

# LAW OFFICE OF MARC CHYTILO, APC

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ENVIRONMENTAL LAW

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

RE: Strauss Wind Energy Project Draft Supplemental Environmental Impact Report (DSEIR)

Dear Ms. Pfeifer,

This letter is submitted on behalf of the Santa Barbara Audubon Society and the La Purisima Audubon Society (collectively Audubon). Audubon also directly submitted technical comments on the DSEIR prepared by a team of local avian experts, which this legal letter references and incorporates. Audubon supports renewable energy and understands the Strauss Wind Energy Project (Project) promise in helping our County reduce its contribution to climate change. However, as the recent United Nations IPBES Global Assessment Report on Biodiversity and Ecosystem Services<sup>1</sup> makes clear, habitat and biodiversity loss is an equally pressing global catastrophe that governments must do everything in their power to address. We believe the Project has the potential to both help address climate change, *and* be designed in such a way that its impacts to biological resources are minimized. Unfortunately, the DSEIR fails to adequately identify, analyze, avoid, and mitigate significant impacts to a range of sensitive wildlife and plant species, including threatened and endangered bird and bat species. The DSEIR also fails to adequately identify, analyze, avoid, and mitigate other significant impacts, including impacts to public access and recreation, and land use.

Due to the numerous fundamental flaws and inadequacies in the DSEIR discussed below, satisfying California Environmental Quality Act (CEQA)'s information disclosure and public participation requirements will require that the DSEIR be revised and recirculated. (*See* CEQA Guidelines § 15088.5 (a).) It is our hope, and expectation, that through this process more data can be collected and the Project can be refined in such a way that the basic objectives of the Project are met, but without the unacceptably severe impacts that the instant proposal entails.

## 1. The Project Description is Flawed and Incomplete

“An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 193). “An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 730). The project description must describe the “whole of the action” that has the potential to impact the environment (*see* CEQA Guidelines § 15378 (a)). “A

curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance." (*County of Inyo*, 71 Cal. App. 3d at 192-193). The DSEIR's project description omits several key components of the Project and lacks the detail necessary to evaluate the Project's impacts on the environment. Several significant inaccuracies and omissions are described below.

a. Failure to Include a Finite Project Description

The DSEIR explains in the section "Post FEIR Project Changes" that the EIR is not based on final engineering data or construction-level plans which have not yet been prepared, and accordingly that some changes in Project details are expected after the SEIR is finalized and approvals are granted. (DSEIR p. 1-9.) As authority purportedly supporting this approach, DSEIR quotes CEQA Guidelines § 15124:

Section 15124 of the State CEQA Guidelines states that an EIR should contain a "general description" of a project's characteristics and "should not supply extensive detail beyond that needed for evaluation and review of the environmental impact." Further, State CEQA Guidelines Section 15004(b) states that an EIR "should be prepared as early as feasible in the planning process to enable environmental considerations to influence project ... design."

(Id.)

However, even the above quoted language in Guidelines § 15124 makes clear that an EIR must describe the Project with sufficient detail to enable an evaluation of the Project's environmental impacts. The question here, is whether the DSEIR describes the proposed wind energy project with sufficient detail in the first instance, not whether CEQA authorizes minor changes to a Project's design post-approval. Unfortunately, the DSEIR fails to describe the Project including the proposed transmission line and the proposed WTG locations with sufficient detail to enable this critical analysis. With respect to the proposed transmission line the DSEIR explains "[t]he exact number of poles and their sizes, types, and spacing would be determined as part of final design engineering." (DSEIR p. 2-21) This information is necessary however for an evaluation of the transmission line's impacts, for example as discussed in the Audubon letter (§ 7.3) transmission line spacing of at least 83 inches is necessary to accommodate the California Condor and minimize impacts to this special status species.

Discussed in section 2.b, below, detailed information regarding the biological resources surrounding the proposed WTGs location including features that attract birds and bats is needed to evaluate the Project's impacts to biological resources and to develop a Project site design that avoids or minimizes avian and bat impacts. Unfortunately the DSEIR does not describe the WTG locations with sufficient specificity to enable an analysis of their impacts. Discussed at length below, the

DSEIR's approach of designing the site layout to maximize energy generation, then relying on pre-construction surveys and limited micrositing to purportedly "mitigate" impacts after the general layout is approved, not only precludes an adequate impact analysis, but also precludes the development of a wind energy project that minimizes avian and bat impacts consistent with state and federal guidelines for wind energy projects (*see* section 2.b; *see* Audubon DSEIR comments for a detailed discussion of the state and federal guidelines).

b. Failure to Identify Proposed Access Limitations – closure of San Miguelito Rd

The Project Description leaves open the possibility that San Miguelito and Sudden Roads may be closed to public travel, either temporarily during construction and/or during the operational phase of the Project. Specifically, the DSEIR provides:

During the construction, and possibly during the operational phase of the Project, the Project operator and landowners using San Miguelito Road and Sudden Road beyond their intersection may request the County to close these roads to public travel. Only the landowners involved in the Project and VAFB would use these roads. A turnaround area would be provided at the end of the public road near the entrance of the Project. This Project component would benefit Project safety and security.

