

**SANTA BARBARA COUNTY PLANNING COMMISSION**  
**Staff Report for the Revision to Permit Condition No. 38, MM BIO-16**  
**(Golden Eagle Take Permit) for the Strauss Wind Energy Project**  
**Case No. 23RVP-00031**

**Hearing Date:** July 12, 2023

**Staff Report Date:** July 3, 2023

**Case Nos.:** 23RVP-00031

**Environmental Document:**

CEQA Exemption per CEQA Guidelines  
Section 15270(a)

**Deputy Director:** John Zorovich

**Division:** Energy, Minerals & Compliance

**Supervising Planner:** Errin Briggs *E. Briggs*

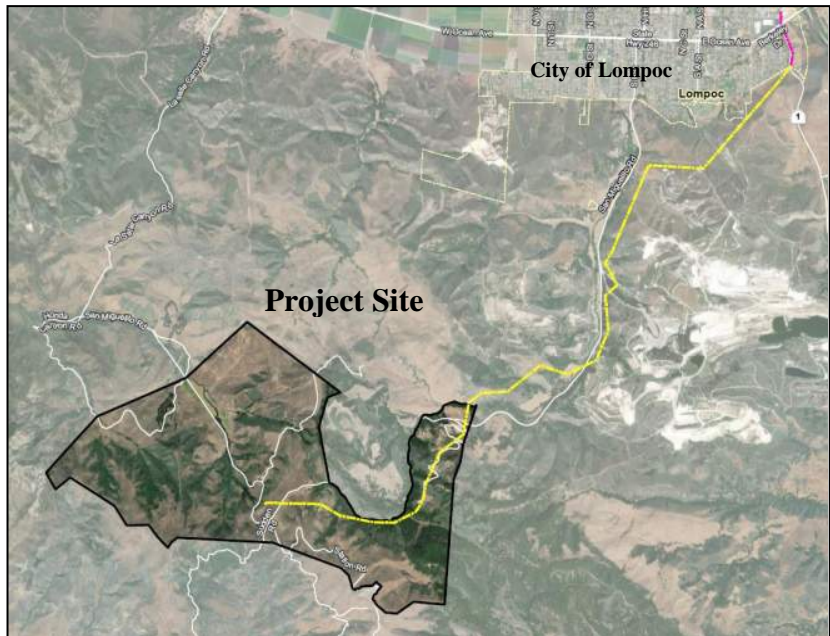
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The Project is located approximately 4.2 miles southwest of the City of Lompoc in the Third and Fourth Supervisorial Districts.

**1.0 REQUEST**

Hearing on the request of Strauss Wind, LLC (Strauss), an affiliate of BayWa r.e. Wind, LLC, to consider:

1. Case No. 23RVP-00031 for approval of a revision to the Strauss Wind Energy Project (SWEP) Conditional Use Permit No. 16CUP-00000-00031 Condition of Approval No. 38, MM BIO-16 to state that prior to operation, Strauss must demonstrate that a Take

Authorization application for golden eagles has been determined complete by U.S. Fish and Wildlife Service (USFWS), rather than a Take Permit be issued (or intended to be issued), as currently stated.

Documents related to this project may be reviewed at the Planning & Development Department's Energy Division located at 123 E. Anapamu Street, Santa Barbara, and on the County's website at: <https://www.countyofsb.org/912/Strauss-Wind-Energy-Project>.

## **2.0 RECOMMENDATION AND PROCEDURES**

Your Commission's motion should include the following:

1. Make the required findings for denial specified in Attachment A of this Staff Report;
2. Determine the denial of the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15270(a), as specified in Attachment B; and
3. Deny the project, Case No. 23RVP-00031.

Please refer back to staff if the Planning Commission takes other than the recommended actions.

## **3.0 JURISDICTION**

The County Planning Commission is considering this revision request based on Sections 35.84.040 (*Changes to an Approved Project*) and 35.80.020 (*Authority for Land Use and Zoning Decisions*) of the County Land Use and Development Code (LUDC). Section 35.84.040 states that a change may be requested to a Conditional Use Permit (CUP), and that a revised permit shall be processed in the same manner as a new CUP. The Planning Commission has the review authority for CUPs per LUDC Section 35.80.020, Table 8-1.

