

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062
agraf@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
CHRISTINA M. CARO
DANIKA L. DESAI
SARA F. DUDLEY
THOMAS A. ENSLOW
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
RACHAEL E. KOSS
NIRIT LOTAN
AARON M. MESSING
WILLIAM C. MUMBY
CAMILLE G. STOUGH

MARC D. JOSEPH
Of Counsel

*Admitted in Colorado

January 24, 2020

Via U.S. Mail and Email

Chairman Gregg Hart

Board of Supervisors

County of Santa Barbara

105 East Anapamu Street

Santa Barbara, CA 93101

ghart@countyofsb.org

dwilliams@countyofsb.org

jhartmann@countyofsb.org

peter.adam@countyofsb.org

steve.lavagnino@countyofsb.org

Clerk of the Board

Board of Supervisors

County of Santa Barbara

105 East Anapamu Street

Santa Barbara, CA 93101

sbcob@co.santa-barbara.ca.us

Via Email Only

Lisa Plowman

Director

Planning & Development Department

lplowman@countyofsb.org

Kathy Pfeifer

Planner

Planning & Development Department

Kathypm@co.santa-barbara.ca.us

Re: **Agenda Item 3) Comments on Board of Supervisors Agenda Letter re: Juarez, Adam & Farley, LLP on behalf of George and Cheryl Bedford; Adams Broadwell Joseph & Cardozo on behalf of Citizens for Responsible Wind Energy; and California Native Plant Society Appeals of the Strauss Wind Energy Project Conditional Use Permit and Variance, Case Nos. 19APL-00000-00033; 19APL-00000-00034; 19APL-00000-00035; 16CUP-00000-00031; 18VAR-00000-00002; Third and Fourth Supervisorial Districts**

Dear Chairman Hart, Board Members, Clerk of the Board, Ms. Plowman and Ms. Pfeifer:

We are writing on behalf of Citizens for Responsible Wind Energy ("Citizens") to provide comments on the County of Santa Barbara ("County") Board of Supervisors ("Board") Agenda Letter for the January 28, 2020 hearing regarding

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the appeals of the Planning Commission's decisions to approve the Conditional Use Permit (16CUP-00000-00031) and Variance (18VAR-00000-00002) and certify the Final Supplemental Environmental Impact Report¹ ("FSEIR") (18EIR-00000-00001) (SCH#2018-071002) for the Strauss Wind Energy Project ("Project") proposed by Strauss Wind, LLC, an affiliate of BayWa re: Wind, LLC ("Applicant").

I. BACKGROUND

On December 2, 2019, Citizens appealed the Planning Commission's decisions to conditionally approve the Project and certify the FSEIR. On January 17, 2020, Planning Department Staff transmitted an Agenda Letter to the Clerk of the Board in advance of the January 28, 2020 appeal hearing recommending that the Board (1) deny the appeals, (2) make the required findings for approval, including California Environmental Quality Act ("CEQA") findings, (3) certify the FSEIR, including the relevant attachments, and adopt the mitigation monitoring program contained in the conditions of approval, and (4) grant *de novo* approval of the Project's conditional use permit and variance, consisting of the Modified Project Layout and Alternative Surface Transportation Route, subject to the conditions of approval.² In support of their recommendations, Staff responded to the issues raised by the appellants in their respective appeals.³

We reviewed Staff's responses with the assistance of our biological expert, Scott Cashen, M.S. His comments are attached as **Exhibit 1**.⁴ As discussed below, Staff's responses fail to correct the FSEIR's fatal flaws.

¹ County of Santa Barbara, Final Supplemental Environmental Impact Report: Strauss Wind Energy Project County EIR No. 18EIR-00000-00001 and State Clearinghouse No. 2018071002 (Oct. 2019) (*hereinafter* "FSEIR")

² Letter from Lisa Plowman, Director, Planning & Development Department to Board of Supervisors re: Juarez, Adam & Farley, LLP on behalf of George and Cheryl Bedford; Adams, Broadwell, Joseph & Cardozo on behalf of Citizens for Responsible Wind Energy; and California Native Plant Society Appeals of the Strauss Wind Energy Project Conditional Use Permit and Variance, Case Nos. 19APL-00000-00033; 19APL-00000-00034; 19APL-00000-00035; 16CUP-00000-00031; 18VAR-00000-00002; Third and Fourth Supervisorial Districts (undated) pp. 1-2 (*hereinafter* "Agenda Letter").

³ *Id.* at p. 3

⁴ Letter from Scott Cashen, M.S. to Andrew J. Graf, Adams Broadwell Joseph & Cardozo re: Comments on Staff's Letter to the Board of Supervisors Regarding Appeal of the Conditional Use Permit for the Strauss Wind Energy Project (Jan. 23, 2020) (*hereinafter* "Cashen Appeal Comments") (**Exhibit 1**).

Pursuant to Board Resolution 91-333,⁵ these comments are timely submitted in writing prior to the January 28, 2020 appeal hearing. In addition, a hard copy of the references cited by Citizens and our expert consultants in comments on the Draft SEIR (“DSEIR”) and the FSEIR are being submitted concurrently. These documents were previously submitted electronically and via flash drive with their respective filings but are also provided now for the Board’s consideration of the instant appeals. We request that these documents be included in the record of the proceedings, along with all other documents Citizens has provided to the County to date.

II. STATEMENT OF INTEREST

Citizens is an unincorporated association of individuals and labor organizations with members who may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes County residents, including Marc Schmid of Lompoc, and California Unions for Reliable Energy (“CURE”) and its members and families and other individuals that live, recreate and/or work in the County.

Citizens supports the development of clean, renewable energy technology, including the use of wind power generation, where properly analyzed and carefully planned to minimize impacts on public health and the environment. Wind energy projects should avoid impacts to sensitive species and habitats, water resources, and public health, and should take all feasible steps to ensure unavoidable impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can energy supply development truly be sustainable.

The individual members of Citizens and the members of the affiliated labor organizations live, work, recreate and raise their families in the County, including in and around the City of Lompoc. They would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work constructing the Project itself. They would be the first in line to be exposed to any health and safety hazards which may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

⁵ County of Santa Barbara, Resolution 91-333: Procedural Rules Governing Planning, Zoning and Subdivision Hearings Before the Board of Supervisors and Planning Commission (June 4, 1991). 4377-037acp

The organizational members of Citizens and their members also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members they represent. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the County, and by making it less desirable for businesses to locate and people to live and recreate in the County, including the Project vicinity. Continued degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities.

Finally, the organizational members of Citizens are concerned with projects that can result in serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.⁶ For these reasons, Citizens offer this response in support of our appeal.

III. RESPONSE TO AGENDA LETTER

The Planning Commission abused its discretion by erroneously certifying a legally inadequate FSEIR and erroneously finding that the Project is consistent with the County's Comprehensive plan. Staff's responses fail to correct the FSEIR's significant deficiencies and legal errors. The responses below correspond to the numbers identified by Staff in the Agenda Letter.

A. Appeal Issue #3a: The SEIR must be recirculated because the County added significant new information identifying more severe impacts to golden eagles than those disclosed during the public comment period.

Following the close of the public comment period, the FSEIR included significant new information regarding the presence of golden eagle nests that requires recirculation of the SEIR. Staff's response conflates three separate significant golden eagle impacts.⁷ As Mr. Cashen explains, *disturbances* to golden eagle nests and *territory abandonment* due to loss of habitat are *different* impacts

⁶ Pub. Resources Code § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

⁷ Agenda Letter at p. 11.

than *fatalities* caused by collisions with operational turbines.⁸ The significance of the first two impacts (nest disturbance and territory abandonment) are largely dependent upon the abundance and proximity of eagle nests in relation to the project footprint; whereas the third impact (turbine collision) is dependent upon eagle activity within the Project site.⁹

It is not disputed that the Lompoc Wind Energy Project (“LWEP”) Environmental Impact Report¹⁰ (“EIR”) and SEIR documented golden eagle occurrences on the Project site for foraging activity. But the LWEP EIR did not identify the presence of any golden eagle nests.¹¹ As a result, the LWEP EIR concluded that disturbance to golden eagle nests was unlikely to occur because golden eagles are not known to nest in the Project area.¹²

The DSEIR’s only mention of a golden eagle nest was in an appendix.¹³ The DSEIR did not analyze the Project’s potential to disturb golden eagle nests or cause territory abandonment. Instead, the DSEIR generally reported:

- “Impacts to nesting birds from construction and operation of the SWEP during nesting season (generally between February 1 and August 31) would be the same as described in the LWEP EIR.”¹⁴
- “Indirect impacts to wildlife from construction of the SWEP would be the same as described in the LWEP EIR, and include disturbance from noise, vibration, night lighting (if required), and general human activity that cause wildlife to temporarily avoid the area. This impact would not be significant (Class III).”¹⁵
- “Indirect impacts to wildlife from operation of the SWEP would be the same as described in the LWEP EIR, and include disturbance from noise, vibration, night lighting (if required), and general human activity that

⁸ Cashen Appeal Comments at p. 1.

⁹ *Ibid.*

¹⁰ County of Santa Barbara, Final Environmental Impact Report: Lompoc Wind Energy Project (Aug. 2008) (*hereinafter* “LWEP EIR”).

¹¹ Cashen Appeal Comments at pp. 2-3; *see also* LWEP FEIR at p. 3.5-72; FSEIR, appen. C at p. 5-43.

¹² FSEIR at p. 4.5-72.

¹³ FSEIR, appen. C-1.

¹⁴ *Id.* at p. 4.5-74.

¹⁵ *Id.* at p. 4.5-91.

cause wildlife to temporarily avoid the area. This impact would not be significant (Class III).”¹⁶

Following the close of the public comment period, the FSEIR included significant new information regarding the presence of golden eagle nests. Specifically, the FSEIR identified the presence of at least four additional nesting territories within 10 miles of the Project site, including a nest approximately 500 feet north of the Project site (and within 1,000 feet of a turbine).¹⁷ The close proximity of the newly disclosed gold eagle nests substantially increases the likelihood that the Project will disturb the nest or disrupt nesting territory.¹⁸ But the FSEIR failed to analyze these impacts based on the newly disclose data.

