

# LAW OFFICE OF MARC CHYTILO, APC

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ENVIRONMENTAL LAW

January 24, 2020

Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, California 93101

*By email to [sbcob@co.santa-barbara.ca.us](mailto:sbcob@co.santa-barbara.ca.us)*

RE: Strauss Wind Energy Project

Chair Hart and Honorable Supervisors,

This letter is submitted on behalf of the Santa Barbara Audubon Society and the La Purisima Audubon Society (collectively Audubon). Audubon supports renewable energy, but projects must be sited, designed, and mitigated in order to avoid or minimize impacts to birds and wildlife, including special status, threatened, and endangered species, to the maximum extent feasible.

The Strauss Wind Energy Project (SWEP) is proposed for a unique and highly sensitive location, immediately inland of the Gaviota Coast, and adjacent to the recently protected 24,000-acre Dangermond Preserve, and the 98,000-acre Vandenberg Air Force Base. Owing to its rich habitat, unique geography, and surrounding contiguous undeveloped lands, the SWEP site is heavily used by a large diversity of bird and bat species, including numerous special-status species such as the fully protected Golden Eagle (*Aquila chrysaetos*). The applicant's own recently collected survey data, presented for the first time in the Final Supplemental Environmental Impact Report (FSEIR) (Appendix C-8, Avian and Bat Survey Results and Wind Turbine Siting Process Description), demonstrates very high raptor use across the SWEP site. Extrapolating the average hourly raptor observation data results from the Applicant's own survey data (*see* FSEIR Appendix C-8, p. 11) shows an estimated 8,208 total yearly raptor observations across the Project site, including 1,467 Golden Eagle observations and 5,818 Red-tailed Hawk observations. This recently disclosed data further shows that raptors which were observed were in the rotor-swept zone of the Project's Wind Turbine Generators (WTGs) 60% of the time. (*Id.*, p. 15.) The FSEIR concludes "because unknown but potentially substantial numbers of protected birds and bats are at risk of dying through collisions with the WTGs over the duration of the Project, and currently there is no proven method to prevent such collisions, this impact is considered significant and unavoidable (Class I)." (FSEIR p. 4-5.90.)

Audubon engaged with the County and the Applicant from the beginning, urging that the SWEP be sited and designed in a manner that minimizes impacts to birds, bats, and other protected biological resources. Unfortunately, the applicant failed to study the normal movement patterns of birds on the site before determining the WTG layout, as called for by California's Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Projects<sup>1</sup>. For example,

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<sup>1</sup> Available at <https://www.energy.ca.gov/programs-and-topics/programs/reducing-impacts-birds-bats-wind-energy> (see p. 64), and incorporated herein by reference.

point count surveys for raptor species of concern were conducted between April 6, 2018 and August 28 2019 (FSEIR Appendix C-8, p. 10), well after the WTG layout had been established. In fact, the applicant did not even claim that reducing bird collisions was a consideration in developing their siting design until after the DSEIR comment period closed (*see* FSEIR Appendix C-8, pp. 1-2.)

However, in response to comments from Audubon and others, the County and Planning Commission incorporated important mitigation measures and conditions of approval that help address the Project's operational impacts. While these mitigation measures are not a substitute for careful site design, they do ensure that this Project must pass muster with wildlife agencies before it can be constructed (including obtaining eagle take authorization from USFWS), and establish a detailed protocol in the event that protected avian species are killed during Project operations. Due to these mitigation measures for protected bird species, Audubon declined to appeal the Planning Commission's approval of the Project despite numerous legal defects in the DSEIR and FSEIR. These legal defects are described in our 11/18/19 and 11/8/19 letters to the Planning Commission (attached hereto as Exhibits 1 and 2 respectively), and our DSEIR comments (FSEIR Volume II, Letters 8 and 9), all of which are expressly incorporated by reference into this letter.

If the Board decides to approve the SWEP, it is imperative that the Board retain all mitigation measures and conditions of approval that reduce impacts to biological resources, including impacts to avian species. These include, among others, Condition 34/Mitigation Measure BIO-14i (California Condor), Condition 38/Mitigation Measure BIO-16 (Monitoring and Adaptive Management Plan – Bird and Bat Conservation Strategy), Condition 39/Mitigation Measure BIO-16a (Before-After/Control-Impact (BACI) Study), Condition 40/Mitigation Measure BIO-16b (Bird/Bat Mortality Study), Condition 41/Mitigation Measure BIO-16c (Remove Carrion Near Turbines), Condition 42/Mitigation Measure BIO-16d (Adaptive Management Plan (AMP)). The Adaptive Management Plan called for in Condition 42, to be activated in the event that bird or bat mortality exceeds specified threshold levels and including the Planning Commission's change to enable public transparency, is particularly critical. Without all these protections in place, the Project would pose an unacceptably high risk to protected bird species that Audubon would find unacceptable.

The Board has a duty under the California Environmental Quality Act (CEQA) to minimize the Project's significant environmental impacts whenever feasible to do so. (*See* Guidelines § 15021 (a)). ***“Even when a project's benefits outweigh its unmitigated effects, agencies are still required to implement all mitigation measures unless those measures are truly infeasible.”*** (*Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 522, 524-525 (emphasis added.)) Accordingly, to comply with CEQA and minimize the SWEP's Class I impact to birds as required, we strongly urge the Board to retain the important protections approved by your Planning Commission including the above listed conditions.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC

A handwritten signature in black ink, appearing to read "Ana Citrin", written over a horizontal line.

Ana Citrin  
For Audubon

- Exhibit 1: 11/18/19 LOMC Letter to the Planning Commission
- Exhibit 2: 11/8/19 LOMC Letter to the Planning Commission re: Eagle Impacts

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ENVIRONMENTAL LAW

November 18, 2019

Santa Barbara County Planning Commission  
123 E. Anapamu Street  
Santa Barbara, CA 93101

*By email to [dvillalo@co.santa-barbara.ca.us](mailto:dvillalo@co.santa-barbara.ca.us)*