## **4.0 ISSUE SUMMARY**

The Strauss Wind Energy Project was approved by the County Board of Supervisors in January 2020, consisting of the construction and operation of up to 29 wind turbine generators, a power collection system and transmission line, and a substation and switchyard installed over approximately 5,887 acres southwest of the City of Lompoc. Since SWEP approval, Strauss has constructed most aspects of the project, and is planning for the upcoming start of operations.

Among various conditions of approval for Case No. 16CUP-00000-00031, Condition No. 38, MM BIO-16 (*Monitoring and Adaptive Management Plan – Bird and Bat Conservation Strategy*) requires in part that prior to operation, Strauss obtain a golden eagle (*Aquila chrysaetos*) Incidental Take Permit (ITP) from the USFWS, or provide the County with a letter from USFWS stating that an ITP is expected to be issued, or not necessary. Condition No. 38 was adopted from mitigation measures identified in the Final Supplemental Environmental Impact Report prepared for the SWEP in order to reduce significant and unavoidable impacts to golden eagles to the maximum extent feasible. The County Land Use and Development Code (LUDC) does not contain specific mitigation requirements for impacts to golden eagles; therefore, Condition No. 38 was adopted in part to ensure that additional compensatory mitigation measures would be enforceable through a binding ITP with the USFWS.

Strauss submitted an Eagle Take Permit application to USFWS in March of 2023. It is unknown as of the date of this Staff Report if or when the ITP may be issued. Due to the unknown, and likely lengthy timeframe for ITP issuance, Strauss is requesting authorization from the County to modify its CUP condition in order to begin SWEP operations upon the Eagle Take Permit application being determined complete, rather than upon permit issuance. Other proposed modifications include: 1) a requirement for Strauss to provide the County with a “Letter of Commitment” to maintain an active ITP application and comply with any federal compensatory mitigation; 2) a requirement for Strauss to provide the County with a signed contract between Strauss and a contractor to implement the Adaptive Management Plan (as described in Conditions No. 38 – 42); and 3) a requirement for Strauss to complete the installation of bird surveillance technology as described in Condition No. 37.

Under the California Environmental Quality Act (CEQA), modifications to an adopted mitigation measure must be supported by a legitimate reason for the change based on substantial evidence, and such modification cannot result in new or more severe environmental impact. Though the SWEP was approved in 2020, Strauss did not submit an ITP application to the USFWS until 2023, and did not provide an explanation for the timing of their ITP application as part of this request. In addition, Strauss is proposing to provide the County with a “Letter of Commitment” to keep the ITP application active, and to comply with any future compensatory mitigation measures once the ITP is issued. However, a “Letter of Commitment” is less binding and less enforceable than an ITP, and therefore would be less effective in ensuring compensatory mitigation for any eagles lost compared to an ITP. Under the proposed project, Strauss could begin operations without an ITP, and any federally required compensatory mitigation measures would be uncertain and delayed until an ITP is issued.

Because the Applicant has not presented a legitimate reason for changing the adopted condition of approval, and those changes would provide less assurance that Strauss implements federally required mitigation measures, Staff recommends denial of the project.

## 5.0 PROJECT INFORMATION

### 5.1 Site Information

Site Information – SWEP	
Comprehensive Plan Designation	Agriculture
Ordinance, Zone	<u>LUDC</u> . SWEP is in the unincorporated area of the County, within parcels zoned AG-II-100
Site Size	Approximately 5,887 acres
Present Use & Development	Constructed wind turbines, access roads, and transmission lines. Other uses include agriculture (cattle grazing), scattered residences and accessory agricultural structures
Surrounding Uses/Zone(s)	The SWEP site is surrounded by agriculture, mining claims, residential development, and Vandenberg Space Force Base
Access	From I-5, CA-166, CA-101, CA-135, CA-1, Santa Lucia Canyon Road, Floradale Avenue, W. Ocean Avenue, S. I Street, San Miguelito Road, and constructed access roads
Public Services	<u>Water Supply</u> : Onsite private well (operations) <u>Sewage</u> : Onsite septic at O&M facility <u>Fire</u> : County Fire Station #51 (Vandenberg Village); mutual aid agreements with City of Lompoc and VSF fire departments; onsite fire-fighting equipment <u>Police Services</u> : County Sheriff

