



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:  
Placement:  
Estimated Time: 2 hours  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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

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**County Counsel Concurrence**

As to form: Yes

Other Concurrence: N/A

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:**

Staff recommends that your Board take the following actions:

- a) Deny the appeals, Case Nos. 19APL-00000-00033, 19APL-00000-00034 and 19APL-00000-00035.
- b) Make the required findings for approval of the project specified in Attachment 1 of this Board Letter including CEQA findings.
- c) Certify the Final Supplemental Environmental Impact Report (Final SEIR) 18EIR-00000-00001; SCH# 2018071002 included as Attachment 3 of the January 14, 2020 Set Hearing Board Letter for these appeals, and the Final SEIR Revision Letter No. 1 dated November 12, 2019 (Attachment 4 of the January 14, 2020 Set Hearing Board Letter for these appeals), after considering the Final EIR for the Lompoc Wind Energy Project (06EIR-00000-00004; SCH# 2006071008) included as Attachment 2 of this Board letter, and adopt the mitigation monitoring program contained in the conditions of approval (Attachment B, Condition 93 of the Planning Commission Action Letter

dated November 22, 2019 included as Attachment 1 of the January 14, 2020 Set Hearing Board Letter for these appeals).

- d) Grant *de novo* approval of the Strauss Wind Energy Project (16CUP-00000-00031 and 18VAR-00000-00002), consisting of the Modified Project Layout and Alternative Surface Transportation Route, that combines two alternatives set forth in the Final SEIR and Final SEIR Revision Letter No. 1 dated November 12, 2019, subject to the conditions of approval included in Attachment B of the November 22, 2019 Planning Commission Action Letter included as Attachment 1 of the January 14, 2020 Set Hearing Board Letter for these appeals.

The proposed project involves 22 parcels in the Third and Fourth Supervisorial Districts:

- The project wind turbine site consists of 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.
- The project electrical 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.

### **Summary Text:**

#### **Project Description**

The proposed Strauss Wind Energy Project is a commercial scale wind energy project which would generate up to 98.14 megawatts (MW) of renewable energy with 29 wind turbine generators (WTGs) located over a project area of 5,887 acres. The project site is located approximately 4 miles southwest of the City of Lompoc at the terminus of San Miguelito Road. Six WTGs would have a power generating capacity of 1.79 megawatts (MW) and would be up to 427 feet tall and 23 WTGs would have a power generating capacity of 3.8 MW and would be up to 492 feet tall. A 5,000-square foot operations and maintenance building would be located near the center of the project site. All power generated by the WTGs would be transmitted to an onsite project substation via a power cable collection system, which would be mainly underground (except for a half mile above ground). From the substation, electricity would be transmitted by an overhead transmission line of 7.3 miles in length which would connect to a switchyard located south of the City of Lompoc where electricity would enter the grid network. A detailed project description is included as Condition No. 1 in Attachment B of the Planning Commission Action Letter dated November 22, 2019, included as Attachment 1 of the January 14, 2020 Set Hearing Board Letter for these appeals.

#### **Background**

On November 20, 2019, the County Planning Commission approved the Strauss Wind Energy Project Conditional Use Permit and Variance by a vote of 5 to 0. As part of their approval, the Planning Commission found the proposed project to be in conformance with applicable Santa Barbara County Comprehensive Plan policies, Santa Barbara County Land Use and Development Code requirements, and the California Environmental Quality Act (CEQA) Guidelines Sections 15162 and 15163. These policies, development standards, and requirements are discussed in detail in the Planning Commission staff report, dated November 12, 2019 (Attachment 2 of the January 14, 2020 Set Hearing Board Letter for these appeals). In their decision to approve the project, the Planning Commission weighed all of the evidence presented to them, including public testimony and written submissions.

## **Appellant Appeal Topics and Staff Responses**

On December 2, 2019, three appeals of the Planning Commission approval were filed; Juarez, Adam & Farley, LLP on behalf of George and Cheryl Bedford (19APL-00000-00033), Adams, Broadwell, Joseph & Cardozo, LLP on behalf of Citizens for Responsible Wind Energy (19APL-00000-00034) and the California Native Plant Society (19APL-00000-00035). All three appeals were filed in a timely manner. Each of the appeal issues are described and responded to below:

- The Juarez, Adam & Farley, LLP on behalf of George and Cheryl Bedford appeal application (Attachment 5 of the January 14, 2020 Set Hearing Board Letter for these appeals) contains a letter which focuses on concerns related to CEQA inconsistency, policy inconsistency, project alternatives and visual, noise, and biological impacts. These issues and staff's responses are summarized below in Appeal Issues 1a through 2a.
- The Adams, Broadwell, Joseph & Cardozo, LLP on behalf of Citizens for Responsible Wind Energy appeal application (Attachment 6 of the January 14, 2020 Set Hearing Board Letter for these appeals) contains a letter which focuses on concerns related to CEQA inconsistency, project alternatives, project findings and, biological, construction blasting, grading and stormwater impacts. These issues and staff's responses are summarized below in Appeal Issues 3a through 12b.
- The California Native Plant Society appeal application (Attachment 7 of the January 14, 2020 Set Hearing Board Letter for these appeals) contains a letter which focuses on concerns related to Gaviota tarplant impacts, as well as impacts to rare plants, Crotch's bumblebee, and wetlands. These issues and staff's responses are summarized below in Appeal Issues 13a through 16a.

### **Juarez, Adam & Farley, LLP on behalf of George and Cheryl Bedford**

#### **Appeal Issues #1: The SWEP Final SEIR is not consistent with CEQA requirements.**

**Issue 1a:** The appellant states that the Final SEIR contains an insufficient project description. The appellant references the Final SEIR's project description that states that wind turbine generators (WTGs) would be subject to minor adjustment of up to 100 feet, known as micro-siting. The appellant states that such shifts would make most of the environmental impacts (particularly visual and noise) associated with the project vastly different than what is presented in the Final SEIR.

The appellant raised this issue during the Draft SEIR public review comment period, and the Final SEIR addresses it in Chapter 8, Comment 52.2 (pages 8-450 to 8-451), to which staff responded accordingly consistent with the requirements of CEQA. A summary of that response is incorporated in the Staff Response below.

**Staff Response:** Chapter 2 Project Description in the Final SEIR states WTG locations could be "micro-sited", which means that any particular WTG location could be shifted up to 100 feet within its identified development pad. The ability to micro-site individual WTGs is needed because the possibility exists that minor changes to the project layout may occur during the project's detailed design phase. The inclusion of this common industry practice does not result in a Final SEIR project description that is unstable or unclear. Section 15124(c) of the State CEQA Guidelines states an EIR project description must provide "A general description of the project's technical, economic, and environmental characteristics..." and the beginning of Section 15124 states that the

project description “should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.” The Final SEIR’s Chapter 2 Project Description provides adequate detail for the assessment of impacts and determinations of the significance of those impacts.

Micro-siting of the WTGs was considered in the SEIR and would not result in any new or increased environmental impacts in addition to those identified in the EIR. The appellant implies that the visual impacts of the project may be more substantial if WTG locations are altered up to 100 feet by micro-siting. While aspects of some visual simulations in the Final SEIR would change minimally, the Final SEIR’s analysis of the project’s visual impacts would be the same. No new or substantially increased significant environmental impacts would result from these possible minor shifts of up to 100 feet in WTG locations.

The appellant wrongly characterizes the potential shift in WTG location that could result from micro-siting adjustments. The appellant argues that the WTGs could potentially be shifted 100 feet from the current boundaries of each WTG’s identified grading footprint. However, this is contrary to the project description in the Final SEIR. Section 2.5.2 of the Final SEIR clearly states that: “Micro-siting adjustments would be limited to up to a 100-foot shift of the location of the footprint analyzed in the conceptual grading plan.” Condition 1 (Project Description) in the Condition of Approvals (Attachment B to the Planning Commission Action Letter, Attachment 1 of the January 14, 2020 Set Hearing Board Letter for these appeals) states “Micro-siting adjustments shall be limited to shifting a WTG up to 100 feet within its footprint identified in the preliminary grading plan.” The WTG locations in the Applicant’s grading plan are precise and the potential shifts could only occur within 100 feet of these known locations. The appellant’s statement that “a shift of WTG placement of 100 feet could very well equate to an elevation of 900 feet” for a relocated WTG is incorrect. The maximum elevation gain for shifting a WTG up to 100 feet laterally would result in an elevation gain of 22 feet (WTG W-5).

The Final SEIR assumes the WTGs will be placed within 100 feet of where the Applicant has proposed them to be placed. The Applicant’s proposed locations for the wind turbines are shown in Final SEIR Figure 2.3a and other figures in the document.

**Issue 1b:** The appellant asserts that the noise analysis in the Final SEIR is inadequate and employs the wrong standard. The appellant states that WTG N-7 is located approximately 2,000 feet from the Bedford residence. If WTG N-7 shifts 100 feet closer to the Bedford residence (from micro-siting), the appellant states that this could have an impact to the Bedford residence. The appellant also states that it believes the Final SEIR noise analysis separately violates CEQA in that it does not comport with applicable County noise standards.

