Service (collectively, Wildlife Agencies).

Monitors should possess the skills necessary to observe changes in bird behavior, recognize threatened, endangered, and sensitive species. Absent the addition of the above mentioned detail in an enforceable mitigation measure, the Department does not believe that the Project can demonstrate compliance with CESA or Fish and Game Code sections 3503, 3503.5 and 3513. Site personnel, lacking biological expertise, cannot be reasonably expected to ensure Project compliance and potentially puts the unwitting site personnel in danger of criminal violation of the California Endangered Species Act ((CESA) Fish and Game Code §2050 *et seq.*).

**Avian Nesting Season**

Mitigation measure M-BI-6 requires the results of the avian nest surveys to be provided to the Department in an annual mitigation status report<sup>3</sup>. The Department recommends that the Lead Agency revise the mitigation measure to require avian nest monitoring plan be submitted to the Lead Agency and Wildlife Agencies. At a minimum, monthly updates should be provided to the aforementioned parties for review and comment.

<sup>2</sup> *Ibid.*  
<sup>3</sup> *Ibid.*

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S2-3

**S2-3**

The County has determined that, while nests were not observed during surveys, to avoid potential impacts related to nesting birds Mitigation Measure M-BI-6 is provided, which the County considers adequate. This measure includes pre-construction surveys and identifies the appropriate consultation with USFWS and CDFW in the event any nests are discovered. As a further clarification in response to this and other comments regarding nesting, the following sentence has been deleted from the mitigation measure M-BI-6 in the Errata/FEIR and monthly reporting has been added:

“This measure does not apply to nests that are started on construction equipment or panels or supporting structures.”

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**Rare Plant Surveys**

Given the persistent drought conditions which have inhibited protocol native plant surveys the DEIR's Biological Resource Report has assessed potential impacts to special-status species based on habitat suitability. In the absence of performing protocol native plant surveys the abundance and distribution of rare plants on the Project site cannot be known. For this reason, the Department continues to recommend that protocol native plant surveys are performed, and at a minimum, topsoil salvage should be included in the DEIR as an enforceable mitigation measure to defray potential impacts to rare plant species. A topsoil salvage plan as a standalone document or component of a restoration plan should be submitted to the Wildlife Agencies for review and comment.

The Department recommends the Lead Agency adopt a mitigation measure for topsoil salvage and restoration consistent with the mitigation measure adopted by the California Public Utilities Commission for the East County Substation:

*"All temporary work areas not subject to long - term use or ongoing vegetation maintenance shall be revegetated with native species characteristic of the adjacent native vegetation communities in accordance with a Habitat Restoration Plan. A habitat restoration specialist will be designated and approved by the California Public Utilities Commission and Bureau of Land Management and will determine the most appropriate method of restoration. Restoration techniques may include: hydroseeding, hand-seeding, imprinting, and soil and plant salvage. Any salvage and relocation of species considered desert native plants shall be conducted in compliance with the California Desert Native Plant Act. The Habitat Restoration Plan shall include success criteria and monitoring specifications and shall be approved by the permitting agencies prior to construction of the project. At the completion of project construction, all construction materials shall be completely removed from the site. All temporary construction access roads shall be permanently closed and restored. Topsoil located in areas to be restoration would be conserved and stockpiled during the excavation process for use in the restoration. Wherever possible, vegetation would be left in place to avoid excessive root damage to allow for natural recruitment following construction. Temporary impacts shall be restored sufficient to compensate for the impact to the satisfaction of the CPUC or BLM (depending on the location of the impact). If restoration of temporary impact areas is not possible to the satisfaction of the CPUC or BLM, the temporary impact shall be considered a permanent impact and compensated accordingly"*

The DEIR's Biological Resources Report identifies six County List A plant species and five County List B plant species that have a high to moderate potential to occur on site. Absent the protocol native plant surveys, the DEIR has elected to evaluate potential impacts to rare plants based on habitat suitability. Using the habitat suitability approach, all eleven County List A and

