

ATTACHMENT C: FINDINGS FOR APPROVAL

The Board of Supervisors adopts the following Findings for Approval of the Revision to Permit Condition No. 38, MM BIO-16 (Golden Eagle Take Permit) for the Strauss Wind Energy Project (SWEPE), Case No. 23RVP-00031.

1.0 CEQA FINDINGS

1.1 CONSIDERATION OF THE ENVIRONMENTAL IMPACT REPORT

The project is a request by Strauss Wind LLC (Strauss), an affiliate of BayWa r.e. Wind, LLC to revise 16CUP-00000-00031 Condition of Approval No. 38, MM BIO-16 (Golden Eagle Take Permit) for the SWEPE. Condition No. 38 was adopted as one of several feasible mitigation measures to reduce significant potential impacts to golden eagles to the maximum extent feasible, as described in Finding 1.4 of the 16CUP-00000-00031 Board Action Letter dated February 4, 2020.

Potential impacts to golden eagles were reviewed under CEQA as detailed in the Final Supplemental Environmental Impact Report (FSEIR) No. 18EIR-00000-00001, and were considered a Significant and Unavoidable impact. Pursuant to CEQA Guidelines Section 15091, the Board of Supervisors found that, to the extent the identified Significant and Unavoidable impacts remain Significant and Unavoidable, such impacts were acceptable when weighed against the overriding social, economic, and other benefits set forth in the Statement of Overriding Considerations (Finding 1.8 of the Board Action Letter dated February 4, 2020, incorporated herein by reference). Because FSEIR No. 18EIR-00000-00001 was previously certified, State CEQA Guidelines Section 15162 states that no subsequent EIR or Negative Declaration shall be prepared for this project, unless one or more of the following has occurred:

1. Substantial changes are proposed in the project which will require major revisions to the Supplemental EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes will occur with respect to the circumstances under which the project is undertaken which will require major revisions to the Supplemental EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

3. New information of substantial importance which was not known and could not have been known at the time the previous Supplemental EIR was certified as complete has become available.

The Board of Supervisors has considered the Addendum dated September 30, 2023, together with the previously certified FSEIR No. 18EIR-00000-00001 for the SWEP. The Addendum reflects the independent judgment of the Board of Supervisors and has been completed in compliance with CEQA. The Addendum, together with FSEIR No. 18EIR-00000-00001, is adequate for this proposal. On the basis of the whole record, including the Addendum, the previously certified FSEIR No. 18EIR-00000-00001, and any public comments received, the Board of Supervisors finds that the project changes described in the Addendum are only minor technical changes or additions. The proposed project will not result in any physical changes to the SWEP, and there are no changed circumstances that would trigger the above occurrences, and there is no new information of substantial importance. In addition, there are no new significant environmental effects, or a substantial increase in the severity of previously identified significant effects under FSEIR No. 18EIR-00000-00001 have been found with the proposed project, as described in Finding 1.2 below. Instead, the project will revise the timing of the requirement that the applicant obtain an Incidental Take Permit (ITP) from the U.S. Fish and Wildlife Service (USFWS) for golden eagles and bolster related conditions imposed to minimize and mitigate potential impacts to golden eagles, under the Board of Supervisor's determination that under present circumstances the existing timing requirement is infeasible, impractical, and/or unworkable.

State CEQA Guidelines Section 15164 allows an addendum to be prepared when only minor technical changes or changes which do not create new significant impacts would result. As discussed above, the project consists of minor changes to existing permit conditions of approval that would revise the timing of the requirement that the applicant obtain an ITP for golden eagles and bolster related conditions imposed to minimize and mitigate potential impacts to golden eagles. Because the project to revise CUP Condition No. 38 meets the requirements of Public Resources Code Section 21166 and State CEQA Guidelines §15164, preparation of a new subsequent EIR or EIR is not required. The Addendum to 18EIR-00000-00001 dated September 30, 2023, incorporated herein by reference, is sufficient to fulfill the environmental review requirements for the project, Case No. 23RVP-00031.

1.2 CEQA CONSISTENCY

The proposed project would revise Condition No. 38 to state that prior to operation, Strauss must demonstrate that a take authorization application for golden eagles (*Aquila chrysaetos*) has been determined complete by the USFWS under the Bald and Golden Eagle Protection Act, rather than an ITP be issued (or intended to be issued, or not required), as currently stated.