(DSEIR p. 2-34.) The potential closure of San Miguelito Road and Sudden Roads to public travel is not identified in the recreational impact analysis, which instead provides that "the physical use of the Project area would remain fully accessible to informal recreation (i.e., cycling, running, birding, sightseeing) during Project operation." (DSEIR p. 4.16-13.) CEQA requires a stable Project Description, and leaving the question of public access during the operational phase open ended has indeed precluded an adequate analysis of the Project's potential impacts to recreation (*see* section 3.b, below, regarding the defective recreational impact analysis.)

**2. The EIR Fails to Adequately Describe the Environmental Setting**

"An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective." (CEQA Guidelines § 15125 (a).) "The environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant." (*Id.*) Additionally, the CEQA Guidelines provide:

Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed

and it must permit the significant effects of the project to be considered in the full environmental context.

(CEQA Guidelines § 15125.) “Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, the EIR cannot provide a meaningful assessment of the environmental impacts of the proposed project.” (*Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 119 (citing Pub. Resources Code, §§ 21100, subd. (a), 21060.5).) “If the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete or misleading, the EIR does not comply with CEQA.” (*Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 87.)

The DSEIR for the Project does not accurately describe the environmental setting, including with respect to resources that are rare or unique to the region and that would be affected by the Project. Because this environmental setting also constitutes the baseline for analysis, this renders the impact analysis inadequate with respect to several key impact areas. (*See Save Our Peninsula*, 87 Cal.App.4th at 119.)

a. Failure to Describe the Regional Environmental Setting

The Project site is situated in an extraordinary area, immediately inland from the Gaviota Coast, the largest remaining stretch of undeveloped coastal land in Southern California, and a biodiversity hotspot. “The Gaviota Coast is Southern California’s largest continuous stretch of rural coastal land and contains its healthiest remaining coastal ecosystem.” (Gaviota Coast Plan, p. 2-1.) Unfortunately the DSEIR does not adequately describe the environmental setting with respect to the Gaviota Coast’s ecosystem, including its extraordinary biodiversity of plants and wildlife. The Project site also adjoins the newly established 24,000-acre Dangermond Preserve, which was not in existence at the time the LWEP EIR was prepared. The DSEIR does not acknowledge this significant new land use or evaluate the Project’s potential land use conflicts with it.

Without a thorough and accurate description of the region surrounding the Project site including the Gaviota Coast and Dangermond Preserve specifically, the DSEIR fails to convey the significance of the Project site, and the impact analysis systematically understates the significance of the Project’s impacts.

b. Failure to Describe Biological Resources on and around the Project Site

The DSEIR is woefully inadequate in its description of the environmental setting for biological resources. This inadequacy is especially pronounced with respect to bird and bat usage of the site and movement through and within the site. Without this critical baseline information, the DSEIR cannot meaningfully analyze the Project’s impacts to biological resources. (*See Save Our Peninsula*, 87 Cal.App.4th at 119.) Furthermore, without this critical baseline information, the WTGs cannot be sited in the manner that minimizes bird and bat strike impacts, as required by the

California Energy Commission (CEC) Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Projects<sup>ii</sup>, and CEQA (*see* CEQA Guidelines § 15021 (a)).

The DSEIR speculates that “the project site probably serves as a migratory corridor” based on number of avian migrants observed (DSEIR p. 4.5) but fails to adequately describe avian migration patterns, or site features which could attract birds and/or bats.

The CEC Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Projects describe the level of detail necessary to assess the impacts of turbine siting, and to determine the appropriate turbine placement to avoid or minimize impacts to birds and bats. (CEC Guidelines, p. 15.)

Pre-permitting studies must be sufficiently detailed to provide maps of special-status species habitats (such as wetlands or riparian habitat, oak woodlands, large, contiguous tracts of undisturbed wildlife habitat, raptor nest sites) as well as bird and/or bat movement corridors that are used daily, seasonally, or year-round. Use maps that show the location of sensitive resources to establish the layout of roads, fences, and other infrastructure to minimize habitat fragmentation and disturbance.

