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December 2, 2019

Via Hand Delivery and Email

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Lisa Plowman
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Re: **Appeal to the Santa Barbara County Board of Supervisors of the Planning Commission's Decisions to Approve the Conditional Use Permit (16CUP-00000-00031) and Variances (18VAR-00000-00002), Certify the Supplemental Environmental Impact Report (18EIR-00000-00001) (SCH#2018071002), and Adopt the Findings for Approval and the Conditions of Approval for the Strauss Wind Energy Project**

Dear Clerk of the Board and Ms. Plowman:

We write on behalf of Citizens for Responsible Wind Energy ("Citizens") to appeal the November 20, 2019 decisions of the County of Santa Barbara ("County") Planning Commission to approve the Conditional Use Permit (CUP16-00000-00031) and Variances (18VAR-00000-00002), certify the Final Supplemental Environmental Impact Report ("FSEIR") (18EIR-00000-00001) (SCH#2018071002)¹ pursuant to the California Environmental Quality Act ("CEQA"),² and adopt the

¹ County of Santa Barbara, Planning and Development Department, Final Supplemental Environmental Impact Report Strauss Wind Energy Project (Nov. 2019) (*hereinafter* FSEIR).

² Pub. Resources Code § 21000 *et seq.*
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Findings for Approval³ and the Conditions of Approval⁴ for the Strauss Wind Energy Project (“Project”) proposed by Strauss Wind, LLC, an affiliate of BayWa re: Wind, LLC (“Applicant”).

If the Board of Supervisors upholds the Planning Commission’s decisions, the Board will commit legal error because the Planning Commission abused its discretion in certifying a legally inadequate FSEIR and in erroneously finding that the Project is consistent with the County’s Comprehensive Plan. For these reasons, we respectfully request that the Board uphold the appeal and reverse the Planning Commission’s decisions to approve the Project’s conditional use permit and variance requests, certify the FSEIR, and adopt the Findings for Approval and the Conditions of Approval.

Through this appeal, Citizens adopts and incorporates all objections to the Project that were previously raised by it and any other individual or entity during the administrative process for this Project before the County. We also reserve the right to supplement the comments in this appeal and referenced technical comments, and at any future hearings related to this Project.⁵

I. BACKGROUND

The Applicant proposes to construct and operate a wind energy facility in an unincorporated area of the County.⁶ The Project involves 22 parcels in the Third and Fourth Supervisorial Districts:

- The wind turbine site is located within 11 parcels and is near the intersection of San Miguelito Road and Sudden Road, southwest of the City of Lompoc: Assessor Parcel Numbers (APNs) 083-100-008, 083-250-011, 083-250-016, 083-250-019, 083-090-001, 083-090-002, 083-090-003, 083-080-004, 083-100-007, 083-100-004, and 083-090-004.

³ Santa Barbara County Planning Commission, Staff Report for Strauss Wind Energy Project (Nov. 12, 2019) (*hereinafter* SWEP Staff Report), attach. A (Findings for Approval).

⁴ *Id.*, attach. B (Conditions of Approval).

⁵ Gov. Code § 65009(b); Pub. Resources Code 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; *Galante Vineyards v. Monterey Water District* (1997) 60 Cal.App.4th 1109, 1121.

⁶ SWEP Staff Report at p. 2.

- The transmission line runs from the wind turbine site in a northeast direction into the City of Lompoc and traverses 11 parcels: APNs 093-140-016, 083-060-013, 083-030-031, 083-030-005, 083-030-006, 083-110-012, 083-110-007, 083-110-008, 083-060-017, and 083-110-002, 099-141-034.⁷

The Project is comprised of the following components: 29 wind turbine generators (“WTGs”), new access roads and improvements to existing roads, a communication system, one meteorological tower, two sonic detection and ranging devices, on-site electrical collection lines, an on-site substation and control building, and an on-site operations and maintenance facility, a new 115-kilovolt electrical transmission line to interconnect with Pacific Gas and Electric (“PG&E”) Company’s electric grid via a new switching station, a new switchyard, and upgrades to existing PG&E facilities.⁸

The Project is located on rural, agriculturally zoned land in an unincorporated area of the County, south of the City of Lompoc.⁹ The site is the same location as the previously proposed Lompoc Wind Energy Project (“LWEP”), which underwent an environmental review process more than 10 years ago.¹⁰ The County published a Final Environmental Impact Report (“FEIR”)¹¹ for the LWEP in August 2008 and certified it in February 2009.¹² The County also approved a conditional use permit for LWEP in 2009, but that project was never constructed.¹³

The Applicant purchased the LWEP and proposes substantial changes to the previously approved project.¹⁴ Most notably, the LWEP anticipated installation of 65 WTGs, which were approximately 400 feet tall.¹⁵ The Applicant now proposes larger but fewer WTGs, standing between 427 and 492 feet tall.¹⁶ The LWEP also anticipated that the transmission line and switchyard would have been built, owned and operated by PG&E.¹⁷ Whereas, the Applicant now proposes to build, own and

⁷ *Ibid.*

⁸ *Id.* at p. 3.

⁹ FSEIR at p. 2-1.

¹⁰ *Id.* at p. 2-3 to 2-7.

¹¹ County of Santa Barbara, Planning and Development Department, Final Environmental Impact Report Lompoc Wind Energy Project (Aug. 2008) (*hereinafter* LWEP FEIR).

¹² FSEIR at pp. S-1 to S-2, 2-3.

¹³ *Id.* at p. 2-3.

¹⁴ *Id.* at p. 2-3 to 2-7.

¹⁵ *Id.* at p. 2-3; *see also* LWEP FEIR at pp. 2-1 to 2-2.

¹⁶ SWEP Staff Report at p. 5-6.

¹⁷ FSEIR at p. 2-3; *see also* LWEP FEIR at pp. 2-1 to 2-2.

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operate the Project's transmission line and switchyard, with PG&E only being responsible for upgrades to its own infrastructure.¹⁸

We submitted written comments on the Draft SEIR ("DSEIR"), accompanied by comments from our expert consultants, Scott Cashen, M.S. and Soil Water Air Protection Enterprise ("SWAPE"), showing that the County failed to comply with CEQA's basic requirement that the DSEIR act as an "informational document."¹⁹ These comments are attached as **Exhibit 1**. We explained that the DSEIR was wholly inadequate due to the County's failure to disclose meaningful details upon which the public and decisionmakers can adequately assess the Project's significant impacts. We identified many shortcomings with the DSEIR, including the County's failure to (1) provide an accurate project description, (2) accurately describe the environmental setting, (3) accurately describe the significance thresholds, (4) adequately disclose and analyze the Project's significant environmental impacts, and (5) incorporate all feasible mitigation measures necessary to reduce the impacts to a level of insignificance. The County failed to correct the DSEIR's fatal flaws.