### 5.2 Background Information

#### 5.2.1 SWEP Approval

The Board of Supervisors granted *de novo* approval of the SWEP on appeal on January 28, 2020. Approval consists of a modified project layout and alternative transmission route, and includes the installation, operation, and maintenance of the wind turbines and associated facilities and infrastructure. The SWEP also involves construction of various access roads, watercourse crossing improvements, and Pacific Gas and Electric (PG&E) upgrades to its Lompoc facility.

FSEIR No. 18EIR-00000-00001 determined that an unknown but potentially substantial number of protected birds and bats are at risk of dying through collisions with wind turbines over the duration of SWEP operations. Specific mitigation measures were developed as part of the FSEIR to substantially lessen the severity of these impacts; however, residual impacts were determined to be Significant and Unavoidable under CEQA. As part of the Board of Supervisor's Findings for Approval, the Board found that the SWEP's Significant and Unavoidable impacts are acceptable when weighed against certain overriding social, technical, economic, legal, and other considerations.

Mitigation measures identified in the FSEIR were carried forward as Conditions of Approval under CUP No. 16CUP-00000-00031. Condition 38, which is the subject of this Staff Report, requires in part that Strauss obtain golden eagle take authorization from the USFWS prior to start of operations, or provide a letter from USFWS stating that authorization is expected to be issued or not needed. Other Conditions of Approval related to eagle minimization and mitigation measures include: Condition No. 9, MM BIO-1 that requires ongoing worker education and awareness programs; Condition No. 37, MM BIO15b that requires bird surveillance technology be installed; Condition No. 39, MM BIO-16a that requires bird use and behavior studies be conducted; Condition No. 40, MM BIO-16b that requires bird and bat mortality studies be conducted; Condition No. 41, MM BIO-16c that requires the removal of carrion; and Condition No. 42, MM BIO-16d that requires the implementation of a bird and bat Adaptive Management Plan.

The Planning and Development Department authorized the construction and operation of the SWEP on April 27, 2020 through issuance of Zoning Clearance No. 19ZCI-00000-00238. Strauss began construction in 2020, and the SWEP was subsequently revised in 2020, 2021, 2022, and 2023 to modify approved grading plans, perform slope stabilization activities, construct temporary bridges over waterways, revise turbine pad elevations and sizes, resize turbines, repair landslides, relocate access roads, and modify erosion control measures (among others). These revisions were considered minor and were approved by the Planning and Development Department through effectuated Zoning Clearances.

### **5.2.3 USFWS Golden Eagle Take Authorization**

Golden eagles, along with bald eagles (*Haliaeetus leucocephalus*), are protected by three federal laws, including the Bald and Golden Eagle Protection Act of 1940 (Eagle Act). The Eagle Act makes it unlawful to take bald or golden eagles, including their parts, nests, and eggs. The Eagle Act defines take as to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb.

The USFWS authorizes the legal take of eagles where it is compatible with the preservation of the species, and the take is associated with, but not the purpose of, an activity and cannot be practicably avoided. The ITP process provides for the imposition of minimization efforts, as well as compensatory mitigation for incidental take of eagles by quantifying a project's annual take of the species, and requiring the funding of national in-lieu fee programs which retrofit utility poles to protect eagles from electrocution.

Eagle take authorization requires environmental analyses pursuant to the National Environmental Policy Act, and applications can take a significant time to process depending on the regional size of the project, the proposed project's actions, the eagle population and their behaviors, and other factors. Take of a golden eagle without an ITP is considered a violation of the Eagle Act, which may result in fines and/or imprisonment as enforced through the USFWS.

Eagle take authorization is a federal process, separate and independent from the County's permitting process and authority. However, as Condition No. 38 requires that eagle take authorization be finalized by the USFWS prior to the start of SWEP operations, Strauss is required to prove issuance of a federal permit for compliance with their County permit, or provide a letter from USFWS stating that authorization is expected to be issued or not needed.