(Id., p. 63.)

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

(Id. p. 64.)

Unfortunately, the DSEIR does not include the requisite level of detail to inform the impact analysis, and to avoid and minimize impacts to birds and bats as called for in the CEC Guidelines, and as required by CEQA. Notably, the DSEIR lacks sufficient data to establish the normal movement patterns of birds and bats. Migration studies referred to in the DSEIR are not included in the materials, and the DSEIR includes no maps showing the normal movement pattern of birds or bats, and includes no discussion of how wildlife interacts with landscape features on the site. Discussed below, identification of site features that may serve to attract birds and bats is deferred to the pre-construction (post-approval) stage (*see* MM BIO-15a). Without this critical information, as the CEC Guidelines make abundantly clear, adequate impact analysis and turbine placement is not possible.

Additionally, the Biological Resources Technical Report (Sapphos Report) even acknowledges in the section “Study Limitations” that complete baseline surveys were not conducted. Specifically, Sapphos Report explains that inclement weather influenced previous and most current studies, that GPS data may be inaccurate, that Project impact areas have changed over the course of the Project history, and notably that ***access was not available to 25 of the 79 proposed transmission pole locations***. (Sapphos Report, p. 4-22.) These substantial gaps in the environmental baseline preclude an adequate and accurate evaluation of the Project’s environmental impacts, and precludes the development of mitigation measures and alternatives that avoid or substantially lessen the Project’s significant adverse environmental impacts.

The above significant omissions from the environmental setting render the DSEIR fundamentally inadequate as an informational document. These omissions in turn result in an inadequate and misleading baseline from which the DSEIR analyzed significance of the Project’s impacts. Revision and recirculation is plainly required to address these baseline flaws. (*See e.g. Save Our Peninsula Committee*, 87 Cal. App. 4<sup>th</sup> at pp. 127-128 (holding that the environmental baseline must be determined at the beginning of the environmental review process for the EIR to fulfill its function with respect to analysis and public participation).)

### 3. The DSEIR Fails to Adequately Analyze and Mitigate Project Impacts

“A legally adequate EIR . . . ‘must contain sufficient detail to help ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug.’” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 733). “An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal. 3d 376, 404-405). CEQA requires that the EIR set forth the basis for its findings; a bare conclusion regarding an impact without an explanation of its factual and analytical basis is not sufficient. (*Sierra Club v. County of Fresno* (2018) 6 Cal. 5th, 522; *Laurel Heights I* (1988) 47 Cal.3d 376, 404.) “[A] sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact. (*Sierra Club v. County of Fresno*, 6 Cal. 5th at 519.)

Agencies have a duty under CEQA to avoid or minimize environmental damage whenever feasible to do so, and must give major consideration to preventing environmental damage. (Guidelines § 15021 (a)). “Even when a project's benefits outweigh its unmitigated effects, agencies are still required to implement all mitigation measures unless those measures are truly infeasible.” (*Sierra Club v. County of Fresno*, 6 Cal. 5th at 524-525.) Agencies must make information relevant to the significant effects of a project, alternatives, and mitigation measures that substantially reduce project impacts as soon as possible in the environmental review process (Pub. Resources Code §

21003.1 (b)) and should not defer the formulation of mitigation measures to some future time (Guidelines § 15126.4 (b)).

The DSEIR's impact analysis is inadequate pursuant to the above CEQA standards. The DSEIR lacks adequate information regarding the environmental baseline (discussed above) which precludes an adequate impact analysis, relies on unsupported conclusions regarding impact significance without factual support and analysis, and defers key aspects of the environmental review process to post-approval mitigation. These failures preclude the public from understanding and meaningfully commenting on the Project, its impacts, and feasible mitigation measures and alternatives to avoid and minimize impacts.

a. Impacts to Biological Resources

Discussed above, the DSEIR does not adequately characterize the environmental setting in and around the Project site with respect to its ecological importance. Nonetheless, the DSEIR does identify the large number of protected plant and wildlife species and their habitats that occur or potentially occur in the vicinity of the Project site including eighty-two (82) special-status plants (DSEIR p. 4.5-17) and seventy-nine (79) special-status wildlife species (*id.*, p. 4.5-19). Nine special-status bird species and three special-status bat species are newly documented in the Project Area since the LWEP EIR's certification (DSEIR p. 4.5-20), and the range of the federally and state-listed endangered California Condor (*Gymnogyps californianus*) has expanded considerably to within 20 miles of the Project site (4.5-22). In addition, since the LWEP EIR's certification the federally endangered El Segundo Blue Butterfly (*Euphilotes battoides allyni*) and its host plant coast buckwheat has been identified on the Project site (*Id.*)