On November 18, 2019, we submitted written comments to the Planning Commission, accompanied by comments from Mr. Cashen,²⁰ detailing numerous legal deficiencies with the FSEIR.²¹ These comments are attached as **Exhibit 2**. We also raised specific concerns about the Project through oral statements at the Planning Commission's November 20, 2019 public hearing.²² Following deliberation, the Planning Commission approved the Project's conditional use permit and variance requests, certified the FSEIR, and adopted Staff's Findings for

¹⁸ FSEIR at p. 2-3; SWEP Staff Report at p. 5.

¹⁹ See generally FSEIR at pp. 8-160 to 8-295; Letter from Andrew J. Graf, Adams Broadwell Joseph & Cardozo to Kathy Pfeifer, County of Santa Barbara re: Comments on the Draft Supplemental Environmental Impact Report (18EIR-00000-0001) for the Proposed Strauss Wind Energy Project (16CUP-00000-0031, and associated cases 18CDP-00000-00001 and 18VAR-00000-00002) (June 14, 2019) (*hereinafter* Citizens' Comments on DSEIR) (**Exhibit 1**).

²⁰ 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) (*hereinafter* Cashen FSEIR Comments).

²¹ Letter from Andrew J. Graf, Adams Broadwell Joseph & Cardozo to Chairman John Parke, Planning Commission, County of Santa Barbara re: Agenda Item No. 1: Comments on the Final Supplemental Environmental Impact Report (18EIR-00000-00001) for the Strauss Wind Energy Project (16CUP-00000-00031, 18VAR-00000-00002) (Nov. 18, 2019) (*hereinafter* Citizens' Comments on FSEIR) (**Exhibit 2**).

²² The draft minutes for the November 20, 2019 Planning Commission hearing were not available at the time this appeal was transmitted for filing.

Approval and Conditions of Approval, including the revisions identified in staff's November 19, 2019 memorandum and the paragraph added to MM BIO-16 during the hearing.²³

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 and California Unions for Reliable Energy and its members and families and other individuals that live, recreate and work in the County.

The individual members of Citizens and the members of the affiliated labor organizations 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.

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.

²³ SWEP Staff Report, attach. A, B; *see also* Memorandum from Kathy McNeal Pfeifer to Planning Commissioners and Interested Parties re: Strauss Wind Energy Project Staff Report and Final SEIR Errata (Nov. 19, 2019).

III. APPELLANT IS AN AGGRIEVED PARTY

Under the County's Land Use and Development Code section 35.102.020, an appeal may be filed by "any aggrieved person."²⁴ An aggrieved person is defined as "any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing or decision, informed the review authority of the nature of their concerns or who for good cause was unable to do either."²⁵

Citizens qualifies as an aggrieved person because its members, through counsel, submitted written comments on the DSEIR and FSEIR and the Project within the applicable deadlines.²⁶ In addition, Citizens' counsel appeared at the Planning Commission's November 20, 2019 public hearing for the Project and offered oral comments on the legal deficiencies with the County's environmental document, findings of approval, and conditions of approval.²⁷

IV. DECISIONS BEING APPEALED

Any and all Planning Commission decisions related to the Strauss Wind Energy Project,²⁸ including, but not limited to:

1. **Case No. 16CUP-00000-00031:** Approval of Conditional Use Permit in order to develop and operate a wind energy facility on property zoned AG-II-100, in compliance with Section 35.82.060 of the County Land Use and Development Code.
2. **Case No. 18VAR-00000-00002:** Approval of two Variances: 1 – To allow the base of 10 wind turbine towers to be setback not less than 230 feet from the property lines adjoining Vandenberg Air Force Base; and 2 – To allow the base of 5 wind turbine towers a reduction of the setback requirements from internal contiguous participating property lines to 194

²⁴ Land Use and Development Code § 35.102.020.A.

²⁵ *Ibid.*

²⁶ *See generally* FSEIR at pp. 8-160 to 8-295; Citizens' Comments on DSEIR.

²⁷ *See generally* Citizens' Comments on FSEIR.

²⁸ *See generally* SWEP Staff Report, attach. A, B; *see also* Memorandum from Kathy McNeal Pfeifer to Planning Commissioners and Interested Parties re: Strauss Wind Energy Project Staff Report and Final SEIR Errata (Nov. 19, 2019).

feet on property zoned AG-II-100, in compliance with Sections 35.82.200 and 35.57.050 of the County Land Use and Development Code.

3. **Certification of the Final Supplemental Environmental Impact Report (SEIR), 18EIR-00000-00001 (SCH#2018071002) to the Lompoc Wind Energy Project EIR (06EIR-00000-00004), including the FSEIR Revision Letter No. 1 dated November 12, 2019 (Attachment D) and adopt the mitigation monitoring program.**
4. **Adoption of Findings for Approval of the Project specified in Attachment A of the November 12, 2019 staff report, including CEQA findings, and any and all errata, including, but not limited, to the Strauss Wind Energy Project Staff Report and Final SEIR Errata Memorandum dated November 19, 2019.**
5. **Adoption of Conditions of Approval of the Project specified in Attachment B of the November 12, 2019 staff report, including the mitigation monitoring program, and any and all errata, including, but not limited, to the Strauss Wind Energy Project Staff Report and Final SEIR Errata Memorandum dated November 19, 2019.**

V. BASIS FOR APPEAL

A. The Planning Commission Abused Its Discretion by Erroneously Certifying a Legally Inadequate FSEIR

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR (except in certain limited circumstances).²⁹ The EIR is the very heart of CEQA.³⁰ “The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”³¹

²⁹ See, e.g., Pub. Resources Code § 21100.

³⁰ *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

³¹ *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 109.

CEQA has two primary purposes, none of which is fulfilled by the FSEIR. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.³² “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”³³ The EIR is described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”³⁴

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.³⁵ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”³⁶ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”³⁷

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*”³⁸ As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.”³⁹

³² CEQA Guidelines § 15002(a)(1).

³³ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

³⁴ *Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

³⁵ CEQA Guidelines § 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

³⁶ CEQA Guidelines § 15002(a)(2).

³⁷ Pub. Resources Code § 21081; CEQA Guidelines § 15092(b)(2)(A)-(B).

³⁸ *Berkeley Jets*, 91 Cal.App.4th at 1355 (emphasis added) quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, 409, fn. 12.

³⁹ *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water*

1. The County Must Recirculate the FSEIR Because It Added Significant New Information Which Requires Additional Mitigation

A lead agency must recirculate an EIR when “significant new information” is added to the EIR after the end of the public comment period, but before certification.⁴⁰ “New information” includes “changes in the project or environmental setting as well additional data or other information,” and “a substantial increase in the severity of an environmental impact.”⁴¹ Recirculation is not required where the new information is added to clarify, amplify, or make insignificant modifications.⁴² The CEQA Guidelines provide four examples where significant new information included in an EIR requires recirculation:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it; or
- The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment was precluded.⁴³

The failure to recirculate an EIR after significant new information has been added turns the process of environmental evaluation into a “useless ritual” which could jeopardize “responsible decision-making.”⁴⁴ One of the purposes of CEQA is to inform the public and its responsible officials of the environmental consequences of

Management Dist. (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

⁴⁰ CEQA Guidelines § 15088.5(a).