RE: Strauss Wind Energy Project

Dear Chair Parke and Planning Commissioners,

This letter is submitted on behalf of the Santa Barbara Audubon Society and the La Purisima Audubon Society (collectively Audubon). Audubon supports renewable energy, but projects must be sited, designed, and mitigated in order to avoid or minimize impacts to birds and wildlife, including special status, threatened, and endangered species, to the maximum extent feasible. The Strauss Wind Energy Project (SWEP or Project) is located in a unique and highly sensitive location, immediately inland of the Gaviota Coast, the largest relatively undeveloped stretch of coast in southern California. The Gaviota Coast includes the recently protected 24,000 acre Dangermond Preserve, and 98,000 acre Vandenberg Air Force Base. Installing the 29 Wind Turbine Generators (WTGs) in this remote location will require substantial habitat destruction including the removing of 225 protected oaks, and 21% of *the entire world population* of endangered Gaviota tarplant (*Deinandra increscens subsp. villosa*).<sup>1</sup>

Owing to its rich habitat, unique geography, and surrounding contiguous undeveloped lands, the SWEP is heavily used by a large diversity of bird species, including numerous protected species such as the Golden Eagle (*Aquila chrysaetos*). The Final Supplemental Environmental Impact Report (FSEIR) acknowledges that the Project would have Class I (significant and unavoidable) impacts to birds, but makes no effort to disclose the magnitude of the impact including how the Project may impact local populations of sensitive bird species. Raptor survey data collected on the site was only made available in September of 2019. The data show significant raptor activity within the rotor swept zone of the proposed WTGs which will undoubtedly translate to very high fatality rates of protected species. Federal wildlife agency staff expressed serious concerns regarding both the recent bird survey data and the Project's inability to comply with federal law prohibiting the "take" of protected species. Despite several requests from Audubon that a collision risk analysis be performed to estimate bird fatalities, no such analysis has been done, leaving the Commission and the public in the dark regarding a critically important issue.

To comply with the California Environmental Quality Act (CEQA), the Planning Commission must make findings regarding whether the FSEIR is adequate including whether it contains sufficient information for the Commission to make a reasoned decision, whether significant impacts have been mitigated to the maximum extent feasible, and whether the Project's

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<sup>1</sup> California Native Plant Society letter to Planning Commission, 11/15/19.

remaining Class I impacts are outweighed by overriding considerations. For reasons discussed below, the record for this Project does not support affirmative findings.

1. The Planning Commission Lacks Relevant Information Necessary to Make an Informed Decision

“A legally adequate EIR . . . ‘must contain sufficient detail to help ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug.’” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733). “An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 404-405). All phases of a project must be considered when evaluating its impact on the environment. (Guidelines § 15126). Agencies must make information relevant to the significant effects of a project, alternatives, and mitigation measures that substantially reduce project impacts as soon as possible in the environmental review process (Pub. Resources Code § 21003.1 (b)) and should not defer the formulation of mitigation measures to some future time (Guidelines § 15126.4 (b)).

The SWEP site has one of the highest raptor concentrations in Santa Barbara County. Moreover, the LWEP FEIR acknowledges that “the LWEP site has more raptor observations per 30-minute survey than nine of the eleven” other wind energy sites evaluated. LWEP FEIR p. 3.5-76.) However, with respect to bird and bat strike impacts (Impact Bio-10) the SEIR makes no attempt to describe the magnitude of the impact. For example, the FEIR acknowledges that a Class I impact can result from just one eagle mortality, but reasons “[a]dditional information such as an estimate of potential golden eagle take would be useful, but not necessary to evaluate significance of potential golden eagle impacts of the Project and identify feasible mitigation.” (FSEIR p. 8-311.) Clearly there is a significant difference between a project that may cause the death of one fully protected bird, and a project that may cause many such deaths. For example, just five eagle deaths would represent a 500% increase in the threshold of significance used in the EIR (1 eagle death, FSEIR p. 8-311). The County’s approach of disclosing a Class I impact, but declining to perform an analysis of available data to determine the magnitude of that Class I impact is contrary to CEQA and grounds for invalidation of the EIR. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519 (“a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”))

The applicant’s own recently collected survey data, as presented in the FSEIR, indicate very high raptor use across the SWEP site. For example, extrapolating the average hourly raptor observation data results in an estimated 8,208 total raptor observations per year across the project site, including 1,467 Golden Eagle and 5,818 Red-tailed Hawk observations. These new data further show that raptors were observed in the project’s rotor-swept zone 15% of the time. Collectively, these data confirm the likelihood of the project to cause very high raptor mortality.

As discussed in Section 4.5.2, a number of federal and state regulations prohibit the nonpermitted take of any migratory birds, golden eagles, white-tailed kites and other fully protected species, or threatened or endangered species....As concluded in the LWEP EIR, **because unknown but potentially substantial numbers of protected birds and bats are at risk of dying through collisions with the WTGs over the duration of the Project, and currently there is no proven method to prevent such collisions, this impact is considered significant and unavoidable (Class I).**

(FSEIR p. 4-5.90, emphasis added)

In addition, U.S. Fish and Wildlife Service Migratory Bird Division staff recently stated that SWEP is likely to prove to be, pending a forthcoming collision risk analysis, a “Category 1” site under its Eagle Conservation Plan (ECP) guidance. This designation would require the Service to recommend that the project be built in another location with less eagle use. One project-knowledgeable expert stated that SWEP would likely cause at least four pairs of nesting Golden Eagles (a State and federal fully protected species) to be extirpated from the Lompoc area. In addition, a single Golden Eagle death due to collision with a wind turbine generator (WTG)—a virtual certainty given the bird survey data presented in the FSEIR—would constitute a violation of California law (which allows no “take” of this species) and thereby risks penalties or curtailment of project operations by the State. The FSEIR offers no information on how the County would handle such a situation.

A collision risk analysis is vital to a viable decision process on SWEP and to the interest of full transparency regarding project effects. The FSEIR states that there will be a Class I impact on birds, but does not quantify the magnitude of the impact. According to FSEIR appendix C-8, the necessary bird use survey data exists. The U.S. Fish and Wildlife Service migratory bird biologist has stated that the existing bird survey data is sufficient to do the eagle collision risk analysis. In addition, the FSEIR states, “adequate data collection has occurred at the Project site over the past 10+ years.” The collision risk software is publicly available on a USFWS website. The County can and should do the collision risk analysis now. The analysis would provide vital information to you, the decision makers, on the degree of harm expected to be caused by SWEP. Not doing the collision risk analysis deprives the public of the knowledge of how severe the impacts to eagles will be. Any approval decision should be delayed until the collision risk analysis is completed. Not doing the eagle collision risk analysis would undermine the informed public participation and decision-making process that CEQA requires and that the public expects for a project of this magnitude with Class I impacts to fully protected bird species.

