

## **Global Response GR-3**

### **Biological Resources**

Commenters expressed concern regarding potential impacts to biological resources as analyzed in the Draft Environmental Impact Report (EIR) for the JVR Energy Park Project (Proposed Project), including impacts to tricolored blackbird, bats, and wildlife movement and corridors. In addition, commenters expressed concern regarding pesticides and chemicals, and heat island effects. Comments were also received regarding how the Multiple Species Conservation Program (MSCP) Planning Agreement applies to the Proposed Project. The following provides a summary of the responses for each of these issues.

Potential impacts to tricolored blackbird, bats, and wildlife movement and corridors have been adequately analyzed in the Draft EIR as presented in Section 2.3, Biological Resources, and the Proposed Project's Biological Resources Technical Report, which is included as Appendix D to the Draft EIR. In addition, clarifying text and additional survey information has been included in Section 2.3 of the Final EIR as discussed below.

#### **Tricolored Blackbird**

Tricolored blackbirds were observed perched in trees and foraging, but not nesting, adjacent to the U.S./Mexico border in the southern portion of the Project site in 2019. There are no suitable freshwater bodies of water for tricolored blackbird nesting within the Project site; however, approximately 200 to 300 tricolored blackbirds nest at the pond in adjacent Jacumba Hot Springs. The pond is located approximately 0.5 miles west of the Project site. Tricolored blackbirds typically forage within 5 kilometers (3 miles) of a nesting colony. Therefore, the Draft EIR determined the amount of suitable foraging habitat available in the 3-mile foraging range of the pond. Suitable foraging habitat includes grasslands, irrigated pasture, grain fields, shallow wetlands, and alkali scrub habitats.

Additional information has been added to the Final EIR regarding tricolored blackbird and the adequacy of the proposed mitigation. As discussed in Section 2.3.3.2 of the Final EIR, the Proposed Project would impact 593.5 acres of potential foraging habitat for tricolored blackbird of the 1,275.5 acres of potential foraging habitat within the Project site. The applicant proposes to provide an onsite biological open space easement rather than off-site. Approximately 424.8 acres of modeled suitable foraging habitat for tricolored blackbird occurs within the proposed on-site biological open space easement, including desert saltbush scrub, desert sink scrub, disturbed freshwater marsh, mesquite bosque, Sonoran mixed woody and succulent scrub unvegetated channel, and fallow agriculture. Natural insect populations in these vegetation communities/land covers provide foraging habitat for tricolored blackbirds. The proposed on-site biological open

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space easement would not be treated with insecticides or pesticides. The Conceptual Resource Management Plan includes a variety of management actions, such as trash removal and removing invasive species, that would improve the habitat for the species.

Importantly, the approximately 424.8 acres of suitable foraging habitat for tricolored blackbird within the biological open space easement is within the 3-mile radius of the pond in Jacumba Hot Springs. The 424.8 acres of suitable foraging habitat will be preserved in perpetuity and managed by an open space land manager. Without the proposed on-site open space easement, this land could potentially be developed as part of another project that eliminates opportunities for tricolored blackbird foraging altogether. Given the variety of insect abundance available in the proposed on-site open space easement – critical for tricolored blackbirds’ reproductive success – and the proximity to the nesting pond, the open space easement provides a greater benefit for foraging opportunities for tricolored blackbird compared to foraging habitat outside of the 3-mile radius. The northwestern open space areas are also adjacent to State Park and BLM land, creating an even larger area of protected land for this species to use. This is consistent with the County’s Report Format and Content Requirements (County of San Diego 2010b), which states that “mitigation must consist of compensatory habitat that provides equal or greater benefit to the species.”

In addition to the onsite foraging habitat within 3 miles of the pond, there are approximately 2,100 acres of suitable tricolored foraging habitat within a 3-mile radius of the pond in Jacumba Hot Springs in the United States. Of the 2,100 acres of suitable available foraging habitat, approximately 530 acres are within federal and state owned and managed lands. In addition, up to an additional 4,400 acres of suitable habitat (appears to be alkali scrub or similar) occurs in Mexico within the 3-mile radius of the pond.