<sup>4</sup> California Public Utilities Commission, 2012, *Mitigation Monitoring, Compliance, and Reporting Program San Diego Gas & Electric-East County Substation Project*.  
<http://www.cpuc.ca.gov/environment/info/dudek/ECOSUB/MMCRP.pdf>

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S2-6

**S2-4**

The County has determined that while conditions were not suitable to undertake rare plant surveys, there is the potential based on the mapped vegetation cover for a few species of rare plants to exist on the site. The County does not consider the salvage of top soil to be necessary as adequate opportunities for preservation, and relocation of specimens if necessary, is afforded in the proposed Open Space. To avoid potential impacts related to the rare plants with a moderate to high potential to occur on the Project site Mitigation Measure M-BI-16 is provided, which the County considers adequate (DEIR pg. 2.2-90). This measure includes pre-construction surveys for rare plant species and identifies the appropriate steps for relocation in the event any specimens are discovered.

**S2-5**

See response to comment S2-4 for discussion of proposed top soil salvage mitigation measure.

**S2-6**

As discussed in the DEIR §2.2.3.2 the habitat evaluation enables refinement of the suitability of the Project area for rare plants compared to the County list, which is developed based on regional distribution not accounting for site conditions. The plants listed in the mitigation measures are the ones from the County list that were found to have a moderate to high potential to occur given the site-specific habitat conditions. The plants listed in mitigation measure M-BI-16 will be revised to include all of the species that have a moderate to high potential to occur on site and

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B plants should be assumed to be present. The Department recommends compensatory mitigation be provided within the DEIR consistent with these assumptions.

**Nighttime Operations, Maintenance and Security Lighting**

As identified in the DEIR's Biological Resource Report, the Project site is located within a Core Wildlife Area. Nighttime lighting and maintenance has the potential to impact nocturnal wildlife movement through behavior modification or avoidance of the Project site and immediate areas entirely. The Department recommends that the DEIR apply strict night lighting standards to general lighting and nighttime operations in accordance with County Light Pollution Code section 59.106 (Zone A) based on luminosity or a metric which measures the amount of light generated or light received at a given receptor. The County has adopted a standard of 4550 lumens (the County of San Diego Light Pollution Code Section 59.101 et seq.). Given the rural nature of the Project area and ability to enable wildlife movement, the Department suggests that the Lead Agency adopt Zone A standards contained in the County of San Diego Light Pollution Code Section 59.101 et seq.

**Delineation of Work**

In accordance with MM-BI-1 "Temporary fencing is required in all locations of the project where proposed grading or clearing is within 300 feet of an open space easement". The Department recommends that a delineation of all approved work limits should be delineated with a temporary fence regardless of the status of the adjacent legal land status.

Mitigation measure M-BI-3 states that "The report shall substantiate the supervision of the grading activities, and state that grading or construction activities did not impact any additional areas or other special-status biological resources<sup>5</sup>. The Department recommends that mitigation measure MM-BI-3 be revised to include the County's Condition of Approval, Grading and Improvement Plan Condition Notes, Biological Resources (May 7, 2009):

**"BIOLOGICAL MONITORING: [PDS, PCC] [RG, BP] [PDS, FEE].**

**INTENT:** In order to comply with the adopted Mitigation Monitoring and Reporting Program (MMRP) pursuant to, and the County of San Diego Guidelines for Determining Significance and Report Format and Content Requirements for Biological Resources, a Grading Monitoring Program shall be implemented.

**DESCRIPTION OF REQUIREMENT:** The Project Biologist shall prepare and submit a final letter report substantiating his/her supervision of the grading activities and substantiating that grading did not impact additional areas of or other sensitive biological resources. The report shall conform to the County of San Diego Report Format Guidelines for Biological Resources. It shall also include but not be limited to the following items:

- a. Photos of the temporary fencing that was installed during the trenching, grading, or clearing activities.

<sup>5</sup> Dudek for County of San Diego Department of Planning and Development Services, April 2015. *Draft Jacumba Solar Energy Project Environmental Impact Report.*

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will include the appropriate mitigation ratios if found. These revisions have been included in the FEIR.