**Staff Response:** The Final SEIR recognizes that noise impacts could change slightly as the project continues to be refined into a final site layout. For residences over 2,000 feet away, a 100-foot “shift” due to micro-siting would not trigger a substantial change in noise levels observed at this distance. Mitigation Measure (MM) NOI-7 (Condition 74) provides the target noise level of 43.3 dBA Leq as a “not-to-exceed” performance standard at nonparticipating residences. Any adjustments to the WTG locations would need to be included in the pre-construction acoustical analysis required by MM NOI-7, and noise monitoring would also be required by MM NOI-8 (Condition 75) after startup of commercial operations to verify compliance with the performance standard. As such, the proposed project is conditioned to require compliance with the identified performance standard.

The appellant's comment wrongly suggests that applicable County noise standards have not been addressed. The Final SEIR identifies an absolute threshold of 50 dBA CNEL (p.4.14-7), for 24-hour periods, and the appellant quotes a passage from the Final SEIR Land Use section confirming that nonparticipating residences would experience levels no greater than 49 dBA [CNEL] (p.4.13-11). Because of 10-dBA "penalty" applied to nighttime noise levels and the 5-dBA "penalty" for evening noise in computing CNEL, an outdoor noise level threshold of 50 dBA CNEL translates to a steady or continuous noise level of 43.3 dBA hourly Leq, and the Final SEIR also applies 43.3 dBA Leq as a threshold for 1-hour periods applicable to the project. The analysis (Table 4.14-6) shows that predicted WTG noise levels would be below the 43.3 dBA Leq target for all nonparticipating residences. Regardless, the threshold had been made enforceable as a performance standard in MM NOI-7. This performance standard for the project is well below and much more stringent than the County-established noise threshold of 65 dBA CNEL.

**Issue 1c:** The appellant states the Final SEIR defers both environmental assessment and mitigation. The appellant points to Mitigation Measures BIO-5: Preconstruction Rare Plant Surveys and Restoration (Condition 15), BIO-6: Gaviota Tarplant Disturbance (Condition 16), BIO-11a: Preconstruction Wildlife Surveys (Condition 20) and VIS-4: Landscape and Lighting Plan (Condition 5) as examples. These mitigation measures require pre-construction surveys (e.g., sensitive plant species, etc.) and plans (Gaviota Tarplant Mitigation Plan and Landscape and Lighting Plan) to be submitted prior to construction. The appellant states that since these surveys and plans were not conducted prior to the Final SEIR certification, environmental review has been hampered and basic principles of CEQA have been violated.

The issue of deferring environmental assessment and mitigation was raised during the Draft SEIR public review comment period by the California Department of Fish and Wildlife (CDFW) and Adams, Broadwell, Joseph & Cardozo, LLP on behalf of Citizens for Responsible Wind Energy. The Final SEIR addresses this issue in Chapter 8, Comment 4.12 (pages 8-69 to 8-70) and Comments 10.106, 10.108, and 10.116 (pages 8-316 to 8-319). A summary of the responses is incorporated in the Staff Response below.

**Staff Response:** A number of plant surveys were conducted over the years associated with both LWEP and SWEP to provide the baseline information of plant species and to determine the project's impacts on these species. The mitigation measures cited in the appeal were developed expressly because environmental analysis of their respective resources identified significant (or potentially significant) impacts. The construction related impact analysis to sensitive plant species such as the Gaviota tarplant and other Special-Status plants identified the need for Mitigation Measures BIO-5 and BIO-6 under Impact BIO-5a and Impact Bio-6, respectively. Similarly, the analyses identifying the need for Mitigation Measure BIO-11a may be found in Final SEIR Section 4.5.4 under Impact BIO-7 (Common Wildlife). And the analyses identifying the need for Mitigation Measure VIS-4 may be found in Section 4.2.4, *Aesthetics/Visual Resources, Environmental Impacts and Mitigation Measures*, under Impacts VIS-1, 2, 3, 5, 6, 7, 8.

In each case, the potential impacts to each resource are analyzed consistent with CEQA requirements and supported by studies or other data cited in the analysis. Where needed, specific mitigation measures are identified to reduce those impacts to less than significant. The mitigation measures cited by the appellant are not intended to develop new information for the purpose of CEQA analysis, but instead to mitigate impacts identified in the analysis. Specifically, pre-construction surveys are conducted immediately before ground disturbing activities in order to

determine precisely where plants are located so that the plants can be flagged for avoidance/protection or relocated.

The mitigation measures cited by the appellant are fully consistent with CEQA and do not involve improper deferral. Rather, each measure provides objective and feasible performance standards such as locations, dates, and methods for required surveys; quantitative ratios to offset impacts; restoration requirements (where applicable); and avoidance or buffer distances. The required actions can feasibly achieve the performance standards, and by requiring conformance to the performance standards, implementation of each measure would avoid or substantially lessen the project's significant impacts. The required mitigation measures do not improperly "defer" formulation of mitigation according to CEQA.

**Issue 1d:** The appellant states the Final SEIR contains an inadequate analysis of project alternatives. The appellant also states that the "Siting WTGs Below Ridgelines" alternative in the Final SEIR would reduce or eliminate the environmental impacts associated with the visibility of the WTGs and the avian impacts. The appellant states that the analysis in the Final SEIR of why this Alternative was eliminated from further consideration is insufficient. The appellant states that a more complete analysis is required under CEQA.

The appellant raised this issue during the Draft SEIR public review comment period, which is addressed in Chapter 8, Comment 52.1 (pages 8-449 to 8-450) in the Final SEIR. The General Response GR-2 *Bird-Friendly Alternative/Low-Impact Project Design Alternative* (pages 8-6 to 8-9) also includes information that addresses the issue. A summary of the responses is incorporated in the Staff Response below.

**Staff Response:** An EIR, or in this case a SEIR, must analyze a reasonable range of feasible alternatives. The Final SEIR considered a reasonable range of alternatives, consisting of nine alternatives, including the No Project alternative and the Environmentally Superior Alternative (ESA) for the Lompoc Wind Energy Project (LWEP) EIR. All of these alternatives were designed to reduce or avoid the significant impacts of a wind energy facility at the project site. Of the nine alternatives initially considered, five were eliminated from further review and four were carried forward for additional analysis.

The "Siting WTGs Below Ridgelines" alternative is described in Section 5.4.5 of the Final SEIR. This potential alternative was identified during the scoping process to reduce avian mortality not for reducing visual impacts of the WTGs (however, the alternative could result in reduced visual impacts). Section 5.4.5 of the Final SEIR explains the reasons for the determination that the "Siting WTGs Below Ridgelines" alternative was not selected for additional analysis:

- Substantially more grading and earth movement would be required for mid-slope WTG foundations and access roads than for locations at the top of slopes (such as ridges) or at the bottom of slopes (canyon bottoms and draws). The increased disturbance footprint would result in increased impacts to biological resources including native vegetation and occupied or suitable habitat for special-status wildlife. Depending on the specific location of the increased grading, the potential alternative also could cause increased loss of protected oak trees or take of listed species such as Gaviota tarplant or El Segundo blue butterfly.
- Lower-elevation locations are the most sensitive biologically and would necessitate the removal of a large number of oak trees and other vegetation. The appellant refers to the

vegetation map in Final SEIR Figure 4.5-1a to indicate that vegetation at the WTG locations is the same as the vegetation at lower elevations. However, this is an incorrect interpretation of the vegetation map. Figure 4.5-1a shows that vegetation varies across the site with the sensitive Coast Scrub, Coast Live Oak Woodland, and Riparian Scrub communities being more dominant at the lower elevations.

- Regarding potential avian impacts, State and federal guidelines provide little guidance regarding the siting of WTGs on ridgelines. Further, there is little evidence to indicate that moving WTGs away from ridgelines would be effective in reducing avian mortality. Bird and bat mortality from collisions with WTGs is difficult to predict and depends on a variety of factors including species composition on a site; behavior and flight characteristics of species present; migratory patterns; site characteristics including habitat, weather and proximity to water and other features that concentrate migrants. Due to the complexity of the multiple factors that contribute to collision risk, pre-construction risk assessments and surveys may not accurately predict actual mortality during operation. There have been few formal studies comparing pre-project risk evaluation with actual operational fatalities and there appears to be only a weak relationship between predicted risk and actual recorded fatalities. In addition, siting factors can also be very site-specific dependent upon numerous contributing factors. For example, at the Altamont Pass Wind Resource Area, red-tailed hawk fatalities occur more frequently than expected at WTGs located on ridge tops and swales, whereas golden eagle fatalities are higher at WTGs located on slopes. There appears to be large variability in risk among bird species groups, raising concern that siting considerations that may benefit one species may put another at higher risk.
- The “Siting WTGs Below Ridgelines” alternative would not meet two basic objectives identified for the project: 1) To develop a wind energy project with a generation capacity of approximately 102 MW of electricity – producing approximately 300 GWh of electricity annually – in an area where the wind resources are known to be sufficient to do so; and, 2) To develop an economically viable wind energy project that will support commercially available financing. Siting WTGs on or close to ridgelines allows the WTGs to capture the maximum capacity of the wind resource. The exact loss of generating capacity if the WTGs are placed at lower-elevation locations is not known as such a determination requires specific assumptions about alternate WTG locations, the wind characteristics at those locations, and position relative to other WTGs. However, the applicant has indicated the loss of generating capacity at individual WTG locations could be as much as 50 percent, which would make the project infeasible.

State CEQA Guidelines Section 15126.6(a) states “An EIR need not consider every conceivable alternative to a project.” There is no requirement to analyze all feasible alternatives, including all possible alternatives capable of reducing environmental impacts. The SEIR adequately explains why the “Siting WTGs Below Ridgelines” alternative was not selected for detailed analysis due to its significant increase in environmental impacts and failure to attain a primary objective of the project.

