

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

The Board of Supervisors 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 Board of Supervisors 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 (Golden Eagle Take Permit) for the SWEP. Condition No. 38 was adopted as one of several feasible mitigation measures to reduce significant potential impacts to golden eagles to the maximum extent feasible, as described in Finding 1.4 of the 16CUP-00000-00031 Board Action Letter dated February 4, 2020.

Under CEQA, a modification to an adopted mitigation measure must be supported by a legitimate reason for the change based on substantial evidence, such as that the mitigation measure is now infeasible, ill-advised, impractical, or unworkable, 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, and the urgency of the commencement of SWEP operations.

The Board of Supervisors finds that 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 would not be effective in ensuring that any federally-required minimization and avoidance measures and compensatory mitigation are in place during initial operations. For example, if Strauss commenced SWEP operations and the take of golden eagles occurred prior to ITP issuance, there would be no compensatory mitigation for that take through the ITP process. The USFWS only imposes compensatory mitigation payments prospectively for take that occurs after the ITP is issued. 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.

Therefore, the Board of Supervisors 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. Further, to the extent that the applicant claims the original mitigation measure is now infeasible or unworkable, the Board of Supervisors finds such infeasibility is the result of the applicant’s failure to timely apply for an ITP, and is not a legitimate reason for revising CUP Condition No. 38.

### **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 Board of Supervisors 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 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, as determined by the Board of Supervisors in the January 28, 2020 certification of the FSEIR No. 18EIR-00000-00001 and 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 Board of Supervisors 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.