



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and Development
Department No.: 053
For Agenda Of: September 19, 2023 Set Hearing for October 3, 2023
Placement: Administrative
Estimated Time: 1 hour on October 3, 2023
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Lisa Plowman, Director, Planning & Development
Director(s) (805) 568-2086
Contact Info: John Zorovich, Deputy Director, Energy & Minerals Division
(805) 568-2519
SUBJECT: Set Hearing for Appeal of the Planning Commission Approval of the Revision to Permit Condition No. 38, MM BIO-16 (Golden Eagle Take Permit) for the Strauss Wind Energy Project (Case No. 23RVP-00031), Third and Fourth Supervisorial Districts

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Recommended Actions:

On September 19, 2023, set a hearing for October 3, 2023 to consider the appeal, Case no. 23APL-00034 of the Planning Commission's August 9, 2023 approval of the revision to Permit Condition No. 38 for the Strauss Wind Energy Project (Case No. 23RVP-00031).

On October 3, 2023, staff recommends that the Board uphold the appeal, and deny the project by taking the following actions:

- a) Uphold the appeal, Case No. 23APL-00034;
- b) Make the required findings for denial of the project, Case No. 23RVP-00031;
- c) Determine that the denial of the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15270(a); and
- d) Deny the project, Case No. 23RVP-00031.

Auditor-Controller Concurrence

As to form: N/A

Alternatively, the Board could deny the appeal and approve the project by taking the following actions:

- a) Deny the appeal, Case No. 23APL-00034;
- b) Make the required findings for approval of the project, Case No. 23RVP-00031, including the CEQA findings;
- c) Approve the Addendum to the previously certified Environmental Impact Report, 18EIR-00000-00011, and determine that, as reflected in the CEQA findings, no subsequent Environmental Impact Report is required for this project; and
- d) Grant *de novo* approval of the project, Case No. 23RVP-00031, subject to the Conditions of Approval.

Summary Text:

This Board Agenda Letter sets a hearing for October 3, 2023 to review the appeal of Case No. 23RVP-00031 that would revise the Strauss Wind Energy Project (SWEP) Conditional Use Permit No. 16CUP-00000-00031 Condition No. 38 concerning golden eagle (*Aquila chrysaetos*) take authorization from the U.S. Fish and Wildlife Service (USFWS). On August 9, 2023, the Planning Commission approved a request by the applicant, Strauss Wind Energy LLC (Strauss), an affiliate of BayWa r.e. Wind, LLC, to revise the requirements that Strauss either obtain an Incidental Take Permit (ITP) or a letter from the USFWS stating that an ITP is expected to be issued or not necessary, prior to commencing operation of the SWEP. The Planning Commission found that the proposed revision was consistent with the requirements of the California Environmental Quality Act (CEQA). The Santa Barbara County Coalition of Labor, Agriculture & Business (COLAB) appealed the Planning Commission’s decision on the grounds that the approval is in direct conflict with CEQA and the California Endangered Species Act (CESA), and based on favoritism for the applicant. A subsequent Board Agenda Letter will detail the appeal issues and provide staff responses.

Background:

The SWEP, Case No. 16CUP-00000-00031, was approved by the Board of Supervisors in January 2020 for the construction and operation of up to 29 wind turbine generators and ancillary equipment located in the coastal hills southwest of the City of Lompoc. Strauss completed substantial construction of the SWEP, and is planning for the upcoming start of operations.

As originally approved in 2020, CUP Condition No. 38 (*MM BIO-16, Monitoring and Adaptive Management Plan – Bird and Bat Conservation Strategy*) required, in part, that Strauss obtain an ITP from the USFWS prior to operation, or provide the County with a letter from USFWS stating that an ITP is expected to be issued, or not necessary.

Strauss submitted an application to the Planning and Development Department on May 11, 2023 to revise Condition No. 38 to propose that prior to operation, Strauss must demonstrate that an ITP application be determined complete by the USFWS, rather than an ITP be issued, or intended to be issued or not needed. Strauss also proposes the following additional requirements prior to operation: 1) provide a “Letter of

Commitment” to maintain an active ITP application and comply with federal compensatory mitigation requirements; 2) provide a signed contract between Strauss and a contractor to implement a required Adaptive Management Plan; and 3) complete the installation of required bird surveillance technology. The purpose of modifying Condition 38 is to allow Strauss to commence SWEP operations in the fall of 2023, prior to ITP issuance which is expected to take a year or more.