**Issue 1e:** The appellant states the Final SEIR is excessively convoluted and improperly relies on a 10-year old EIR. The appellant states that the Final SEIR is 3,571 pages long, and in multiple places, refers to the 10-year old Lompoc Wind Energy Project (LWEP) EIR, which is over 3,000 pages. The Final SEIR refers to the LWEP EIR without adequate page references. The appellant states that the Final SEIR is extraordinarily difficult to review and to decipher what real

environmental impacts will occur. In addition, the appellant states that the Final SEIR improperly relies on the LWEP EIR because the projects are vastly different with respect to impacts to visual resources.

The appellant raised this issue during the Draft SEIR public review comment period, which is addressed in Chapter 8, Comments 52.3 and 52.4 (page 8-451) in the Final SEIR. A summary of the response is incorporated in the Staff Response below.

**Staff Response:** The Final SEIR is a Supplemental EIR to the Lompoc Wind Project EIR and explains similarities and differences between the SWEP and LWEP project descriptions. In addition, the Final SEIR describes where the proposed project's impacts would be similar to those of the LWEP as well as how they would be different. Much of the analysis and conclusions of the LWEP EIR are relevant to the proposed SWEP, which is why the County decided that preparation of a supplement to the LWEP EIR was appropriate for the SWEP. In regards to visual impacts, the Final SEIR does not rely on the LWEP EIR analysis but it does refer to it, which is appropriate for a SEIR. The Final SEIR includes its own analysis of the SWEP's impacts on aesthetics and visual resources and fully describes those impacts.

The Final SEIR was organized in standard manner for such documents and is consistent with direction articulated in Sections 15120 through 15132 of the State CEQA Guidelines (Contents of EIRs). Making references to other sections of the Final SEIR and to sections of the LWEP EIR is appropriate in order to avoid unnecessary duplication of information and is consistent with CEQA's requirements. When referring to information in the LWEP EIR, the Final SEIR briefly summarizes the relevant information in the LWEP EIR and the appropriate section of the LWEP EIR is referenced. Throughout the Final SEIR, the impacts and mitigation measures associated with SWEP are clearly described and the conclusions regarding significance are presented for each impact.

## **Appeal Issues #2: The project conflicts with various parts of the General Plan and Local Policies and objectives.**

**Issue 2a:** The appellant states that the project conflicts with the following:

- LUDC Section 35.62.040.C.1(b)(1) (Ridgeline and Hillside Development Guidelines) states:

*The height of any structure should not exceed 16 feet wherever there is a 16 foot drop in elevation within 100 feet of the location of the proposed structure's location.*

- Land Use Development Code (LUDC) Section 35.82.060.E.1(e) (Findings required for all Conditional Use Permits) states:

*The proposed 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.*

- LUDC Section 35.57.050(K) (Development Standards for wind energy systems) states:

***Visual impact.*** *The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible, the wind energy system:*



1. *Shall not project above the top of ridgelines.*
  2. *If visible from public viewing areas, shall use natural landforms and existing vegetation for screening.*
  3. *Shall not cause a significantly adverse visual impact to a scenic vista from a County or State designated scenic corridor.*
  4. *Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.*
- Comprehensive Plan Land Use Element Visual Resource Policy 2 states:

*In areas designated as rural on the land use plan maps, the height, scale, and design of structures shall be compatible with the character of the surrounding natural environment, except where technical requirements dictate otherwise. Structures shall be subordinate in appearance to natural landforms; shall be designed to follow the natural contours of the landscape; and shall be sited so as not to intrude into the skyline as seen from public viewing places.*

**Staff Response:** The Ridgeline and Hillside Development Guidelines, Section 35.62.040.C.1 states that the Board of Architectural Review shall have the discretion to interpret and apply the Ridgeline and Hillside Development Guidelines. In addition, Section 35.62.040(B)(2)(b) states: “In certain circumstances, allowing greater flexibility in the guidelines will better serve the interests of good design without negatively affecting neighborhood compatibility or the surrounding viewshed.” The Central Board of Architectural Review (CBAR) has the initial responsibility for considering the project’s compliance with the County’s visual design standards, including the County’s Ridgeline and Hillside Development Guidelines. On December 13, 2019, CBAR granted preliminary (but not final) design approval for the project. The appellant, Juarez, Adam & Farley, LLP on behalf of George and Cheryl Bedford, has appealed the CBAR’s preliminary approval to the County Planning Commission, which will hear the appeal early this year. The decision of the Planning Commission is appealable to your Board of Supervisors. The project’s compliance with the Ridgeline and Hillside Development Guidelines would be considered within the scope that appeal, if any.

Regarding the other LUDC and Comprehensive Plan Policies to which the appellant cites, the height, scale, location and design of the WTGs are dictated by technical requirements. Taller WTGs allow for fewer WTGs needed to generate a certain amount of energy. WTGs located along ridgelines maximize capture of a site’s wind resource. The WTGs height and location on ridgelines make it infeasible to use visual screening to mitigate visual impacts; however, the relatively remote location of the project site and intervening topography provide significant screening of the wind turbines from many public viewing locations. Over ten years ago, the County approved the LWEP’s 65 WTGs that would be approximately 400 feet tall and located on ridgelines. SWEP’s 29 492-foot tall WTGs reduces the number of approved LWEP’s WTGs by more than half. Having the least amount of wind turbines for a feasible project serves the interests of good design regarding the surrounding viewshed.

The project is situated in a relatively remote, rural location, surrounded by agriculturally zoned properties and undeveloped Vandenberg Air Force Base land. The non-reflective, neutral gray finish of the wind turbines would minimize contrast with the sky, and hazard lighting would be

kept to the minimum required by the FAA. Potential noise and safety impacts would be mitigated to less than significant by the mitigation measures identified in Final SEIR. Visual, safety and noise mitigations are included as project conditions. With implementation of mitigation measures, it was determined by the County Planning Commission that the operation of the project will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood. In addition, the Planning Commission determined that the height, scale and design of the project will be compatible with the character of the surrounding area “except where technical requirements dictate otherwise.” On November 20, 2019, the Planning Commission found the project consistent with the County’s Comprehensive Plan and the LUDC.

In sum, the project’s visual impacts have been minimized to the greatest extent feasible taking into account the project’s technical requirements, in compliance with the LUDC and Comprehensive Plan.

**Adams Broadwell Joseph & Cardozo on Behalf of Citizens for Responsible Wind Energy**

**Appeal Issues #3: The appellant states that the Draft SEIR must be recirculated because it added significant new information which requires additional mitigation.**

**Issue 3a:** The appellant states that the Draft SEIR must be recirculated because it added significant new information regarding the presence of eagles which identified more severe impacts than previously disclosed.

**Staff Response:** Golden eagle occurrence on the site was well documented in the LWEP EIR, which was summarized and incorporated by reference into the SWEP Draft and Final SEIRs. It provided a substantial basis for the golden eagle analysis and mitigation found in the SWEP Draft and Final SEIRs. The appellant’s contention that “the County was not aware of any eagles in the project area following publication of the LWEP EIR” is not accurate. The County was aware of multiple reports of golden eagles reported in the applicant’s technical reports (appended to the Draft and Final SEIR) and email reports from the Audubon Society (2 Oct 2018, 29 Oct 2018).

The LWEP EIR identified suitable golden eagle habitat on the site (Section 3.5.2, *Biological Resources, Vegetation and Habitats*) and identified golden eagles as present on the site (Section 3.5.3.1, *Biological Resources, Wildlife, Avian Species*; pages 3.5-17 and following) and listed multiple observations and described their occurrence and habitat usage on the site in text and tables listed below.

- Table 3.5-5, Other Sensitive Species in the Project Area and Potential Occurrence on the Project Site (p. 3.5-36)
- Table 3.5-6, Summary of Listed and Other Sensitive Species Observed in the Project Site (p. 3.5-56)
- Section 3.5.4.2.2, Biological Resources, Endangered, Threatened, Rare, and Other Sensitive Species, Other Sensitive Species, Other Sensitive Wildlife Species (pp. 3.5-46 and following)

The baseline information confirms that golden eagles regularly use the site and surrounding area, and that suitable golden eagle habitat exists on the site. This information formed that basis for the SWEP SEIR’s analysis of the project’s potential impacts to golden eagles, and the development of feasible mitigation measures designed to minimize those impacts.

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

The appellant wrongly claims that this supplemental information and expanded description of the Environmental Setting constitute a "new analysis" and "discloses a substantial increase in the severity of the project's significant impacts on eagles," requiring re-circulation of a revised Draft SEIR. To the contrary, the information that was added to the Final SEIR based on the additional field surveys merely clarifies and amplifies the detailed information that was already included in the Draft SEIR, namely that there was documented regular use of the site and surrounding areas by golden eagles, that suitable habitat for eagles existed on site, and that impacts resulting from Avian and Bat Collisions with WTGs would remain significant even with application of feasible mitigation.

Moreover, the additional information that was included in the Environmental Setting section of the Final SEIR did not identify a new environmental impact, a feasible and considerably different project alternative or mitigation measure, or a substantial increase in the severity of an impact that would result unless mitigation is adopted. Both the Draft and Final SEIR identified impacts resulting from Avian and Bat Collisions to be significant and unavoidable. Additionally, the record supports the conclusion that the Mitigation Measures adopted (15a, 15b, 16, and 16a-d, Conditions 36-42) will lessen these impacts to the greatest extent feasible. The added information changes none of these conclusions. Accordingly, the Environmental Setting information included in the Final SEIR is consistent with CEQA and does not require recirculating the Draft SEIR.