### 5.3 Project Description

Strauss requests approval of the following revision to 16CUP-00000-00031 Condition of Approval No. 38, MM BIO-16. Text proposed to be removed is shown in ~~strikeout~~, and text proposed to be added is shown in underline. All other Conditions of Approval would remain as previously approved.

38. MM BIO-16 A Monitoring and Adaptive Management Plan is required, due to the uncertainty of the Project's operational impacts on protected and special-status bird and bat species. The Plan shall be developed and implemented in an effort to provide maximum feasible mitigation for those impacts. Monitoring studies of bird activity and fatalities at the site shall be required to collect information on bird activity and fatalities caused by wind farm operations. In addition, an Adaptive Management Plan (AMP) shall be implemented if the bird or bat mortalities trigger specified thresholds.

The Owner/Applicant will incorporate the Monitoring and Adaptive Management Plan into a Bird and Bat Conservation Strategy to be submitted to USFWS and CDFW for review and approval. Additionally, prior to beginning operation, the Owner/Applicant will submit an application to obtain golden

eagle take authorization from USFWS under the federal Bald and Golden Eagle Protection Act ~~or and~~ will provide P&D with a letter from USFWS stating that ~~either such application is deemed complete authorization is under review and expected to be issued or is not necessary for the Project.~~ The application for take authorization will incorporate all components of the Monitoring and Adaptive Management Plan that pertain to golden eagles and will specify hazard removal measures such as powerline retrofitting to offset potential take of golden eagles. Note that take of golden eagles is prohibited under California law as this species is fully protected.

P&D will enforce the following measures unless CDFW either adopts them as part of a Sec. 2081 incidental take permit or Sec. 1602 streambed alteration agreement or if CDFW, as a Responsible Agency, enforces Condition 38/MM Bio-16.6 In reviewing and approving the final plan and applying the required measures, P&D will consult with CDFW and USFWS, as appropriate.

The Plan shall be prepared by a County-approved biologist and be subject to P&D approval. The Plan shall include the sections outlined in subsections 16.a to 16.d below, which comprise the following components:

- a. **Before-after/Control-impact (BACI) Study.** Required study to compare pre- and post-construction bird use on the site.
- b. **Bird/Bat Mortality Study.** Required study to estimate bird and bat mortality rates during wind farm operations and to identify WTGs causing unanticipated levels of mortalities.
- c. **Remove Carrion Near Turbines.** Program to promptly remove carrion from livestock grazing areas in the Project site for the purpose of reducing the attraction of raptors, vultures, and condors.
- d. **Adaptive Management Program.** Additional mitigation measures to be required if specific thresholds of bird or bat mortality are reached.

**Plan Requirements.** The Owner/Operator shall prepare the Adaptive Management California Guidelines for Reducing Impacts To Birds And Bats From Wind Energy Development (2007)

Plan as described in Conditions 38-42 (MMs BIO-16, 16a, 16b, 16c, and 16.d) below, in consultation with CDFW and USFWS.

**Timing.** The Adaptive Management Plan shall be submitted to P&D for

review and approval prior to issuance of the Zoning Clearance. In reviewing and approving the final plan and applying the required measures, P&D will consult with CDFW and USFWS, as appropriate.

Prior to beginning operation, the Owner/Operator shall: (1) submit an Eagle Conservation Plan (ECP) and application to obtain golden eagle take authorization from to the USFWS under the federal Bald and Golden Eagle Protection Act or and shall provide P&D with a letter from USFWS stating that either such an ECP has been submitted and application is deemed complete authorization is under review and expected to be issued or is not necessary for the Project; (2) provide the County with a signed contract with the contractor responsible for implementing the Adaptive Management Plan described in both the ECP and below in Condition 42/MM BIO-16d, the Before-After/Control-Impact Study (described below in Condition 39/MM BIO-16a), Bird/Bat Mortality Study (described below in Condition 40/MM BIO-16b), and prey base reduction measures are implemented (described below in Condition 41/MM BIO-16c); (3) provide documentation demonstrating the complete installation of active surveillance technology (such as Identiflight units) described in Condition 37/MM BIO-15b; and (4) provide a letter of commitment to P&D stating the Owner/Operator shall maintain an active eagle take permit application with the USFWS and will ensure compliance with all compensatory mitigation requirements that may result from the permit.