Additionally, the FEIR fails to disclose the potential impact of proposed mitigation measures such as MM BIO-14d, intended to reduce impacts to raptors. MM BIO-14d proposes to backfill identified inactive American badger dens to reduce their potential reuse by raptor prey species. “If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail

than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)” (CEQA Guidelines § 15126.4 (a)(1)(D).) The FSEIR fails to discuss the significant effects of BIO-14d and other mitigation measures on American badger and other sensitive biological resources, contributing to the uncertainty regarding the full extent of the Project’s impacts on sensitive wildlife.

a. Significant New Information Added Late In the Process Undermines the Environmental Review Process

“The requirement of public review has been called ‘the strongest assurance of the adequacy of the EIR.’” (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal. App. 3d 1043, 1051 (quoting *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal. App. 3d 813, 823).) To effectuate this public review requirement, the lead agency must prepare a draft EIR that is circulated to the public and government agencies. (CEQA Guidelines §§ 15084, 15087.) Fundamental deficiencies in the draft EIR or the omission of significant information cannot be ‘cleared up’ in a final EIR that is not circulated to the public. (*Mountain Lion Coalition*, 214 Cal. App. 3d at 1052 (court refused to consider whether the final EIR “clears up some of the deficiencies of the draft” because “[i]f we were to allow the deficient analysis in the draft [EIR] to be bolstered by a document that was never circulated for public comment . . . we would be subverting the important public purposes of CEQA.”); *see also Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal. App. 4th 74, 95.) Where fundamental deficiencies are corrected or significant new information is added to the EIR after public notice is given of the availability of the draft but before certification of the EIR, the public agency is required to recirculate the EIR for additional public comment. (CEQA Guidelines § 15088.5 (a).) Significant new information requiring recirculation includes, for example, a new significant environmental impact, a substantial increase in the severity of an environmental impact, a new significantly different and environmentally preferable feasible project alternative or mitigation measure, and information required to enable meaningful public review and comment on a fundamentally inadequate draft EIR. (CEQA Guidelines § 15088.5 (a) (1-4).)

In our DSEIR comments we explained numerous fundamental flaws in the document, including the failure to conduct baseline studies to inform WTG placement as required by state and federal wind energy guidelines, the failure to analyze how the SWEP’s impacts differ from the LWEP with respect to the rotor swept area and potential bird strike impacts, and the failure to conduct bird surveys to estimate fatalities, among other things (*see* section b, below for more discussion of this issue). While the FSEIR’s Response to Comment (RTC) is inadequate and fails to resolve numerous significant environmental issues raised in the comments (*see* section b, below) a large amount of new information was included for the first time in the FSEIR. This includes the results of recently conducted point-count surveys identifying the number of hours that raptors were observed within the “rotor swept zone” of the proposed WTGs, which provides the data necessary to conduct a collision risk analysis to estimate the Project’s impacts on protected raptor species. Pro approach is fundamentally contrary to CEQA, and the County should have recirculated the

SEIR for additional public and agency review. (CEQA Guidelines § 15088.5 (a) (1-4); *Mountain Lion Coalition*, 214 Cal. App. 3d at 1052.)

Additionally, information that has come to light subsequent to the DSEIR's release that reveals not only a substantial increase in the severity of the acknowledged Class I impact to protected bird species, but also a new potentially significant impact to the fully protected Golden eagle, as reflected in the potential Category 1 designation USFWS indicated may be applicable to the site. (*See* Audubon Letter to PC on Eagle Impacts, 11/8/19, Attachment B.)

b. The FEIR's Responses to Comment Are Inadequate and Leave Important Environmental Issues Unresolved

The responses to public comments received on the draft EIR is a central part of the CEQA process. Pursuant to CEQA Guidelines § 15088

The written response [to public comments received on the draft EIR] shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

Unfortunately the County's responses to a number of significant environmental issues raised were inadequate. The "failure to comply with required response-to-comment procedures can constitute grounds for finding the EIR inadequate and reversing the Lead Agency's project approval." (Matthew Bender, *1-22 California Environmental Law & Land Use Practice* § 22.04, citing *Twain Harte Homeowners Assn. v. County of Tuolumne* (1982) 138 Cal. App. 3d 664, 686-687.

One key issue Audubon raised in its DSEIR comments that received an inadequate response concerns the SWEP failure to comply with California and federal wind energy guidelines, and in particular provisions regarding the appropriate use of bird survey data to inform the placement of wind turbine generators (WTGs). For example, California's wind energy guidelines state:

Pre-permitting studies must be sufficiently detailed to establish normal movement patterns of birds and bats to inform micro-siting decisions about turbine configuration. Turbine alignments that separate birds or bats from their daily roosting, feeding, or nesting sites or that are located in high bird use or bat use areas can pose a collision threat. Assessing the impacts of turbine siting and determining appropriate turbine placement requires a thorough understanding of the distribution and abundance of birds and bats at a proposed site as well as site-specific knowledge of how wildlife interacts with landscape features at the site.



(FEIR p. 8-108; CEC Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Projects, p. 64.) Rather than address the substance of this significant environmental concern, the Response to Comment (RTC) asserts (incorrectly) that we failed to identify how the Project fails to comply with the guidelines. (FEIR pp. 8-120, 8-12). Information included in the RTC purporting to establish that BayWa did in fact comply with the guidelines is not supported by evidence. (*Id.*, FEIR p. 8-9-8-11.) For example, the RTC claims that the SWEP layout places most wind turbines in grassland habitats to reduce collision risk (FEIR pp. 8-9, 8-11) but both the LWEP EIR, and recent surveys, describe grassland areas as key foraging areas used by golden eagle and other protected bird species. (*See e.g.* LWEP FEIR, p. 3.5-78.)

Moreover, Audubon's comment that BayWa's bird surveys have not been sufficient to establish the requisite avian distribution and movement patterns across the SWEP site has only been underscored by recent developments. Specifically, the developer's recently released raptor survey<sup>2</sup> included in the FSEIR as Appendix C-8, was clearly started too late to affect the project design (i.e. turbine layout) or to be included in the DSEIR! Accordingly, the explanation in the RTC suggesting that the Appendix C-8 data informed "in part" the current turbine configuration is questionable. (*See* FEIR p. 8-11.) Audubon requested that the County examine the applicant's computer file used for optimizing the wind farm turbine locations to determine whether it had "keep-out zones" where turbines were not allowed because of bird use, but has received no indication that this occurred.