The appellant also wrongly states that the SEIR determined that "no feasible mitigation measures are available to reduce golden eagle collision impacts." However, both the Draft SEIR and the Final SEIR identify seven feasible mitigation measures to reduce or minimize bird and bat collisions with WTGs, but concludes that implementation of these measures would not mitigate the impact below significance. Mitigation Measures (15a, 15b, 16, and 16a-d, Conditions 36-42) include installation of active control devices that curtail WTG operation if birds are detected approaching the project site, removal of carrion within 500 feet of each WTG to minimize avian feeders, data collection and reporting on bird and bat use of site and adoption of an adaptive management plan that would include actions regarding certain WTG operations if bird and bat mortalities reach a certain threshold.

**Issue 3b:** The appellant argues that the Draft SEIR must be recirculated because it added significant new information regarding the project's groundwater impacts. The appellant states that the Draft SEIR analyzed one onsite well for construction water and that the Final SEIR analyzed four wells in a different aquifer. The appellant asserts that the Final SEIR included a significantly revised mitigation measure. In addition, the appellant asserts that the Final SEIR attempts to conceal the significance of the groundwater changes by keeping the same mitigation measure heading.

**Staff Response:** The applicant has always proposed, as reflected in the SEIR, to obtain a portion of the water needed for project construction and all of the water needed for routine operations from

an on-site well. At the time the Draft SEIR was prepared, information about the size and safe yield of the local aquifer was limited and, therefore, the SEIR preparers conservatively concluded that the potential drawdown of the aquifer caused by project construction could result in a significant impact (Class 2) due to a lack of information on the safe yield of groundwater from the aquifer (see Impact WAT-4: Groundwater). As a result, Mitigation Measure WAT-1 (Condition 63) prohibited the use of an on-site well as a source for construction water.

After publication of the Draft SEIR, the two groundwater studies referenced by the appellant were completed, which provided clarifying information on a conservative safe drawdown level for the local aquifer that would not adversely affect other local wells which utilize that aquifer. The Final SEIR was revised to reflect relevant information gleaned from the new groundwater studies. The impact described in the Draft SEIR remained essentially intact in the Final SEIR, including the conclusion that the impact was potentially significant and thus required mitigation. As a result, MM WAT-1 was revised to establish a maximum drawdown level for the aquifer that would be monitored at hourly intervals and reported to the County bi-weekly for the first six months and then monthly thereafter until three months after completion of construction. The revised discussion and mitigation measure were shown in ~~strikeout~~ and underline, similar to all revisions in the Final SEIR, not concealed to hide the revisions as the appellant asserts. Regarding the four wells in the Final SEIR being in a different aquifer than what was evaluated in the DSEIR, all of the wells evaluated in the Final SEIR are located in the same aquifer that is proposed for use in obtaining construction and operation water. The discussion in the Final SEIR included additional information that was obtained after the Draft SEIR was released for public review. The additional information was used to refine the groundwater analysis but did not change the impact determination.

In sum, the additional information regarding groundwater use included in the Final EIR that resulted in a modified mitigation measure merely clarified and amplified the information included in the Draft SEIR. It did not identify a new environmental impact, a feasible and considerably different project alternative or mitigation measure, or a substantial increase in the severity of an impact that would result unless mitigation is adopted. Instead, the additional information confirmed a potential Class 2 impact to groundwater (Impact WAT-4), and supported a slightly modified, feasible mitigation measure (MM WAT-1). Accordingly, recirculation is not required.

#### **Appeal Issues #4: El Segundo Blue Butterfly.**

**Issue 4a:** The appellant states that the County failed to adequately describe the environmental setting for the El Segundo Blue Butterfly (ESBB). The appellant states that its biologist identified numerous inconsistencies in the studies used by the County to determine the acreage of coastal buckwheat at the site. The appellant asserts that impacts to ESBB are severely underestimated because the County did not conduct a proper baseline assessment of ESBB habitat.

The appellant raised this issue during the Draft SEIR public review comment period, which is addressed in Chapter 8, Comments 10.73, 10.83, 10.84, and 10.108 (pages 8-304 to 8-305, 8-309, and 8-317) in the Final SEIR. A summary of the responses is incorporated in the Staff Response below.

**Staff Response:** Regarding inconsistencies in estimated impact acreages, the applicant's earlier reports (that were included in the technical appendices) based their acreages on previous project designs and survey methods. However, the Final SEIR provides a complete baseline assessment for the ESBB, presented in Section 4.5.1.4, *Biological Resources, Environmental Setting, Endangered, Threatened, Rare or other Sensitive Species*, including citations to the appropriate

technical reports and a map of the suitable habitat identified on the site (Figure 4.5-6). The field surveys for coast buckwheat covered the proposed Project footprint and a 100-foot buffer as well as the 100-foot-wide transmission line corridor and adjacent vehicle access corridor. In addition, during the spring 2018 rare plant surveys for the SWEF, biologists mapped the locations and extent of coast buckwheat to better quantify the distribution of El Segundo blue butterfly habitat within the current Project configuration. These were the data used as the baseline conditions regarding ESSB habitat.

The appellant presents no evidence that impacts to ESBB are underestimated. All potential habitat for the ESBB (i.e., presence of its host plant, coast buckwheat) was mapped within and around the project's disturbance area. While some of this potential habitat may be unoccupied by ESBB, all of the habitat was analyzed in the Draft and Final SEIRs with the presumption that it may be occupied. Therefore, the Final SEIR may actually overestimate the actual impacts to ESBB and could not underestimate the impacts.

**Appeal Issues #5: The County failed to adequately analyze significant impacts to biological resources.**

**Issue 5a:** The appellant states that the County's Gaviota tarplant impact analysis is not supported by substantial evidence. The appellant states the Final SEIR excludes indirect impacts from consideration of permanent impacts requiring a mitigation of 3:1 ratio that is not supported by substantial evidence. The appellant asserts that the County failed to adequately consider how the indirect impacts effect the long-term viability of the Gaviota tarplant and failed to quantify these impacts. Because of this, the appellant asserts that the proposed mitigation measure fails to reduce the impacts to a less than significant level. The appellant further states that off-site mitigation may be necessary and the County needs to ensure the option can be implemented.

The appellant raised this issue during the Draft SEIR public review comment period as did CDFW. This issue is addressed in Chapter 8, Comments 4.7, 4.8 4.9, 4.10, and 10.77 (pages 8-63 to 8-69 and 8-305 to 8-306) in the Final SEIR. A summary of the responses is incorporated in the Staff Response below.

**Staff Response:** Potential for indirect impacts of habitat fragmentation and pollinators is acknowledged in the Final SEIR. Contrary to appellant's argument, the Final SEIR does not "exclude" indirect impacts from consideration as permanent impacts; please refer to Final SEIR Section 4.5.4, *Biological Resources, Environmental Impacts and Mitigation* under Impact BIO-5a (Construction Impacts to Gaviota Tarplant). Indirect impacts to the Gaviota tarplant are required to be mitigated through Mitigation Measures BIO-5 (Pre-construction Rare Plant Surveys and Restoration) and BIO-6 (Gaviota Tarplant Disturbance) requiring preservation and long-term management of Gaviota tarplant habitat on the site or off-site. The required compensatory mitigation ratio of 3:1 (conservation/impact) would offset both direct and indirect impacts from development and operation of the project. The Final SEIR relies on acreage of direct impacts in determining mitigation requirements because such impacts are quantifiable.

The appellant attached a research paper by Conservation Biology Institute (CBI, 2000<sup>1</sup>) that is a summary of indirect impacts to rare plants, including estimates of the distance from development

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<sup>1</sup> Conservation Biology Institute. 2000. Review of Potential Edge Effects on the San Fernando Valley Spineflower (*Chorizanthe parryi* var. *fernandina*). Prepared for Ahmanson Land Company and Beveridge & Diamond, LLP.

areas where indirect impacts would occur. The paper was prepared to review indirect impacts of a then-proposed extensive residential and commercial development at the former Ahmanson Ranch site in Ventura County. Unlike the former Ahmanson Ranch project, land use changes for the SWEP would be small relative to the project site (about 5 percent of the site) and relative to the extent of occupied Gaviota tarplant habitat (about 13 percent of occupied habitat). Additionally, after construction is completed, very little project-related ongoing human disturbance would occur at the project site. Existing land uses would continue unchanged throughout most of the project site whereas the Ahmanson Ranch project would have resulted in long-term on-site activity associated with the residential and commercial development. The Ahmanson Ranch land use pattern could have caused substantial indirect effects to relatively small rare plant occurrences at risk of becoming isolated and from long-term habitat changes such as pedestrian traffic, pets, irrigation runoff, and new introductions of potentially invasive landscaping plants, as addressed by the CBI report. The CBI report properly identifies and quantifies the expected indirect impacts of a residential/commercial project, but that analysis is not applicable to the SWEP project. The SWEP land use pattern and future O&M activities are different from the former Ahmanson Ranch proposal. As stated in the SWEP Final SEIR and in responses to comments cited above, the expected indirect effects of the SWEP land use and O&M activities (e.g., extensive undeveloped open space and regular vehicle access to turbines for maintenance or repairs) would be minor. The appellant has submitted no evidence that the Supplemental EIR's qualitative analysis is inappropriate or that any quantitative analysis of the SWEP's indirect effects is needed.