In addition, the new information regarding the proximity of eagle nests to the Project site and turbine locations contradicts the LWEP FEIR and FSEIR’s assumptions. Thus, LWEP FSEIR’s conclusion that the “loss of nests and disruption of nesting behavior are not likely”¹⁹ and the FSEIR’s assertion that “there is no reason to expect abandonment of territory”²⁰ are not supported by substantial evidence .²¹ As Mr. Cashen emphasizes that “[d]isturbance to, or loss of, golden eagle nesting territory 500 feet from the Project boundary would substantially increase the severity of Project’s impacts on the golden eagle population in the region, especially given the relatively low density of that population.” In fact, the newly disclosed nest disturbance would double the level of take due to fatalities with turbines estimated in the DSEIR and FSEIR, and territory abandonment would quintuple the fatality take estimate.²²

These significant impacts are separate and apart from the Project’s significant, unavoidable impact to golden eagles due to fatalities from collisions with operational turbines.²³ Because the FSEIR added significant new information regarding the presence of golden eagle nest that increase the severity of significant

¹⁶ *Ibid.*

¹⁷ *See generally id.*, append. C-8.

¹⁸ Cashen Appeal Comments at p. 3.

¹⁹ LWEP FEIR at p. 3.5-72.

²⁰ FSEIR at p. 8-311.

²¹ *Id.* at p. 8-311 (“We refer the commenter to page 3.5-78 of the LWEP EIR, where impacts to golden eagle are described under BIO-10 (Avian and Bat Collisions with WTGs).”).

²² Cashen Appeal Comments at p. 4.

²³ *Id.* at p. 3.

impacts without identifying mitigation measures to reduce those impacts, the SEIR must be recirculated.

Staff also claims that “all of the studies and document relevant to the Draft or Final SEIR impact analysis have been provided to the public and decision makers.”²⁴ The fact that the documents were provided to the public and decisionmakers prior to the certification of the SEIR is irrelevant to whether the County added significant new information depriving the public a meaningful opportunity to comment on the potentially significant impacts and proposed mitigation measures in the DSEIR.

Here, a substantial amount of new data was disclosed after the public comment period and that substantial amount of new data identified a substantial increase in the severity of impacts to golden eagles than was previously disclosed.²⁵ But the County failed to utilize that data to analyze the Project’s impacts to special-status raptors, including golden eagles. In addition, no substantial evidence is provided showing that those more severe significant impacts would be mitigated to below a level of significance. State law requires the County to recirculate the SEIR for public review and comment.

B. Appeal Issue #3b: The SEIR must be recirculated because, after the public review and comment period on the DSEIR closed, the County disclosed a new potentially significant impact on groundwater within the siliceous shale of the upper Monterey Formation, a newly disclosed groundwater source, along with a completely revised mitigation measure that purportedly reduces the new impact to less than significant.

Despite extensive changes to the SEIR following the close of the public comment period, Staff claims the groundwater impact disclosed in the DSEIR remained “essentially intact” because the FSEIR reached the same conclusions as the DSEIR – that the Project’s groundwater impacts were potentially significant and the mitigation measure reduce the impacts to less than significant.²⁶ As cautioned in our appeal, this response obfuscates the issue.

²⁴ Agenda Letter at p. 11.

²⁵ FSEIR at p. 4.5-12 to 4.5-16, appen. C-8.

²⁶ Agenda Letter at pp. 12.

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The County made a mistake in the DSEIR. The FSEIR analyzes and discloses a new significant impact and a new mitigation measure required to reduce the new significant impact to a level of significance, and the County's decision to not recirculate the SEIR fails to comply with the law. The County failed to disclose its analysis of a new significant impact to groundwater in the upper Monterey Formation until the release of the FSEIR. As the County's own consultant explained: "The DSEIR does not correctly identify *the source* and quantity of water available onsite to SWEP."²⁷

The consultant described the important differences between the groundwater source assessed in the DSEIR and the source examined in the FSEIR. "The 40 acre-foot capacity shallow alluvial aquifer referenced above [on DSEIR page 4.12-9] and described in DSEIR Appendix E-1 ... is not the proposed source of SWEP construction water."²⁸ The four wells proposed in the FSEIR "would tap a groundwater reservoir within the siliceous shale of the upper Monterey Formation that is considerably larger than the shallow alluvial aquifer referenced in WAT-4 [of the DSEIR]."²⁹ The new groundwater source is "estimated at approximately 1,000 acre-feet, twenty-five times the estimated capacity of the shallow alluvial aquifer analyzed in the DSEIR (p.412-9), and more sufficient storage for all construction water use."³⁰

The FSEIR's revised analysis discloses a new significant groundwater impact that relies on two studies published after the close of the public comment period.³¹ The newly disclosed studies show that the Project's withdrawal of groundwater from the Monterey Formation for construction purposes is a potentially significant impact because it would likely exceed the source's natural recharge and impact neighboring off-site wells.³² To mitigate this impact, the FSEIR proposed an entirely new mitigation measure, which the County concedes was based exclusively on the analysis conducted in newly disclosed studies.³³ Because the County analyzed a new groundwater source and proposed a wholly revised mitigation

²⁷ FSEIR at p. 8-364 (emphasis added).

²⁸ *Id.* at p. 8-365.

²⁹ *Ibid.*

³⁰ *Id.* at p. 8-366.

³¹ *Id.* at p. 4.12-8 to 4.12-11, appen. E-3, E-4.

³² *Id.* at p. 4.12-9.

³³ *Id.* at p. 4.12-10 ("MM WAT-1 is based on the groundwater analysis in Appendix E-4 that shows that a drawdown of 14 feet in the nearest adjacent offsite well would be the threshold for causing a loss in production to that well.").

measure purportedly reducing the Project's new significant groundwater impacts to less than significant – after the DSEIR's release – the public was deprived of a meaningful opportunity to comment on the significance of the impact and the revised mitigation measure's efficacy. Therefore, the County failed to comply with the law and must re-circulate the FSEIR.

C. Appeal Issue #4: The FSEIR failed to adequately describe the environmental setting for El Segundo Blue Butterfly because it failed to accurately quantify coastal buckwheat, thereby significantly underestimating the species presence on-site.

Staff's claim that the FSEIR overestimated actual impacts to El Segundo Blue Butterfly ("ESBB") habitat is incorrect and fails to address the discrepancies raised by Mr. Cashen.³⁴ The DSEIR relied on studies performed in 2018 and 2008 to conclude 23 acres of ESBB habitat is present on the Project site.³⁵ But as Mr. Cashen explains, the cited studies cannot support the DSEIR's conclusion because they provide varying estimates, none of which equal 23 acres.³⁶ Therefore, the DSEIR failed to accurately report the ESBB habitat, rendering the impact analysis inadequate. The FSEIR failed to correct this deficiency.

D. Appeal Issue #5a: *First*, the FSEIR failed to adequately describe the Gaviota tarplant habitat. *Second*, the County's decision to not quantify indirect impacts to the Gaviota tarplant lacks substantial evidence and violates CEQA as a matter of law. *Third*, the Project's impacts to Gaviota tarplant are not mitigated to a level of insignificance because the FSEIR fails to show suitable off-site compensation habitat is available.

As a threshold matter, Staff fails to address the FSEIR's inconsistent accounting of occupied habitat for the Gaviota tarplant.³⁷ This precludes the ability to accurately evaluate how and the extent to which the Project will significantly

³⁴ Cashen Appeal Comments at p. 13.

³⁵ *Id.* at p. 4.5-78.

³⁶ Cashen Appeal Comments at p. 5; Letter from Scott Cashen, M.S. to Andrew J. Graf, Adams Broadwell Joseph & Cardozo re: Comments on the Final Supplemental Environmental Impact Report for the Strauss Wind Energy Project (Nov. 17, 2019) pp. 20-21 (*hereinafter* "Cashen FSEIR Comments").

³⁷ Cashen Appeal Comments at p. 6.

impact Gaviota tarplant habitat and whether the Project can meet the compensatory mitigation requirements to reduce the impacts to a level of insignificance.³⁸

Staff's claim that the FSEIR did not exclude areas that would be indirectly impacted from consideration as permanent impacts conflicts with the plain language of the FSEIR. The acreage identified as permanent impacts in the FSEIR is limited to direct impacts and does not account for any indirect impacts that may occur outside the disturbance footprint or after construction is completed.³⁹ This fact is acknowledged by Staff.⁴⁰

To justify Staff's admission that the FSEIR does not account for indirect impacts outside the disturbance footprint or after construction, Staff makes conflicting statements regarding the *ability to quantify indirect impacts*. On one hand, Staff claims that "indirect impacts cannot be quantified in terms of acreage."⁴¹ On the other hand, it acknowledges that indirect impacts can be quantified.⁴² Clearly, indirect impacts can be quantified.

Instead, the issue is whether staff thinks it is "appropriate" to analyze indirect impacts, which is a question of law. According to Staff, it was *appropriate* for a lead agency to quantify the indirect impacts to the San Fernando Valley Sunflower resulting from a residential/commercial development because that project could cause isolation and long-term habitat changes, but it is not *appropriate* to calculate indirect impacts to the Gaviota tarplant for a wind energy power plant, even though the Project causes the exact same impacts - isolation and long-term habitat changes.⁴³ Specifically, Staff claims an analysis of indirect impacts is not appropriate here because the land use changes are small relative to

³⁸ *Id.* at pp. 6-9.

³⁹ *Id.* at p. 7.

⁴⁰ Agenda Letter at p. 13 ("[t]he Final SEIR relies on acreage of direct impacts in determining mitigation requirements because such impacts are quantifiable.").

⁴¹ FSEIR at p. 4.5-68.

⁴² Agenda Letter at p. 14 ("The CBI report *properly identifies and quantifies the expected indirect impacts* of residential/commercial project, but that analysis is not applicable to SWEP" because "[t]he SWEP land use pattern and future O&M activities are different from the former Ahmanson Ranch proposal.") (emphasis added).

⁴³ FSEIR at p. 4.5-68 ("Indirect impacts (including but not limited to isolation, habitat fragmentation, pollinator impacts; see LWEPE EIR) would occur in occupied habitat near the project activities."); see also Cashen FSEIR Comments at pp. 6-12; Cashen Appeal Comments at pp. 7-9.

the Project site and indirect impacts “would be minor.”⁴⁴ The Legislature already decided whether it is appropriate to analyze a Project’s indirect impacts and the answer is resoundingly yes, it is required.⁴⁵ Staff’s decision not to analyze indirect impacts to Gaviota tarplant violates CEQA as a matter of law.