**Monitoring.** P&D compliance monitoring staff will ensure that the eagle take permit application remains active with the USFWS, and that the Adaptive Management Plan (described below in Condition 39/MM BIO-16a and Condition 42/MM BIO-16d), the Before-After/Control-Impact Study (described below in Condition 39/MM BIO-16a), Bird/Bat Mortality Study (described below in Condition 40/MM BIO-16b), and prey base reduction measures are implemented (described below in Condition 41/MM BIO-16c). P&D compliance monitoring staff will review all monthly, quarterly, and annual reports provided pursuant to the Avian and Bat Mitigation Plan and ensure that appropriate adaptive management measures are undertaken if AMP thresholds are reached (see Monitoring under Condition 42/MM BIO-16d).



## 6.0 ANALYSIS

### 6.1 Environmental Review

The proposed project is exempt from CEQA in accordance with State CEQA Guidelines Section 15270 (*Projects Which Are Disapproved*). CEQA Guidelines Section 15270(a) states that:

*“CEQA does not apply to projects which a public agency rejects or disapproves”*

The denial of the proposed project to revise Condition No. 38 is exempt from environmental review, and no further environmental analysis is required. The CEQA Exemption is presented in Attachment B to this Staff Report.

### 6.2 Consistency Analysis

#### 6.2.1 Consistency with CEQA

Under CEQA, lead agencies are required to adopt any feasible mitigation measures as identified in an EIR that would mitigate, avoid, or lessen a project’s significant environmental impacts (State CEQA Guidelines Section 15021). Where supported by the evidence, feasible mitigation measures may include “compliance with a regulatory permit or similar process” (State CEQA Guidelines Section 15126.4).

Condition No. 38 requires compliance with a federal regulatory permit, and is a feasible mitigation measure. Through the ITP process, USFWS would: 1) find that Strauss would “to the maximum extent practicable, minimize and mitigate the impacts” of potential golden eagle take; and 2) condition the ITP to ensure compliance, including ensuring adequate funding for such minimization and mitigation efforts (16 U.S.C. Sec. 1539(a)(2)).

The proposed project to modify Condition No. 38 is: 1) not based on a legitimate reason supported by substantial evidence; 2) could result in the delay of any federally-required mitigation measures; and 3) would result in a less binding and less enforceable condition. Therefore, the proposed project is not consistent with CEQA.

#### 6.2.2 Consistency with Condition 38, MM BIO-16

The proposed project would be inconsistent with the intent of Condition No. 38, as it would result in less protective mitigation measures than currently written. The County LUDC does not require specific mitigation ratios for impacts to golden eagles (such as the required 10:1 mitigation ratio for impacts to oak trees). Instead, to reduce environmental impacts of the SWEP to the maximum extent feasible, Condition No. 38 relies on both County-developed

mitigation measures, and the USFWS ITP to satisfy compensatory mitigation requirements. Without golden eagle take authorization (or a determination that it is not needed), the County would have less assurance that Strauss would be able to satisfy all of their compensatory mitigation requirements for this species.

### **6.2.3 Consistency with all Other Permit Conditions**

All other Conditions of Approval for 16CUP-00000-00031 would remain the same, and would be valid through the terms of the permit. The proposed project is not in direct conflict of any other existing condition.

### **6.2.4 Consistency with other Local, State, and Federal Laws**

If the USFWS determines an ITP is required, federal requirements to obtain take authorization would apply independently of the County's permitting process. If Strauss were to commence operations prior to USFWS take authorization and incidentally take a golden eagle, Strauss would be subject to Eagle Act violations and penalties enforced by USFWS. Strauss would also continue to be responsible for all other local, state, and federal permits, laws, and regulations.

### **6.2.5 Comprehensive Plan Consistency**

The SWEP was previously analyzed for consistency with the County's Comprehensive Plan, as detailed in the Staff Report dated November 12, 2019 for Case No. 16CUP-00000-00031.