The specific indirect impacts named in the appeal are pollination and fragmentation. Project components (mainly roads) would bisect existing Gaviota tarplant occurrences on the site, but any new habitat fragmentation would be similar to the existing natural pattern of scattered Gaviota tarplant occurrences. The roads and turbine sites are smaller than the flight distances of Gaviota tarplant's pollinators and smaller than the natural gaps between existing occurrences. Thus, the project is not expected to interrupt pollinator movement among occupied sites, or otherwise significantly fragment existing occupied sites. The appeal and prior comments present no evidence that the project would adversely affect Gaviota tarplant pollination.

The appellant suggests that off-site compensation may be required to meet the 3:1 compensation ratio, and argues that such off-site mitigation has not been shown to be feasible in the Final SEIR. Based on the 3:1 compensation ratio identified in Mitigation Measure BIO-6 (Gaviota tarplant disturbance) and that most occupied Gaviota tarplant on the site would not be disturbed, the EIR conclude that the impact can be feasibly implemented on the project site. Approximately 13 percent of the Gaviota tarplant acreage on the site would be directly affected, leaving as much as 87 percent available for potential compensation (i.e., more than twice the needed acreage). Regardless, the specific on-site and/or off-site mitigation actions must be included in the Draft Gaviota Tarplant Mitigation Plan, pursuant to the Final SEIR Mitigation Measure BIO-6 (Condition 16). The Plan would also incorporate any additional requirements for a Biological Opinion (BO) from the USFWS and an Incidental Take Permit (ITP) from the CDFW would be implemented in coordination with those agencies to ensure consistent compliance with all applicable requirements. Habitat isolation, fragmentation, or degradation on the scale the appellant asserts would not occur, and these potential indirect impacts would not cause significant effects to Gaviota tarplant beyond those evaluated in the Final SEIR.

**Issue 5b:** The appellant states that the Final SEIR failed to adequately analyze collision impacts on avian and bat species, specifically special-status bats and raptors, including golden eagles. The appellant states that the Final SEIR failed to use new information on special-status bats and raptors,

including golden eagles, to assess the severity of the project's wind turbine impacts. The appellant asserts that the County needs to conduct a golden eagle collision risk assessment.

**Staff Response:** The relevant risk assessment mentioned by the appellant is a software tool developed and used by the USFWS for the purpose of issuing federal take authorization under the Bald and Golden Eagle Protection Act (BGEPA). During development of the EIR, the County could not conduct the risk assessment because it did not have the applicant's golden eagle survey data to input into the USFWS model. When asked for the data in October 2019, the applicant stated that it was finalizing the data and would provide the eagle survey data with the USFWS application for a take permit, as is the typical practice. Mitigation Measure BIO-16 (Condition 38) requires the applicant to obtain take authorization from the USFWS pursuant to the BGEPA; thus, the Final SEIR ensures that the relevant risk analysis will be performed by the agency responsible for doing so prior to the issuance of permits for construction.

The appellant argues that a similar risk analysis must be performed not only for the golden eagle, but for all birds and bats, and that the Final SEIR violates CEQA because this analysis is not included. In this instance, the appellant requests an unreasonable level of analysis. There are dozens of species of birds and bats that use the project site seasonally or year-round, and there is no standard methodology for conducting a risk analysis as suggested by the appellant. The environmental analysis need not be exhaustive and "the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible" (CEQA Guidelines Section 15151). The analysis and conclusions in the Final SEIR regarding impacts to avian and bat species provide the needed level of detail required by CEQA and provide decision-makers with sufficient information to take intelligent account of environmental consequences of the proposed project and alternatives.

The Final SEIR Section 4.5.4 (*Biological Resources, Environmental Impacts and Mitigation*) properly describes the nature and magnitude of potential impacts to golden eagles (and other wildlife):

- Direct and indirect habitat effects, including golden eagle habitat (Impact BIO-1: Vegetation and Wildlife Habitat Impacts, Impact BIO-7: Common Wildlife, Impact BIO-9: Special-Status Wildlife, and Impact BIO-12: Avian Displacement from WTGs)
- Nest disturbance, including golden eagle nests (Impact BIO-8: Nesting Birds)
- Potential avian and bat WTG collisions, including potential golden eagle collisions (Impact BIO-10: Avian and Bat Collisions with WTGs) and transmission line collisions (Impact BIO-11: Avian and Bat Collisions with Power Lines and Meteorological Towers)

The analysis of golden eagle impacts is consistent with the CEQA statute, guidelines, and practice. Further, it is consistent with the analysis of other special-status wildlife, including even listed threatened or endangered species, in the Final SEIR. The appellant has not provided substantial evidence demonstrating that the analysis in the Final SEIR is inadequate.

The appellant incorrectly claims that the Draft SEIR underestimated the presence of special-status birds and bats. While the Final SEIR incorporated more detailed field survey data that clarified and amplified the information included in the Draft SEIR, that new data is consistent with the baseline and impact analysis set forth in the Draft SEIR.

**Issue 5c:** The appellant states that the Final SEIR failed to analyze impacts of low-frequency noise generated from wind turbines on special-status species.

**Staff Response:** Noise was broadly analyzed with other indirect impacts in the LWEP EIR and incorporated by reference in the SWEP Final SEIR. An updated noise impact analysis was added to the SEIR for the proposed project (Brennan, 2018). The Final SEIR explains, “[m]odern WTGs avoid creating problematic levels of infrasound or low-frequency noise because the upwind blades of the turbines do not pass through the turbulence generated by the wind shadow downwind of the tower.” (Final SEIR at 4.14-8) The Final SEIR describes the levels of low-frequency noise that could be produced by the WTGs, according to vendor specifications. The low-frequency component of the overall noise would be at least 20 dB lower than the total sound power level (107 dBA). According to the proposed WTG vendor specifications, the WTGs would produce apparent sound levels of 80 dBA or lower at frequencies of 31.5 Hz or below (GE, 2016) (Final SEIR at 4.14-8). Operational levels of low-frequency noise are expected to be minimal and unlikely to be disruptive to any type of receiver (human or animal).

The appellant states that the Final SEIR analyzed noise at the A-weighted decibels (dBA), but that impacts to wildlife must be analyzed at the C-weighted dBA. The County uses the conventional measurement metric of A-weighted dBA for environmental evaluation. Compared with A-weighting that reflects the sensitivity of the human ear, C-weighting highlights sounds at lower-frequencies, which are a concern for hearing loss in loud settings. As noted above, operational levels of low-frequency noise are expected to be minimal and unlikely to be disruptive to any type of receiver.

**Appeal Issues #6: The County’s conclusion that blasting will not cause potentially significant impacts is unsupported by substantial evidence.**

**Issue 6a:** The appellant states that the Final SEIR fails to adequately disclose, analyze and mitigate blasting impacts from the project’s construction of WTG foundations. The appellant asserts that blasting activities cause several impacts, including noise, flyrock, and ground vibrations.

**Staff Response:** The Final SEIR identifies blasting as a potential construction technique for WTG foundation construction. Condition No. 69 MM NOI-2 (Construction Hours) requires the applicant to erect temporary noise barriers if blasting occurs within 1,600 feet of a non-participating residence. Condition No. 73 MM NOI-6 (Resident Notification) requires the applicant to notify residences within 1 mile of any unusually loud construction activities, including the use of blasting at least 1 week prior to their scheduled occurrence.

The applicant has indicated that, based on geotechnical evaluations, it does not anticipate the need for blasting. However, a final determination will be made when WTG foundation excavation begins. If blasting is needed, it would be confined and only used to loosen soil to support further excavation. The Final SEIR explains that general applicable laws, regulations, and policies of the County and other jurisdictions with authority over the project would be applied as required. Federal regulations administered by the Bureau of Alcohol, Tobacco, and Firearms regulate the manufacture, purchase, transport, use, storage, and possession of explosive materials in order to promote public safety. In addition, the federal Occupational Health and Safety Administration (OSHA) regulates blasting during construction in Safety and Health Regulations for Construction.

The appellant cites a blasting guidance manual published in 1987 by the federal Office of Surface Mining Reclamation and Enforcement. However, the guidance presented in this manual is intended for surface mining operations, which use larger explosive charges that are needed to fully fracture and displace the rock to be recovered in the mining operation. Explosives used for foundation construction use much smaller charges because there is no intent to fully fracture the rock. To do



so would be counterproductive as the native rock and soils are needed to provide a secure foundation for the WTGs.

With regard to the appellant's flyrock assertion, the Final SEIR states that "If explosives were required to construct WTG foundations, rock could be projected several hundred feet..." However, the closest on-site, participating residence is 900 feet away, and all non-participating residences are at least 2,000 feet away. The distance of the non-participating residence exceeds the distance of potential flyrock occurrence. In addition, a ridge of land separates the closest non-participating residence from the project site, which further reduces the potential for flyrock to affect the residence. In addition, the public would not be allowed in the vicinity of any blasting activities.