In response to Audubon's comment that the DSEIR did not meaningfully analyze how the SWEP's bird strike impacts would differ from the LWEP (*see* FEIR p. 8-111) the RTC simply refers back to the LWEP EIR, which misses the point entirely (*see* FEIR p. 8-122.) Here the RTC also asserts that the "County firmly believes that enough information is provided to conclude that the Project's impacts to birds and bats would be significant and unavoidable." (*Id.*, pp. 8-122 – 8-123.) Discussed above and in our previous correspondence regarding golden eagle impacts specifically (*see* 11/8/19 Audubon letter to PC), a Class I impact could result from just one eagle death. CEQA requires that the EIR include actual facts and analysis regarding the magnitude of that impact, which the SEIR lacks. The FSEIR runs afoul of CEQA in failing to respond to these significant environmental issues raised in public comments.

## 2. The Project's Significant Environmental Impacts Are Not Mitigated to the Maximum Extent Feasible

Agencies have a duty under CEQA to avoid or minimize environmental damage whenever feasible to do so, and must give major consideration to preventing environmental damage.

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<sup>2</sup> In addition, the raptor survey methodology suffers from many technical deficiencies, resulting in significant understatements of the breadth and degree of raptor use (in terms of the numbers of both species and individuals) across the project area. Consequently, the survey underestimates the degree of harm to raptors the project will likely cause.

(Guidelines § 15021 (a)). An EIR must identify feasible mitigation measures to mitigate significant environmental impacts. (CEQA Guidelines § 15126.4.) Mitigation measures must be described with sufficient detail to determine if a mitigation measure would cause significant environmental effects in addition to those caused by the proposed project. (See Guidelines § 15126.4 (a)(1)(D).) Deferring the formulation of mitigation measures until after project approval is inadequate, unless specific performance standards are identified. CEQA Guidelines § 15126.4(a)(1)(B), *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309 (deferral of mitigation until after project approval is inadequate); see also *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884-885 (“CEQA process demands that . . . environmental information be complete and relevant and that environmental decisions be made in an accountable arena.”); *San Joaquin Raptor v. County of Merced* (2007) 149 Cal.App.4<sup>th</sup> 645, 670 (“generalized goal” insufficient as CEQA mitigation).

The following new mitigation measures and modifications to existing mitigation measures would further reduce impacts and must be included in the Project to ensure that significant impacts are mitigated to the maximum extent feasible.

1. *Two-year Operations Review and Operational Modifications.* *The County shall conduct an operations review of the SWEP no longer than two years after commencement of operations. The County shall hire a qualified wildlife biologist who is approved by the County, paid by the County with funding from the applicant, and experienced in evaluating WTG bird and bat hazards to conduct the review and prepare the findings. The County shall review as a minimum the bird and bat mortality data and any other relevant data regarding the impact of the SWEP on the local environment. The review shall include:*
  - a. *Review of bird and bat mortality monitoring methods.*
  - b. *Review of bird and bat mortality data.*
  - c. *Determination of causes of bird and bat mortality, including, but not limited to, determination of mortality by particular turbines.*
  - d. *Review of use and effectiveness of active control technology on site.*
  - e. *Review of availability and effectiveness of new or improved technology that may help reduce bird and bat mortality. This would include, but not be limited to, technology that could detect birds smaller than eagles, such as Red-tailed Hawks and Turkey Vultures.*

*The County shall develop requirements for the operator to improve operations of the SWEP. These may include, but are not limited to:*

- a. *Improving bird and bat mortality monitoring*
- b. *Curtailing operation of particular turbines or the entire wind farm on an hourly, daily, or seasonal basis if bird and/or bat mortality exceeds Level 2 thresholds.*
- c. *Installation of new or improved active control technology or other new technology to decrease bird and bat mortality.*

*The Review shall include public disclosure of all mortality monitoring data, use and effectiveness data of active control technology, other data relevant to the public’s knowledge*

*of the SWEP operation and impacts, and the requirements for improvement of SWEP technology and operations. The Planning Commission shall conduct a public hearing of the review, solicit and consider public comment, and shall approve changes to technology and operations, if necessary.*

2. *The applicant shall establish a fund of \$500,000 for the purpose of purchasing conservation easements on Golden Eagle nests in the vicinity of the SWEP. The County shall determine the location of all Golden Eagle nests within 10 miles of the SWEP (except on VAFB) and negotiate with property owners to establish conservation easements with a radius of at least one-half mile around any known or inactive Golden Eagle nests. The County shall pay the property owners for the easements from the applicant's fund.*
3. *A modified version of MM-BIO-15b(d) that would read, "Prior to commencement of operations, the applicant/operator shall install and validate operations of active control technology, such as one or more IdentiFlight units or other proven technology as available, that can identify large birds such as eagles and automatically curtail WTG operation until birds are safe, if birds are detected approaching or entering the Project site. Placement, number, and plans for use of active control technology shall be determined in consultation with USFWS and the County. Plans shall be approved by the County. The County shall hire a qualified wildlife biologist who is approved by the County, paid by the County with funding from the applicant, and experienced in evaluating WTG bird and bat hazards to develop help develop plans for the use of the active control technology. Verification of the effectiveness of the technology will be evaluated by a third party in consultation with the USFWS and the County. All data will be made public. The County shall recommend to the USFWS that this mitigation be part of an Eagle Conservation Plan in an application for an Eagle permit by the applicant/operator. The applicant/operator shall produce a quarterly report on actual use and effectiveness of the active control technology and present it for approval by the County, for the life of the project."*
4. *A modified version of MM-BIO-15b(b) that would read: "The Owner/Applicant shall confer with a qualified wildlife biologist who is approved by the County, paid by the County with funding from the applicant, and experienced in evaluating WTG bird and bat hazards to develop micro-siting plans."*
5. *A modified version of MM BIO-16 that would read: "The Plan shall be prepared by a County-approved biologist who is paid by the County with funding from the applicant. This provision applies to all subsections of MM BIO-16. The plan shall be subject to County approval."*
6. *A modified version of the first sentence of MM BIO-16b that would read: "Conduct a bird and bat mortality study under the direction of an independent qualified biologist approved by and paid by the County using funding from the operator."*

While implementation of these additional and modified mitigation measures will not reduce the Project's significant impacts below significant levels, they are nonetheless required to ensure that impacts are mitigated to the maximum extent feasible as CEQA requires. These measures are particularly important if the Commission determines to proceed with this Project despite the considerable uncertainty regarding the magnitude of the Project's Class I impact to protected bird species. Specifically, adding the Two-year Operations Review and Operational Modifications mitigation measure provides the opportunity for the County to direct changes to technology and operations, after data regarding bird and bat mortality at the site is collected and analyzed. Discussed above, the SEIR's analysis of the Project's bird and bat strike impacts is woefully inadequate. While this additional mitigation does not substitute for the missing CEQA analysis, it at least provides the County the opportunity to revisit and improve the Project in response to actual data. Additionally, specifying that the qualified wildlife biologists contract directly with the County would enhance the reliability and accountability of the process.