Moreover, indirect impacts cannot be summarily dismissed simply because they are “minor.” To the contrary, minor impacts can still be significant under CEQA. For example, Staff claimed impacts to Gaviota tarplant from the modified layout would be “minor.”⁴⁶ However, the modified SWEP layout will require an additional 20.4 acres of habitat compensation at a minimum.⁴⁷ This acreage amount is larger than 26% of the CNDBB occurrences for the entire species.⁴⁸

Staff claims no evidence has been presented that a qualitative analysis of indirect impacts is inappropriate or that a quantitative analysis is needed. This is incorrect. Mr. Cashen provided evidence that a quantitative analysis of indirect impacts for the Gaviota tarplant is appropriate and necessary because it has direct implications regarding the implementation of on-site compensation to satisfy the required mitigation ratio.⁴⁹

Off-site compensation will be required if the Project’s impacts to Gaviota tarplant exceed 51.75 acres (under the conservative assumption that the FSEIR’s calculation of occupied habitat acreage is correct).⁵⁰ At a minimum, the FSEIR acknowledges the Project will permanently impact 33.13 acres of occupied Gaviota tarplant habitat based exclusively on direct impacts.⁵¹ Therefore, if indirect impacts are quantified and exceed 18.62 acres, the Applicant would need to acquire off-site compensation lands to satisfy the 3:1 mitigation requirement.

⁴⁴ Agenda Letter at p. 14.

⁴⁵ Pub. Resources Code § 21065 (“Project” means an activity which may cause either direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”); CEQA Guidelines § 15064(d)(2).

⁴⁶ Santa Barbara County Planning Commission, Staff Report for Strauss Wind Energy Project (Nov. 12, 2019), *append. D* at p. D-5.

⁴⁷ Cashen Appeal Comments at p. 7.

⁴⁸ *Ibid.*

⁴⁹ *Id.* at p. 9.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

Despite the requirement for off-site compensation being triggered by a specific quantitative threshold of 51.75 acres-impacted, the County failed to conduct an analysis of the acres impacted. According to Mr. Cashen, “[g]iven the configuration of the Project features in relation to the Gaviota tarplant habitat, there is no doubt that the Project would indirectly impact at least 18.62 acres (10.7%) of the remaining habitat, even if one accepts the County’s unsupported argument that indirect impacts would be limited to ‘relatively short distances.’”⁵²

The FSEIR admits that off-site compensation lands have not been identified.⁵³ In addition, the draft Gaviota Tarplant Mitigation Plan submitted by the Applicant does not identify any off-site compensation lands.⁵⁴ Moreover, there is an extremely limited amount of potential compensation lands for this species given the species’ status.⁵⁵

Lastly, the on-site compensatory mitigation is made up entirely of occupied habitat indirectly impacted by the Project. Conserving habitat that will be subject to the Project’s indirect impacts does not mitigate indirect impacts.⁵⁶ For all these reasons, the FSEIR’s Gaviota tarplant impact analysis is not supported by substantial evidence and violates CEQA as a matter of law.

E. Appeal Issue #5b: The FSEIR failed to analyze the severity of impacts to special-status raptors and bats due to collisions with the turbines violating CEQA as a matter of law.

Staff claims it was unable to perform the risk assessment to special-status raptors, including golden eagles, and bats because it did not have the Applicant’s golden eagle survey data.⁵⁷ However, as Mr. Cashen notes, the Applicant’s consultant completed the memorandum on September 12, 2019, almost two months

⁵² *Id.* citing FSEIR at p. 4.5-68.

⁵³ FSEIR at p. 8-69 (“The Applicant has indicated that potential mitigation lands have not been identified to date ‘beyond the conceptual level’ and that ‘all options considered to date are on-site.’”); p. 8-316 (“Off-site compensation would satisfy the measure, but is presented only as an option. There is no need to evaluate the feasibility because on-site compensation is feasible.”).

⁵⁴ Dudek, Draft Gaviota Tarplant Mitigation Plan for the Strauss Wind Energy Project (Oct. 2019).

⁵⁵ Cashen FSEIR Comments at pp. 12-13.

⁵⁶ Cashen Appeal Comments at p. 9.

⁵⁷ Agenda Letter at p. 15.

before the FSEIR was published.⁵⁸ Moreover, the data collection occurred over the span of a year, with most surveys completed prior to the DSEIR's release for public comment.

Staff also claims there is no standard methodology for conducting a collision risk analysis for this Project,⁵⁹ but this assertion is incorrect. As Mr. Cashen explains, “[t]he core issue pertaining to risk to other special-status raptors and bats is the magnitude and severity of collision impacts.” The FSEIR did not rectify the DSEIR's error of estimating fatality rates using fatality data of smaller turbines.⁶⁰ The USFWS' *Land-Based Wind Energy Guidelines* and CEC and CDFW's *California Guidelines for Reducing Impacts to Bird and Bats from Wind Energy Development* each provide methodology for conducting a collision risk assessment.⁶¹

Both guidelines are cited in the DSEIR. Thus, the County had access to the relevant data and was aware that it is possible to conduct a collision risk assessment, but it failed to do so. None of the FSEIR's impact analyses cited by Staff properly describe the nature and magnitude of impacts to special status raptors or bats, including golden eagles.⁶² The FSEIR simply states that “[s]everal special-status birds are known or suspected to nest on or in close proximity to the proposed SWEP, including Copper's hawk, California horned lark, oak titmouse, and grasshopper sparrow (Appendices C-1 and C-7).”⁶³ Notably, the FSEIR fails to mention the golden eagle, despite nests within 500 feet of the Project boundary. The FSEIR failed to analyze the severity of impacts to special-status raptors and bats due to collisions with the turbines.

⁵⁸ FSEIR, appen. C-8.

⁵⁹ Agenda Letter at p .15.

⁶⁰ Cashen Appeal Comments at p. 10.

⁶¹ *Id.* at p. 11.

⁶² *Ibid.*

⁶³ FSEIR at p. 4.5-74.

F. Appeal Issue #5c: The FSEIR failed to analyze the impacts of low-frequency noise generated from wind turbines on special-status species.

Staff acknowledges that the A-weighted dBA “reflects the sensitivity of the human ear”⁶⁴ and that C-weighted dBA “highlights sounds at lower-frequencies.”⁶⁵ Staff then concludes that the operational levels of low-frequency noise are expected to be minimal and unlikely to be disruptive to any type of receiver, including humans and wildlife, based exclusively on the A-weighted dBA.⁶⁶ Staff jumped to this incorrect conclusion before conducting any analysis.

Mr. Cashen explained that a separate noise assessment using the C-weighted dBA must be completed for wildlife because they hear at lower frequencies.⁶⁷ Low-frequency noise could permanently change the functional value of wildlife habitat by deterring or preventing special-status species from creating or maintain habitat in or near the Project area.⁶⁸ Furthermore, sound levels of 80 dBA exceed levels known to adversely affect wildlife.⁶⁹ Because there are a substantial number of special-status species with potentially affected habitat near WTGs, the Project’s continuous low-frequency noise presents significant, unmitigated impacts to wildlife. The County’s failure to analyze this potentially significant impact is a failure to comply with the legal requirements of CEQA.

G. Appeal Issue #6: The FSEIR failed to analyze the impacts from blasting for turbine foundations.

Staff acknowledges the risk of flyrock from blasting, but they conclude flyrock does not present a risk to nearby residents because rock could be projected only several hundred feet.⁷⁰ The County does not provide any evidence to support its conclusion that flyrock is limited to this vaguely defined distance. To the contrary, substantial evidence shows that flyrock can be propelled 900 feet beyond the

⁶⁴ Agenda Letter at p. 16.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Cashen FSEIR Comments at pp. 2-4; Cashen Appeal Comments at p. 11.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Agenda Letter at p. 17.

original blast site.⁷¹ Despite the presence of two residences within 900 feet of the proposed turbine locations (and possibly even closer depending on turbine micro-siting), the FSEIR failed to address this significant public health and safety concern.

Staff addresses potential ground vibration impacts to non-participating residents from blasting, but then fails to discuss potential ground vibration impacts to “participating” project landowners.⁷² Residences 900 feet away from the potential blast site could experience ground vibrations that exceed 0.5 inches/second or 0.2 inches/second, which exceed CEQA thresholds for damage and adverse reaction, respectively, but failed to conduct the analysis. The County is not excused from assessing potentially significant *ground vibration* impacts simply because the residence is a “participating” project landowner. In fact, the FSEIR analyzed both participating and non-participating residences when it assessed the potential *noise* impacts.⁷³ By failing to conduct the analysis of a potentially significant impact, the FSEIR fails to comply with CEQA as a matter of law.

H. Appeal Issue #7: *First*, the FSEIR failed to contain a stable, finite project description because it does not describe an unguyed meteorological tower. *Second*, the FSEIR failed to analyze the impacts of an unguyed meteorological tower.

The public cannot quantify the impacts from the meteorological tower because the FSEIR fails to provide a definite and stable project description. The DSEIR estimated construction of the meteorological towers would result in approximately 0.4 acres of permanent land disturbance.⁷⁴ But this estimate assumed the use of guy wires. The County never revised the SEIR to account for the impacts associated with the installation of the unguyed meteorological tower, including the wider access roads required for crane travel. Therefore, the FSEIR lacks an adequate project description.

Staff acknowledges the FSEIR was not updated to include potential environmental impacts that would result from installation of an unguyed

⁷¹ Dhekne P.Y. Environmental Impacts of Rock Blasting and Their Mitigation, International Journal of Chemical, Environmental & Biological Sciences (2015) p. 49.

⁷² Agenda Letter at p. 17.

⁷³ See generally FSEIR at pp. 4.14-1 to 4.14-23.

⁷⁴ *Id.* at p. 2-47 (Table 2-10).

meteorological tower, but it claims the increased grading would “not increase the severity of the impacts or change the nature of the impacts to resources analyzed.”⁷⁵ Simply because the grading for the meteorological tower foundation is a small percentage of the overall grading activities, does not mean the impacts caused by the grading will not be substantial. Moreover, the construction activities for the meteorological tower go beyond grading for the foundation. As the Applicant noted in comments on the DSEIR:

[T]he structure will require significantly more ground disturbance than a guyed structure due to the large footprint of the tower, the required pier foundations under each tower leg, a leveled approximately 100 x 80 ft crane pad and a 16 ft wide access road with 10 ft wide shoulders on each side (or 20 ft on one side) for crane travel. Such additional ground disturbance likely would increase impacts to sensitive resources, including the Gaviota tarplant....⁷⁶

“An adequate description of adverse environmental effects is necessary to inform critical discussion of mitigation measures and project alternatives at the core of the EIR.”⁷⁷ For example, the FSEIR anticipates that construction of the meteorological towers will last 3 months,⁷⁸ but then fails to account for the increased emissions resulting from construction activities associated with installing an unguyed tower.⁷⁹ Similarly, the County acknowledges additional ground disturbance from meteorological tower construction would permanently impact the Gaviota tarplant;⁸⁰ however, the County does not quantify the impacts of the tower and associated activities to this endangered species in the FSEIR.