With regard to ground vibration, the appellant cites the Black Nubble wind project as an example where a project's conditions required a pre-blast survey of all structures within 2,000 feet. As stated above, the closest non-participating residence is 2,000 feet away and, therefore, would not have been within the Black Nubble's radius of concern. Reviewing federal requirements for surface mining (in Title 30, Section 816.67 of the Code of Federal Regulations [CFR]), the maximum allowable peak particle velocity (ppv) for ground vibration in inches/second should be limited to 1.25 inches/second for all locations within 300 feet of a surface mining blasting site. To avoid fully fracturing foundation rock, the applicant would limit blasting to within such levels, consistent with the CFR. For locations beyond the immediate area of blasting, the ground vibration would attenuate or diminish so that the resulting ground vibration would be approximately 0.1 inches/second or less at 2,000 feet. Typically, a CEQA threshold for damage is 0.5 inches/second and a CEQA threshold for adverse reaction is 0.2 inches/second. Therefore, there is not a concern for ground vibration at a residence 2,000 feet away.

**Appeal Issues #7: The Final SEIR underestimated potential impacts from the construction of the meteorological tower.**

**Issue 7a:** The appellant states that an unguyed meteorological tower requires significantly more ground disturbance than guyed wired meteorological towers. The appellant quotes the project applicant's Draft SEIR public comment letter that describes the ground disturbance from an unguyed meteorological tower. The appellant asserts that the Final SEIR underestimates the project's permanent and temporary biological impacts (e.g., Gaviota tarplant).

**Staff Response:** The applicant proposes a guyed meteorological tower, which is described in the Final SEIR's project description (Chapter 2). Final SEIR Mitigation Measure BIO-15b (Condition 37) requires the meteorological tower to be unguyed, which would require a foundation. The increase in grading for one meteorological tower's foundation is estimated to be 4,130 cubic yards of cut and 910 cubic yards of fill; this amount of grading compared with the overall project's approximately 1 million cut and 1 million fill would not increase the severity of impacts or change the nature of the impacts to resources analyzed in the Final SEIR.

If additional ground disturbance, potentially including additional disturbance to Gaviota tarplant, result from meteorological tower construction, those impacts would be minimized or offset through application of mitigation measures, including restoration compensation ratios for the Gaviota tarplant, identified in Final SEIR Section 4.5.4, *Biological Resources, Environmental Impacts and Mitigation*.

**Appeal Issues #8: The County failed to identify specific performance standards and identify feasible impacts to mitigate stormwater impacts.**

**Issue 8a:** The appellant states that the Final SEIR failed to adopt specific, enforceable standards for the stormwater quality plans and failed to list specific Best Management Practices (BMPs) that would be implemented, and as such, the County improperly deferred mitigation. The appellant asserts that although the Final SEIR identified implementation of a Stormwater Pollution Prevention Plan (SWPPP) and Stormwater Quality Management Plan (SWQMP) as reducing stormwater impacts, it does not categorize them as mitigation measures nor does it identify performance standards and BMPs.

**Staff Response:** As described in Final SEIR Section 4.12.2, *Regulatory Setting*, a Storm Water Quality Management Plan (SWQMP) must be prepared if a project would have a potentially significant storm water quality impact. As discussed under Impact WAT-1, due to state and federal regulatory requirements, the project will be required to prepare a SWQMP and a Storm Water Pollution Prevention Plan (SWPPP), which will include the design and implementation of best management practices (BMPs) to reduce potential water quality impacts. Adherence to the existing regulations requiring a SWPPP and BMPs will ensure that impacts from polluted runoff are mitigated and that sensitive riparian and wetland resources are protected from such runoff. By law, SWPPPs must be prepared by professionals who are specifically licensed to prepare such plans in accordance with Clean Water Act regulations. The Final SEIR does not describe the specific BMPs that will be required for the project because SWPPPs are prepared at a point when much more detailed construction plans are developed, which is after project approval, and BMP design is very project- and site-specific. Existing regulations for SWPPPs require that BMPs include all feasible measures to avoid adverse storm water quality impacts.

The Final SEIR recognizes that various existing regulatory requirements would serve to reduce or avoid, i.e., “mitigate” certain environmental impacts (i.e., SWQMP and SWPPP). The Final SEIR assumes that existing regulatory requirements will be followed and does not present formal mitigation measures that are duplicative of these existing requirements. Final SEIR Section 4.12, *Analytical Assumptions*, indicates that the impact analysis was conducted using the following assumptions:

- The applicable laws, regulations, and policies of Santa Barbara County and other jurisdictions with authority over the project would be applied consistently to the project.
- All applicable laws, regulations, and standards of the State of California would be applied consistently to the proposed project.
- The applicant will obtain all required permits and approvals from other agencies and comply with all legally applicable terms and conditions associated with those permits and approvals.

Preparation of a SQWMP and a SWPPP are existing regulatory requirements. Consistent with the approach described in Final SEIR Section 4.12 (and State CEQA Guidelines Section 15126.4(a)(1)(B)), the Final SEIR analysis concludes that implementation of these requirements would be sufficient to avoid significant impacts.

Regarding the assertion that the implementation of BMPs and stormwater management measures could cause environmental impacts to wildlife, all BMPs would be installed within the impact

areas where ground disturbance was anticipated in the Final SEIR. In addition, biological monitors will be on site during all construction activities to ensure compliance with Final SEIR mitigation requirements.

**Appeal Issues #9: The Final SEIR relies on inadequate mitigation measures for biological impacts.**

**Issue 9a:** The appellant states that it commented on the inadequacy of the Draft SEIR's mitigation measures during the Draft SEIR public comment period. Some of the Final SEIR mitigation measures were revised based on the appellant's Draft SEIR comments; however, the appellant asserts that the Final SEIR's mitigation measures which were not revised based on the appellant's comments, are inadequate.

The appellant raised this issue during the Draft SEIR public review comment period, which is addressed in Chapter 8, Comments 10.103, 10.105, 10.106, 10.108, 10.116 and 10.117 (pages 8-315 to 8-319) in the Final SEIR. A summary of the responses is incorporated in the Staff Response below.

**Staff Response:** The appellant refers to its previous comments on the Draft SEIR, asserting inadequate biological resources mitigation, claiming "improper deferral, lack of performance standards, and vague conditions." Some of the Final SEIR's mitigation measures were revised due to the appellant's Draft SEIR comments; however, some were not revised.

The appellant states that no construction or operational activities should occur within one mile of any active or inactive golden eagle nest year round for the life of the project. Final SEIR Mitigation Measure BIO-12 (Avoidance Measures for Nesting Birds) includes a 1-mile buffer around active golden eagle nests during construction but not for inactive ones. Construction and operational project activities within a mile of an inactive golden eagle nest and outside the nesting season would not directly affect any nest site. In addition, multiple feasible mitigation measures are included in the Final SEIR to minimize golden eagle impacts, including Mitigation Measures BIO-15a (Siting), BIO-15b (Appropriate WTG and Project-Element Design), and BIO-16 (Monitoring and Adaptive Management Plan / Bird and Bat Conservation Strategy). BIO-15b includes a requirement for installation of active control technology, to identify large birds such as eagles and automatically curtail WTG operation if birds are detected approaching or entering the project site.

The appellant incorrectly interprets the compensation ratio identified for El Segundo Blue Butterfly (ESBB) in Mitigation Measure BIO-13 (Conservation of El Segundo Blue Butterfly) as being 1:1 and recommends a higher ratio. However, the ratio identified in the measure is 3:1, as follows: "Restoration or enhancement will be conducted at a 3:1 ratio (3 acres of restored suitable habitat for each acre of temporarily or permanently disturbed suitable habitat) on an acre-for-acre basis." Habitat restoration and subsequent occupancy by the butterflies has been shown to be feasible ([https://www.fws.gov/pollinators/features/El\\_Segundo\\_blue\\_butterfly.html](https://www.fws.gov/pollinators/features/El_Segundo_blue_butterfly.html)). Therefore the mitigation as identified in the SEIR is feasible and adequate to mitigate impacts to ESBB habitat. To ensure successful habitat restoration, the mitigation measure includes a monitoring requirement regarding ESSB occurrence in restoration sites to evaluate restoration success.

The appellant states the Final SEIR defers mitigation and specifies insufficient performance standards. The comment erroneously conflates performance standards in the CEQA context with revegetation success criteria. The comment claims that eight mitigation measures include insufficient performance standards. In every case identified in the comment letter's attachment

(Restoration and Revegetation, Wetland Avoidance and Habitat Restoration, Horned Lizard, Western Spadefoot, Monitoring and Adaptive Management) performance standards consistent with CEQA's requirements are included in the mitigation. Moreover, those performance standards are required to be achieved through feasible mitigation actions, including compliance with regulatory permits, where appropriate.

**Appeal Issues #10: The County failed to analyze the least environmentally damaging practicable alternative.**

**Issue 10a:** The appellant states that the Final SEIR does not analyze the least environmentally damaging practicable alternative (LEDPA) required for a Section 404 permit. The appellant asserts that deferral of the LEDPA analysis constitutes deferral of mitigation.

The appellant raised this issue during the Draft SEIR public review comment period, which is addressed in Chapter 8, Comments 10.39 (pages 8-300 to 8-301) in the Final SEIR. A summary of the responses is incorporated in the Staff Response below.

**Staff Response:** The agency responsible for issuing permits pursuant to Section 404 of the Clean Water Act (CWA) is the U.S. Army Corps of Engineers (USACE) and the Final SEIR recognizes this. An EIR is not required to identify and analyze the Least Environmentally Damaging Practicable Alternative (LEDPA). Rather that is a type of alternative that must be identified by the USACE in making a decision to issue an Individual Permit pursuant to CWA Section 404. The LEDPA is not relevant to CEQA's requirements for preparation of an EIR and the County does not need to identify the LEDPA for the proposed project.