Although the DSEIR lacks a comprehensive "constraints map" showing all the sensitive biological resources on the site overlaid with areas proposed for development, the maps provided do illustrate substantial overlap between the areas proposed for Project development and sensitive biological resources. For example, the mapped El Segundo Blue Butterfly habitat is concentrated along the southern portion of the site along ridgelines proposed for WTG development (DSEIR Figures 4.5-6a and 6b). Similarly, discussed at length in the Audubon DSEIR comments, these ridgelines are also especially important for raptors and other protected bird species. The entirety of the 791-acre Sudden Peak Unit of critical habitat for Gaviota Tarplant (*Deinandra increscens ssp. villosa*), a federally and state-listed endangered plant species, is located in the southern portion of the site (DSEIR Figure 4.5-2, p. 4.5-17).

Unfortunately, the DSEIR does not adequately analyze or mitigate the Project's impacts to these sensitive biological resources, and importantly the DSEIR lacks a Project alternative that seeks to avoid these sensitive resources. Considerable changes in the environment including the newly identified presence or potential presence of at least seventeen (17) additional special status species and/or habitats (*see* DSEIR pp. 4.5-20 – 4.5-25), and considerable changes to the Project including new road widening, a new transmission line route, and considerably larger WTGs necessitates a new

thorough impact analysis. The DSEIR's reliance on the outdated LWEP EIR and inclusion of only a cursory impact analysis of the Project's biological resource impacts is contrary to CEQA and precludes informed public participation and decisionmaking.

i. Bird Strike Impacts

The DSEIR's analysis of Impact BIO-10, Avian and Bat Collisions with WTGs, is woefully inadequate and requires wholesale revision. Bird and bat mortality is one of the most, if not the most, significant adverse environmental impact of wind farms generally, and the SWEP in particular. The mitigation measures the DSEIR relies on are demonstrably ineffective. Rather, proper siting is the single most effective way to reduce avian and bat collisions, and yet the DSEIR incomprehensibly defers any studies that would elucidate which proposed WTG locations are most likely to result in bird and/or bat strikes, and enable the Project to be designed in such a way that those impacts are minimized as both CEQA and the CEC guidelines require.

1. Inadequate Impact Analysis of Bird/Bat Strike Impacts

The DSEIR's approach is to determine that bird and bat strike impacts are Class I, without the explanation or factual support necessary to inform the public and decisionmakers about the severity of the impact, the effectiveness of mitigation measures, or the availability of other feasible means of reducing these impacts. The California Supreme Court recently confirmed that this approach violates CEQA. (*See Sierra Club v. County of Fresno*, 6 Cal. 5th 502.)

The DSEIR's discussion of Impact BIO-10 is devoid of any actual analysis of the Project's bird strike impacts. The first two paragraphs addressing this impact in the DSEIR, which essentially encompass the entirety of the "impact analysis", consists of a series of unsupported assertions, and an unconvincing explanation as to why no actual analysis was done. The Biological Resources Report (DSEIR Attachment C-1) is also lacking, as discussed below, and includes highly questionable conclusions about the ability to mitigate impacts that appears to be inconsistent with the DSEIR itself (*see e.g.* p. 5-98, concluding that impact to migratory birds would be less than significant).

The DSEIR acknowledges obvious differences between the two projects that affect bird and bat mortality, stating:

Although the SWEP would have fewer WTGs than the LWEP (30 compared with 65), the WTGs would be larger and taller (up to 492 feet tall compared with 397 feet tall), and therefore, may place the rotor-swept area into the flight paths of birds that would have flown over the LWEP.

(DSEIR p. 4.5-81.) However, the DSEIR does not disclose which birds may be placed into the rotor-swept area of the SWEP Project, or undertake an analysis of the impact of the height change. Without this information and analysis, the DSEIR has no evidentiary basis to conclude, as it



summarily does, that “the overall risk of the Project to birds and bats is considered similar to that presented by the LWEP” (DSEIR p. 4.5-81.) Reliance on the LWEP EIR’s analysis, without actually analyzing how the differences between the projects will impact birds and bats, is patently inadequate and contrary to CEQA. (*See Laurel Heights I*, 47 Cal.3d at 404.)