Under CEQA, a modification to an approved and adopted mitigation measure must be supported by a legitimate reason for the change based on substantial evidence, such as that the mitigation measure is now infeasible, ill-advised, impracticable, or unworkable, and additional CEQA documentation is required only if that modification would result in a new or substantially more severe significant environmental impact. The project to revise Condition No. 38 is proposed due to the uncertain timing of USFWS golden eagle take authorization, and the urgency of the commencement of SWEP operations.

The Board of Supervisors finds that various economic, environmental, social, and technological factors support the finding that the extensive delay to applicant faces in obtaining an ITP, as well as the unavailability of alternatives, such as obtaining a letter from the USFWS indicating that the ITP is expected to be issued or is not needed, now render the original mitigation measure infeasible and unworkable. The Board of Supervisors finds that the following are legitimate reasons to modify Condition No. 38 as proposed, and that substantial evidence in the record supports the request as described in the Planning Commission Staff Memo dated August 1, 2023, herein included by reference:

1. **Proof of Concept.** The SWEP, once operational, will provide proof of concept by providing evidence that the facility design and operation is feasible.
2. **Ability to Deliver on Contract with Marin Clean Energy (MCE).** Strauss is contracted with MCE under a 15-year Power Purchase Agreement. Power from the SWEP will help lower energy costs, reduce the risk of power outages, support high-demand grid needs, and reduce the need for fossil-fuels, helping California meet the need for in-state reliable energy.
3. **Degradation of Equipment.** Expired warranties and degradation of equipment could occur when the SWEP is non-operational, and could decrease performance reliability and increase the potential for faults and failures.
4. **Immediately Available Renewable Energy.** Once operational, the SWEP will have a generating capacity of approximately 98.14 megawatts (MW), which will

generate enough power to supply about 43,000 California homes annually, thereby reducing carbon dioxide emissions by as much as 40,000 metric tons annually.

5. **Replacement of Other Power Sources.** Once operational, the SWEP will potentially offset other non-renewable energy sources and could avert the construction and operation of new fuel burning power plants, reducing petroleum usage and greenhouse gas emissions.
6. **Support for California's Climate Goals.** The SWEP will further California plans and policies related to increasing the amount of available renewable energy and achieving carbon neutrality as soon as possible (e.g. the Renewable Portfolio Standard goals).
7. **Support for the County's Energy and Climate Action Plan.** The SWEP contributes to achieving the County's renewable energy goals and addresses public concerns related to greenhouse gas emissions and climate change, energy security, and fossil fuel dependence. The SWEP furthers County Energy and Climate Action Plan Measure RE 4 and County Energy Element Goal 5.
8. **The Revisions Provide No Less Protection, and Potential Impacts Remain Mitigated to the Maximum Extent Feasible.** The project provides no less protection to golden eagles, and potential impacts remain mitigated to the maximum extent feasible, as Strauss remains obligated to complete the ITP process and has committed to implementing all required mitigation procedures imposed through that process. The project also ensures that the minimization efforts required through other Conditions of Approval, including the Adaptive Management Plan and bird surveillance technology, will be in place prior to operation.

Given the extensive delay in obtaining an ITP and the unavailability of alternatives, the economic, environmental, social, and technological factors identified above, and the additional revisions to the Conditions of Approval to ensure maximum protection of and mitigation for potential impacts to golden eagles, the Board of Supervisors finds it is now infeasible and unnecessary that Strauss obtain the ITP prior to commencing SWEP operations.

Under CEQA, lead agencies are required to adopt any feasible mitigation measures as identified in an EIR that would mitigate, avoid, or lessen a project's significant environmental impacts (State CEQA Guidelines Section 15021). Where supported by the

evidence, feasible mitigation measures may include “compliance with a regulatory permit or similar process” (State CEQA Guidelines Section 15126.4). Condition No. 38 requires, in part, compliance with a federal regulatory permit, and is in most respects a feasible mitigation measure. The County Land Use and Development Code (LUDC) does not require specific mitigation ratios for impacts to golden eagles; instead, Condition No. 38 relies on the federal take authorization process, which would minimize and mitigate the impacts of a potential golden eagle take to the maximum extent practicable, and would condition an ITP to ensure compliance with compensatory mitigation requirements.

Strauss has not yet obtained the ITP; it has submitted its application for the ITP, and USFWS has determined that the application is complete. Strauss is proposing to provide the County with a “Letter of Commitment” to keep the ITP application active, and to comply with any future compensatory mitigation measures once the ITP is issued. Condition No. 38 as currently written requires that: 1) the ITP be issued prior to operation; 2) that the USFWS provide a letter stating that the ITP is expected to be issued; or 3) that the USFWS provide a letter stating that an ITP is not required. The ITP being issued prior to operation is now unfeasible without delaying SWEP operations, and thereby delaying or potentially foregoing the benefits of the SWEP outlined above. A letter from the USFWS stating that the ITP is expected to be issued is also no longer feasible, as Strauss confirmed that the USFWS does not issue such pre-decision determinations (Strauss formerly required such a determination, and was informed that the USFWS did not issue such letters). A letter from the USFWS stating that an ITP is not required is also not feasible, as Strauss is committed to maintaining its ITP application and adhering to the terms of its conditions.