As stated in the Project Description §1.2 (p.1-8) lighting would not exceed 100 watts, be shielded, directed downwards, and provided for security and maintenance purposes as needed and turned off when not in use. Furthermore, as the facility would be unmanned, the lighting would only be necessary at the substation and entrance to the facility. In response to this comment the County further clarifies that the lighting will comply with Zone A standards. The DEIR discusses compliance with Zone B, as the Project would be located within this zone. However, the lighting would also be in compliance with Zone A standards, as described in the Project Description.

S2-8

In response to this comment, mitigation measure M-BI-1 has been revised to clarify that fencing erected around the proposed facility would be permanent fencing, as follows:

“M-BI-1 To prevent inadvertent disturbance to areas outside the limits of grading, fencing shall be installed and all grading shall be monitored by a biologist.

**Fencing.** In order to prevent inadvertent disturbance to sensitive biological resources, fencing shall be installed prior to grading the solar site. Fencing is required

	<p>around the entire perimeter of the proposed solar facility. Activities associated with the driveway and gen-tie line, which would occur outside the fence, will be restricted to demarked areas, flagging and/or staking would be used to delineate work limits. The placement of fencing flagging and/or staking shall be approved by the County of San Diego (County) Department of Planning and Development Services (PDS).” ...</p> <p>This revision is intended to clarify that the permanent fencing for the Project would be installed as an initial phase of the construction activities, rather than erecting a temporary construction fence and then replacing it with a permanent security fence. For areas outside the solar facility footprint and perimeter fence (driveway and gen-tie line), flagging and/or staking would be used to delineate work limits.</p> <p><b>S2-9</b> In response to this comment, M-BI-3 will be revised in accordance with the comment, with the exception of Item (a.), which will instead read as follows:</p> <p>“a. Photos of the fencing or temporary flagging, that was installed during the trenching, grading, or clearing activities.”</p> <p>These changes have been included in the FEIR</p>
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- b. Monitoring logs showing the date and time that the monitor was on site.
- c. Photos of the site after the grading and clearing activities.

**DOCUMENTATION:** The applicant shall submit the final biological monitoring report to the [PDS, PCC] for review and approval. **TIMING:** Upon completion of all grading activities, and prior to Rough Grading final Inspection (Grading Ordinance SEC 87.421.a.2), the final report shall be completed. **MONITORING:** The [PDS, PCC] shall review the final report for compliance with the project MMRP, and inform [DPW, PDCI] that the requirement is completed.\*


The Department believes that the above cited condition fosters a stronger reporting role with the biological monitor over the language currently proposed within mitigation measure MM-BI-3.

**Decommissioning**

The Department previously commented on the Project Notice of Preparation (October 9, 2014) wherein we recommended that a Project Decommissioning Plan be required as an enforceable mitigation measure. Subsequently, the DEIR analysis has indicated that at end of the Project's twenty year Power Purchase Agreement (PPA), the Project would either be retooled or decommissioned. However, no financial surety is required by the DEIR to be provided to the Lead Agency.<sup>6</sup> The Department recommends that the DEIR require financial surety for the retooling or decommissioning the Project.

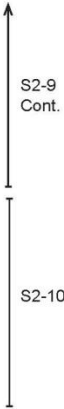
We appreciate the opportunity to comment on the referenced NOP. Questions regarding this letter and further coordination on these issues should be directed to Eric Weiss, Senior Environmental Scientist (Specialist) at (858) 467-4289 or eric.weiss@wildlife.ca.gov.

Sincerely,

  
 Betty J. Courtney  
 Environmental Program Manager 1  
 South Coast Region

cc: Eric Porter, U.S. Fish and Wildlife Service, Carlsbad  
 Erinn Wilson, CDFW, Los Alamitos  
 State Clearinghouse, Sacramento

\* Dudek for County of San Diego Department of Planning and Development Services, April 2015. Draft Jacumba Solar Energy Project Environmental Impact Report.



**S2-10**

Whether financial surety backs the Project's decommissioning plan does not affect the evaluation of potential physical environmental effects. County code provides a full range of enforcements measures anytime an applicant fails to comply with a permit condition or mitigation. Financial security is not necessary to make the mitigation enforceable. Security will be provided as required by County Code.