Quantifying the impacts to Gaviota tarplant is critical because the FSEIR requires that permanent impacts to this species be compensated at a 3:1 ratio.⁸¹ The FSEIR assumed there is enough on-site occupied habitat to meet the

⁷⁵ Agenda Letter at p. 17.

⁷⁶ FSEIR at p. 8-350.

⁷⁷ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514.

⁷⁸ FSEIR at p. 2-35 (Table 2-7).

⁷⁹ *Id.* at p. 2-45.

⁸⁰ Agenda Letter at p. 17.

⁸¹ FSEIR at p. 4.5-70.

compensation requirement,⁸² but if the impacts to Gaviota tarplant caused by installation of the meteorological tower are added to the previously disclosed significant impacts, then there may not be enough occupied habitat on-site to meet the compensatory mitigation requirement. In that case, the County must ensure off-site compensation is feasible, which is currently not seriously contemplated.⁸³ As a result, the impacts to Gaviota tarplant remain significant and unmitigated.

I. Appeal Issue #8: The FSEIR fails to identify specific performance standards and list potential best management practices to mitigate stormwater impacts.

Staff asserts that implementation of best management practices (“BMPs”) through the Storm Water Quality Management Plan (“SWQMP”) and Storm Water Pollution Prevention Plan (“SWPPP”) ensure impacts from polluted runoff are mitigated and that sensitive riparian and wetland resources are protected.⁸⁴ While compliance with a regulatory program may be identified as mitigation, the lead agency must still identify and analyze the types of potential actions that can be feasibly achieved through the regulatory program.⁸⁵ The purpose of this requirement is to assess whether the mitigation measure itself would cause one or more significant effects in addition to those that would be caused by the project as proposed.⁸⁶ An EIR does not need to discuss the effects of the mitigation measures in the same amount of detail as the significant effects of the proposed project, but it must still complete the analysis.⁸⁷

Here, the County failed to list the potential BMPs and stormwater management measures that may be implemented in a SQWMP and SWPPP. Substantial evidence shows that implementation of BMPs an stormwater management measures could cause environmental impacts to wildlife.⁸⁸ The

⁸² *Id.* at p. 8-69 (“The Applicant has indicated that potential mitigation lands have not been identified to date ‘beyond the conceptual level’ and that ‘all options considered to date are on-site.’”); p. 8-316 (“Off-site compensation would satisfy the measure, but is presented only as an option. There is no need to evaluate the feasibility because on-site compensation is feasible.”).

⁸³ *Ibid.*

⁸⁴ Agenda Letter at p. 18.

⁸⁵ CEQA Guidelines § 15126.4(a)(1)(B).

⁸⁶ *Id.* § 15126.4(a)(1)(D).

⁸⁷ *Ibid.*

⁸⁸ Cashen FSEIR Comments at p. 24; Cashen Appeal Comments at p. 12.

County does not refute this conclusion. Instead, the County states that “all BMPs would be installed within the impact areas where ground disturbance was anticipated in the final SEIR. In addition, biological monitors will be on site during all construction activities to ensure compliance with the Final SEIR mitigation requirements.”⁸⁹

A separate significant environmental impact can occur even if the BMP is implemented where ground disturbance already occurred. For example, silt fences could have significant impacts on wildlife by blocking movement of small animals, such as the California red-legged frog, which could inhibit access to essential breeding and sheltering habitat and create a pray trap leading to additional fatalities.⁹⁰ While biological monitors may be beneficial for addressing potential impacts to biological resources from implementation of BMPs that affect wildlife, they would have no impact on addressing environmental impacts from other BMPs, such as chemical stabilization or temporary diversion dikes.⁹¹ Because the County failed to adopt enforceable performance standards for the stormwater management plans or list candidate BMPs, the County violated CEQA’s prohibition against deferred mitigation.

J. Appeal Issue #9: The FSEIR relies on inadequate mitigation measures to ensure impacts on biological resources are reduced to less than significant.

Staff’s responses regarding the adequacy of the FSEIR’s mitigation measures for biological resources do not cure the FSEIR’s deficiencies.⁹² In some cases, Staff fails to directly address the issues raised by Mr. Cashen. As a result, impacts to various biological species remain significant.

⁸⁹ Agenda Letter at p. 19.

⁹⁰ Cashen FSEIR Comments at p. 24; Cashen Appeal Comments at p. 12.

⁹¹ Environmental Protection Agency, National Pollutant Discharge Elimination System (NPDES), National Menu of Best Management Practices (BMPs) for Stormwater, <https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater#constr> (last accessed January 23, 2020).

⁹² Agenda Letter at pp. 19-20.

1. *MM BIO-3 is inadequate because the measure lacks adequate performance standards.*

Staff failed to directly address the inadequacy raised by Mr. Cashen with respect to MM BIO-3, which requires a site restoration and revegetation plan. This measure includes only one, vague unenforceable success criterion rendering the mitigation measure inadequate.⁹³ As a result, the measure fails to mitigate significant impacts to sensitive vegetation and their habitat resulting in unmitigated impacts to special-status species.

2. *MM BIO-9 lacks performance standards and adequate monitoring and reporting.*

Staff fails to directly address the inadequacies raised by Mr. Cashen with respect to MM BIO-9, which requires wetland avoidance and riparian habitat restoration plan.⁹⁴ Specifically, the quantitative performance standards are improperly limited to temporary disturbances, which does not ensure wetland functions restored.⁹⁵ In addition, the measure fails to identify the variables that will be monitored, the monitoring schedule, and a mechanism for reporting.⁹⁶ Lastly, the measure does not identify a timeline for achieving performance standards for jurisdictional features, nor does it establish the monitoring and reporting program.⁹⁷

3. *MM BIO-12 is inadequate because it fails to account for non-breeding season golden eagle activity.*

Staff claims MM BIO-12 mitigates impacts to nesting golden eagles because it institutes a 1-mile buffer around active golden eagle nests.⁹⁸ However, this measure is not effective because it does not require surveys or buffers if construction activities occur during the non-breeding season.⁹⁹ This is a critical

⁹³ Cashen FSEIR Comments at p. 25.

⁹⁴ Agenda Letter at pp. 20-21.

⁹⁵ Cashen FSEIR Comments at p. 26.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ Agenda Letter at p. 19.

⁹⁹ Cashen Appeal Comments at p. 13; *see also* Cashen FSEIR Comments at pp. 19-20.

flaw because golden eagles reuse the same nest sites and the Bald and Golden Eagle Protection Act prohibit disturbance, including during the non-breeding season.¹⁰⁰

4. *MM BIO-14a is inadequate because it fails to establish adequate standards for horned lizard clearance surveys.*

Staff fails to directly address the inadequacies raised by Mr. Cashen with respect to MM BIO-14a,¹⁰¹ which requires clearance surveys for horned lizards.¹⁰² Appropriate standards for clearance surveys are critical because horned lizards are often buried in the sand and impossible to locate visually.¹⁰³ Mr. Cashen recommended that raking be adopted as the FSEIR identifies in MM BIO-14b,¹⁰⁴ but the FSEIR failed to do so.

5. *MM BIO-14h is inadequate because it is vague and improperly defers formulation of success criteria.*

Staff fails to directly address the inadequacies raised by Mr. Cashen with respect to MM BIO-14h,¹⁰⁵ which requires pre-construction surveys for the western spadefoot toad.¹⁰⁶ The revisions made in the FSEIR failed to rectify the DSEIR's errors.¹⁰⁷ Therefore, this mitigation remains deficient, and impacts to the western spadefoot toad remain significant.

6. *MM BIO-16 is inadequate because it is vague and unsupported by substantial evidence.*

Staff fails to address the vagueness of the fatality thresholds that trigger adaptive management in MM BIO-16. Mr. Cashen emphasized that measures chosen thresholds and techniques are not supported by substantial evidence because they fail to follow the appropriate guidelines or methodologies, which were

¹⁰⁰ Cashen Appeal Comments at pp. 12-13.

¹⁰¹ Agenda Letter at pp. 19-20.

¹⁰² FSEIR at p. 4.5-83.

¹⁰³ Cashen FSEIR Comments at p. 28.

¹⁰⁴ *Ibid.*

¹⁰⁵ Agenda Letter at pp. 19-20.

¹⁰⁶ FSEIR at p. 4.5-86 to 4.5-87.

¹⁰⁷ Cashen FSEIR Comments at p .28.

disclosed in his comments on the DSEIR.¹⁰⁸ In addition, the adaptive management protocol fails to define the techniques that will be used to search for carcasses, which renders the mitigation measure ineffective and improperly defers mitigation.¹⁰⁹ Therefore, the severity Project's impacts to special-status raptors is significantly underestimated, and not fully mitigated.

K. Appeal Issue #10: The FSEIR fails to include an analysis of the least environmentally damaging practicable alternative.

Staff claims the least environmentally damaging practicable alternative ("LEDPA") is not required under CEQA and defers to the permitting process that will be completed United States Army Corp of Engineers.¹¹⁰ The deferral of a LEDPA analysis directly conflicts with the County's recognition that "[r]elying on another agency's approval is considered deferred mitigation."¹¹¹ As such, the County's deferral of the LEDPA analysis is the same as deferring mitigation by relying on another agency's approval.

By conducting a LEDPA analysis now, which the County is aware will be required given it identified permanent impacts to waters of the United States and wetlands,¹¹² the public and decisionmakers can be informed of the potentially significant environmental impacts that may result from implementation of an alternative identified during the LEDPA analysis. This is the exact type of analysis contemplated by CEQA.¹¹³

L. Appeal Issue #11: The FSEIR is inconsistent with the County Comprehensive Plan's Energy Element and CEQA because it failed to analyze the decommissioning phase.

Staff admits the Energy Element requires that the County "consider" the full life-cycle environmental effects of an alternative energy. Here, the County failed to consider the full life-cycle environmental effects; it neglected to analyze an entire

¹⁰⁸ *Id.* at p. 33-34.

¹⁰⁹ *Id.* at p. 33.

¹¹⁰ Agenda Letter at p. 20.

¹¹¹ FSEIR at p. 8-371.