Therefore, approval of the proposed revisions to Condition No. 38 is based on legitimate reasons supported by substantial evidence, and will not result in a substantial increase in the severity of the significant and unavoidable impact to golden eagles identified in FSEIR No. 18EIR-00000-00001.

1.3 LOCATION OF RECORD OF PROCEEDINGS

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

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

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

2.0 ADMINISTRATIVE FINDINGS

2.1 CONDITIONAL USE PERMIT FINDINGS

Findings required for all Conditional Use Permits. Pursuant to Subsection 35.82.060.E.1 of the Santa Barbara County Land Use and Development Code, a Conditional Use Permit application shall be approved or conditionally approved only if the review authority first makes all of the following findings, as applicable. Each of these findings can be made, as discussed below.

- a. The site for the proposed project is adequate in terms of location, physical characteristics, shape, and size to accommodate the type of use and level of development proposed.*

The project to revise Condition No. 38 does not result in any physical change to the SWEP. The site remains adequate in terms of location, physical characteristics, shape, and size to accommodate the SWEP, as described in the Board of Supervisor's Action Letter, Attachment 1 – Finding 2.1a, dated February 4, 2020, incorporated herein by reference.

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

Environmental impacts to golden eagles were determined to be mitigated to the maximum extent feasible through existing mitigation requirements adopted through the FSEIR No. 18EIR-00000-00001, and through the requirement to obtain federal approval of an enforceable ITP that may require additional minimization efforts and/or compensatory mitigation, as determined by the Board of Supervisors in the January 28, 2020 approval of the SWEP, Case No. 16CUP-00000-00031 and 18VAR-00000-00002. However, the requirement to obtain an ITP (or a letter from USFWS that an ITP is expected to be issued or not needed) prior to operation is no longer feasible or necessary. Due to the potentially lengthy timeframe for ITP issuance, and because the USFWS does not provide pre-determination letters, requiring the ITP prior to commencement of operations would conflict with urgent SWEP objectives. Instead, through revisions to the Conditions of Approval, including Strauss's commitment to

implementing all required mitigation measures imposed through the ITP process, and commencing all required minimization efforts prior to operation, the project provides no less protection for golden eagles than as was provided for under the original SWEP approval. The Board of Supervisors finds that with revisions to the Conditions of Approval, environmental impacts to golden eagles remain mitigated to the maximum extent feasible.

c. *Streets and highways are adequate and properly designed.*

The project to revise Condition No. 38 does not result in any physical change to the SWEP. Streets and highways remain adequate and properly designed as described in the Board of Supervisor's Action Letter, Attachment 1- Finding 2.1c, dated February 4, 2020, incorporated herein by reference.

d. *There will be adequate public services, including fire protection, police protection, sewage disposal, and water supply to serve the proposed project.*

The project to revise Condition No. 38 does not result in any physical change to the SWEP. Adequate public services remain, as described in the Board of Supervisor's Action Letter, Attachment 1- Finding 2.1d, dated February 4, 2020, incorporated herein by reference.

e. *The project will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood and will be compatible with the surrounding area.*

The project to revise Condition No. 38 does not result in any physical change to the SWEP. The project remains non-detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood, and is compatible with the surrounding area, as described in the Board of Supervisor's Action Letter, Attachment 1- Finding 2.1e, dated February 4, 2020, incorporated herein by reference.

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

The project complies with the County's Land Use and Development Code, as discussed in Section 4.0 of the Planning Commission Staff Memo dated August 1, 2023,

incorporated herein by reference. Therefore, the Board of Supervisors finds that the project complies with all applicable requirements of the County's Comprehensive Plan and complies with the County's Land Use and Development Code.

g. In designated rural areas the use will be compatible with and subordinate to the rural and scenic character of the site.

The project to revise Condition No. 38 does not result in any physical change to the SWEP. The project remains compatible with the rural character of the site to the maximum extent feasible in consideration of technical requirements of the SWEP, as described in the Board of Supervisor's Action Letter, Attachment 1- Finding 2.1g, dated February 4, 2020, incorporated herein by reference.