⁴¹ *Ibid.*

⁴² *Id.* § 15088.5(b).

⁴³ *Id.* § 15088.5(a); see also *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1129.

⁴⁴ *Sutter Sensible Planning v. Sutter County Bd.* (1981) 122 Cal.App.3d 813, 822.

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their decisions *before* they are made. Thus, the EIR protects not only the environment but also informed self-government.”⁴⁵ Both the opportunity to comment and the preparation of written responses to those comments are crucial parts of the EIR process. Here, the County’s changes to the FSEIR’s discussion of (1) baseline conditions for eagles and (2) groundwater impacts and applicable mitigation measures constitute significant new information requiring recirculation.

a. The County Added Significant New Information Regarding the Presence of Eagles Which Identifies More Severe Impacts than Previously Disclosed

The DSEIR’s discussion of the baseline conditions for eagles relies heavily on information included in the 10-year old LWEP FEIR.⁴⁶ In fact, eagles were only mentioned once in the DSEIR’s recitation of the environmental setting when the County identified the golden eagle as a special-status species routinely observed at the project site.⁴⁷ Because the County was not aware of any eagles in the Project area following publication of the LWEP FEIR, the DSEIR did not include any additional discussion.⁴⁸ We alerted the County that the DSEIR did not contain an adequate discussion of the baseline conditions for eagles given the significant deficiencies with the DSEIR’s avian surveys.⁴⁹ Unsurprisingly, our concerns were validated by the significant new information presented in the FSEIR.

After the close of the public comment period, the County conducted a new baseline analysis for eagles and raptors, then inserted a considerable amount of new information on eagles and raptors into the FSEIR without providing an opportunity for public comment.⁵⁰ The County added an entirely new section to the FSEIR discussing the results of ongoing eagle and raptor point count surveys conducted between April 2018 and August 2019.⁵¹ These surveys resulted in observations of 12 raptor species not previously documented on site, including bald

⁴⁵ *Citizens of Goleta Valley*, 52 Cal.3d at 564 (citations omitted).

⁴⁶ FSEIR at p. 4.5-24 (“Refer to LWEP EIR Section 3.5.4, Endangered, Threatened, Rare and Other Sensitive Species, for a description of the special-status wildlife that were known from the Project area at the time that document was published.”).

⁴⁷ *Ibid.*

⁴⁸ *Id.* at pp. 4.5-24 to 4.5-25.

⁴⁹ *Id.* at pp. 8-178, 8-227 to 8-229.

⁵⁰ *Id.* at pp. 4.5-14 to 4.5-16.

⁵¹ *Id.* at p. 4.5-14.

eagles and golden eagles.⁵² The County provided a detailed description of the eagle observations in the FSEIR:

A juvenile bald eagle was observed soaring and circling on September 28 and October 4, 2018 in the southern central portion of the site. Golden eagle flight paths were recorded throughout the site during the 2018-2019 raptor point count surveys, and flight paths do not appear to coincide with topography or vegetation community or observer 800-m survey area. Golden eagle perching locations were scattered throughout the site with concentrated activity in the northern boundary of the site and to a lesser extent along the southern boundary of the site. The surveyors concluded that this primarily represents a single family group and occasional other golden eagles moving through the site. (Appendix C-8).⁵³

These observations also reveal that raptors travel frequently through the Project site frequently, especially golden eagles:

Across the 646 hours of surveys, raptors were detected in flight within the rotor swept zone for approximately 94 hours (15 percent), with red-tailed hawks (57 hours, 61 percent) and golden eagles (28 hours, 30 percent) contributing the majority to these observations (see Appendix C-8). Golden eagles were one of the most commonly observed raptors (18 percent of all observations during the spring-summer and fall-winter surveys), second only to red-tailed hawks (73 percent of all observations in spring-summer and 68 percent of all observations in fall-winter).⁵⁴

New information included in the FSEIR also discloses the presence of multiple golden eagle nests. The County conducted three aerial eagle nest surveys in March 2018, May 2018, and February 2019.⁵⁵ These surveys identified an active golden nest approximately 4 miles northeast of the Project area with a successfully fledged young.⁵⁶ The February 2019 survey also revealed a golden eagle nest located approximately 500 feet north of the Project area.⁵⁷ The United States Fish

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Id.* at p. 4.5-15.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

and Wildlife Service (“USFWS”) also alerted the County to two additional golden eagle nests within 10 miles of the Project site.⁵⁸

This new baseline information constitutes an entirely new analysis of the Project’s baseline conditions for biological resources, which was not included in the DSEIR. The FSEIR’s new baseline analysis also discloses a substantial increase in the severity of the Project’s significant impacts on eagles. This significant new information must be circulated to the public in a revised DSEIR for a full public comment period. The courts have held that the failure to provide the public with access to a required component of an EIR’s analysis during the CEQA public review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.⁵⁹ It is also well settled that an EIR may not rely on hidden studies or documents that are not provided to the public.⁶⁰

Golden eagles are extremely sensitive to additional mortality because they occur in very low densities and a relatively high percentage of juveniles do not survive to breeding age.⁶¹ Exacerbating these problems is the fact that golden eagle populations are currently declining.⁶² The surveys confirm not just the presence of multiple eagles in the region and near the Project site, but the high frequency with which eagles travel through the WTG rotor swept zone. These two factors alone increase the likelihood of eagle fatalities due to collisions with power poles, power lines, WTGs, WTG blades and vehicle strikes because the risk to eagles exponentially increases the closer the nest is to the Project footprint.⁶³

As the County acknowledges, “[b]ecause the golden eagle is fully protected in California, even one eagle mortality would be significant.”⁶⁴ Similarly, the “USFWS has determined that the golden eagle population is declining and cannot withstand any additional level of take.”⁶⁵ As the Santa Barbara Audubon Society and the La

⁵⁸ *Ibid.*

⁵⁹ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

⁶⁰ *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

⁶¹ Cashen FSEIR Comments at p. 15

⁶² *Ibid.*

⁶³ FSEIR at p. 8-55; Cashen FSEIR Comments at pp. 15-16.

⁶⁴ FSEIR at p. 8-311.

⁶⁵ Cashen FSEIR Comments at p. 15 (emphasis in original).

Purisima Audubon Society (“Audubon”) pointedly states: “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.”⁶⁶ The new information confirming there are a substantial number of eagles in the Project area and the eagles frequently fly through the rotor swept zone substantially increases the severity of potential impacts to eagles because of the higher likelihood eagle fatalities will occur because of a collision with a WTG.