2. Mitigation for Bird/Bat Strike Impacts Is Ineffective and Improperly Deferred

Discussed above in the context of the environmental baseline, the CEC Guidelines call for detailed studies upfront to inform the analysis and guide decisions about turbine placement. (*See Id.*, pp. 63-64.) Only through proper turbine placement, can bird and bat collisions be effectively minimized. Rather than conduct up front surveys and develop a site plan that seeks to minimize bird and bat strikes DSEIR relies on pre-construction surveys of the areas already selected for development, when it is too late to make major changes to the site layout to avoid and minimize impacts, and too late for the public to be meaningfully engaged in the process. This approach is fundamentally contrary to CEQA. (*See Pub. Resources Code § 21003.1 (b); CEQA Guidelines § 15126.4 (b)*).

For example, MM BIO-15a (Siting) calls for pre-construction surveys to identify critical biological resources that could serve to attract birds or bats, to ensure that each WTG and transmission tower is located at least 500 feet away from these resources. (DSEIR p. 4.5-82). However, as explained in the Audubon DSEIR comments, this mitigation measure omits consideration of the movement of birds and bats through the site that is required by the CEC guidelines and required to evaluate and mitigate the Project’s bird and bat strike impacts. As the CEC Guidelines make clear, pre-construction surveys are not adequate to minimize bird and bat collisions. The mitigation approach taken in the DSEIR is ineffective, and precludes the required finding that the Project’s significant adverse environmental effects are mitigated or avoided to the maximum extent feasible (*see CEQA Guidelines § 15091*). Moreover studies to identify biological resources that could serve to attract birds or bats, as well as the movement of birds and bats through the site, should have been prepared *before* the proposed site layout was developed, and released to the public and responsible agencies with the DSEIR. Additional pre-construction surveys are also clearly needed, however it is not permissible for the County to defer preparation of surveys that are themselves necessary for an adequate impact analysis, and informed public participation. (*See Pub. Resources Code § 21003.1 (b); Guidelines § 15126.4 (b)*).

ii. Impacts to Trees, Woodlands, and Forests

The Project proposes the removal of 607 specimen oaks - 250 Coast Live Oaks and 355 Tanoaks. (DSEIR p. 4.5-50.) The DSEIR speculates that this may constitute 10 percent of the trees on the overall site. (*Id.*) The impacts associated with the large number of trees removed or damaged are extensive, ranging from habitat fragmentation, canopy disruption, disruption of animal movement, and spread of Sudden Oak Death (SOD) which is not currently documented in Santa

Barbara County. (*Id.*, pp. 4.5-50 – 4.5-51.) By contrast, the LWEP’s impacts to trees, woodlands, and forests were relatively minor. Unfortunately the DSEIR fails to adequately compare the LWEP and SWEP’s impacts to trees, woodlands, and forests, and fails to adequately disclose, analyze, mitigate and avoid the SWEP’s impacts to these critically important biological resources.

The DSEIR acknowledges that proposed mitigation including restoration will not reduce the Project’s impact to less than significant levels, and that ecological functions may not be restored for decades or longer. (DSEIR p. 4.5-51.) The DSEIR also acknowledges the existence of a significant unmitigated cumulative impact to woodlands and forests (DSEIR p. 4.5-94). However, the DSEIR does not analyze the significance of this loss in ecological function, either on the Project site, in the Lompoc area, or more broadly. An evaluation of the direct and cumulative loss in ecological function is especially critical with increased forest fires and other climate-change induced threats to forests generally and oak woodlands specifically. These issues must be acknowledged in the EIR and included in the impact analysis.

The DSEIR lacks any meaningful discussion of means of substantially lessening or avoiding impacts to woodlands and forests. As with bird and bat strikes, the DSEIR’s approach is to determine that the impacts are Class I, without an analysis of feasible means of actually reducing these impacts. Discussed above, this approach is contrary to CEQA. (*Sierra Club v. County of Fresno*, 6 Cal. 5th at 524-525.) The LWEP successfully avoided this Class I impact by utilizing smaller turbines that do not require road widening for transport. The DSEIR does not provide any rational explanation for why the use of smaller turbines is no longer feasible. The SWEP also changed the transmission line route without stating why and without comparing the impact of the new route to the LWEP. If a less impactful route was feasible in the context of the LWEP, it must be considered to reduce the SWEP’s Class I impact to trees, woodlands, and forests.

b. Impacts to Public Access and Recreation

Pursuant to the environmental thresholds identified in the DSEIR, the proposed Project would have a significant recreation impact if it would “[c]ontribute to the long-term loss or degradation of a recreational use or facility.” (DSEIR p. 4.16-1.) The DSEIR however only identifies *loss* of recreation as a potential impact, and fails to consider the significant degradation of recreation that the Project will cause. Moreover, the DSEIR only analyzes impacts to recreation in the context of construction-related activities, omitting any analysis of the operational impacts of the Project. The Project’s degradation of the public recreational experience currently available along Project area roadways is explained in detail in Audubon’s DSEIR comments. These two omissions, together with the inconsistent Project Description with respect to whether or not roadways in the Project area will be closed to the public during Project operations (*see* section 1.b, above) render the recreational impact analysis utterly inadequate and in need of wholesale revision.