Temporary indirect impacts to avian foraging, wildlife access to foraging, and nesting species, including tricolored blackbirds, were evaluated in the Draft EIR under Impact BI-W-5. Short-term, construction-related, or temporary indirect impacts to avian foraging, including tricolored blackbird, would primarily result from construction activities, such as noise producing activities. Implementation of the following mitigation measures would reduce temporary indirect impacts to avian foraging, including tricolored blackbird, to less than significant: **M-BI-1** (biological monitoring), **M-BI-2** (temporary construction fencing), **M-BI-5** (nesting bird survey), **M-BI-7** (biological monitoring of SWPPP), **M-BI-10** (O&M signage), **M-BI-11** (noise reduction), and **M-AQ-2** (fugitive dust control plan).

The Proposed Project’s potential direct impacts (**Impact BI-W-2**) and indirect impacts during operations (**Impact BI-W-5**) to tricolored blackbird were evaluated in the Draft EIR. The Draft EIR states that the Proposed Project would have a direct impact on 593.5 acres of potential foraging habitat, approximately half of which is located in the northern portion of the Project site where tricolored blackbirds were not observed during surveys for the Proposed Project. Implementation of mitigation measures **M-BI-3** (habitat preservation) and **M-BI-4** (resource management plan)

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would reduce the direct impact (**Impact BI-W-2**) to less than significant. A total of approximately 424.8 acres of modeled suitable foraging habitat for tricolored blackbird occurs within the proposed biological open space easement within the Project site. This foraging habitat is located within the 3-mile radius of the pond in Jacumba Hot Springs. Clarifying text has been added to Section 2.3.7 of the Final EIR stating that potential significant impacts to tricolored blackbird would be reduced to less than significant with implementation of mitigation measures.

The discussion in the Draft EIR adequately discloses and summarizes the Proposed Project's potential impacts to tricolored blackbird. However, Section 2.3 Biological Resources and the Biological Resources Technical Report (Appendix D) to the Final EIR has been revised to include additional information to describe the foraging habitat surrounding the Jacumba Pond where tricolored blackbirds nest, the impacts to potentially suitable foraging habitat from the Project, and the amount of suitable foraging habitat which would be preserved in the proposed on-site open space.

Given the proposed preservation of approximately 424.8 acres of suitable tricolored blackbird foraging habitat within the on-site biological open space easement, as well as the large amount of available foraging habitat within 3 miles of the nesting colony in the United States (approximately 2,100 acres) and Mexico (approximately 4,400 acres), a substantial amount of suitable foraging habitat would be available for use by tricolored blackbirds currently nesting near the Biological Study Area (BSA). Therefore, impacts to potential foraging habitat on the Project site would not preclude tricolored blackbird from successfully nesting in the region.

### Bats

Although the pallid bat (SSC and County Group 2 species) was not detected during focused bat presence/absence surveys in 2021, this species has high potential to forage within the Project site but is not roosting on site.

Although the western small-footed myotis bat (County Group 2) was not detected during focused bat presence/absence surveys in 2021, this species has high potential to forage within the Project site. This species has potential to roost, including maternity roost, in the dairy/ranch abandoned buildings on the Project site; however, the 2021 survey determined this species is not currently roosting on site. The abandoned buildings would be demolished as part of the Proposed Project.

Although the Yuma myotis bat (County Group 2) was not detected during focused bat presence/absence surveys in 2021, this species has high potential to occur within the Project site. This species is fairly common and widespread in San Diego County and has potential to roost, including maternity roost, in the abandoned buildings on the Project site and in the rocky outcrops on Round Mountain, the eastern half of which is within the Project site.

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The Project site provides bat foraging habitat. The dairy/ranch complex abandoned buildings located in the southeastern portion of the Project site provide potential for bat roosting. The abandoned buildings would be demolished as part of the Proposed Project. The rocky outcrops on Round Mountain, the eastern half of which is within the Project site, also provide potential for bat roosting. This portion of the Project site would be preserved in the proposed biological open space easement and is approximately 0.5 mile from the closest proposed solar panels.