Moreover, in comments on the DSEIR, the California Department of Fish and Wildlife (“CDFW”) recommended the County establish a minimum one-mile buffer from each active nest known to exist within the last five years to minimize the potential for construction impacts.⁶⁷ Because the newly disclosed information confirms an active golden eagle nest 500 feet from the Project site and 1000 feet from a WTG,⁶⁸ nearly 5 times closer than the recommended buffer distance, the potential of prohibited golden eagle take increases significantly.⁶⁹ In addition, the new modified layout adopted by the Applicant places another WTG within the vicinity of the known nest.⁷⁰

Disclosure of a substantially more severe impact requires recirculation, where, as here, additional mitigation is required to reduce the impact to the greatest extent feasible.⁷¹ In this case, because the County has determined that no feasible mitigation measures are available to reduce eagle collision impacts.⁷² The fact that eagle collision impacts are significant and unavoidable makes recirculation an even more critical step in the environmental review process because the County only now reveals its even greater certainty, based on the disclosure of substantial amounts of newly disclosed data, that eagles are nesting near the Project site and travel frequently through the rotor swept zone.

⁶⁶ Letter from Ana Citrin to Santa Barbara Planning Commission re: Strauss Wind Energy Project – Golden Eagle Impacts (Nov. 8, 2019) p. 2 (*hereinafter* Audubon Letter).

⁶⁷ FSEIR at p. 8-57.

⁶⁸ *Id.* at p. 8-311.

⁶⁹ Cashen FSEIR Comments at pp. 17-18.

⁷⁰ *Ibid.*

⁷¹ CEQA Guidelines § 15088.5(a)(2) (recirculation required re new information discloses a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance); *id.* § 15091(a)(2) (in order to adopt statement of overriding considerations, agency must make findings that it has mitigated all significant environmental impacts to the greatest extent feasible).

⁷² FSEIR at p. 4.5-89 to 4.5-90.

Recirculation also enables the County to consult with CDFW and USFWS regarding the evaluation and implementation of all feasible measures available to mitigate the Project's newly disclosed significant eagle impacts.⁷³ As Audubon urges, the County should consult with USFWS regarding the newly disclosed data and conduct a collision risk analysis to study the potential eagle take.⁷⁴ A collision risk analysis will further inform decisionmakers about the effectiveness of the mitigation measures and the availability of other mitigation measures to reduce these impacts.⁷⁵

b. The County Added Significant New Information Regarding the Project's Groundwater Impacts

The DSEIR analyzed the installation of a single onsite well for Project use.⁷⁶ The DSEIR concluded that use of the proposed well could cause a significant impact to the water level for an existing, nearby offsite well if the groundwater obtained from the proposed well were used for construction-related purposes.⁷⁷ To avoid this impact, the County proposed implementing MM WAT-1 to prohibit the use of any onsite wells for construction purposes.⁷⁸ The County then made significant revisions to the DSEIR's groundwater impact analysis and applicable mitigation measure following the public comment period.⁷⁹

The FSEIR now analyzes installation of 4 wells in a different aquifer for Project use.⁸⁰ The FSEIR concludes that the use of the proposed wells for construction-related purposes could have a significant impact because the water demand "would likely exceed the natural recharge of the local aquifer" temporarily depleting the local aquifer and impacting water production at the nearest offsite well.⁸¹ Relying on two newly disclosed studies, the FSEIR concludes that the nearest offsite well could lose production if drawdown from the 4 proposed wells exceeds 14 acre feet.⁸²

⁷³ CEQA Guidelines § 15088.5(d).

⁷⁴ Audubon Letter at p. 2.

⁷⁵ *Ibid.*

⁷⁶ FSEIR at p. 4.12-9.

⁷⁷ *Ibid.*

⁷⁸ *Id.* at p. 4.2-10.

⁷⁹ *Id.* at pp. 4.12-9 to 4.12-11.

⁸⁰ *Id.* at p. 4.12-9

⁸¹ *Ibid.*

⁸² *Id.* at p. 4.12-10.

To mitigate this impact, the FSEIR proposes implementing a significantly revised mitigation measure.⁸³ Instead of prohibiting the use of onsite wells, the measure now requires the installation of a monitoring well near the existing offsite well to monitor the groundwater levels should the new onsite wells be used for construction.⁸⁴ If the monitoring shows groundwater use by the Project could exceed 14 feet, then the Applicant must adjust or reduce the Project's groundwater use to avoid water levels reaching the threshold.⁸⁵

The County added a considerable amount of new information to its groundwater impact analysis and applicable mitigation measure after the close of the comment period. The new information discloses a new significant environmental impact. Most notably, the FSEIR analyzes a different aquifer than the aquifer analyzed in the DSEIR.⁸⁶ As the Applicant explains: the DSEIR "inadvertently used the incorrect well location and therefore analyzed the incorrect groundwater aquifer when drawing its conclusions."⁸⁷ This is a significant error in the County's analysis which rendered the DSEIR inadequate as a matter of law, and may only be corrected by allowing additional public comment.⁸⁸

Moreover, the County now (1) considers installation of additional wells for Project use, (2) permits the use of onsite wells for construction-related purposes, and (3) relies on two feasibility studies not previously available.⁸⁹ The FSEIR attempts to conceal the significance of these changes by keeping the same headings and ultimate conclusions as the DSEIR. However, there is no reasonable question that these are substantial changes in the Project which were not disclosed in the DSEIR. The County's failure to include this information in the DSEIR deprived the public of a meaningful opportunity to comment on the full scope of the Project, and its potentially significant impacts on groundwater resources.⁹⁰

Because the FSEIR was not recirculated, the public is deprived of a meaningful opportunity to comment on a significant environmental effect of the

⁸³ *Id.* at pp. 4.12-10 to 4.12-11.

⁸⁴ *Id.* at p. 4.12-10.

⁸⁵ *Id.* at pp. 4.12-10 to 4.12-11.

⁸⁶ *See generally id.*, appen. E-3, E-4.

⁸⁷ *Id.* at pp. 8-352, 8-364 ("The DSEIR does not correctly identify the source and quantity of water available onsite to SWEP.").

⁸⁸ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521; *Ultramar*, 17 Cal.App.4th at 699.

⁸⁹ *Id.* at pp. 4.12-10 to 4.12-11.

⁹⁰ *Sierra Club*, 6 Cal.5th at 516.

Project given that the County relied on two previously undisclosed studies evaluating the use of 4 onsite wells impacting a new aquifer, permits groundwater use for construction-related purposes that may adversely impact offsite wells, and proposes an entirely new mitigation measure to allegedly reduce those significant impacts.

The Planning Commission abused its discretion when it failed to recirculate the FSEIR for public review prior to certification.

2. The County Failed to Adequately Describe the Environmental Setting for the El Segundo Blue Butterfly

We commented that the DSEIR failed to adequately describe the area affected for the El Segundo Blue Butterfly (“ESBB”).⁹¹ We alerted the County that the DSEIR provided inconsistent information regarding the amount of coastal buckwheat within the Project site making it impossible to determine the relative severity of the Project’s impacts on the ESBB’s habitat.⁹² The County responded that, although the Project configuration changed slightly since it conducted the rare plant survey in 2018, supporting reports often include areas that are no longer a part of the proposed development footprint.⁹³ This may be true, but the surveys relied upon by the County do not support its conclusions.