Case No. 23RVP-00031 was first heard by the Planning Commission on July 12, 2023. Staff recommended denial of the project, stating that: 1) Strauss’ failure to submit a timely ITP application did not constitute a legitimate reason to modify an adopted mitigation measure as required under CEQA; 2) that the requested changes would cause uncertainty and delay in federally required mitigation measures; and 3) that the changes would result in a less binding and less enforceable Condition of Approval. However, the Planning Commission identified various reasons to approve the project in compliance with CEQA, requested that staff add supplemental monitoring and reporting requirements to the Conditions to ensure impacts remained mitigated to the maximum extent feasible, and requested that staff return with Findings for Approval and revised Conditions of Approval.

The project returned to the Planning Commission on August 9, 2023 with the Commission’s requested changes. In response to additional public comments, the Planning Commission approved Case No. 23RVP-00031 with further revisions to: Condition No. 1 (*Project Description*) for Strauss to voluntarily provide \$30,000 to a County-approved raptor rehabilitation center for each documented golden eagle take that would occur prior to ITP issuance; Condition No. 38 (*Bird and Bat Conservation Strategy*) to add a requirement to obtain an ITP from the California Department of Fish and Wildlife under the new California Senate Bill 147; and Condition No. 40 (*Bird/Bat Mortality Study*) to increase the frequency of eagle carcass searches to weekly from every two weeks.

On August 21, 2023, COLAB filed an appeal of the Planning Commission’s action (Case No. 23APL-00034), which is now scheduled to be heard by your Board on October 3, 2023.

The record for the project is attached. The appeal letter is included as Attachment 1. The Planning Commission Action Letter dated August 11, 2023 is included as Attachment 2. The Planning Commission Staff Memo dated August 1, 2023 is included as Attachment 3. The Planning Commission Staff Report dated July 3, 2023 is included as Attachment 4. Public Comment Letters from the July and August Planning Commission hearings are included as Attachment 5. A link to 18EIR-00000-00001 is provided as Attachment 6. The Facilitation Report is included as Attachment 7. The Addendum to 18EIR-00000-00001 will be included in the subsequent Board Agenda Letter that details the appeal issues.

Fiscal and Facilities Impacts:

Budgeted: Yes

The costs to process the project were borne by the applicant through the payment of processing fees. Funding for this project is budgeted in the Planning and Development’s Permitting Budget Program on page D-310 of the County of Santa Barbara Fiscal Year 2023-24 Adopted Budget.

Special Instructions:

The Planning and Development Department will satisfy all noticing requirements for the October 3, 2023 hearing. Clerk of the Board to return the two (2) printed copies of the EIR (18EIR-00000-00001) to Planning and Development, ATTN: David Villalobos.

Attachments:

1. COLAB Appeal Application, dated August 16, 2023
2. Planning Commission Action Letter, dated August 11, 2023
3. Planning Commission Staff Memo, dated August 1, 2023
4. Planning Commission Staff Report, dated July 3, 2023
5. Public Comment Letters
6. Link to 18EIR-00000-00001
7. Facilitation Report, dated August 29, 2023

Authored by:

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Energy, Minerals & Compliance Division
Planning and Development Department

ATTACHMENT 1

COLAB Appeal Application, dated August 16, 2023

ATTACHMENT 2

Planning Commission Action Letter, dated August 11, 2023

ATTACHMENT 3

Planning Commission Staff Memo, dated August 1, 2023

ATTACHMENT 4

Planning Commission Staff Report, dated July 3, 2023

ATTACHMENT 5
Public Comment Letters

ATTACHMENT 6

Link to SWEP 18EIR-00000-00001

<https://cosantabarbara.box.com/s/yz35bx781qenkghv2q0ldocuvjrypzw5>

ATTACHMENT 7

Facilitation Report, dated August 29, 2023