The Draft EIR analyzed the Proposed Project's impacts to bat foraging habitat and roosts. The Draft EIR determined that the Proposed Project could result in temporary and permanent direct impacts to County Group 2 or special-status species and/or their habitat and foraging ground through construction and Project implementation. In addition, the Draft EIR stated that the Yuma myotis, pallid bat, and western small-footed myotis bat species have a high potential to roost in the abandoned buildings on site, which would be demolished as part of the Proposed Project. If there were a maternity roost in a building to be demolished, impacts on that roost site would be potentially significant (**Impact BI-W-4**). Implementation of mitigation measures **M-BI-1** (biological monitoring), **M-BI-2** (temporary construction fencing), **M-BI-3** (habitat preservation), **M-BI-4** (resource management plan), and **M-BI-6** (bat surveys with roost avoidance or exclusion if necessary) would reduce potential impacts to County Group 2 species, including the pallid bat, and potential impacts to maternity roosts to less than significant.

Commenters on the Draft EIR stated concerns regarding the Proposed Project's potential impact to roosting bats (e.g., the pallid bat) on the Project site and in particular, the dairy/ranch complex abandoned buildings on the project site. Accordingly, additional bat surveys were conducted in February 2021. The bat survey consisted of a daytime roost assessment, emergence survey at dusk, and nighttime acoustic monitoring to record the echolocation calls of flying bats. Please refer to the bat survey results in Appendix B to the Biological Resources Technical Report (Appendix D to the Final EIR).

No bat roosts or sign of roosting bats were found within the BSA. There have also not been any signs of bats using the abandoned buildings on site to date. The acoustic monitoring detected two bat species – Mexican free-tailed bat (*Tadarida brasiliensis*) and canyon bat (*Parastrellus hesperus*); however, based on the absence of roosts or visual detections of bats during the nighttime emergence survey, these bats were determined to forage, but not roost, on site. The February 2021 acoustic survey did not detect pallid bat. Although there was no sign of active roosting within the Biological Study Area, the bat survey was conducted prior to the start of the maternity roosting season when bat species would most likely be absent. Due to the continued presence of potentially suitable roosting habitat within the abandoned buildings on site, future demolition of these buildings would require an additional bat clearance survey.

Mitigation measure **M-BI-6** has been revised in the Final EIR to state the applicant will avoid demolition within the bat maternity roosting season of March through August. In addition, **M-BI-6** has been revised in the Final EIR to require a bat biologist to install at least two bat houses built

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specifically for the species that occur on site or purchased from a reputable vendor if suitable for species that occur on site if a special status species is found in the abandoned buildings on site.

As discussed above, with implementation of mitigation measures impacts to foraging bat habitat and bat roosting would be less than significant.

### **Wildlife Movement and Corridors**

Comments were received on the Draft EIR regarding wildlife movement through the Project site. Potential Impacts to wildlife movement and wildlife corridors are analyzed in the Draft EIR, which identifies potential temporary direct impacts (Impact BI-WLC-1), permanent direct impacts (Impact BI-WLC-2), and temporary indirect impacts (Impact BI-WLC-3). Implementation of mitigation measures (**M-BI-1** (biological monitoring), **M-BI-2** (temporary construction fencing), **M-BI-3** (habitat preservation and wildlife corridor access), **M-BI-4** (RMP), **M-BI-5** (nesting bird survey), **M-BI-7** (biological monitoring of SWPPP), and **M-BI-11** (noise reduction) would reduce the impacts to wildlife movement and corridors to less than significant.

Section 2.3 of the Draft EIR states that the Project site is located within a Core Wildlife Area (a large block of habitat that supports multiple wildlife species), even though the Project site is bordered by the U.S/Mexico border fence which may exclude some larger wildlife moving directly through the Project site. The Draft EIR also explains the Project site is also a linkage between two blocks of habitat located to the east and west of the Project site.

The Proposed Project perimeter fencing would still allow small reptiles, amphibians, and mammals to pass through, but would not provide movement for larger species. The undeveloped SDG&E easement which transects the Project site would allow uninterrupted movement from Boundary Creek, along the western portion of the site, to the undeveloped land to the east. This easement is approximately 700 to 1,100 feet between fence lines and more than 4,000 feet in length.