3. The Project's Benefits do not Outweigh its Significant and Unavoidable Environmental Impacts

The FSEIR acknowledges that SWEP will do irreparable damage to the landscape, wildlife habitat, and many special-status plant and animal species. The SWEP Final Supplemental Environmental Impact report identifies eight Class I impacts (significant and unavoidable). These include:

- Mortality of birds and bats due to collisions with wind turbine generators.
- Impacts to woodland and tanoak forest - loss of an estimated 225 individual oak trees
- Road widening that would dramatically alter the landscape and viewshed along San Miguelito Road
- Inconsistency with County policies on tree removal.
- Impacts to Aesthetics and Visual Resources (in multiple areas)
- Adverse nighttime light impacts

Meanwhile, the renewable energy produced at SWEP will be relatively small. The amount of Green House Gas reduction per year due to Strauss is only 20,000 Metric Tons of CO<sub>2</sub> equivalent (MTCO<sub>2e</sub>)<sup>3</sup>, compared to the total GHG emissions for the County for 2016 of 1,306,833 MTCO<sub>2e</sub>.<sup>4</sup> This is less than 1.5%! To look at it another way, the County has projected that wind will comprise less than 4% of the County's Strategic Energy Plan goals for renewable energy (129

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<sup>3</sup> SWEP FSEIR, Table 4.10-2

<sup>4</sup> Santa Barbara County 2017 Energy and Climate Action Plan, Table ES-2.

GWh per year out of 3,478 GWh total).<sup>5</sup> By comparison, Solar PV will produce 2,925 GWh, and even biomass will produce 375 GWh, nearly 3 times wind. Interestingly, the County did not consider the SWEP site viable for utility-scale wind in its Strategic Energy Plan, and accordingly did not include the SWEP in its identified wind potential.<sup>6</sup> SWEP will cause significant and irreparable harm to birds and wildlife, landscape, endangered native plants, and woodlands. The miniscule amount of energy that this project will produce does not justify the tremendous environmental destruction that it will cause.

Audubon supports renewable energy and understands that even incremental progress toward reducing our contribution to climate change is important. However, as the recent United Nations IPBES Global Assessment Report on Biodiversity and Ecosystem Services<sup>1</sup> makes clear, habitat and biodiversity loss is an equally pressing global catastrophe that governments must do everything in their power to address. Installing a utility-scale wind energy projects in remote and ecologically sensitive landscapes that provide refuge to species threatened by development and climate change, and perform ecosystem services that benefit us all, is clearly not the optimum approach.

While Santa Barbara County lacks substitute locations with adequate wind resources to accommodate the Project in less ecologically sensitive areas of the County, we do have abundant solar resources and potentially viable locations for new utility-scale solar projects in environments that are considerably less sensitive than the SWEP site. Audubon is eager for the County to explore the development of new solar projects and, as with the Cuyama solar energy facility, will work with the County to help ensure that impacts to birds and sensitive habitats are reduced below significant levels.

#### 4. Conclusion

If the County is to proceed with this Project, it must be confident that this is the best possible project for the site, that the Project's impacts were thoroughly studied and disclosed to the public and responsible agencies, and that on balance the Project's benefits outweigh its significant unavoidable environmental impacts. Unfortunately based on the information currently available, it is impossible to have such confidence in the SWEP, and accordingly we request that you not approve the Project at this time and rather send it back for additional environmental review.

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<sup>5</sup> Strategic Energy Plan for the County of Santa Barbara, August 2019, Table 2.1; available at [http://www.centralcoastpower.org/uploadedFiles/centralcoastpower/Content/COSB%20Strategic%20Energy%20Plan\\_Final.pdf](http://www.centralcoastpower.org/uploadedFiles/centralcoastpower/Content/COSB%20Strategic%20Energy%20Plan_Final.pdf),

<sup>6</sup> Strategic Energy Plan, p. 33.

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO, APC

A handwritten signature in black ink, appearing to read 'Ana Citrin', written over a horizontal line.

Ana Citrin  
For Audubon

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<sup>i</sup> <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>;  
report available for download here: <https://www.ipbes.net/assessment-reports>

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ENVIRONMENTAL LAW

November 8, 2019

Santa Barbara County Planning Commission  
123 E. Anapamu Street  
Santa Barbara, CA 93101

*By email to [dvillalo@co.santa-barbara.ca.us](mailto:dvillalo@co.santa-barbara.ca.us)*

RE: Strauss Wind Energy Project – Golden Eagle Impacts

Dear Chair Parke and Planning Commissioners,

This letter is submitted on behalf of the Santa Barbara Audubon Society and the La Purisima Audubon Society (collectively Audubon). Audubon supports renewable energy, but projects must be sited, designed, and mitigated in order to avoid or minimize impacts to birds, including special status, threatened, and endangered species, to the maximum extent feasible. We are currently reviewing the Final Supplemental Environmental Impact Report (FSEIR) for the Strauss Wind Energy Project (SWEP or Project) and will submit an additional comment letter closer to the November 20 Planning Commission hearing covering all of Audubon's concerns regarding the Project. This letter focuses on one issue that we want to alert you to in advance, both because it is new and important information, and to give County staff and the applicant the opportunity to address the issue and provide the needed information in advance of the scheduled hearing.

Survey results released after the Draft Supplemental Environmental Impact Report (DSEIR) comment period reveal that the SWEP site has significant use by golden eagle (*Aquila chrysaetos*), a fully protected species under both state and federal law. The surveys reported 329 observations within the 646 hours, including 27.60 hours where golden eagles were observed within the "rotor swept zone" of the proposed Wind Turbine Generators (WTGs). (FSEIR Appendix C-8 pp. 12-13.)

The killing, or "take" of golden eagle is outright prohibited by state law.<sup>i</sup> The federal Bald and Golden Eagle Protection Act and USFWS Eagle Conservation Plan Guidance for Land-based Wind Energy projects (ECP Guidance)<sup>ii</sup> identify a process evaluating potential eagle take at wind energy projects. Estimating a project's potential eagle take is done by performing a collision risk analysis using data from point-count surveys such as those conducted at the SWEP site in 2018-2019.