¹¹² *Id.* at p. 4.5-65.

¹¹³ *Sierra Club*, 6 Cal.5th at 519-21.

phase of the Project. In fact, the FSEIR openly admits it does not include a life-cycle analysis:

Consistent. *Although a full life-cycle analysis has not been done for this specific project*, studies for other wind projects show that wind projects have a high net energy payback and low greenhouse gas emissions compared to other energy sources.¹¹⁴

The County's Energy Element policy was adopted to avoid or mitigate significant environmental impacts associated with water resources and flooding, air quality, noise, energy, and hazardous materials.¹¹⁵ The County failed to comply with its own policy.

Next, Staff contends a decommissioning analysis is speculative because it will occur in approximately 30 years.¹¹⁶ Nothing could be further from the truth. The California Energy Commission, along with local agencies throughout the state, regularly conduct decommissioning analyses in CEQA documents prepared for power plants.¹¹⁷ Clearly, the County knows how to do the analysis; the FSEIR included analysis of 30 years of Project operations.¹¹⁸ While environmental conditions and decommissioning methods may change in the future, a description and evaluation of decommissioning activities can be based on currently known decommissioning practices. Moreover, CEQA provides options for revisiting an environmental analysis should conditions or methods change in the future.¹¹⁹

Lastly, Staff relies on CEQA Guidelines section 15145 to claim that the degree of specificity of an EIR's impact analysis is limited to the degree of specificity involved in the underlying activity.¹²⁰ This issue is not about the level of specificity

¹¹⁴ *Ibid.* (emphasis added).

¹¹⁵ FSEIR at p. 8-202; *see also* County of Santa Barbara, Planning and Development Department, Implementation Plan and Technical Appendices to the Energy Element (1994), appen. F (County of Santa Barbara, Planning and Development Department, Final Initial Study/Negative Declaration (Oct. 28, 1994) pp. 9-10, 12, 18, 20-21, 24).

¹¹⁶ Agenda Letter at p 21.

¹¹⁷ *See e.g.*, California Energy Commission, Genesis Solar Energy Project: Revised Staff Assessment (June 2010), *available at* <https://ww2.energy.ca.gov/2010publications/CEC-700-2010-006/CEC-700-2010-006-REV.PDF>.

¹¹⁸ *See generally* FSEIR at pp. 2-13 to 2-53 (project components sections).

¹¹⁹ CEQA Guidelines §§ 15162, 15163, 15164.

¹²⁰ Agenda Letter at p. 21.

in an analysis. The issue is about no analysis. Staff's failure to provide an incomplete project description does not relieve the lead agency of its obligation to perform an impact analysis. Our DSEIR comments informed the County that the project description was inadequate because it failed to describe decommissioning activities.¹²¹ The FSEIR failed to correct these fatal flaws.

M. Appeal Issue #12a: The Planning Commission lacked an adequate basis to conclude that the Project's purported benefits outweigh the significant, unavoidable impacts to golden eagles.

The Project lacks substantial evidence to show that its benefits outweigh its significant, unavoidable impacts. Staff presents a new estimation of greenhouse gas ("GHG") emissions savings for the Project.¹²² The constantly shifting GHG savings estimates shows the alleged benefits are speculative and not supported by substantial evidence. Instead, the known impacts of the Project are the significant, unavoidable impacts to aesthetics, coast live oak woodland and golden eagles. Operation of the Project would take fully protected golden eagles, which is entirely prohibited in California, given that an active nest lies within 500 feet of the Project site and this species frequently travels through the WTG rotor swept zone.¹²³ By this alone, the County lacks a sufficient basis to conclude the Project's benefits outweigh its permanent harm.

N. Appeal Issue #12b: The ever-changing greenhouse gas estimates are not supported by substantial evidence because they do not consider emissions from manufacturing, transporting, and decommissioning project components.

Staff claims that the GHG emissions saving estimate was based on existing, non-speculative data and that the EIR is not required to consider, or quantify, future, speculative impacts.¹²⁴ GHG emissions cause global environmental impacts and all sources of Project-related GHG emissions must be included in the FSEIR's analysis, especially if GHG savings is one of the bases for overriding considerations. However, the Staff dismisses such an assessment as speculative.¹²⁵ This is

¹²¹ FSEIR at p. 8-167 to 8-171.

¹²² Agenda Letter at p. 22.

¹²³ Cashen Appeal Comments at pp. 1-3; Cashen FSEIR Comments at pp. 15-20.

¹²⁴ Agenda Letter at p. 23.

¹²⁵ *Ibid.*

incorrect. The FSEIR must conduct such an analysis as part of the life-cycle assessment of the Project. Significant amounts of GHG emissions can be released from obtaining Project materials and manufacturing the turbines.¹²⁶ Therefore, Staff's proposed changes to the statement of overriding consideration are not based on substantial evidence.

Moreover, the estimate fails to consider that Senate Bill ("SB") 100 already requires 100% renewables by 2045.¹²⁷ Thus, this reduction would occur regardless of the Project and is part of the baseline assumptions. Further, the SB 100 reduction would not be required until 2045, which is beyond the claimed lifespan of the Project. Therefore, the increase in GHG emissions from closing existing fossil-fuel generation would occur independently of the Project.

Even ignoring the SB 100 baseline, there is no guarantee that the Project would replace existing generation. This would require an enforceable mitigation measure requiring the shutdown of an equivalent amount of existing generation on the startup of the Project that would not be required under Sb 100 and that would occur over the lifetime of the Project.

O. The FSEIR's failed to adequately describe the environmental setting for Vernal Pool Fairy Shrimp.

Staff did not address FSEIR's inadequate description of the environmental setting for vernal pool fairy shrimp. The DSEIR indicated that the federally threatened vernal pool fairy shrimp is absent from the project site because the required habitats were not present.¹²⁸ But the FSEIR provided new information regarding the potential for vernal pool fairy shrimp to occur within the project

¹²⁶ See e.g., Gamesa, *Electricity from European G114-2.0 MW On-Shore Wind Farm (2017)*, available at <https://gryphon4.environdec.com/system/data/files/6/10370/epd540.pdf>; see also Vestas, *Life Cycle Assessment of Electricity Produced from Onshore Sited Wind Power Plants Based on Vestas V82-1.65 MW Turbines (Dec. 2006)*, available at <https://www.vestas.com/~media/vestas/about/sustainability/pdfs/lca%20v82165%20mw%20onshore2007.pdf>.

¹²⁷ Senate Bill 100 § 1(a).

¹²⁸ FSEIR at p. 4.5-78.

site.¹²⁹ Mr. Cashen noted that the neither the DSEIR or the FSEIR analyzes impacts to this species beyond stating that it could occur.¹³⁰

The County's Environmental Thresholds and Guidelines Manual identifies three project-related impacts that may be significant.¹³¹ None of these impacts were analyzed following discovery the presence of vernal pool fairy shrimp on-site. This precludes the public's ability to assess the severity of the impact and the efficacy of the proposed mitigation measure in violation of CEQA.

IV. CONCLUSION

The FSEIR attempted to repair a fundamentally flawed DSEIR, but it fell short of achieving that goal. The FSEIR still contains many of the same analytical flaws and unsupported claims presented in the DSEIR and is missing information about the Project, the setting, potentially significant impacts and mitigation, all as required by law. The FSEIR also fails to comply with the Comprehensive Plan's Energy Element. Finally, the FSEIR included a voluminous amount of new information regarding new and never-before-disclosed significant or more adverse impacts and new required mitigation, which clearly each trigger recirculation of the SEIR. Despite this, the County failed to comply with CEQA's procedural requirement to recirculate the SEIR. Moreover, Staff's comments fail to cure the fatal defects of the FSEIR.

We respectfully request that the Board grant Citizens' appeal, reverse the Planning Commission's decisions to (1) conditionally approve the conditional use permit and variances and (2) certify the FSEIR, and (3) adopt the findings and conditions of approval. In addition, Citizens requests that the Board remand this matter to the Planning Department to correct the deficiencies identified in the instant appeals and recirculate a revised DSEIR that includes all of the new information that the County disclosed for the first time in the FSEIR, an analysis of the Project's significant environmental impacts, and identification of all feasible mitigation measures to reduce those impacts to less than significant, as required by law.

¹²⁹ *Id.*, appen. C-7.

¹³⁰ Cashen FSEIR Comments at p. 23.

¹³¹ County of Santa Barbara, Environmental Thresholds and Guidelines Manual (Mar. 2018) p. 29. 4377-037acp

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Thank you for your consideration of these comments.

Sincerely,



Andrew J. Graf

AJG:acp

Attachments

4377-037acp

EXHIBIT 1

January 23, 2020

Mr. Andrew J. Graf
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Comments on Staff’s Letter to the Board of Supervisors Regarding Appeal of the Conditional Use Permit for the Strauss Wind Energy Project

Dear Mr. Graf:

This letter contains my comments on the letter to the Board of Supervisors prepared by Santa Barbara County Staff (“Staff”) regarding appeal of the conditional use permit for the Strauss Wind Energy Project (“Project” or “SWEP”). I submitted comment letters in response to the Draft Supplemental Environmental Impact Report (“DSEIR”) and Final Supplemental Environmental Impact Report (“FSEIR”). The subsequent comments address Staff’s responses to the issues raised in your appeal.

ISSUE 3A (NEW INFORMATION PERTAINING TO GOLDEN EAGLE IMPACTS)

There are three main ways in which the Project may significantly impact golden eagles:

1. Fatalities due to collisions (primarily with the WTGs).
2. Disturbance, which results in loss of productivity at nearby nests.
3. Territory abandonment due to loss of habitat (including functional loss of habitat), disturbance (e.g., due to noise from WTGs or elevated human activity in the vicinity of the nest site), or mortality.¹

The likelihood that one or more of these impacts will occur is dependent on: (a) eagle activity within the Project site, and (b) abundance and proximity of eagle nests (territories) in relation to the Project footprint. Specifically, the potential for impact #1 (collision fatalities) is largely a function of eagle activity within the Project site, whereas the potential for impacts #2 and #3 is largely dependent on the abundance and proximity of eagle nests (territories) in relation to the Project footprint.

The FSEIR included significant new information regarding the presence of golden eagle nests, which in turn affects the severity of Project impacts on golden eagles. However, County Staff argues: “[g]olden eagle occurrence on the site was well documented in the LWEP EIR, which was summarized and incorporated by reference into the SWEP Draft and Final SEIRs.”² I do not dispute that golden eagle occurrence—in the form of foraging activity—was well documented in the LWEP EIR. However, this is not the issue I raised in my FSEIR comments. Rather, the issue is that the FSEIR provided substantial new information regarding the presence of golden

¹ Cashen FSEIR comments, p. 16.