The proposed project's consistency with the Comprehensive Plan is limited to the Conservation Element's general statements recognizing that certain avian species (including bald eagles) and ecological communities are of particular value. The Conservation Element does not specifically list golden eagles as a species of particular value; however denial of the proposed project would be consistent with the Conservation Element's general statement that eagles are of ecological interest and in need of species protection. No other elements of the Comprehensive Plan contain requirements, policies, or goals relate to golden eagles.

### **6.2.6 Land Use and Development Code Compliance**

The SWEP was previously analyzed for consistency with the LUDC, as detailed in the Staff Report dated November 12, 2019 for Case No. 16CUP-00000-00031.

The proposed project's consistency with the LUDC is described in the table below, and is limited to the authorization of changes to an approved project outlined in LUDC Section 35.84.040, and permit processing for Conditional Use Permit revisions outlined in Section 35.84.040(E)(2). The

LUDC does not require any specific protections, policies, or goals related to golden eagles and wind energy systems.

<b>Project Compliance with LUDC Requirements</b>	
<b>REQUIREMENT</b>	<b>DISCUSSION</b>
<p><b><i>Section 35.84.040 – Changes to an Approved Project</i></b></p> <p>Development or a new land use authorized through a planning permit granted in compliance with this Development Code shall be established only as approved by the review authority and in compliance with any conditions of approval, except where a change to the project is approved in the following manner. A change may be requested before, during or after construction or establishment and operation of the approved land use.</p>	<p><b>In compliance.</b> The proposed project is requested as a change to the SWEP, approved under County Permit 16CUP-00000-00031. The change is requested by the Applicant during construction of the approved land use.</p>
<p><b><i>Section 35.84.040 (E)(2) – Revisions</i></b></p> <p>A revised permit shall be processed in the same manner as a new Conditional Use Permit, Demolition and Reclamation Permit, Final Development Plan or Oil Drilling and Production Plan, in compliance with Chapter 35.82.060 (Conditional Use Permits and Minor Conditional Use Permits), as applicable</p>	<p><b>In compliance.</b> The proposed project is being processed in the same manner as a new Conditional Use Permit. Compliance with Chapter 35.82.060 is described below.</p>
<p><b><i>Section 35.82.060(E) – Findings Required for approval of Conditional Use Permits</i></b></p> <p>a. The site for the proposed project is adequate in terms of location, physical characteristics, shape, and size to accommodate the type of use and level of development proposed.</p>	<p><b>In Compliance.</b> The proposed project would not result in any physical changes to the SWEP. The site remains adequate for the type of use and level of development approved.</p>
<p>b. Significant environmental impacts will be mitigated to the maximum extent feasible.</p>	<p><b>Not in Compliance.</b> The proposed project to revise Condition 38, MM BIO-16 would result</p>

<b>Project Compliance with LUDC Requirements</b>	
<b>REQUIREMENT</b>	<b>DISCUSSION</b>
	<p>in less protective and less enforceable mitigation measures for golden eagles than is provided for by the existing condition. As currently approved, environmental impacts to golden eagles are mitigated to the maximum extent feasible through existing mitigation requirements adopted through the FSEIR No. 18EIR-00000-00001, and through the requirement to obtain federal approval of an enforceable ITP that may require additional minimization efforts and/or compensatory mitigation. Under the proposed project, the County would have less assurance that Strauss is required, and has adequate resources available, to satisfy all of their minimization and/or compensatory mitigation requirements for potential impacts to golden eagles as required by a federal ITP.</p>
<p>c. Streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use.</p>	<p><b>In Compliance.</b> The proposed project would not result in any physical changes to the SWEP. Streets and highways remain adequate for the type and quantity of traffic approved.</p>
<p>d. There will be adequate public services, including fire protection, police protection, sewage disposal, and water supply to serve the proposed project</p>	<p><b>In Compliance.</b> The proposed project would not result in any physical changes to the SWEP. Public services remain adequate to serve the project.</p>
<p>e. The proposed project will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood and will be compatible with the surrounding area</p>	<p><b>In Compliance.</b> The proposed project would not result in any physical changes to the previously approved SWEP.</p>