It is anticipated that the project will need to obtain a Section 404 permit from the USACE, but the County does not rely on the Section 404 permit to mitigate impacts. Therefore, there is no deferral of mitigation as claimed by the appellant. The appellant also presumes that the LEDPA analysis to be conducted by the USACE will identify a new alternative that will need to be implemented other than the proposed project. This is speculative, and the appellant provides no evidence to support this presumption.

Pursuant to section 15126.6 of the State CEQA Guidelines, the Final SEIR identified and evaluated alternatives to the project that would avoid or lessen the project's significant impacts. In accordance with CEQA requirements, the Final SEIR identified an "environmentally superior alternative" (ESA) among the alternatives analyzed. The Modified Project Layout alternative, which was included in the Planning Commission approval on November 20, 2019, was identified as the ESA.

**Appeal Issues #11: The Final SEIR is inconsistent with the County Comprehensive Plan's Energy Element.**

**Issue 11a:** The appellant states that the Final SEIR does not comply with the Energy Element's Policy 5.1, which requires the County to consider the full life-cycle environmental effects of alternative energy because the Final SEIR failed to analyze the project's decommissioning. The appellant states that the Planning Commission abused its discretion by erroneously finding that the project is consistent with the Energy Element's Policy 5.1.

The appellant raised this issue during the Draft SEIR public review comment period, which is addressed in Chapter 8, Comments 10.5 and 10.40 (pages 8-297 and 8-301) in the Final SEIR. A summary of the responses is incorporated in the Staff Response below.

**Staff Response:** Section 2.8 of the Final SEIR generally describes decommissioning of the project. It describes that the life of project is estimated to be 30 years, and at the end of its useful life, the project could be repowered, renovated or decommissioned. The section generally describes that under full decommissioning structures and equipment at the site would be dismantled and removed and all land surfaces would be restored to as close to the original condition as possible when the project is complete.

Condition No. 66 MM LU-2 (Decommissioning and Reclamation Plan) (D&R) requires the applicant to develop a D&R plan that addresses facility decommissioning, abandonment, post-abandonment reclamation efforts. This D&R plan is required when the applicant submits a discretionary permit for project decommissioning and abandonment.

Plans for decommissioning of the project are too speculative to analyze in detail at this time because decommissioning of the project would be more than 30 years away. The applicant is not required to have a detailed decommissioning plan prepared before the project has been constructed. Under section 15145 of the State CEQA Guidelines, agencies are discouraged from engaging in speculation about impacts. Further, in accordance with Section 15146, the degree of specificity of an EIR's impact analysis is limited to the degree of specificity in the description of the underlying activity. There is no plan for decommissioning at this time, so the Final SEIR's impact analysis is necessarily limited to a general concept for the decommissioning of the project decades in the future.

Environmental conditions could change in important ways between now and thirty years or more from now. In addition, environmental regulations and other regulations that might be applicable to decommissioning activities in the future could change in substantive ways by the time the project is ready to be decommissioned. Further, methods and technologies for undertaking decommissioning activities could evolve in significant ways in the future. For all of these reasons, a meaningful analysis of decommissioning is not possible at this time. Instead, appropriate environmental review would occur when a Demolition and Reclamation Plan, a discretionary permit requiring environmental review, is submitted in the future and would address the environmental conditions and regulations that would be in place at that time.

The County's Energy Element does not state that a detailed analysis of the environmental impacts of the decommissioning process of alternative energy projects needs to be part of an EIR, and this is also not a requirement of CEQA. The Energy Element states that the full life-cycle environmental effects of alternative energy use need to be considered by the County. Section 4.13.5 of the Final SEIR (p. 4.13-18) explains that wind energy projects have a high net energy payback and low greenhouse gas emissions. This statement is true and therefore the Final SEIR's analysis of the project's consistency with the Energy Element is valid.

The fact that the environmental impacts of the decommissioning phase of the project cannot be analyzed in detail at this time does not invalidate the Final SEIR's conclusion that the project would be consistent with the Energy Element. To the contrary, the record supports a finding of consistency.

**Appeal Issues #12: The Planning Commission's findings in the Statement of Overriding Considerations are not supported by substantial evidence.**

**Issue 12a:** The appellant states that the agency approving a project with a significant impact must find that the specific environmental, economic, legal, social technological or other benefits of the proposed project outweigh the unavoidable adverse environmental impacts. The appellant asserts the County lacks sufficient basis to conclude that the project's benefits outweigh the impacts to golden eagles.

**Staff Response:** Finding 1.8 (Statement of Overriding Considerations) of Attachment 1 of this Board letter acknowledges that the project would result in significant unavoidable impacts to Aesthetics/Visual and Biological impacts, and that these impacts are not fully mitigated. The Statement of Overriding Considerations states that any remaining significant effects on the environment are acceptable due to the benefits of the project, of which five were listed (generate renewable energy, offset fossil fuel emissions, promote long-term economic viability of agricultural uses, increase tax revenues, and benefit local economies through temporary construction work). The Statement of Overriding Considerations, as written, identifies specific project benefits that are found to outweigh the significant and unavoidable project impacts.

The appellant states the fossil fuel emission estimate – that carbon dioxide emissions would be reduced by as much as 73,000-200,000 metric tons annually – was not supported by substantial evidence. The 73,000 metric ton estimate was calculated using a 2016 California state-wide average emissions factor basis. This factor is the latest CAMX (California/Mexico subregion of the Western Electricity Coordinating Council service territory) CO<sub>2</sub>e emissions factor value from The Climate Registry's 2019 EF document which estimates that for every megawatt of energy produced the project would reduce fossil fuel emissions by 530 lbs. The calculation for the proposed project would be as follows: 303,800 MWh/year x 530 lbs CO<sub>2</sub>e/MWh / 2204.5 lbs/MT = 73,039 MT CO<sub>2</sub>e/year or rounded to 73,000 MT CO<sub>2</sub>e/year. The estimate will go down over the project life as the State works to increase the utilization of renewable energy and decrease reliance on fossil fuels to achieve 100 percent renewable sources. The higher metric ton estimate (200,000) was based on calculations for the US average electricity emissions factor value rather than California specific.

The SEIR consultant found that a more recent PG&E website noted average CO<sub>2</sub> GHG emissions value for electricity (CO<sub>2</sub> is nearly the same as CO<sub>2</sub>e for electricity generation). Based on the project's estimated generation of 303,800 MWh/year, the proposed project's emissions rate would be 59,947 MT.

Therefore, staff recommends that Finding 1.8 (Statement of Overriding Considerations) of Attachment 1 of this Board letter be revised to read as follow

2. The project will offset the need for additional electricity generated from fossil fuels and thereby assist the California in meeting its air quality goals and reducing greenhouse gas emissions. The project will reduce carbon dioxide emissions by as much as 60,000-73,000-200,000 metric tons annually.

**Issue 12b:** The appellant states the project's greenhouse gas (GHG) emissions savings estimate was not supported by substantial evidence since the GHG emission savings estimates does not consider the increase in GHG emissions resulting from manufacturing, transporting and decommissioning of project components.

**Staff Response:** As stated in Appeal Issue #11 above, the GHG emission savings estimate was based on existing, non-speculative data, and the EIR is not required to consider, much less quantify, future, speculative impacts. As required by CEQA, the GHG emission savings estimate is supported by substantial evidence.

### **California Native Plant Society**

#### **Appeal Issues #13: Gaviota tarplant**

**Issue 13a:** The appellant states that the Final SEIR fails to adequately disclose and analyze direct and indirect impacts to Gaviota tarplant.

This issue was raised during the Draft SEIR public review comment period by the California Department of Fish and Wildlife (CDFW) and Adams, Broadwell, Joseph & Cardozo, LLP on behalf of Citizens for Responsible Wind Energy. The Final SEIR addresses this issue in Chapter 8, Comments 4.7, 4.8, and 4.9 (pages 8-63 to 8-68) and 10.77 and 10.78 (pages 8-305 to 8-307). A summary of the responses is incorporated in the Staff Response below.

**Staff Response:** The appellant raises the same argument that is addressed in Issue 5a (above), responding to Adams, Broadwell, Joseph & Cardozo, LLP on behalf of Citizens for Responsible Wind Energy. Please see Staff Response to Issue 5a.

In addition, the appellant asserts that “1.2 million individuals” and “20 percent of all individuals of Gaviota tarplant would be destroyed by SWEP and more than 80 percent of the total population of the species would be indirectly impacted.” The appellant does not present substantial evidence demonstrating its methodology used to estimate the numbers of Gaviota tarplant that would be affected by the project, but the numbers stated in the appeal are based on population censuses and appear to be overestimated. The Final SEIR analysis is based on acres of occupied habitat rather than census data because the number of plants (whether 1.2 million or any other number) is an unreliable measure for impacts to annual plants. As an annual species, Gaviota tarplant numbers fluctuate by orders of magnitude from one growing season to another, dependent on rainfall or other environmental considerations. As analyzed in the SEIR, loss of occupied habitat is more of a reliable and meaningful means of quantifying impacts (see Final SEIR Section 4.5.1, Biological Resources, Environmental Setting, under Special Status Plants and the USFWS 5-Year Review of the Gaviota tarplant [footnote: USFWS. 2011. *Deinandra increscens* ssp. *villosa* (Gaviota tarplant), 5-Year Review: Summary and Evaluation). Field data from the project site indicate about a 50 percent variation in numbers of plants between 2018 and 2019 when censuses were conducted, with no plants recorded in 2019 in some areas that had been occupied in 2018, and vice-versa. Therefore, loss of occupied habitat documented by the cumulative field survey results is a more reliable method of quantifying impacts. Accordingly, this method was applied in the SEIR.