Mr. Cashen identified numerous inconsistencies in the studies used by the County to determine the acreage of the coastal buckwheat at the Project site.⁹⁴ These inconsistencies remained because County’s responses did not resolve the issues raised in our initial comments. To the contrary, substantial evidence supports the conclusion that the impacts to ESBB are severely underestimated because the County did not conduct a proper baseline assessment of ESBB habitat.⁹⁵ Therefore, the FSEIR failed to disclose potentially significant environmental impacts in violation of CEQA.

⁹¹ FSEIR at pp. 8-178 to 8-179, 8-229 to 8-230.

⁹² *Ibid.*

⁹³ *Id.* at pp. 8-304 to 8-305.

⁹⁴ Cashen FSEIR Comments at pp. 20-21.

⁹⁵ FSEIR at pp. 8-229 to 8-230; Cashen FSEIR Comments at pp. 20-21.

3. The County Failed to Adequately Analyze Significant Impacts to Biological Resources

The County's discussion of impacts to biological resources in the FSEIR remains deficient in several key respects. First, the County's analysis of the Project's impacts on Gaviota tarplant is unsupported by substantial evidence. Second, the County failed to adequately analyze the impacts to special-status avian and bats due to collisions with WTGs, especially with respect to golden eagles. Third, the County failed to analyze the low-frequency noise impacts on special-status wildlife in the Project area due to operation of WTGs.

a. The County's Gaviota Tarplant Impact Analysis Is Not Supported by Substantial Evidence

We commented that the DSEIR lacked substantial evidence to conclude the construction impacts to Gaviota tarplant will be less than significant with mitigation.⁹⁶ The County's response and changes to the FSEIR did not cure this defect.⁹⁷ Specifically, the County's exclusion of indirect impacts from consideration as permanent impacts requiring mitigation at a 3:1 ratio is not supported by substantial evidence.

Mr. Cashen identified several critical deficiencies with respect to the County's treatment of habitat fragmentation and pollinator disruption.⁹⁸ In sum, the County (1) failed to adequately consider the how these indirect impacts effect the long-term viability of the Gaviota tarplant and (2) failed to quantify the magnitude of these types of impacts.⁹⁹ Instead, the County summarily dismissed these issues by claiming indirect impacts "are far less important than direct impacts."¹⁰⁰ This statement could not be further from the truth.

Mr. Cashen presented substantial evidence that the Project's indirect impacts are as significant as the direct impacts.¹⁰¹ His conclusions on this issue were also independently corroborated by CDFW, the agency with relevant subject-matter

⁹⁶ FSEIR at pp. 8-186 to 8-188, 8-232 to 8-235.

⁹⁷ *Id.* at pp. 8-305 to 8-306.

⁹⁸ Cashen FSEIR Comments at pp. 6-12.

⁹⁹ *Ibid.*

¹⁰⁰ FSEIR at p. 8-63.

¹⁰¹ Cashen FSEIR Comments at pp. 6-12.

expertise.¹⁰² Because the County improperly excluded indirect impacts from consideration as direct impacts, the FSEIR erroneously concluded the Project's construction impacts are less than significant.

Moreover, because the County unjustifiably excluded indirect impacts from the FSEIR analysis of permanent impacts, the proposed mitigation measures failed to reduce the Project's impacts to less than significant. MM BIO-6 permits off-site compensation to achieve the 3:1 ratio for permanent impacts, but the County claims it did not need to evaluate the feasibility of off-site compensation because enough on-site compensation land exists to mitigate all permanent impacts.¹⁰³

Because off-site compensation may be necessary (especially given the County's failure to support its conclusion that indirect impacts are not permanent impacts with substantial evidence), and is identified as a potentially feasible mitigation measure, the County must ensure the option can be implemented. Here, the County admitted it did not determine whether off-site compensation lands are available for this species.¹⁰⁴ To the contrary, adequate off-site alternatives may not be available for this species.¹⁰⁵ Therefore, the proposed mitigation measure does not ensure potentially significant impacts to the Gaviota tarplant are reduced to a level of significance.

b. The County Failed to Adequately Analyze Avian and Bat Collision Impacts

We concur with Audubon's conclusion that the County fails to adequately analyze the magnitude of WTG operation on golden eagles.¹⁰⁶ As the recent California Supreme Court decision explains: "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."¹⁰⁷ Although the County cured some of the DSEIR's deficiencies with respect to data collection on golden eagles, the County failed to use this significant new information to assess

¹⁰² See generally FSEIR at p. 8-38 to 8-45 (CDFW's Gaviota tarplant impact analysis and mitigation discussion).

¹⁰³ FSEIR at p. 8-316.

¹⁰⁴ *Ibid.* ("There is no need to evaluate [off-site compensation] feasibility because on-site compensation is feasible.").

¹⁰⁵ Cashen FSEIR Comments at pp. 12-13.

¹⁰⁶ Audubon Letter at pp. 1-3.

¹⁰⁷ *Sierra Club*, 6 Cal.5th at 519.

the severity of the Project's operation to golden eagles. Instead, the County claimed the data "would not improve our understanding of golden eagle occurrence on the site, or potential Project impacts."¹⁰⁸

This could not be further from the truth. A thorough risk assessment is critical to understanding the relative severity of Project impacts on the local golden eagle populations.¹⁰⁹ The County needed to complete a collision risk analysis consistent with the applicable regulatory guidelines.¹¹⁰ The County cannot avoid this analysis simply because it already concludes the impact is significant and unavoidable.¹¹¹ To the contrary, such an analysis is necessary for this impact in particular because the County made that determination.

In addition to the golden eagle impacts, the County failed to adequately analyze the magnitude of impacts from the WTG operation on other special-status raptors and bats. Although golden eagles possess greater protections under state law, the significant impacts to other special-status species which possess habitat near the Project site and frequently travel through the rotor swept zone cannot be ignored. The DSEIR assumed the Project's risks were the same risks posed by the LWEP.¹¹² Our comments provided substantial evidence that this is not the case.¹¹³

Although the County produced new data confirming concerns that the DSEIR underestimated the presence of special-status raptors and bats,¹¹⁴ the FSEIR remained deficient.¹¹⁵ Given the wealth of new significant information regarding the presence of special-status raptors and bats and the frequency with which they travel through the WTG rotor swept zone,¹¹⁶ the magnitude of the impacts to each special-status species needed to be analyzed.¹¹⁷ The FSEIR violates CEQA because the County failed to conduct the collision risk analysis.

¹⁰⁸ FSEIR at p. 4.5-15.

¹⁰⁹ Cashen FSEIR Comments at pp. 18-19.

¹¹⁰ *Id.* at p. 18.

¹¹¹ FSEIR at p. 4.5-90.

¹¹² *Id.* at pp. 4.5-89 to 4.5-90.

¹¹³ *Id.* at pp. 8-194 to 8-197; 8-243 to 8-247.

¹¹⁴ *Id.* at pp. 4.5-11 to 4.5-16.

¹¹⁵ Cashen FSEIR Comments at pp. 13-15.

¹¹⁶ FSEIR at pp. 4.5-11 to 4.5-16.