In addition to addressing the above general flaws and omissions, the revised recreational impact analysis should specifically address degradation of the recreational experience currently

available from Jalama Beach County Park (the DSEIR acknowledging that the Project will adversely affect “high quality” views from this publicly accessible beach that could not be mitigated to a less than significant level, see p. 4.13-7.) The revised recreational impact analysis should also identify mitigation measures to help reduce the Project’s significant impacts associated with the degradation of recreation on the site and at nearby recreational facilities, including impact mitigation fees for use in improving and/or acquiring public trails and/or other recreational facilities in the Lompoc area and on the Gaviota Coast.

c. Land Use Impacts

The DSEIR is required to identify the Project’s potential inconsistencies with applicable policies, and identify any potentially significant impacts arising from this inconsistency (see CEQA Guidelines Appendix G, § IV (e) (“Would the project . . . [c]onflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?”); *see also Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 (policy conflicts may constitute potentially significant impacts). While the DSEIR identifies some conflicts and associated potentially significant impacts, the impact analysis is badly flawed and incomplete.

Inadequacies in the DSEIR’s evaluation of the Project’s land use impacts from tree removal, and impacts to coastal resources, are addressed in turn below. Additionally, discussed in the context of the environmental setting, above, the DSEIR’s land use impact analysis impermissibly fails to evaluate potential land use conflicts with the newly established Dangermond Preserve which borders a large portion of the Project site’s southern border, and with adjacent Gaviota Coast more generally. This impact must be identified, analyzed, and mitigated or avoided in a revised DSEIR.

i. Impact LU-1b – Tree Removal

The DSEIR acknowledges that the Project as proposed would be inconsistent with County policies protecting oak trees, and that as a result the Project results in a potentially significant land use impact (Impact LU-1b). (DSEIR p. 4.13-9.) However, the impact analysis is flawed and incomplete, and both the Project *and* the Modified Project Layout Alternative are patently inconsistent with County policies protecting oaks. Specifically, the DSEIR claims that the Modified Project Layout Alternative avoids oak tree removal to the maximum extent feasible, and that therefore it can be found consistent with oak protection policies. However, discussed in section a.ii above and in the Audubon DSEIR comment letter, further avoidance of impacts to oaks is feasible, and accordingly a finding of consistency with County policy is not supportable.

ii. Impact LU-6 – Coastal Resources

The DSEIR includes a cursory 1-paragraph discussion of Impact LU-6, identified as “Coastal Resources. Possible unpermitted encroachment into the Coastal Zone, impacting coastal resources.” (See DSEIR p. 4.13-12.) The impact discussion is vague and confusing, but appears to be limited to

the possibility that construction could occur accidentally within the Coastal Zone outside any area authorized by a CDP. This impact discussion and proposed MM LU-1 (Staking of Coastal Zone) may be appropriate, but is hardly sufficient. First, the analysis includes no discussion of what impacts to coastal resources may result from an unpermitted encroachment into the Coastal Zone. There are various sensitive coastal resources including riparian areas and Environmentally Sensitive Habitat Areas (ESHAs) in and near the Project area that must be identified in the analysis of Impact LU-6, and avoided to the maximum extent feasible through Project design modification before a CDP is sought. Second, the Project includes substantial development including WTG installation in the immediate vicinity of the Coastal Zone (*see* DSEIR Figures 2-3a and 2-3b), but the analysis of LU-6 is unclear with respect to whether the entire southern border of the Project has been considered for potential Coastal Zone encroachment and associated impacts to coastal resources. Additionally, MM LU-1 is unclear as to whether exclusionary fencing or staking is required along the entire Coastal Zone boundary (which forms the southern boundary of the western portion of the site, and then extends into the site in the eastern portion, *see* Figure 2-3b) or only in the area proposed for coastal development. A much more robust analysis and mitigation approach is required to adequately address the Project's potential impact to coastal zone resources from unauthorized encroachment.