Regardless of the number of plants that may be present in any given year, the project’s impacts are evaluated in terms of occupied habitat. As stated in the Final SEIR the proposed project would affect about 13 percent of the occupied Gaviota tarplant habitat on the site. The remaining 87 percent of occupied habitat may be subject to some unquantified indirect impacts, but there is no basis for the appellant’s claim that 80 percent of the “total population of the species would be indirectly impacted.” And the suggestions that the project could place Gaviota tarplant “in danger of extinction” or “represents and existential threat to the species” are unsubstantiated. The Tranquillon Mountain/Sudden Peak population is one of seven disjunctive occurrences of this

plant; the other six will not be affected by the project. This population is the largest and therefore less vulnerable to extirpation than the other populations.

The appellant indicates that demographic and genetic scientific studies "...focusing on population dynamics (e.g. gene flow, genetic diversity, structure, etc.) within and between populations of Gaviota tarplant..." would be valuable. Studies such as these must be conducted over multiple years to yield meaningful results. However, the environmental analysis need not be exhaustive and "the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible" (CEQA Guidelines Section 15151).

The appellant argues that the 3:1 compensation ratio identified in the Final SEIR is inadequate to support issuance of an Incidental Take Permit (ITP) by CDFW and recommends a ratio of 5:1 or greater, but provides no substantial basis to justify its preferred ratio. The County concludes that the 3:1 ratio identified in the SEIR would mitigate the Project's impacts to less than significant, consistent with the CEQA guidelines, by compensating for the impact by replacing or providing substitute resources or environments." (State CEQA Guidelines § 15370). The 3:1 ratio is consistent with past County and California Department of Fish & Wildlife practice with other rare plants and has been applied in several instances. The currently required 3:1 mitigation ratio is greater than that employed in the LWEP EIR where Mitigation Measures Bio-8 through Bio-10 required a 1:1 or 2:1 replacement ratio for impacts to sensitive plant communities. However, if the CDFW concludes that a greater compensation ratio is needed under the CESA than the County's CEQA 3:1 ratio, CDFW may require a greater ratio as a condition of the ITP.

The 3:1 ratio would permanently exclude potential future incompatible land uses (e.g., recreational facilities or trails) from approximately 80 acres of occupied Gaviota tarplant habitat, most likely to be located on the proposed project site. This is a substantial conservation benefit to the species.

**Issue 13b:** The appellant asserts that the Final SEIR fails to provide a project alternative that minimizes impacts to Gaviota tarplant. The appellant asserts that because of the gravity of the impacts to Gaviota tarplant, the preparation of another project alternative is needed. The appellant asserts that the Final SEIR must be revised to include an alternative design that alters siting of the WTGs to reduce Gaviota tarplant impacts.

**Staff Response:** As stated above, the appellant draws unsubstantiated conclusions regarding the extent of potential impacts to Gaviota tarplant. In fact, as discussed in Issue 13a, above, substantial evidence supports the conclusion that the appellant overestimates the potential impact to Gaviota tarplant. The record supports the SEIR's conclusion that impacts to the Gaviota tarplant will be mitigated to a level of less than significance through the application of feasible mitigation measures. The range of alternatives analyzed within a SEIR is governed by the "rule of reason." A SEIR is not required to consider every conceivable alternative to a project, and alternatives should focus on those that can avoid or substantially lessen significant effects. (State CEQA Guidelines Section 15126.6.a). Accordingly, a project alternative that primarily focuses on reducing impacts to Gaviota tarplant is not required.

#### **Appeal Issues #14: Rare plants**

**Issue 14a:** The appellant states that the Final SEIR does not adequately account for impacts to other rare plants present on the project site. The appellant further states that the mitigation measures for impacts to these species are inadequate. The appellant asserts that the Final SEIR must be revised to account for and minimize impacts to all rare plant species.



**Staff Response:** The four California Rare Plants that Rank 1B plant species which are referred to by the appellant are the Gaviota Tarplant, Kellogg's/mesa horkelia, black-flowered figwort, and Purisima manzanita. The distribution and occurrence of these rare plant species in the project area is documented in the Final SEIR (Final SEIR Section 4.5.1, *Biological Resources, Environmental Setting*, under the subheading, Special-Status Plants). In-season surveys for rare plants were conducted in spring and summer of 2019, which is consistent with the timing also identified in the Draft SEIR Mitigation Measure BIO-5 (Condition 15). Minor revisions of that measure in the Final SEIR did not affect the timing of when field survey would be conducted. A county-approved biologist reviewed the survey methods and results and concluded that they were both comprehensive and conformed to agency-endorsed protocols. Data gathered from these surveys augment information gathered previously in relation to both the LWEP and SWEP. Potential impacts to these four species are described in Final SEIR Section 4.5.4, *Biological Resources, Environmental Impacts and Mitigation* under Impact BIO-6, Other Special-Status Plants. Nothing in the appeal substantiates its contention that the analysis is inadequate. There are two mitigation measures addressing these species: MM BIO-5: Pre-construction Rare Plant Surveys and Restoration (Condition 15), and MM BIO-7: Kellogg's and Mesa Horkelia Habitats (Condition 17). Impacts to any of these species would be mitigated at a 3:1 ratio for either numbers of plants (for trees or shrubs) or acreage (for herbaceous plants).

#### **Appeal Issues #15: Crotch's bumblebee**

**Issue 15a:** The appellant asserts that the Final SEIR does not require pre-construction surveys nor mitigation for Crotch's bumblebee, a candidate for listing under the California Endangered Species Act. The appellant asserts that the Final SEIR must be revised to account for potential impacts to Crotch's bumblebee and to detail measures that would avoid or minimize take of this species.

**Staff Response:** The Crotch bumblebee has recently been proposed for listing under the California Endangered Species Act, and consequently, CDFW treats the species as though it is already been listed when evaluating project impacts. However, there is not much known about the Crotch bumblebee regionally and P&D's contract biologist and the SEIR preparer's biologist are not aware of any survey protocols or studies that have been done on local distribution and life history. The Final SEIR conservatively concludes there is a moderate potential that Crotch's bumblebee may occur on the site, although the nearest recorded occurrence to the project site is approximately 17 miles to the southeast. Crotch's bumblebee is a widespread species with more than 100 reported locations throughout California (Final SEIR Section 4.5.1.4, *Biological Resources, Environmental Setting, Endangered, Threatened, Rare, and Other Sensitive Species*, under the subheading Special-status Wildlife). In addition, the Crotch bumblebee's habitat is common and widely distributed, and the potential for significant habitat loss is not expected to occur on site from the project. As such, the Final SEIR concludes that the project will not have a potentially significant impact to Crotch's bumble bee and does not recommend pre-construction surveys.

#### **Appeal Issues #16: Section 404**

**Issue 16a:** The appellant states it expects the County to ensure that the project developer obtains appropriate federal permits and coverage for take of endangered and threatened species for the project, including and beyond any impacted federal jurisdictional waters.

**Staff Response:** A Wetland Delineation and Jurisdictional Determination Report was prepared in support of the project's application to the state and federal agencies for necessary permits. Impacts to jurisdictional resources are summarized in Table 4.5-5 of the Final SEIR. Mitigation Measure

BIO-9 (Condition 19) specifically requires that necessary permits (including Section 404) and approvals be obtained from the regulatory agencies for any impacts to wetland jurisdictional features. Mitigation Measure BIO-6 (Condition No. 16) requires that the applicant obtain a Biological Opinion from USFWS and Incidental Take Permit from CDFW for take of Gaviota Tarplant. Mitigation Measure BIO-16 (Condition 38) requires that the applicant secure take authorization for golden eagle.

As discussed above, all of the appeal issues raised are meritless and Planning and Development staff recommends that the Board deny the appeals and grant *de novo* approval of the Conditional Use Permit (16CUP-00000-00031) and Variance (18VAR-00000-00002).

**Fiscal Impacts:**

Budgeted: Yes

Total costs for processing the appeals are approximately \$14,000.00 (60 hours of staff time). The costs for processing appeals of projects in the Energy, Minerals & Compliance Division are borne completely by the applicant. Funding for processing this appeal is budgeted in the Planning and Development Permitting Budget Program, as shown on page D-269 of the adopted 2019-20 Fiscal Year budget.

**Special Instructions:**

The Clerk of the Board shall fulfill all noticing requirements. The notice shall appear in the Santa Barbara News Press and mailed to neighboring property owners and interested parties (mailing labels included as Attachment 8 of the January 14, 2020 Set Hearing Board Letter for these appeals). A minute order of the hearing and copy of the notice and proof of publication shall be forwarded to the Planning and Development Department, Hearing Support, Attention: David Villalobos.

**Attachments:**

1. Findings for Approval
2. Final Lompoc Wind Energy Project hyperlink:  
<https://cosantabarbara.app.box.com/s/w2g404315q3sk40afxkf6srdnpq46u45>

**Authored by:**

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