¹¹⁷ *Sierra Club*, 6 Cal.5th at 519.

c. The County Failed to Analyze Low-Frequency Noise Impacts on Special-Status Species

We raised concerns with the DSEIR's failure to address low-frequency noise impacts on wildlife from WTG operation.¹¹⁸ The County claimed the potential indirect impacts from low-frequency turbine noise was disclosed and analyzed in the LWEP FEIR.¹¹⁹ Contrary to the County's claim, the LWEP FEIR did not conduct any analysis of low-frequency noise generated by WTGs. Instead, the LWEP FEIR's discussion was limited to indirect noise impacts stemming from construction impacts, not operational impacts.¹²⁰ The County failed to correct this error in the FSEIR.

The County's omission of any discussion or analysis of the environmental impacts on wildlife violates CEQA.¹²¹ The FSEIR failed to discuss or analyze the low-frequency noise impacts on wildlife associated with WTG operation. WTGs produce a maximum sound power level of approximately 109 dBa.¹²² Although a construction noise analysis was completed, it is not applicable to assessing the operational noise impacts to wildlife because they are sensitive to noise at lower frequency levels.¹²³ Where the FSEIR and its predecessor considered noise at the "A scale," the impacts to wildlife needed to be analyzed at the "C scale" to ascertain whether indirect impacts from WTG operation are significant.¹²⁴

Continuous low-frequency noise could permanently change the functional value of wildlife habitat by deterring or preventing special-status species from creating or maintaining habitat in or near the Project area.¹²⁵ Because the FSEIR disclosed a substantial number of special-status species with potentially affected habitat near WTGs, the Project presents a significant, unmitigated impact due to low-frequency noise.¹²⁶ Thus, the County's conclusory dismissal of low-frequency operational noise impacts on wildlife prevents informed agency decision-making and public participation. Therefore, the FSEIR violates CEQA.

¹¹⁸ FSEIR at p. 8-231.

¹¹⁹ *Id.* at p. 8-305.

¹²⁰ LWEP FEIR at pp. 3.5-73, 3.5-84.

¹²¹ *Sierra Club*, 6 Cal.5th at 518-21.

¹²² FSEIR at p. 4.14-8.

¹²³ Cashen FSEIR Comments at pp. 2-3.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ FSEIR at pp. 4.5-1 to 4.5-15.

4. *The County's Conclusion That Blasting Will Not Cause Potentially Significant Impacts Is Unsupported by Substantial Evidence*

We raised concerns that the DSEIR failed to adequately disclose, analyze, and mitigate potentially significant impacts resulting from blasting to install WTG foundations.¹²⁷ The County claimed it was not aware of any significant impacts associated with blasting during construction, especially due to the remote nature of the Project site and individual WTG locations.¹²⁸ The County concluded potential blasting would not present a public health impact because the public would not be in the vicinity of any blasting activities.¹²⁹ But blasting operations cause several adverse environmental impacts, including noise, flyrock, and ground vibrations.¹³⁰ While the FSEIR briefly addresses potential noise impacts from blasting, the County failed to disclose, analyze or mitigate potentially significant impacts caused by ground vibrations or flyrock.

Both above-ground and below-ground structures are susceptible to vibration impacts.¹³¹ Ground vibrations propagate away from a blast site as waves.¹³² These waves disturb the ground by displacing particles of soil or rock. Unlike flyrock, the County completely failed to address the potential impact of ground vibrations caused by blasting on nearby residences.¹³³ Excessive vibrations can cause damage to nearby structures.¹³⁴

The Office of Surface Mining Reclamation and Enforcement published a Blasting Guidance Manual ("BGM") intended to protect the general public against the possible negative effects of blasting.¹³⁵ Although the BGM is a guide for surface mining, it "applies to all blasting, regardless of the total weight of explosives

¹²⁷ *Id.* at pp. 8-167, 8-203, 8-221 to 8-222.

¹²⁸ *Id.* at p. 8-297.

¹²⁹ *Ibid.*

¹³⁰ Dhekne P.Y., Environmental Impacts of Rock Blasting and Their Mitigation, International Journal of Chemical, Environmental & Biological Sciences (2015).

¹³¹ Wyoming Department of Environmental Quality, Controlling the Adverse Effects of Blasting, <https://www.osmre.gov/resources/blasting/docs/WYBlasterCertModules/8AdverseEffectsBlasting.pdf>.

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ Dhekne at p. 47.

¹³⁵ Office of Surface Mining and Reclamation and Enforcement, Blasting Guidance Manual (Mar. 1987) p. 1 (*hereinafter* Blasting Guidance Manual); *see also* Wyoming Department of Environmental Quality, Controlling the Adverse Effects of Blasting, <https://www.osmre.gov/resources/blasting/docs/WYBlasterCertModules/8AdverseEffectsBlasting.pdf>. 4377-026acp

detonated.¹³⁶ The BGM recommends pre-blast inspections of properties within one-half mile of the blast zone.¹³⁷ Similarly, a wind project in Black Nubble, Maine, which required blasting to install the WTG foundations, was required to prepare a pre-blast survey of all structures within a minimum distance of 2,000 feet from any blasting activity.¹³⁸ The Maine project was also required to prepare a blasting plan meeting the criteria established in Chapter 3 of the BGM.¹³⁹

Flyrock is rock that is projected beyond the normal blast area due to “too much explosive energy for the amount of burden, when stemming i[s] insufficient, or when explosive energy is rapidly vented through a plane of weakness.”¹⁴⁰ Improper blast design or imperfections in geologic features can cause flyrock.¹⁴¹ The FSEIR recognized flyrock as an adverse environmental impact to wildlife;¹⁴² but the County failed to consider the potentially significant public health impacts flyrock may have on nearby residences. Studies shows flyrock can be propelled 900 feet beyond the original blast site.¹⁴³ Despite the presence of two residences within 900 feet of a WTG and another six residences within 2,500 feet,¹⁴⁴ the FSEIR failed to address this critical public health and safety concern.

Because the BGM recommends a pre-blast assessment of properties within 2,460 feet and studies show flyrock can cause damage up to 900 feet from the blast site, ground vibrations and flyrock could significantly impact people and properties if blasting occurs for WTG foundation installation. Since there are eight properties within 2,500 feet of a WTG,¹⁴⁵ the Project may cause potentially significant public health impacts. Although blasting may cause potentially significant public health impacts, the County failed to disclose, analyze or mitigate these impacts to less than significant. Therefore, FSEIR is deficient as an informational document.

¹³⁶ Blasting Guidance Manual at p. 1.

¹³⁷ *Id.* at p. 3.

¹³⁸ DeLuca-Hoffman Associates, Inc., Black Nubble Wind Farm Project: Blasting Narrative (undated) p. 3, available at https://www1.maine.gov/DACF/lupc/projects/windpower/redington/redingtonrevised/Documents/Section20_Blasting/Section_08_Blasting_Narrative.pdf.

¹³⁹ *Id.* at p. 4.

¹⁴⁰ Dhekne at p. 48.