<b>Project Compliance with LUDC Requirements</b>	
<b>REQUIREMENT</b>	<b>DISCUSSION</b>
f. The proposed project will comply with all applicable requirements of this Development Code and the Comprehensive Plan, including any applicable community or area plan.	<p><b>Not In Compliance.</b> The proposed project is limited to compliance with the LUDC, as the Comprehensive Plan and applicable community or area plans (i.e. the Lompoc Planning Area) do not contain requirements, policies, or goals related to golden eagles.</p> <p>As described in the consistency analysis for Section 35.82.060(E)(b) above, the proposed project is not in compliance with LUDC requirements regarding mitigating significant environmental impacts to the extent feasible; therefore, the proposed project is also not in compliance with Section 35.82.060(E)(f).</p>
g. Within Rural areas as designated on the Comprehensive Plan maps, the proposed use will be compatible with and subordinate to the rural and scenic character of the area.	<p><b>In Compliance.</b> The proposed project would not result in any physical changes to the previously approved SWEP.</p>

## 7.0 APPEALS PROCEDURE

The action of the Planning Commission may be appealed to the Board of Supervisors within 10 calendar days of said action. Appeal forms are available online at:

<https://www.countyofsb.org/2837/Filing-Land-Use-Appeals-Claims>

## 8.0 ATTACHMENTS

- A. Findings for Denial
- B. CEQA Notice of Exemption

**ATTACHMENT A**

**FINDINGS FOR DENIAL**

## **ATTACHMENT A: FINDINGS FOR DENIAL**

The Planning Commission adopts the following Findings for Denial of the Revision to Permit Condition No. 38, MM BIO-16 (Golden Eagle Take Permit) for the Strauss Wind Energy Project (SWEP), Case No. 23RVP-00031. Only findings that cannot be made are discussed below.

### **1.0 CEQA FINDINGS**

#### **1.1 CEQA EXEMPTION**

The Planning Commission finds that denial of the proposed project (Case No. 23RVP-00031) is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270(a). Please see the Notice of Exemption included as Attachment B.

#### **1.2 CEQA CONSISTENCY**

The project is a request by Strauss Wind LLC (Strauss), an affiliate of BayWa r.e. Wind, LLC to revise 16CUP-00000-00031 Condition of Approval No. 38, MM BIO-16, which was adopted as a feasible mitigation measure as identified in the previously certified Final Supplemental Environmental Impact Report (FSEIR) No. 18EIR-00000-00001. Condition No. 38 was adopted to mitigate significant and unavoidable environmental impacts to avian and bat species associated with the Strauss Wind Energy Project (SWEP) to the maximum extent feasible. The proposed project would revise Condition No. 38 to state that prior to operation, Strauss must demonstrate that a take authorization application for golden eagles (*Aquila chrysaetos*) has been determined complete by the U.S. Fish and Wildlife Service (USFWS) under the Bald and Golden Eagle Protection Act, rather than an Incidental Take Permit (ITP) be issued (or intended to be issued, or not required), as currently stated.

Under CEQA, a modification to an approved and adopted mitigation measure must be supported by a legitimate reason for the change based on substantial evidence, and such modification cannot result in new or more severe environmental impacts. The project to revise Condition No. 38 is proposed due to the uncertain timing of USFWS golden eagle take authorization. However, the Planning Commission finds that uncertain timing of the federal permitting process is not a legitimate reason for the change, and that there is no other substantial evidence in the record to support the request.

Further, the project would result in less protective mitigation measures for golden eagles than currently approved. Under CEQA, lead agencies are required to adopt any

feasible mitigation measures as identified in an EIR that would mitigate, avoid, or lessen a project's significant environmental impacts (State CEQA Guidelines Section 15021). Where supported by the evidence, feasible mitigation measures may include "compliance with a regulatory permit or similar process" (State CEQA Guidelines Section 15126.4). Condition No. 38 requires, in part, compliance with a federal regulatory permit, and is a feasible mitigation measure. The County Land Use and Development Code (LUDC) does not require specific mitigation ratios for impacts to golden eagles; instead, Condition No. 38 relies on the federal take authorization process, which would minimize and mitigate the impacts of a potential golden eagle take to the maximum extent practicable, and would condition an ITP to ensure compliance with compensatory mitigation requirements.