The Draft EIR further explains that the “mesquite-dominated floodplain along the western portion of the Project site may serve as a wildlife movement area between the Project site and the north side of I-8 for a variety of wildlife species, including mammals, birds, reptiles, and invertebrates. The western portion of the floodplain (i.e., Boundary Creek) narrows, but larger wildlife may still move through the area at night if they are traveling to the west. The eastern portion of the Project site is flatter and more open with smaller drainages and existing dirt roadways that could serve as movement areas for wildlife travel. Birds can move freely through the region; invertebrates and smaller mammals can also move relatively freely through the region. All terrestrial species’ movement is hindered by I-8, constraining movement between north and south of I-8, and, to a lesser degree, movement is hindered by Old Highway 80 and surface streets. The exit to Carrizo Gorge Road and the San Diego and Eastern Railway/Carrizo Gorge Road underpasses are the only

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routes across I-8 in the vicinity. These constraints make the Project site a connection between blocks of habitat to the east and west.” (Draft EIR, at 2.3-32.)

The Proposed Project is designed to preserve the wildlife movement corridor along Boundary Creek on the western side of the Project site. Further, the Proposed Project will not impede wildlife movement through the SDG&E easement that transects the middle of the Project site. Further, mitigation measures **M-BI-3(d)** requires the Proposed Project to include a 50 to 100-foot opening in the perimeter fence north of the SDG&E easement to allow for wildlife moving within the easement corridor or north of the easement to move in and out of the easement.

As explained in the Draft EIR, small wildlife species (e.g., lizards and small mammals) would be able to access the solar facility through openings in the beneath the fence. Therefore, small mammals and reptiles can continue using the area for wildlife movement to the north, south, east and west.

Regarding larger wildlife species, page 2.3-70 of the Draft EIR states: “Larger wildlife (e.g., coyotes, bobcats, cougars) could still move along the mesquite-dominated floodplain and unvegetated portion of Boundary Creek to access undeveloped lands on either side of the project site and to cross into Mexico at the open border to the east and west. Wildlife movement would be more restricted along the eastern side since there are fewer topographic features for cover. As discussed above, the undeveloped SDG&E easement would allow uninterrupted movement from Boundary Creek to the undeveloped land to the east.

Mule deer are not expected to utilize the flat open areas (i.e., SDG&E easement area) due to lack of vegetative cover within the easement. It is likely that they will continue to utilize the open space on the western side of the railroad tracks which is dominated by mesquite. There is also land between Carrizo Gorge Road and I-8 that would allow movement for some wildlife species, particularly nocturnal wildlife. In addition, although not an ideal movement corridor, the approximately 60-foot-wide border patrol road along the southern portion of the Project site will continue to allow for wildlife movement. The Proposed Project is setback 45 feet from the edge of the road along the southeastern portion of the site, gradually widening to 270 feet to the west, with a 100-foot buffer along the southwestern border.”

Additionally, the Draft EIR analyzes the Proposed Project’s cumulative impact to wildlife movement in Section 2.3.4.3 of Section 2.3, Biological Resources. The section states that the cumulative analysis study area “encompasses a largely undeveloped landscape with few barriers to movement, except for I-8, the U.S./Mexico border fence, and, to a lesser extent, scattered rural development and property fencing. Reasonably foreseeable projects that occur in the cumulative analysis area could potentially inhibit wildlife movement. Several of the larger reasonably foreseeable projects, including wind energy projects, could block wildlife movement (particularly for avian species) due to their size and location (e.g., along an avian flyway or migration route).

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The Proposed Project combined with the cumulative projects would result in energy-related and other development throughout the cumulative analysis area. These projects have the potential to disrupt wildlife movement patterns for wildlife species moving east/west and traversing the I-8 freeway (in particular, typical wide-ranging terrestrial species including mule deer, mountain lion, bobcat, and coyote). To reduce impacts to wildlife movement, the Proposed Project has been designed to maintain movement corridors throughout the Project site and concentrate development in the least sensitive portions of the Project site. In addition, the cumulative analysis area is largely undeveloped, and wildlife movement through and around the reasonably foreseeable cumulative project areas would still be possible. Despite the development of these projects, the area would remain predominantly rural with significant undeveloped areas and wildlife movement opportunity. Additionally, the total acreage of vegetation communities analyzed in the biological cumulative analysis study area is approximately 499,048 acres and the Proposed Project combined with reasonably foreseeable cumulative projects would only impact approximately 0.91% of the total acreage. Therefore, impacts from the Proposed Project combined with the reasonably foreseeable cumulative projects would be less than significant for habitat linkages and wildlife movement corridors.”

It should also be noted that this Proposed Project will be in operation for 35 years, at which time it will be decommissioned unless the applicant submits an application to renew the MUP. At such time, additional environmental review would be required.