² Board of Supervisors Agenda Letter, p. 10.

eagle nests, which has direct implications on impacts #2 and #3 (listed above), and thus, the severity of the Project's impacts on the local golden eagle population.

Staff's response, and the mitigation discussed therein, focuses solely on impact #1 (collisions with WTGs). Staff does not address impacts #2 and #3, nor does the FSEIR incorporate mitigation for those impacts. My DSEIR comments discussed mitigation measures that have been required for impacts #2 and #3 at other wind energy facilities.³ Not only has the County failed to incorporate those (or comparable) mitigation measures, but after termination of the CEQA comment period the County allowed the Applicant to revise the Project such that it now includes installation of an additional wind turbine (N-10)⁴ in close proximity to the eagle nest (also reported after termination of the CEQA comment period).

Assessments of Project Impacts to Golden Eagle Nests (Territories)

LWEP FEIR

The LWEP FEIR concluded that disturbance to golden eagle nest sites (impact #2) was unlikely to occur because golden eagles are not known to nest in the Project area:

The loss of nests and disruption of nesting behavior are not likely, because [golden eagles] are not known to nest in the Project area. Additionally, most golden eagle nests are built in large trees, rock outcrops, or overhanging ledges. There are few wooded or outcrop areas that would be disturbed from the construction and operation of this Project.⁵

The LWEP FEIR further concluded that indirect impacts, including displacement (i.e., impact #3, territory abandonment), would be temporary, minor, and less than significant (*Class III*).⁶

SWEP DSEIR

The DSEIR provided no information on golden eagle nests within 10 miles of the Project site.⁷ However, the Biological Resources Technical Report briefly discussed one eagle nest that was detected in 2013 approximately five miles from the Project site.⁸

The DSEIR provided no additional analysis of impacts to golden eagle nests (territories). It reported:

- "Impacts to nesting birds from construction and operation of the SWEP during nesting season (generally between February 1 and August 31) would be the same as described in the LWEP EIR."⁹

³ Cashen DSEIR comments, p. 41.

⁴ See 12 Nov 2019 Staff Report to the Santa Barbara County Planning Commission.

⁵ LWEP FEIR, p. 3.5-72.

⁶ LWEP FEIR, p. 3.5-84.

⁷ If the size of territories in the project region is not known, the USFWS recommends that the developer consider the project a threat to all eagles associated with nests that are within 10 miles of the Project footprint.

⁸ BRTR, p. 5-43.

⁹ DSEIR, p. 4.5-68.

- “Indirect impacts to wildlife from construction of the SWEP would be the same as described in the LWEP EIR, and include disturbance from noise, vibration, night lighting (if required), and general human activity that cause wildlife to temporarily avoid the area. This impact would not be significant (Class III).”¹⁰
- “Indirect impacts to wildlife from operation of the SWEP would be the same as described in the LWEP EIR and would include minor and infrequent disturbance from noise and general human activity that cause wildlife to temporarily avoid the area. This impact would not be significant (Class III).”¹¹

SWEP FSEIR

The FSEIR provided substantial new information on the abundance and proximity of eagle nests (territories) in relation to the Project footprint. Specifically, the FSEIR revealed presence of at least four additional nesting territories within 10 miles of the Project site:

1. The Applicant’s consultant, Dudek, detected a golden eagle nest approximately 500 feet north of the Project site during its 2019 surveys.¹²
2. Dudek detected a golden eagle nest approximately four miles northeast of the Project site during the 2018 helicopter surveys.¹³
3. Dudek acquired data from the U.S. Fish and Wildlife Service (“USFWS”) indicating presence of two additional nest sites (territories) east and southeast of the Project site. The FSEIR indicates these nests are “within 10 miles” but it does not identify the precise distance(s).

These data provide substantial new information because the abundance and proximity of eagle nests (territories) in relation to the Project footprint affects the likelihood that the Project will cause impact #2 or #3 (disturb nest sites or cause territory abandonment). In particular, the presence of a nest site 500 feet from the Project boundary (and 1,000 feet from WTG N-7) substantially increases the likelihood that the Project will disturb the nest or result in loss of the nesting territory.¹⁴ As a result, the County no longer has the basis for its conclusions that: (a) “loss of nests and disruption of nesting behavior are not likely,” and (b) all potentially occurring indirect impacts would be minor and insignificant (Class III).

Disturbance to, or loss of, the nest territory 500 feet from the Project boundary would substantially increase the severity of the Project’s impacts on the golden eagle population in the region, especially given the relatively low density of that population. The USFWS’s golden eagle “take” calculations provide perspective on the severity of these impacts:

- Take resulting from disturbance at one nest on only one occasion = take of 0.8 individuals.

¹⁰ DSEIR, p. 4.5-91.

¹¹ *Ibid.*

¹² FSEIR, Response to Comment 10.87.

¹³ FSEIR, Appendix C-8.

¹⁴ Cashen FSEIR comments, p. 18.

- One nest take resulting in the permanent abandonment of a territory = take of 0.8 individuals for the first year, then take of 4 individuals annually until data show the number of breeding pairs has returned to or exceeded the original estimated number for the eagle management unit.¹⁵

The County estimated the Project's WTGs would cause three raptor fatalities per year.¹⁶ During surveys for the Project, 30 percent of the raptors detected in flight within the rotor swept zone were golden eagles.¹⁷ Therefore, one can predict that approximately 30 percent of the raptor fatalities will be golden eagles. This equates to 0.9 golden eagle fatalities per year. Disturbance of a nest would almost double that level of take, and territory abandonment would result in a take level that is over five times more severe than suggested in the DSEIR and FSEIR.¹⁸

Availability of Documents for Public Review

Staff's letter to the Board of Supervisors states:

After close of the Draft SEIR public comment period, the U.S. Fish and Wildlife Service (USFWS) informed the County that the applicant was conducting additional golden eagle surveys in preparation of obtaining a take permit. The applicant provided a summary of those additional golden eagle field surveys that were conducted between March 2018 and August 2019 which is included in the Final SEIR Section 4.5.1.3, Biological Resources, Environmental Setting, Wildlife surveys. Contrary to the appellant's assertion, all of the studies and documents relevant to the Draft or Final SEIR impact analysis have been provided to the public and decision makers.¹⁹

It seems highly unlikely that the County was unaware of the additional golden eagle surveys, which were initiated over a year before the DSEIR was released. However, that issue is irrelevant to the facts that: (a) Dudek and the County did not disclose the survey data to the public until after termination of the CEQA comment period,²⁰ and (b) those data provide significant new information pertaining to Project impacts to golden eagles.

Staff's letter argues:

the information that was added to the Final SEIR based on the additional field surveys merely clarifies and amplifies the detailed information that was already included in the Draft SEIR, namely that there was documented regular use of the site and surrounding areas by golden eagles, that suitable habitat for eagles existed on site, and that impacts resulting from Avian and Bat Collisions with WTGs would remain significant even with application of feasible mitigation.²¹

¹⁵ U.S. Fish and Wildlife Service. 2013 Apr. Eagle Conservation Plan Guidance: Module 1—Land-based Wind Energy, Ver 2. p. 94.

¹⁶ DSEIR, p. 4.5-89 and FSEIR, p. 4.5-98.

¹⁷ FSEIR, p. 4.5-14.

¹⁸ DSEIR, p. 4.5-89 and FSEIR, p. 4.5-98.

¹⁹ Board of Supervisors Agenda Letter, p. 11.

²⁰ See FSEIR, pp. 4.5-14, -15, and Appendix C-8.

²¹ Board of Supervisors Agenda Letter, p. 11.

Staff's argument is nonsense. The DSEIR provided no information on golden eagle nests in the vicinity of the Project site, nor did it provide information on the "eagle exposure rate,"²² which is the foundation for modeling fatality predictions.²³ This information was only provided in the FSEIR, which included an entirely new section entitled *Raptor Use and Nesting*.²⁴

ISSUE #4 (EL SEGUNDO BLUE BUTTERFLY HABITAT)

The DSEIR, FSEIR, and technical appendices provide inconsistent and confusing information on the amount of El Segundo blue butterfly habitat at the Project site. My FSEIR comments provided substantial evidence that the acreage value reported in the FSEIR is not accurate.

Staff claims the inconsistencies are due to: "previous project designs and survey methods." Changes in the Project design do not resolve the issue because the boundary of the Project site in relation to potential habitat for the El Segundo blue butterfly has not changed since habitat was mapped for the LWEP.²⁵ In other words, all of the habitat within the boundary of the LWEP also occur within the boundary of the SWEP.

Differences in the survey methods may explain the large discrepancy, but not for the reasons suggested in Staff's response:

1. The 2008 surveys (Sapphos 2008) were specifically designed to refine the habitat map. The surveyors used a sub-meter GPS to collect data, then GIS to create habitat maps to: "define the maximum probable extent of its food plant, the coast buckwheat, within the project property... These surveys resulted in an increase of the total acreage of coast buckwheat from approximately 31 acres to 51 acres."²⁶
2. The 2018 surveys (Dudek 2018a) were described as: "[t]he survey area for El Segundo blue butterfly host plant, seacliff buckwheat (*Eriogonum parvifolium*), included the proposed grading area, laydown yard, substation and a 100-foot buffer of these areas. The survey area also included the proposed 100-foot wide transmission line corridor and approximately 60-foot wide associated vehicle access corridor."²⁷

Thus, the 2008 surveys covered the entire Project site, whereas the 2018 surveys were limited to disturbance areas and a 100-foot buffer around those areas. This may explain why Dudek reported considerably less habitat than Sapphos (17.5 acres and 51 acres, respectively).²⁸ However, it does not explain why the DSEIR reported 23 acres of habitat, especially because DSEIR Figures 4.5-6a and -6b cite both Dudek (2018) and Sapphos (2008) as the source of the survey data depicted on the figures. As a result, Staff's response fails to resolve the issues raised in my DSEIR and FSEIR comment letters.

²² Eagle-minutes flying within the project footprint (in proximity to turbine hazards) per hour per square kilometer.

²³ U.S. Fish and Wildlife Service. 2013 Apr. Eagle Conservation Plan Guidance: Module 1—Land-based Wind Energy, Ver 2. Appendix D.

²⁴ FSEIR, pp. 4.5-14 through -16.