In addition, the proposed location of the Project immediately adjacent to and within the Coastal Zone will cause a host of potentially significant impacts to coastal resources that need to be thoroughly disclosed, analyzed, and mitigated in the DSEIR. In particular, impacts to protected migratory water birds from Project construction and operation must be considered specifically in the context of the Project's impacts to coastal resources. While the migratory bird surveys relied on in the DSEIR are inadequate, as explained in section 2.b above, the surveys conducted did nonetheless identify migratory water birds on the Project site including greater yellowlegs (*Tringa melanoleuca*), solitary sandpiper (*Tringa solitaria*), great egret (*Ardea alba*), common loon (*Gavia immer*), Wilson's snipe (*Gallinago delicata*), and California brown pelican (*Pelecanus occidentalis*) a CDFW Fully Protected species. (DSEIR p. 4.5-9.)

In section 4.13.5.2 the DSEIR improperly constrained its analysis of the Project's consistency with the County's LCP to the Project components proposed within the Coastal Zone itself. (DSEIR p. 4.13-27). However, both potential unpermitted encroachment of all Project development, and the impacts of the WTGs themselves, must be taken into account in the land use impact and policy consistency analysis.

#### **4. Defective Alternatives Analysis**

"A major function of an EIR 'is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.' (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437, 1456). The alternatives analysis is the core of CEQA, and forms the foundation for CEQA's "substantive mandate" which prohibits approval of projects "if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the

significant environmental effects of such projects.” (*Citizens for Goleta Valley*, 52 Cal. 3d at 564-565; Pub. Res. Code § 21002.)

Specifically, the CEQA Guidelines provide that “An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” (Guidelines § 15126.6 (a).) “The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects.” (Guidelines § 15126.6 (c).) “Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment [citation], the discussion of alternatives shall focus on alternatives . . . which are capable of avoiding or substantially lessening any of the significant effects of the project, even if these alternatives would impede to some degree the attainment of the project alternatives, or would be more costly.” (Guidelines § 15126.6 (b).)

Accordingly, it is critically important that the EIR identify and analyze all reasonable alternatives. Unfortunately, the DSEIR does not identify a reasonable range of alternatives and improperly rejects alternatives from consideration without adequate explanation.

a. Failure to Analyze a Reasonable Range of Alternatives

The DSEIR identifies a number of potentially feasible alternatives that were “considered and dismissed” without adequate justification. The result of improperly rejecting these alternatives is that the DSEIR analyzed unreasonably narrow range of alternatives, and that the public lacks adequate information about the dismissed alternatives to understand that reasons for their dismissal.

None of the alternatives analyzed in the DSEIR are true Project alternatives in the sense that they provide an alternative to *the Project*, not just to some individual Project component. An “EIR must discuss proposed alternatives to the project as a whole” as opposed to alternatives “to various facets of the project”. (*A Local & Regional Monitor v. City of Los Angeles* (1993) 16 Cal.App.4th 630, 642 (fn. 8), citing *Big Rock Mesas Property Owners v. Board of Supervisors* (1977) 73 Cal.App.3d 218, 226-227.) Discussed below, the DSEIR improperly rejected the more comprehensive alternatives, resulting in an unreasonably narrow range of alternatives analyzed.

In addition, the newly identified presence or potential presence of at least seventeen (17) special-status plant and wildlife species and habitats in the Project area since the LWEP EIR was prepared (*see* DSEIR pp. 4.5-20 – 4.5-25), along with the recent and significant comments from the Santa Ynez Tribe of Chumash Indians that the Project site and surroundings is a sacred place to the Chumash, and continuing opposition from affected County residents, demonstrates the need to consider other potential alternative *locations* for the Project.

b. Improper Rejection of Feasible Alternatives

The DSEIR rejects two alternatives that substantially reduce the Project's impacts, asserting they are infeasible, but without any substantial evidence to support their rejection. First, the DSEIR rejects the 82.5-MW Wind Energy Project that was identified as the environmentally superior alternative in the LWEP EIR. (*See* DSEIR p. 5-4.) Remarkably, the DSEIR rejects this alternative which was considered feasible and worthy of analysis in the LWEP EIR out of hand. The DSEIR provides: "Although this alternative was previously analyzed, there are reasons why this alternative either would not be feasible today, would not meet Project objectives, or would result in certain adverse impacts that would not occur with the proposed Project." (DSEIR p. 5-4.) None of the reasons listed however actually support the infeasibility of this alternative. First the DSEIR states the alternative "would not generate the 102 MW of power intended by the proposed Project, which would not allow the Project to meet the terms of its Power Purchase Agreement and would likely have an adverse effect on the financial viability of the Project." (*Id.*) However, CEQA does not require that an alternative satisfy every project objective or provide equivalent financial gains to the Project to be considered feasible. Instead "the discussion of alternatives shall focus on alternatives . . . which are capable of avoiding or substantially lessening any of the significant effects of the project, *even if these alternatives would impede to some degree the attainment of the project alternatives, or would be more costly.*" (Guidelines § 15126.6 (b) (emphasis added).) That the alternative "would likely have an adverse effect on the financial viability of the Project" is entirely speculative, and does not constitute substantial evidence. The possibility that costly retaining walls may need to be constructed and were not analyzed in the LWEP is hardly a reason that this alternative is infeasible (by that rationale, the SWEP which includes extensive road widening that is costly and required new environmental analysis would also be infeasible). Alleged changes with respect to the transmission line are not defined, and their effects with respect to feasibility are "unknown". In sum, there is nothing in DSEIR section 5.4.1 or elsewhere in the DSEIR that supports the elimination of the 82.5-MW Wind Energy Project alternative from consideration.