### Pesticides and Chemicals

Several commenters on the Draft EIR stated concerns regarding impacts to wildlife from potential pesticide or chemical use at the Proposed Project. As described in Section 2.3.1.1 of the Draft, indirect impacts result from adverse “edge effects,” either short-term indirect impacts related to construction, or long-term, chronic indirect impacts associated with the location of development in proximity to biological resources within natural areas. During construction of the Proposed Project, short-term indirect impacts may include dust and noise, which could temporarily disrupt habitat and species’ vitality; changes in hydrology; disruption of wildlife activity due to increased human activity; and construction-related chemical pollutants. However, all Proposed Project grading would be subject to restrictions and requirements that address erosion and runoff, including the federal Clean Water Act and the National Pollutant Discharge Elimination System, and preparation of a SWPPP and standard urban stormwater management plan. These programs are expected to minimize Proposed Project impacts with respect to erosion/runoff, as well as potential impacts from chemical pollutants.

To reduce potential impacts from chemical pollutants during operation, the Proposed Project is required to implement **M-BI-8**, Prevention of Chemical Pollutants, which regulates the use of weed control treatments (herbicides) on the Project site, requires best management practices to be used in all areas where such chemicals are used, and prohibits the use of rodenticides. In addition,

the on-site biological open space easement will not be treated with insecticides or pesticides as natural insect populations in these vegetation communities/land covers provide foraging habitat special-status species. In addition, the Proposed Project will not apply pesticides.

### **Heat Impacts**

Several commenters expressed concerns that the Proposed Project would increase ambient temperatures and that such an increase would impact wildlife. Generally, please refer to Global Response GR-2, which discusses concerns that the Proposed Project will induce a heat island effect. Studies on photovoltaic heat island effects have identified increases in ambient temperatures; however, the increases dissipate with distance above and from the perimeter of the solar facility. A study by Walston et al. (2016) states solar flux-related mortality has been observed only at facilities employing power tower technologies. However, the Proposed Project design does not employ power tower technologies, and thus this heat-related bird mortality does not apply to the Proposed Project, and Walston et al. (2016) does not identify other heat-related impacts to wildlife. Therefore, there are no known studies that show a minor increase in ambient temperatures would affect wildlife.

### **Multiple Species Conservation Program (MSCP)**

During the public review period for the Draft EIR, the County proposed to enter into a Restated and Amended Planning Agreement for the North and East County Multiple Species Conservation Plans (MSCP) with the California Department of Fish and Wildlife (CDFW) and the United States Fish and Wildlife Service (USFWS). The “North and East County Multiple Species Conservation Program Plans: Natural Community Conservation Program Plans and Habitat Conservation Plans” was released for public review in December 2020, and the agreement was executed in April 2021. Sections 2.3.2.3 of the Draft EIR has been revised to reflect this updated Planning agreement information. In addition, Section 2.3.3.6 has been revised in the Final EIR to describe the Proposed Project’s consistency with the interim project review process and MSCP principles, which have been modified from the previous planning agreement.

The Interim Review Process in the revised Planning Agreement outlines procedures for projects that meet the definition of an interim project (County of San Diego, CDFW, and USFWS 2020). The procedures outlined in the Interim Review Process are: 1) meetings with the County and Wildlife Agency staff (and applicant/biologist if requested); 2) discuss the project during the review meeting; and 3) within 30 days after the review meeting, provide the County and applicant with a list of concerns, additional studies requested, list of project alternatives or mitigation measures, and guidance on anticipated permits required from Wildlife Agencies.

Under the prior Planning Agreement, consulting biologists for the EIR and the Project applicant attended two batching meetings with the County, USFWS and CDFW. These meeting were held



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on April 18, 2019 and March 18, 2020. Staff from the County, USFWS and CDFW, were in attendance at both meetings to discuss their comments and questions on the Proposed Project. USFWS and CDFW did not provide a list of follow up comments or questions within 30 days after either of these meetings.

The Proposed Project meets the conservation principles for the North and East County MSCP as outlined in Table 10.1 in the Biological Resources Technical Report (Appendix D of the Draft EIR) and Section 2.3 in the Final EIR. Therefore, the Proposed Project would not conflict with the draft MSCP East County planning effort.

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