¹⁴¹ *Ibid.*

¹⁴² FSEIR at pp. 4.5-73, 4.5-99

¹⁴³ Dhekne at p. 49.

¹⁴⁴ FSEIR at p. 4.14-4, tab. 4.14-2 (summary of noise-sensitive receptor locations).

¹⁴⁵ *Id.* at p. 4.14-4.

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5. *The County Underestimated Potential Construction Impacts from the Installation of the Meteorological Tower*

We raised concerns regarding the discrepancies between the Applicant's proposal to install guyed meteorological towers and MM BIO-15's requirement that all meteorological towers be unguyed.¹⁴⁶ The County responded that MM BIO-15 does not conflict with the Project description because it requires unguyed meteorological towers.¹⁴⁷ Although the issue heading may have misinformed the County regarding the nature of the issue, our concerns with potential impacts from installation of unguyed meteorological towers remained unchanged.

Unguyed meteorological towers require significantly more ground disturbance than guy-wired towers. As the Applicant explained:

The Strauss Wind team proposed a guyed structure to reduce overall environmental impacts because an unguyed 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.¹⁴⁸

The County rejected changes to MM BIO-14, but it did not then account for the additional ground disturbance caused by unguyed towers.¹⁴⁹ As a result, the construction impact analysis severely underestimated the Project's permanent and temporary impacts to biological resources (like the Gaviota tarplant) in that area.¹⁵⁰ Therefore, the Project presents significant, unmitigated impacts to sensitive resources due to the installation of meteorological towers. Because the County did not correct this deficiency, the FSEIR violates CEQA.

¹⁴⁶ *Id.* at pp. 8-213, 8-263.

¹⁴⁷ *Id.* at p. 8-318.

¹⁴⁸ *Id.* at p. 8-350.

¹⁴⁹ *Id.* at p. 2-31 ("The meteorological tower would be a guy-wired lattice structure, up to 295 feet (90 meters) in height."), 8-373 ("The Applicant's request to remove the requirement for the permanent meteorological tower to be unguyed has not been made."); Cashen FSEIR Comments at pp. 1-2.

¹⁵⁰ Cashen FSEIR Comments at pp. 1-2.

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6. The County Failed to Identify Specific Performance Standards and Feasible Actions to Mitigate Stormwater Impacts

We raised concerns that the DSEIR lacked adequate mitigation measures to ensure water impacts are less than significant.¹⁵¹ The County claimed compliance with stormwater plans required by law is enough to prevent violation of water quality standards.¹⁵² It asserted it does not need to identify project-specific BMPs and their expected effectiveness, but the County admitted a general list of typical BMPs could be developed at this time.¹⁵³ Because the FSEIR failed to adopt specific, enforceable standards for the stormwater quality plans, and failed to list potential BMPs for the proposed Project, the County improperly deferred mitigation.

Under the CEQA Guidelines, an agency is prohibited from deferring formulation of mitigation measures unless it: “(1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will [be] considered, analyzed, and potentially incorporated in the mitigation measure.”¹⁵⁴ Although an agency may rely on compliance with a regulatory permit to reduce an environmental impact if compliance would result the implementation of measures that would be reasonably expect to reduce a significant impact, the agency is not relieved of its obligation to (1) adopt specific performance standards and (2) identify the types of potential actions that can feasibly achieve the performance standard.¹⁵⁵ Here, the County failed to adopt enforceable performance standards for the required stormwater management plans and identify the types of potential actions that can feasibly achieve the performance standard.

Although the FSEIR identifies implementation of a Stormwater Pollution Prevention Plan (“SWPPP”) and Stormwater Quality Management Plan (“SWQMP”) as means of keeping potentially adverse or reducing potentially significant impacts to a level of insignificance, the County does not categorize these plans as “mitigation measures.”¹⁵⁶ By doing so, the FSEIR also does not (1) identify any performance

¹⁵¹ FSEIR at p. 8-216 to 8-219.

¹⁵² *Id.* at pp. 8-302 to 8-303.

¹⁵³ *Id.* at p. 8-302.

¹⁵⁴ CEQA Guidelines § 15126.4(a)(1)(B).

¹⁵⁵ *Ibid.*

¹⁵⁶ FSEIR at pp. 4.9-20 to 4.9-21 (GEO-4); 4.12-6 to 4.12-8 (WAT-1 to WAT-3).

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standards for these plans or (2) identify potential Best Management Practices (“BMPs”) that can feasibly achieve the unarticulated performance standard. The County cannot rely on the LWEP EIR’s discussion of the SWPPP measure because, unlike the FSEIR, the LWEP FEIR identified the SWPPP as a mitigation measure (called an erosion control plan), established specific performance standards, and listed potential BMPs to be implemented.¹⁵⁷

Disclosure of probable BMPs is critical because implementation of those practices may result in potentially significant impacts. CEQA requires examination of whether a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed.¹⁵⁸ For example, if silt fences were installed to mitigate stormwater impacts, the silt fences could have significant impacts on wildlife by blocking the movement of small animals, such as the California red-legged frog, which could inhibit access to essential breeding and sheltering habitat.¹⁵⁹ In addition, silt fences, can create a prey trap leading to additional fatalities.¹⁶⁰ Because the County failed to adopt enforceable performance standards for the stormwater management plans or list candidate BMPs, the County violates CEQA’s prohibition against deferred mitigation.

7. The FSEIR Relied on Inadequate Mitigation Measures for Biological Resources

Our DSEIR comments raised concerns that several mitigation measures were inadequate for a variety of reasons, including improper deferral, lack of performance standards, and vague conditions.¹⁶¹ The County generally claimed the mitigation measures were either adequate or revised to clarify an already adequate DSEIR.¹⁶² Despite making changes to several mitigation measures in response to our comments, Mr. Cashen identified several areas where the FSEIR’s biological resources mitigation measures remains inadequate.¹⁶³ His comments on these issues are incorporated by reference in its entirety. Because the County failed to correct the deficiencies identified by Mr. Cashen prior to certification of the FSEIR, it violates CEQA.

¹⁵⁷ LWEP FEIR at pp. 3.15-11 to 3.15-12.

¹⁵⁸ CEQA Guidelines § 15093(a)(1)(D).

¹⁵⁹ Cashen FSEIR Comments at p. 24.

¹⁶⁰ *Ibid.*

¹⁶¹ FSEIR at pp. 8-204 to 8-216, 8-252 to 8-269.

¹⁶² *Id.* at pp. 8-315 to 8-322.

¹⁶³ Cashen FSEIR Comments at pp. 19-20, 22-34.

8. The County Failed to Analyze the Least Environmentally Damaging Practicable Alternative

We commented that the County failed to analyze the least environmentally damaging practicable alternative (“LEDPA”) as required for a Section 404 permit, which will inform the CEQA analysis and reasonably foreseeable alternatives.¹⁶⁴ The County claimed CEQA does not require such an analysis in an EIR.¹⁶⁵ Rather, the County deferred to the United States Army Corp of Engineers.¹⁶⁶ This statement directly conflicts with the County’s recognition that “[r]elying on another agency’s approval is considered deferred mitigation.”¹⁶⁷ 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,¹⁶⁸ 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.¹⁶⁹ Because the County did not perform a LEDPA analysis, the FSEIR violates CEQA.