The ECP Guidance identify three categories of project, based on their risk to eagles and the potential to avoid or mitigate impacts. The criteria for each category are detailed on pages 11 and 12 of the ECP Guidance, attached hereto as Attachment A. Category 1 projects have a high risk to eagles and the potential to avoid or mitigate impacts is low. (ECP Guidance, p. x.) **The USFWS recommends that applicants *not build* projects at sites determined to be Category 1, unless the projects can be substantially redesigned to at least meet the Category 2 criteria.** (Id.) Category 2 projects have a high or moderate risk to eagles, and an opportunity to mitigate impacts. (Id.) Category 3 projects have minimal risk to eagles. (Id., pp. x-xi)

Although no determination has yet been made by USFWS because “all the data has not yet been received and analyzed”, **USFWS migratory bird division staff identified a distinct possibility that the SWEP may indeed be Category 1, in which case “the service would recommend that the project be built in another location with less eagle use per our ECP guidance.”** (Attachment B, USFWS Emails).

The DSEIR and FSEIR include no attempt to estimate eagle mortality. The FSEIR’s responses to comment claim “[b]ecause the golden eagle is fully protected in California, even one eagle mortality would be significant. Therefore, this impact was considered significant and unavoidable (Class I) for both the LWEP and SWEP. ... Additional information such as an estimate of potential golden eagle take would be useful, but not necessary to evaluate significance of potential golden eagle impacts of the Project and identify feasible mitigation.” (FSEIR p. 8-311.)

However, there is a significant difference between a project that may cause 1 eagle death, and a project that may cause many eagle deaths. For example, just five eagle deaths would represent a 500% increase in the threshold of significance used in the EIR (1 eagle death, FSEIR p. 8-311). **The County’s approach of disclosing a Class I impact, but declining to perform an analysis of available data to determine the magnitude of that Class I impact is contrary to CEQA and grounds for invalidation of the EIR.** (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519 (“a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”))

Additionally, the “eagle fatality estimate (average number of eagles predicted to be taken annually)” is used to assess whether the Project is Category 1, 2 or 3, pursuant to the ECP Guidelines. (*See* Attachment A.) Less than 0.03 eagle fatalities per year and the Project may be Category 2; more than that and the Project is Category 1 and, unless measures can reduce fatalities to meet the Category 2 criteria, the Project cannot be built consistent with the ECP Guidelines. (*Id.*)

After communicating with USFWS migratory bird division staff, Audubon submitted a letter to County staff explaining the importance of having a collision risk analysis performed before the Project reached decisionmakers, and specifically requesting that the raw data necessary for the analysis be provided so USFWS could conduct the analysis. (*See* Attachment C, Audubon letter to County, 10/25/19.) In response, the USFWS migratory bird division staff explained that they would conduct the eagle risk assessment *after* the Planning Commission makes their determination, but that the USFWS collision risk model is publicly available and published so that any interested party can conduct their own risk assessments. (*See* Attachment B; USFWS Collision Risk Model<sup>iii</sup>) Subsequently we verbally requested that County Staff have the risk analysis performed, and we were told the County “would try” but no commitment was made.

By this letter we specifically request that a collision risk analysis for golden eagle be conducted and the results integrated into the CEQA analysis (e.g. with an Addendum) and provided to the public and the Planning Commission in advance of the November 20 hearing. To proceed without this



vital information concerning the risk of bird mortality due to collisions with the wind turbine generators would undermine both the adequacy of the FSEIR and the informed public participation and decisionmaking process that CEQA requires and that the public expects for a project of this magnitude with Class I impacts to fully protected bird species.

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO, APC



Ana Citrin  
For Audubon

- Attachment A: USFWS Eagle Conservation Plan Guidance for Land-based Wind Energy projects, pp. x-xi.
- Attachment B: Email communications between USFWS migratory bird division staff and County staff responding to Audubon's 10/25/19 request.
- Attachment C: 10/25/19 Audubon letter to County requesting collision risk analysis

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<sup>i</sup> Cal. Fish & G. Code § 3511 (“a fully protected bird may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected bird, and no permit or license previously issued shall have any force or effect for that purpose. ...”)

<sup>ii</sup> USFWS Eagle Conservation Plan Guidance, Module 1 – Land-based Wind Energy (April 2013), available at <https://www.fws.gov/migratorybirds/pdf/management/eagleconservationplanguidance.pdf>

<sup>iii</sup> A Collision Risk Model to Predict Avian Fatalities at Wind Facilities: An Example Using Golden Eagles, available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0130978#sec009>

so, that the project will meet standards in 50 CFR 22.26 for issuance of a programmatic eagle take permit.

***Category 1 – High risk to eagles, potential to avoid or mitigate impacts is low***

A project is in this category if it:

- (1) has an important eagle-use area or migration concentration site within the project footprint; or
- (2) has an annual eagle fatality estimate (average number of eagles predicted to be taken annually) > 5% of the estimated local-area population size; or
- (3) causes the cumulative annual take for the local-area population to exceed 5% of the estimated local-area population size.

In addition, projects that have eagle nests within ½ the mean project-area inter-nest distance of the project footprint should be carefully evaluated. If it is likely eagles occupying these territories use or pass through the project footprint, category 1 designation may be appropriate.

Projects or alternatives in category 1 should be substantially redesigned to at least meet the category 2 criteria. The Service recommends that project developers not build projects at sites in category 1 because the project would likely not meet the regulatory requirements. The recommended approach for assessing the percentage of the local-area population predicted to be taken is described in Appendix F.

***Category 2 – High or moderate risk to eagles, opportunity to mitigate impacts***

A project is in this category if it:

- (1) has an important eagle-use area or migration concentration site within the project area but not in the project footprint; or
- (2) has an annual eagle fatality estimate between 0.03 eagles per year and 5% of the estimated local-area population size; or
- (3) causes cumulative annual take of the local-area population of less than 5% of the estimated local-area population size.