Strauss is proposing to provide the County with a "Letter of Commitment" to keep the ITP application active, and to comply with any future compensatory mitigation measures once the ITP is issued. However, a "Letter of Commitment" is less binding and less enforceable than an ITP, and therefore would be less effective in ensuring compensatory mitigation for any eagles lost compared to an ITP. Without issuance of an ITP prior to operations (or a determination that an ITP is expected to be issued or not required), the County would have less assurance that Strauss would be able to satisfy their compensatory mitigation requirements for this species.

The Planning Commission finds that there is not a legitimate reason or substantial evidence in the record to support the requested revision to a previously-adopted mitigation measure, and finds the revised permit condition would be less protective of biological resources affected by a significant and unavoidable environmental impact of the Strauss Wind Energy Project.

### **1.3 LOCATION OF RECORD OF PROCEEDINGS**

The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the County Planning and Development Department, located at 123 East Anapamu Street, Santa Barbara, CA 93101.

### **1.4 FINDINGS THAT MITIGATION OF CERTAIN IMPACTS IS WITHIN THE RESPONSIBILITY AND JURISDICTION OF ANOTHER PUBLIC AGENCY**

The USFWS will be responsible for any required golden eagle take authorization under federal law for the SWEP in accordance with the requirements of Condition of Approval No. 38 BIO-MM 16.



## **2.0 ADMINISTRATIVE FINDINGS**

### **2.1 CONDITIONAL USE PERMIT FINDINGS**

**Findings required for all Conditional Use Permits.** Pursuant to Subsection 35.82.060.E.1 of the Santa Barbara County Land Use and Development Code, a Conditional Use Permit application shall be approved or conditionally approved only if the review authority first makes all of the following findings, as applicable. The Planning Commission finds that there is insufficient evidence in the record to support findings 35.82.060.E.1 (b & f) below based on the following:

***b. Significant environmental impacts will be mitigated to the maximum extent feasible.***

The proposed project would result in less protective and less enforceable mitigation measures for golden eagles than is provided for by the existing condition. As currently approved, environmental impacts to golden eagles are mitigated to the maximum extent feasible through existing mitigation requirements adopted through the SEIR, and through the requirement to obtain federal approval of an enforceable ITP that may require additional minimization efforts and/or compensatory mitigation, as determined by the Board of Supervisors in the January 28, 2020 approval of the SWEP, Case No. 16CUP-00000-00031 and 18VAR-00000-00002. Under the proposed project, Strauss would be allowed to commence operations prior to obtaining golden eagle take authorization from the USFWS, and the County would have less adequate assurance that minimization efforts and/or compensatory mitigation measures for this species would occur, as required by a federal ITP.

***f. The proposed project will comply with all applicable requirements of this Development Code and the Comprehensive Plan, including any applicable community or area plan.***

The proposed project would result in less protective and less enforceable mitigation measures for golden eagles than is provided for by the existing condition, as described in Finding 2.1.b. Because the project is not in compliance with Finding 2.1.b, it is also not in compliance with Finding 2.1.f.

The Planning Commission finds this less protective measure impedes their ability to find that the project meets the requirements of LUDC Sections 35.82.060.E.1(b & f), and therefore cannot make these findings.

**ATTACHMENT B**

**CEQA NOTICE OF EXEMPTION**



CEQA Notice of Exemption  
Revision to Permit Condition No. 38, MM BIO-16  
Strauss Wind Energy Project  
Case No. 23RVP-00031  
Attachment B – 2

*“CEQA does not apply to projects which a public agency rejects or disapproves”.*

The Planning Commission determined that the project cannot be approved, therefore, CEQA does not apply and no further environmental review is required.

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**Department/Division Representative:** Errin Briggs, Supervising Planner, Energy Minerals & Compliance Division



**Date:** July 3, 2023

**Acceptance Date:** July 3, 2023

**Distribution:** Hearing Support Staff

**Date Filed by County Clerk:** \_\_\_\_\_