²⁵ DSEIR, Figure 2-2.

²⁶ LWEP FEIR, Memorandum for the Record 1, Appendix A-13, p. 8.

²⁷ BRTR, Addendum No 1, p. 8.

²⁸ *Ibid*, p. 25. Dudek detected 17.5 acres during their surveys. However, they mapped an additional 6.5 acres, which they attributed to the Sapphos 2008 surveys.

ISSUE 5 (Gaviota Tarplant)

The DSEIR and FSEIR provided inconsistent information on the amount of habitat occupied by Gaviota tarplant at the Project site.²⁹ The County states the discrepancy between the DSEIR (192 acres) and FSEIR (207 acres) is due to “updated Gaviota tarplant surveys data” and mapping “at a finer scale.”³⁰ However, the County has yet to provide the data and maps needed to resolve the issue.

According to the County, the updated survey data are provided in FSEIR Appendix C-9.³¹ The County’s response does not resolve the issue because Appendix C-9 reports 56.6 acres of habitat occupied by Gaviota tarplant in 2019,³² which is less than one-third of the value reported in the DSEIR. According to the FSEIR:

The 2019 field survey methods were much finer-scaled and identified many smaller patches within the previously mapped patches, as well as many additional patches or occurrences not previously identified because of the expanded survey area (Dudek 2019c). In some cases, previously identified occupied habitat was not found to support Gaviota tarplant in 2019 (Figure 4.5-4c). Cumulatively, the 2019 surveys increased the total amount of occupied acreage from 192 to 207 acres relative to results reported in the DSEIR. See Figure 4.5-4a and 4.5-4c for the locations of the Gaviota tarplant patches.³³

Thus, Figure 4.5-4c is essential to understanding the increase in habitat acreage because it depicts the additional patches of habitat detected in 2019, as well as the patches of previously occupied habitat that were unoccupied in 2019. However, there was no Figure 4.5-4c in the FSEIR.

The County provided Figure 4.5-4c in a memo that was released the day before the 20 November 2019 Planning Commission hearing. Based on the information provided in the FSEIR and Appendix C-9, the patches of habitat detected in 2019 (blue polygons in the figure) equal 56.6 acres, whereas the patches of habitat detected in 2018 (green polygons) equal 192 acres. If these values are accurate, the green polygons should exceed the blue polygons by a factor of 3.4. This is not evident on Figure 4.5c, and it conflicts with Staff’s statement that: “[f]ield data from the project site indicate about a 50 percent variation in numbers of plants between 2018 and 2019 when censuses were conducted.”³⁴

Furthermore, Figure 4.5-4c does not depict the Project features (e.g., roads, WTGs, and structures) in relation to habitat occupied by Gaviota tarplant. This precludes the ability to thoroughly evaluate how the Project will directly and indirectly impact habitat based on the updated survey data.

²⁹ Cashen FSEIR comments, p. 5. See also CDFW DSEIR Comment 4.9. *See also* Conservation Organizations appeal comments, p. 3.

³⁰ FSEIR, Response to Comments 4.7, 4.9, and 10.77.

³¹ *Ibid.*

³² FSEIR, Appendix C-9, p. 11.

³³ FSEIR, pp. 4.5-21 and -22.

³⁴ Board of Supervisors Agenda Letter, p. 23.

The inconsistent information provided in the DSEIR and FSEIR is compounded by the following:

1. The Project was modified after release of the FSEIR. The Modified SWEP would impact an additional 6.8 acres of Gaviota tarplant.³⁵ Staff claims this would result in a “minor increase” in impacts to Gaviota tarplant.³⁶ The additional impacts to Gaviota tarplant due to the Modified SWEP are not trivial because they would fragment one of the largest patches of occupied habitat on the Project site³⁷ and will require an additional 20.4 acres of habitat compensation per the requirements of MM BIO-6. For perspective, six (26%) of the 23 occurrence records in the California Natural Diversity Database are smaller than 6.8 acres.
2. According to the County, the Applicant provided the updated survey data indicating presence of 207 acres of occupied Gaviota tarplant on the Project site. However, according to the Applicant’s Gaviota Tarplant Mitigation Plan, there are 196.7 acres of habitat occupied by Gaviota tarplant within the Conservation Lands, which encompass “all known occupied Gaviota tarplant habitat” associated with the Project.³⁸ There is no apparent explanation for the discrepancy between the FSEIR and the Gaviota Tarplant Mitigation Plan, especially because both documents are dated October 2019 and are based on the same survey data.

Indirect Impacts

Staff’s letter to the Board of Supervisors states:

Contrary to appellant’s argument, the Final SEIR does not “exclude” indirect impacts from consideration as permanent impacts; please refer to Final SEIR Section 4.5.4, Biological Resources, Environmental Impacts and Mitigation under Impact BIO-5a (Construction Impacts to Gaviota Tarplant).

Staff’s statements conflict with evidence in the record. First, it is clear that the FSEIR did not incorporate indirect impacts in the calculation of permanent impacts. Impact BIO-5a states: “[o]f the total 207.15 acres of occupied habitat on the site, 26.33 acres of permanent impacts to Gaviota tarplant occupied habitat would occur from construction of the SWEP.” This value (26.33 acres) is limited to the direct impacts of the Project and does not account for any indirect impacts that may occur outside of the disturbance footprint or after the construction phase is completed.³⁹

Second, although the FSEIR acknowledged the Project would indirectly impact Gaviota tarplant habitat, it made no attempt to quantify the indirect impacts because it claimed: “indirect impacts cannot be quantified in terms of acreage.”⁴⁰ Whereas it is more difficult to quantify indirect impacts, they can be estimated. Indeed, CDFW estimated the Project would indirectly impact

³⁵ Staff Report for the 20 November 2019 Planning Commission Hearing, p. D-5.

³⁶ *Ibid.*

³⁷ See Staff Report, Figure 2 and Figure 4.5-4c (provided in Staff’s errata memo).

³⁸ Dudek. 2019 October. Gaviota Tarplant Mitigation Plan, p. 13.

³⁹ See *definition of indirect impacts on FSEIR*, p. 4.1-2.

⁴⁰ FSEIR, p. 4.5-68.

approximately 191 acres of habitat based on evidence that all plants within 1,000 meters of Project disturbance areas may experience indirect effects.⁴¹ My FSEIR comments provided evidence that at a very minimum, indirect impacts will extend 200 feet beyond Project disturbance areas. As a result, the County has the tools (i.e., GIS) needed to provide a quantifiable estimate of the Project's indirect impacts, and its claim that indirect impacts cannot be quantified in terms of acreage is not supported by substantial evidence.

Mitigation for Indirect Impacts

Staff does not dispute the fact that the Project may have indirect impacts on Gaviota tarplant: “[t]he remaining 87 percent of occupied habitat may be subject to some unquantified indirect impacts...”⁴² However, Staff claims the following:

Indirect impacts to the Gaviota tarplant are required to be mitigated through Mitigation Measures BIO-5 (Pre-construction Rare Plant Surveys and Restoration) and BIO-6 (Gaviota Tarplant Disturbance) requiring preservation and long-term management of Gaviota tarplant habitat on the site or off-site. The required compensatory mitigation ratio of 3:1 (conservation/impact) would offset both direct and indirect impacts from development and operation of the project.

Staff's claims are inconsistent with the requirements of Mitigation Measures BIO-5 and BIO-6. Mitigation Measure BIO-5 requires: (a) pre-construction rare plants surveys, and (b) salvaging topsoil from direct impact areas, spraying the soil with hydromulch and binder, then spreading it over all restored areas. Neither action mitigates indirect impacts to Gaviota tarplant (e.g., surveys are not mitigation).

Staff's claim that the required compensatory mitigation ratio of 3:1 (conservation/impact) would offset both direct and indirect impacts from development and operation of the Project is inconsistent with the requirements of Mitigation Measure BIO-6, which only requires habitat compensation for *direct* impacts to Gaviota tarplant habitat. Staff acknowledges the compensation requirement is based solely on the Project's direct impacts: “[t]he Final SEIR relies on acreage of direct impacts in determining mitigation requirements because such impacts are quantifiable.”⁴³

Furthermore, MM BIO-6 allows the Applicant to satisfy the mitigation requirement by “conserving” Gaviota tarplant habitat that will be subject to indirect impacts caused by the Project.⁴⁴ Conserving habitat that will be subject to the Project's indirect impacts does not mitigate indirect impacts to that habitat.

⁴¹ CDFW Comment 4.7, Table 2. CDFW estimated 41.4 acres of direct impacts, which exceeds the County's estimate in the FSEIR (26.33 acres). CDFW concluded all Gaviota tarplants within 1,000 meters of Project features would be subject to indirect impacts, which includes all tarplant habitat at the Project site. Based on the values provided in the FSEIR, and the information provided by Staff regarding the Modified SWEP, the Project would directly impact 33.13 acres, and thus, indirectly impact approximately 173.87 acres.

⁴² Board of Supervisors Agenda Letter, p. 23.

⁴³ Board of Supervisors Agenda Letter, p. 13.

⁴⁴ Cashen FSEIR comments, p. 8.

Significance of Indirect Impacts

Staff argues the indirect effects of the Project “would be minor”⁴⁵ despite the fact that: “Project facilities such as roads or turbines would be located within most of the mapped Gaviota tarplant polygons within the site.”⁴⁶ Staff’s argument is inconsistent with the scientific information we submitted, as well as the information submitted by the California Department of Fish and Wildlife (“CDFW”) and Conservation Organizations. This includes the USFWS’s 5-Year Status Review, which specifically identifies indirect effects associated with the LWEP as a threat to the continued existence of the Gaviota tarplant.⁴⁷

Staff goes on to claim: “[t]he appellant has submitted no evidence that the Supplemental EIR’s qualitative analysis is inappropriate or that any quantitative analysis of the SWEP’s indirect effects is needed.”⁴⁸ Staff’s claim is nonsense: my DSEIR and FSEIR comment letters contained extensive evidence pertaining to the flaws with the County’s qualitative analysis.⁴⁹ As explained in my previous comments, quantitative analysis is needed because it has direct implications on the Applicant’s ability to implement on-site compensation to satisfy the requirements of MM BIO-6.

There are either 196.7 or 207 acres of occupied Gaviota tarplant habitat at the Project site, depending on whether one uses the value provided in the Gaviota Tarplant Mitigation Plan, or the value provided in the FSEIR. MM BIO-6 requires compensatory mitigation at a 3:1 ratio for permanent impacts to Gaviota tarplant. Therefore, off-site compensation will be required if Project impacts to Gaviota tarplant habitat exceed 51.75 acres (under the conservative assumption that the value in the FSEIR is the correct one).