Projects in this category will potentially take eagles at a rate greater than is consistent with maintaining stable or increasing populations, but the risk might be reduced to an acceptable level through a combination of conservation measures and reasonable compensatory mitigation. These projects have a risk of ongoing take of eagles, but this risk can be minimized. For projects in this category the project developer or operator should prepare an Eagle Conservation Plan (ECP) or similar plan to document meeting the regulatory requirements for a programmatic permit. The ECP or similar document can be a stand-alone document, or part of a larger bird and bat strategy as described in the WEG, so long as it adequately meets the regulatory requirements at 50 CFR 22.26 to support a permit decision. For eagle management populations where take thresholds are set at zero, the conservation measures in the ECP should include compensatory mitigation and must result in no-net-loss to the breeding population to be compatible with the permit regulations. This does not apply to golden eagles east of the 100th meridian, for which no non-emergency take can presently be authorized (USFWS 2009b).

***Category 3 – Minimal risk to eagles***

A project is in this category if it:

- (1) has no important eagle use areas or migration concentration sites within the project area; and
- (2) has an annual eagle fatality rate estimate of less than 0.03; and
- (3) causes cumulative annual take of the local-area population of less than 5% of the estimated local-area population size.

Projects in category 3 pose little risk to eagles and may not require or warrant eagle take permits, but that decision should be made in coordination with the Service. Still, a project developer or operator may wish to create an ECP or similar document or strategy that documents the project's low risk to eagles, and outlines mortality monitoring for eagles and a plan of action if eagles are taken during project construction or operation. This would enable the Service to provide a permit to allow a *de minimis* amount of take if the project developer or operator wished to obtain such a permit.

The risk category of a project can potentially change as a result of additional site-specific analyses and application of measures to reduce the risk. For example, a project may appear to be in category 2 as a result of Stage 1 analyses, but after collection of site-specific information in Stage 2 it might become clear it is a category 1 project. If a project cannot practically be placed in one of these categories, the project developer or operator and the Service should work together to determine if the project can meet programmatic eagle take permitting requirements in 50 CFR 22.26 and 22.27. Projects should be placed in the highest category (with category 1 being the highest) in which one or more of the criteria are met.

## **11. Addressing Uncertainty**

There is substantial uncertainty surrounding the risk of wind projects to eagles, and of ways to minimize that risk. For this reason, the Service stresses that it is very important not to underestimate eagle fatality rates at wind facilities. Overestimates, once confirmed, can be adjusted downward based on post-construction monitoring information with no consequence to eagle populations. Project developers or operators can trade or be credited for excess compensatory mitigation, and debits to regional and local-area eagle-take thresholds and benchmarks can be adjusted downwards to reflect actual fatality rates. However, the options for addressing underestimated fatality rates are extremely limited, and pose either potential hardships for wind developers or significant risks to eagle populations.

Our long-term approach for moving forward in the face of this uncertainty is to implement eagle take permitting in a formal adaptive management framework. The Service anticipates four specific sets of adaptive management decisions: (1) adaptive management of wind project siting and design recommendations; (2) adaptive management of wind project operations; (3) adaptive management of compensatory mitigation; and (4) adaptive management of population-level take thresholds. These are discussed in more detail in Appendix A. The adaptive management process will depend heavily on pre- and post-construction data from individual projects, but analyses, assessment, and model evaluation will rely on data pooled over many individual wind projects. Learning accomplished through adaptive management will be rapidly incorporated into the permitting process so that the regulatory process adjusts in proportion to actual risk.

## **12. Interaction with the Service**

The Service encourages early, frequent and thorough coordination between project developers or operators and Service and other jurisdictional-agency employees as they implement the tiers of the WEG, and the related Stages of the ECPG. Close coordination will aid the refinement of the

LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW

**ATTACHMENT B**

Ana Citrin &lt;ana@lomcsb.com&gt;

**Re: [EXTERNAL] RE: Strauss Wind Energy Project - Bird Strike Risk Analysis**

1 message

**Dietsch, Thomas** <thomas\_dietsch@fws.gov>

Fri, Nov 1, 2019 at 4:13 PM

To: "Pfeifer, Kathy" &lt;Kathypm@co.santa-barbara.ca.us&gt;

Cc: Ana Citrin &lt;Ana@lomcsb.com&gt;, Thomas Leeman &lt;thomas\_leeman@fws.gov&gt;, Amedee Brickey &lt;amedee\_brickey@fws.gov&gt;, Daniel Duke &lt;duke@baywa-re.us&gt;

Dear Kathy,

I am writing this email to provide additional clarification regarding the email I sent on October 29, 2019 regarding the proposed Strauss Wind project, and our (US Fish and Wildlife Service (Service)) communication with Audubon. The intent of the Service's original email was to explain our Eagle Conservation Plan (ECP) Guidance, which we use in communicating our expectations to wind energy companies regarding survey needs, and our application process for a take permit under the Bald and Golden Eagle Protection Act.

However, in discussing the definition of a Category 1 site in our ECP Guidance document, my email included a premature assessment of the proposed project. At this point in the process, it is too early for the Service to make a determination as to the risk category, as all the data has not yet been received and analyzed. We have made no determination as to what risk category this project would fall under per our ECP Guidance. However based on the limited data provided to us by the County (that is consistent with the analysis in your EIR), we do anticipate take of eagles may occur over the lifespan of this project.

The Service has been working cooperatively with BayWa r.e. Wind and their consultants Dudek regarding eagle surveys that will allow a more thorough evaluation of the site. The Service will continue to work with BayWa r.e. Wind through the project development process, including evaluating an eagle take permit application should an application be submitted. Please let us know if you have any questions about our ECP Guidance or eagle take permit process.

Sincerely,

Tom Dietsch

On Tue, Oct 29, 2019 at 5:41 PM Dietsch, Thomas &lt;thomas\_dietsch@fws.gov&gt; wrote:

Hi Kathy,

I would like to add a clarification to the letter that Santa Barbara Audubon submitted regarding the Strauss Wind project. The letter is correct that the US Fish and Wildlife Service (Service) is concerned about eagle use at the proposed Strauss Wind project site. The memo indicates that Golden Eagles has significant eagle use and is proximal to nest sites. Though the Service hasn't seen the final survey results yet, it is likely that the Service would consider the project to be a category 1 site. The Service's Eagle Conservation Plan (ECP) Guidance document recommends that wind projects in category 1 sites be relocated.

<https://www.fws.gov/migratorybirds/pdf/management/eagleconservationplanguidance.pdf>

However, the letter also indicates that I am waiting for the survey report to conduct an eagle risk assessment. Normally, when we receive a survey report, we make general recommendations based on survey results. In this case, based on the memo, the Service would recommend that the project be built in another location with less eagle use per our ECP guidance. However, if the project is approved, we would recommend that the project apply for an eagle take permit prior to construction. Our collision risk model is publicly available and published so that companies can conduct their own risk assessments as part of project site selection. Once we receive an application, the Service would do an eagle risk assessment as part of the eagle take permit application process using the same model.