Second, during the scoping process Audubon proposed an alternative identified as "Siting WTGs Below Ridgelines" in the DSEIR. The DSEIR rejects this alternative from detailed evaluation without adequate explanation. The DSEIR reasons that WTGs must be sited close to the ridgelines "in order to best exploit the wind resource at the Project site" and that "[s]hifting WTGs any substantial distance away from the ridgetops would result in a failure to capture the maximum capacity of the wind resource." (DSEIR p. 5-6.) However, capturing the maximum capacity of the wind resource is not even an articulated Project Objective, and moreover as discussed above an alternative need not satisfy all of a project's identified objectives to be feasible (Guidelines § 15126.6 (b, c).) Clearly, given the sensitivity of the site and the Project's numerous Class I impacts, and the directive in the CEC Guidelines that WTGs should be sited where they avoid bird strikes, some tradeoffs in capturing the *maximum* amount of wind energy will be required in order to fulfill CEQA's requirement to *minimize* environmental damage wherever feasible to do so (Guidelines § 15021 (a)). Discussed below, Audubon has proposed a Low-Impact Project Design Alternative which incorporates elements of the Siting WTGs Below Ridgelines Alternative and substantially

reduces various impacts including impacts to biological resources and aesthetics. Rather than add the Siting WTGs Below Ridgelines Alternative to the alternatives considered in detail in a revised EIR, we request that the revised EIR instead analyze the Low-Impact Project Design Alternative which more comprehensively addresses and seeks to avoid and minimize the Project's various significant adverse environmental impacts.

c. Additional Alternatives for Consideration

The Audubon DSEIR comment letter identifies a facially feasible alternative that would substantially reduce the significant impacts of the proposed Project, the Low-Impact Project Design. We request that this alternative be specifically analyzed in a revised DSEIR.

In addition, the approved LWEP entails substantially reduced impacts in various impact areas, including avoiding the SWEP's Class I impacts associated with the road widening. Discussed above, the DSEIR does not adequately explain why the SWEP is being pursued in lieu of the LWEP. The approved LWEP should be expressly identified as a feasible alternative to the Project, or if it is no longer feasible, the reasons supporting that determination must be clearly identified in a revised DSEIR.

## 5. The DSEIR Must Be Recirculated

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

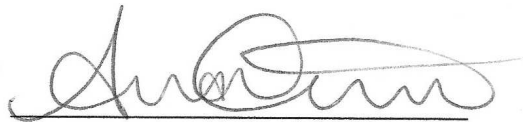
Discussed herein, at the public DSEIR hearing, and in other public comment letters, there are new significant impacts that the DSEIR failed to identify, and impacts that are substantially more severe than the DSEIR asserts. Accordingly, unless these impacts are mitigated or avoided, EIR recirculation is required. (Guidelines § 15088.5 (a, 1-2).) Moreover, public comments have identified additional feasible mitigation measures and alternatives that would substantially lessen the Project's significant effects. Should the Applicant decline to adopt them and include them in the final EIR, recirculation is required. (Guidelines § 15088.5 (a, 3).) Finally, correcting the fundamental deficiencies including baseline flaws identified herein is further grounds for requiring recirculation. (Guidelines § 15088.5 (a, 4).)

## 6. Conclusion

For reasons stated herein, the DSEIR for the Strauss Wind Energy Project is seriously and extensively flawed. It requires revision and recirculation for additional public and agency review.

Respectfully submitted,

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Ana Citrin  
Marc Chytilo

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

<sup>ii</sup> <https://www.energy.ca.gov/2007publications/CEC-700-2007-008/CEC-700-2007-008-CTF-MINUS-APF.PDF>; see also [https://www.fws.gov/ecological-services/es-library/pdfs/WEG\\_final.pdf](https://www.fws.gov/ecological-services/es-library/pdfs/WEG_final.pdf)  
for federal guidelines (USFWS Land-Based Wind Energy Guidelines)