The Project would permanently impact at least 33.13 acres of occupied Gaviota tarplant habitat.^{50,51} Therefore, if the Project impacts an additional 18.62 acres of Gaviota tarplant habitat, the Applicant would need to acquire off-site compensation land to satisfy the requirements of MM BIO-6. Given the configuration of Project features in relation to Gaviota tarplant habitat, there is no doubt that the Project would indirectly impact at least 18.62 acres (10.7%) of the remaining habitat, even if one accepts the County’s unsupported argument that indirect impacts would be limited to “relatively short distances.”⁵²

⁴⁵ Board of Supervisors Agenda Letter, p. 14.

⁴⁶ FSEIR, Response 4.7.

⁴⁷ U.S. Fish and Wildlife Service. 2011. *Deinandra increscens* ssp. *villosa* (Gaviota tarplant) 5-Year Review: Summary and Evaluation. Ventura Fish and Wildlife Office, Ventura, California. pp. 12 and 14.

⁴⁸ Board of Supervisors Agenda Letter, p. 14.

⁴⁹ Cashen DSEIR comments, pp. 9 through 12 and FSEIR comments, pp. 6 through 12.

⁵⁰ The Modified SWEP would impact an additional 6.8 acres beyond the 26.33 acres reported in the FSEIR. See Staff Report for the 20 November 2019 Planning Commission Hearing, p. D-5.

⁵¹ It appears the meteorological tower and associated access road would impact additional Gaviota tarplant habitat; however, the County has yet to quantify those impacts.

⁵² FSEIR, p. 4.5-68.

ISSUE 5B (AVIAN AND BAT COLLISIONS)

Issue 5b pertains to the County's failure to adequately analyze: (1) the risk to golden eagles, and (2) the severity of impacts to other special-status raptors and bats due to collisions with the Project's WTGs. Staff claims:

During development of the EIR, the County could not conduct the risk assessment because it did not have the applicant's golden eagle survey data to input into the USFWS model. When asked for the data in October 2019, the applicant stated that it was finalizing the data and would provide the eagle survey data with the USFWS application for a take permit, as is the typical practice.

Staff is incorrect. Appendix C-8 contains the data needed to conduct the risk assessment and it was issued nearly two months before the County published the FSEIR.

According to Appendix C-8: "Dudek conducted weekly ground point count surveys for golden eagle (*Aquila chrysaetos*) and other raptor species of concern from April 6, 2018 to April 25, 2019 and then biweekly surveys from May 9, 2019 through August 28, 2019 at five locations across the site."⁵³ Therefore, the County had access to an entire year's worth of data prior to release of the DSEIR, and it had all of the data prior to release of the FSEIR.

The core issue pertaining to risk to other special-status raptors and bats is the magnitude and severity of collision impacts. I provided substantial evidence that the DSEIR's estimates of bird and bat fatalities were fatally flawed because the County used per WTG fatality data from small turbines (33 m maximum rotor diameter) to predict per WTG fatality rates for large turbines (137 m maximum rotor diameter). As noted in the *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development*: "[f]or all quantification of risk and fatality estimates, apply a uniform metric of bird or bat fatalities per megawatt (MW) of installed capacity per year."⁵⁴ The FSEIR failed to adhere to this guideline and made no revisions to the County's flawed fatality estimates.⁵⁵

Staff argues: "the appellant requests an unreasonable level of analysis. There are dozens of species of birds and bats that use the project site seasonally or year-round, and there is no standard methodology for conducting a risk analysis as suggested by the appellant." Staff is incorrect; there are two sources of "standard methodology for conducting a risk analysis:"

1. USFWS's *Land-Based Wind Energy Guidelines*.⁵⁶
2. CEC and CDFG's *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development*.⁵⁷

⁵³ FSEIR, Appendix C-8, p. 9.

⁵⁴ California Energy Commission and California Department of Fish and Game. 2007. *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development*. Commission Final Report. CEC-700-2007-008-CMF. p. 62.

⁵⁵ Cashen FSEIR comments, p. 14.

⁵⁶ U.S. Fish and Wildlife Service. 2012 Mar 23. *Land-Based Wind Energy Guidelines*. 71 pp.

⁵⁷ California Energy Commission and California Department of Fish and Game. 2007. *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development*. Commission Final Report. CEC-700-2007-008-CMF.

Both of these documents were cited in the DSEIR, and according to General Response 3 in the FSEIR: “[t]he SEIR preparers researched published guidelines for wind energy facilities and reviewed the following such guidelines: [USFWS and CEC/CDFG guidelines listed].” Furthermore, according to the DSEIR:

The Applicant has implemented avian surveys consistent with the U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines (USFWS, 2012), Eagle Conservation Plan Guidance: Module 1 – Land-based Wind Energy Version 2 (USFWS, 2013); and surveys were conducted with the concurrence of the USFWS Migratory Bird Division staff.⁵⁸

Therefore, the County had the data needed to assess risk according to the methods described in the *Land-Based Wind Energy Guidelines*. It also had the data needed to assess risk to golden eagles according to the methods described in the *Eagle Conservation Plan Guidance*.

Staff references Impact BIO-8 and six of the other impacts assessed under FSEIR Section 4.5.4 in its claim that the FSEIR properly describes the nature and magnitude of potential impacts to golden eagles (and other wildlife).⁵⁹ None of those subsections of the FSEIR even mention the nature and magnitude of potential impacts to golden eagles. However, the FSEIR included revisions to Impact BIO-8, which state: “[s]everal special-status birds are known or suspected to nest on or in close proximity to the proposed SWEP, including Cooper’s hawk, California horned lark, oak titmouse, and grasshopper sparrow (Appendices C-1 and C-7).” Incredibly, the County’s revision to Impact BIO-8 failed to mention the golden eagle as a species that nests in close proximity to the Project site, even though the County was aware of the eagle nest Dudek detected approximately 500 feet north of the Project site.

ISSUE 5C (NOISE)

Staff’s response to Issue 5c is:

According to the proposed WTG vendor specifications, the WTGs would produce apparent sound levels of 80 dBA or lower at frequencies of 31.5 Hz or below (GE, 2016) (Final SEIR at 4.14-8). Operational levels of low-frequency noise are expected to be minimal and unlikely to be disruptive to any type of receiver (human or animal).

Staff’s conclusion is not based on analysis and conflicts with scientific literature. Sound levels of 80 dBA exceed levels known to adversely affect wildlife.⁶⁰ Moreover, Staff’s response fails to address the issue, which is the SEIR’s failure to include analysis of impacts to wildlife due to noise generated by the Project’s wind turbines.

ISSUE 7 (IMPACTS ASSOCIATED WITH THE METEOROLOGICAL TOWER)

An unguyed meteorological tower would require significantly more ground disturbance due to the large footprint of the tower, required pier foundations under each tower leg, 100 x 80 ft crane

⁵⁸ DSEIR, p. 4.5-9.

⁵⁹ Board of Supervisors Agenda Letter, p. 15.

⁶⁰ Cashen FSEIR comments, pp. 2 through 4.

pad, and 36-foot wide access road to transport the crane.⁶¹ The Applicant informed the County that the additional ground disturbance associated with these features “likely would increase impacts to sensitive resources, including the Gaviota tarplant.”⁶² Nevertheless, Staff argues that the additional ground disturbance “would not increase the severity of impacts or change the nature of the impacts to resources analyzed in the Final SEIR.” Staff has no basis for that argument because the FSEIR did not analyze the impacts, nor has Staff issued supplemental analysis of the issue (e.g., impacts have not been quantified, nor is there a map of the access road and tower disturbance areas in relation to Gaviota tarplant and other sensitive biological resources).

ISSUE 8 (STORMWATER BMPS)

Staff’s response to Issue 8 is:

Regarding the assertion that the implementation of BMPs and stormwater management measures could cause environmental impacts to wildlife, all BMPs would be installed within the impact areas where ground disturbance was anticipated in the Final SEIR. In addition, biological monitors will be on site during all construction activities to ensure compliance with Final SEIR mitigation requirements.

Staff’s response fails to resolve the issue. Installing BMPs within impact areas does not eliminate the potential for the BMPs to significantly impact wildlife by impeding movement and heightening predation pressure (i.e., the two examples I provided in my FSEIR comments).

ISSUE 9 (INADEQUATE MITIGATION)

Issue 9 pertains to flaws with the FSEIR’s mitigation measures.

Staff claims: “[t]he appellant states that no construction or operational activities should occur within one mile of any active or inactive golden eagle nest year round for the life of the project.” Staff’s response to this issue is irrelevant because Staff misrepresented my comment. I stated:

MM BIO-12 only requires a one-mile buffer during the nesting season, and only during construction of the Project. Thus, the measure fails to incorporate mitigation for any disturbance activities that occur after completion of construction. This includes mitigation for noise generated by the WTGs and O&M activities.

MM BIO-12 does not prevent impacts to golden eagle nests because it does not require surveys or buffers if construction activities are initiated during the non-breeding season. Unlike most other birds, golden eagles tend to reuse the same nest sites. This is important because the Bald and Golden Eagle Protection Act prohibits disturbance, which includes disturbance activities during the non-breeding season. According to the USFWS: “[i]n addition to immediate impacts, this definition [of disturb] also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle’s return, such alterations agitate or bother an eagle to a degree that injures an eagle or

⁶¹ FSEIR, Comment 13.31.

⁶² *Ibid.*

substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment.”⁶³

Regarding MM BIO-13, Staff states: “[t]o ensure successful habitat restoration, the mitigation measure includes a monitoring requirement regarding ESSB occurrence in restoration sites to evaluate restoration success.” Staff is correct, but as discussed in my FSEIR comments, MM BIO-13 fails to incorporate any success criteria or adaptive management triggers for ESSB occurrence. This renders the occurrence monitoring useless as a mitigation measure because there are no assurances that the Applicant’s efforts to maintain butterflies at the site are successful.

Staff’s response concludes with the statement that: “performance standards consistent with CEQA’s requirements are included in the mitigation.” Staff’s response is inconsistent with the content of the FSEIR’s mitigation measures, as explained in extensive detail in both my DSEIR and FSEIR comment letters.

This concludes my comments on Staff’s letter to the Board of Supervisors.

Sincerely,



Scott Cashen, M.S.
Senior Biologist

⁶³ 50 CFR 22.