<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0130978#sec009>

Please let me know if you have any questions or if you would like to set up a call to discuss this further.

Thanks, Tom

On Mon, Oct 28, 2019 at 11:30 AM Pfeifer, Kathy <Kathypm@co.santa-barbara.ca.us> wrote:

Anna,

We have received and are reviewing your letter.

Thank you, Kathy

---

**From:** Ana Citrin <Ana@lomcsb.com>  
**Sent:** Friday, October 25, 2019 3:03 PM  
**To:** Pfeifer, Kathy <Kathypm@co.santa-barbara.ca.us>  
**Cc:** thomas\_dietsch@fws.gov  
**Subject:** Strauss Wind Energy Project - Bird Strike Risk Analysis

**Caution:** This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Hi Kathy, please see the attached letter submitted on behalf of **Santa Barbara Audubon Society and the La Purisima Audubon Society**. Please don't hesitate to contact me if you have any questions or concerns.

Best regards,

Ana

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Ana Citrin  
Law Office of Marc Chytilo, APC  
P.O. Box 92233  
Santa Barbara, CA 93190  
Phone: (805) 570-4190  
Fax: (805) 682-2379

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If you believe you have received this message in error, please notify sender immediately.

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Thomas Dietsch, PhD  
Migratory Bird Biologist  
US Fish and Wildlife Service, Region 8  
Carlsbad Fish and Wildlife Office  
2177 Salk Ave, Suite 250  
Carlsbad, CA 92008  
(760) 431-9440 Ext. 214

11/6/2019

LOMC Mail - Re: [EXTERNAL] RE: Strauss Wind Energy Project - Bird Strike Risk Analysis

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Thomas Dietsch, PhD  
Migratory Bird Biologist  
US Fish and Wildlife Service, Region 8  
Carlsbad Fish and Wildlife Office  
[2177 Salk Ave, Suite 250](#)  
[Carlsbad, CA 92008](#)  
(760) 431-9440 Ext. 214  
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ENVIRONMENTAL LAW

October 25, 2019

Kathy Pfeifer  
Santa Barbara County  
Planning and Development Department  
Energy, Minerals and Compliance Division  
123 E. Anapamu Street  
Santa Barbara, CA 93101

*By email to: [Kathypm@countyofsb.org](mailto:Kathypm@countyofsb.org)*

RE: Strauss Wind Energy Project – Bird Collision Risk Analysis Must Be Included in County Decisionmaking Process

Dear Ms. Pfeifer,

This letter is submitted on behalf of the Santa Barbara Audubon Society and the La Purisima Audubon Society (collectively Audubon).

As you know, BayWa, the applicant on the Strauss Wind Energy Project (SWEP), has widely distributed a memo entitled, “Strauss Wind Energy Project – Avian and Bat Survey Results and Wind Turbine Siting Process Description,” dated September 12, 2019 (hereafter called “BayWa/Dudek memo”). This memo describes certain bird surveys that have been done at the SWEP site for the previous Lompoc Wind Energy Project and more recently by Dudek for BayWa, in 2018 – 2019. These surveys included Raptor Point Count Surveys that were conducted from April 6, 2018 to August 28, 2019.

Audubon has recently been in contact with Mr. Tom Dietsch, Migratory Bird Biologist for the USFWS Carlsbad office. Mr. Dietsch stated that he has not seen the BayWa/Dudek memo or any of the data for the Raptor Point Count Surveys. He is waiting for survey data in order to prepare a bird collision risk analysis of bird strikes at the SWEP site, and irrespective of whether the surveys are still ongoing, he indicated he could prepare an adequate analysis with the data collected to date. Audubon urges the County to make the appropriate bird survey data available to Mr. Dietsch as soon as possible to enable him to perform the collision risk analysis.

Having the bird collision risk analysis is vital for Santa Barbara County to make an informed decision on the benefit/risk of the SWEP project. Our comments on the Draft EIR identify the DSEIR’s lack of “factual support necessary to inform the public and decisionmakers about the severity of the impact [Impact Bio-10, bird/bat strike impacts], the effectiveness of mitigation measures, or the availability of other feasible means of reducing these impacts.” (Strauss Wind Energy DSEIR Comments, Law Office of Marc Chytilo, APC for Audubon, p. 8.) Our comments further note that this approach violates CEQA, as clarified recently by the California Supreme Court in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519 (“a sufficient discussion of significant

Ms. Pfeifer, County P&D

October 25, 2019

Page 2

impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”) (Id. pp. 6, 8.)

The collision risk assessment that the USFWS is poised to prepare would help flesh out the deficient impact analysis, and inform both the effectiveness of proposed mitigation measures, and may enable the identification of additional mitigation measures to reduce impacts to raptors to the maximum extent feasible. Note, as explained in our DSEIR comments, the County has a duty under CEQA to implement all feasible mitigation measures to minimize environmental damage, including when a project’s benefits outweigh its unmitigated effects. (DSEIR Comments, p. 6, citing Guidelines § 15021 (a) and *Sierra Club* 6 Cal.5th at 524-525.)

Audubon understands that the Final EIR may be released as early as next week, and in the interest of allowing the public and responsible agencies sufficient time to review the responses to comment, we are not suggesting a delay in the Final EIR’s release. However, the collision risk assessment must be incorporated into the CEQA process by some means such as with an EIR Addendum that the Planning Commission could review and certify together with the FEIR.

We believe it is probably feasible to obtain the collision risk assessment with sufficient time for the Project to be heard by the Planning Commission this year. To proceed without this vital information concerning the risk of bird mortality due to collisions with the wind turbine generators, would undermine both the adequacy of the FEIR and the informed public participation and decisionmaking process that CEQA requires and that the public expects for a project of this magnitude with numerous Class I impacts.

Accordingly, we respectfully request that Mr. Dietsch of USFWS be provided with the raw 2018/2019 raptor point count survey data, including eagle tracks, to conduct a collision risk analysis as soon as possible, that the collision risk analysis be analyzed and incorporated into the CEQA review process, and that the public and decisionmakers have the opportunity to review the collision risk analysis and supplemental CEQA analysis with sufficient time to meaningfully inform the Planning Commission’s decision on this important project.

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO, APC



Ana Citrin  
For Audubon

CC: Mr. Tom Dietsch, Migratory Bird Biologist, USFWS (Carlsbad)