9. The FSEIR Is Inconsistent with the Energy Element of the County’s Comprehensive Plan

We commented that the County failed to comply with Policy 5.1 of the Energy Element requiring that the County “consider the full-life cycle environmental effects,” including all “reasonably anticipated adverse and beneficial environmental, health, and safety effects of an energy source (including fuel-cycle and temporal aspects), beginning from its development and adaptation continuing through to its end” because it failed to analyze the Project’s decommissioning.¹⁷⁰ The County claimed a life-cycle analysis is not required and that the DSEIR’s consistency analysis was adequate. The County based this opinion on its argument that a

¹⁶⁴ FSEIR at pp. 8-199 to 8-200.

¹⁶⁵ *Id.* at pp. 8-300 to 8-301.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Id.* at p. 8-371.

¹⁶⁸ *Id.* at p. 4.5-65.

¹⁶⁹ *Sierra Club*, 6 Cal.5th at 519-21.

¹⁷⁰ FSEIR at pp. 8-200 to 8-203.

decommissioning analysis would be speculative because it would not occur for another 30 years¹⁷¹ despite acknowledging potentially significant environmental impacts could occur as a result.¹⁷² The County's argument is illogical.

The County possesses all the information needed to conduct a decommissioning analysis. It is aware of all Project components given that County described each one in the FSEIR.¹⁷³ Simply because the Project's activities may occur later in time, does not render those activities speculative. In fact, the County described and analyzed the Project's operational phase impacts even though those activities do not occur until after the Project is constructed.¹⁷⁴ Moreover, decommissioning analyses are routinely completed by the California Energy Commission in power plant siting proceedings.

The language of Policy 5.1 couldn't be clearer: conduct a life-cycle analysis during the environmental review process.

Policy 5.1: Environmental Analysis. In consideration of alternative energy, the County *shall* consider the full life-cycle environmental effects and embedded energy requirements to provide alternative energy. The County shall encourage the use of those alternatives determined to present sufficient environmental benefits.¹⁷⁵

The County admitted it did not complete the 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.¹⁷⁶

Because the County adopted Policy 5.1 to avoid or mitigate significant environmental impacts associated with water resources and flooding, air quality,

¹⁷¹ *Id.* at p. 8-301.

¹⁷² *Id.* at pp. 8-200 to 8-203.

¹⁷³ *See generally id.* at pp. 2-13 to 2-53 (project components sections).

¹⁷⁴ *Id.* at pp. 2-54 to 2-57.

¹⁷⁵ *Id.* at p. 4.13-18 (emphasis added).

¹⁷⁶ *Ibid.* (emphasis added).

noise, energy, and hazardous materials,¹⁷⁷ its failure to conduct a life-cycle analysis for the Project violates CEQA.

10. The Planning Commission's Findings in the Statement of Overriding Considerations Are Not Supported by Substantial Evidence

A statement of overriding considerations must be issued when an agency decides to approve a project that will cause one or more significant environmental effects.¹⁷⁸ The agency must find that the specific environmental, economic, legal, social, technological, or other benefits of the proposed Project outweigh the unavoidable adverse environmental impacts.¹⁷⁹ Here, the Planning Commission's findings that the Project's benefits outweigh its environmental harms was not supported by substantial evidence.

First, as discussed in Sections V.A.1.a. and V.A.3.b., operation of the Project essentially proposes take of 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. By this alone, the County lacks a sufficient basis to conclude the Project's benefits outweigh its permanent harm.

Second, the GHG estimate (which was substantially revised the day before the Planning Commission hearing) relied upon in the statement of overriding considerations was not supported by substantial evidence.¹⁸⁰ As we raised in comments during the hearing, the GHG estimate failed to consider the increase in GHG emission resulting from manufacturing, transporting and decommissioning of the wind turbines and associated facilities. Climate change from GHG emissions is a world-wide phenomenon and all sources of Project-related GHG emissions must be included in the County's analysis. Because the County failed to consider the life-cycle GHG impacts of the Project, it significantly underestimated the Project's GHG emissions. Therefore, the Planning Commission's finding that the Project's benefits outweigh the harms was not supported by substantial evidence.

¹⁷⁷ *Id.* 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).

¹⁷⁸ CEQA Guidelines § 15093.

¹⁷⁹ *Ibid.*

¹⁸⁰ SWEP Staff Report, attach. A at pp. A-14 to A-15.

B. The Planning Commission Abused Its Discretion by Erroneously Finding that the Project is Consistent with Policy 5.1 of the Energy Element

A county must adopt a “comprehensive, long-term general plan” for its physical development.¹⁸¹ The general plan contains the county’s fundamental policy decisions about such development.¹⁸² A county’s land use decisions must be consistent with the policies expressed in the general plan.¹⁸³ Although precise conformity is not required, the project must be compatible with the objectives and policies of the general plan.¹⁸⁴ The County’s conclusion that a project is consistent with the applicable general plan must be supported by substantial evidence.¹⁸⁵

The Planning Commission erred when it concluded the Project is consistent with Policy 5.1 of the Energy Element of the County’s Comprehensive Plan.¹⁸⁶ As discussed in Section V.A.9., the County admits it did not complete the required life-cycle environmental analysis.¹⁸⁷ The County’s decision to forgo the required analysis is not supported by substantial evidence because the decommissioning activities are not too speculative, and a decommissioning analysis is routinely performed by other state agencies during the environmental review process. As a result, the Planning Commission abused its discretion.

VI. REQUESTED RELIEF

We respectfully request that the Board of Supervisors grant this appeal, reversing the Planning Commission’s decisions to (1) approve the conditional use permit and variances, (2) certify the FSEIR and (3) adopt Findings of Approval and Conditions of Approval for the Project. We further request the County recirculate a revised DSEIR that includes all new information that the County disclosed for the first time in the FSEIR, analysis of the Project’s significant environmental impacts, and identification of feasible mitigation measures to reduce those impacts to less than significant, as specified in our written and oral comments and as required by law. By doing so, the County and the public can ensure that all the Project’s

¹⁸¹ Gov. Code § 65300.

¹⁸² *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1194.

¹⁸³ *Citizens of Goleta Valley*, 52 Cal.3d at 570.

¹⁸⁴ *Naraghi Lakes Neighborhood Preservation Assn. v. City of Modesto* (2016) 1 Cal.App.5th 9, 17-18.

¹⁸⁵ *Id.* at p. 19.

¹⁸⁶ SWEF Staff Report at p. 38; *id.*, attach. A at p. A-18.

¹⁸⁷ *Id.* at p. 38.

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adverse environmental and public health impacts are adequately disclosed, analyzed, and mitigated as required by law.

Thank you for your consideration of this appeal.

Sincerely,



Andrew J. Graf
Associate

AJG:acp

Attachments

4377-026acp