ATTACHMENT A

Bedford Appeal to Board of Supervisors dated October 9, 2008

APPEAL TO THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

Submit to: Clerk of the Board
County Administration Building
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

RE: Pacific Renewable Energy Generation, LLC (a subsidiary of Acciona Wind Energy, USA LLC) : Appeal of Planning Commission Approval of Conditional Use Permit to the Board of Supervisors

Case Number: 06CUP-00000-00009
Tract/APN: 883-080-004, 083-090-001, 083-090-002, 083-090-003, 083-100-004, 083-100-008, 083-250-011, 083-250-019, 083-250-019, 083-090-004, and 083-100-007
Date of Action Taken by Planning Commission: September 30, 2008

I hereby appeal the approval of this project by the Planning Commission on September 30, 2008.

The basis for this appeal is detailed in the attached letter. The project does not conform to the applicable General Plan policies, the applicable zoning ordinances, and has not complied with CEQA.

The approval and all specific conditions therewith, are being appealed.

Name and Address of Appellant:
George and Cheryl Bedford
P.O. Box 1057
Lompoc, CA 93436

Attorney for Appellant:
Richard E. Adam, Jr.
The Law Offices of Brenneman, Juarez & Adam
625 E. Chapel
Santa Maria, CA 93454

Appellant is a Third Party to the Approval.

Fees: $443.00

Signature: _____ Dated: October 9, 2008

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Hearing set for:_____ Date Received:_____
Received by: _____ File No. _____

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October 7, 2008

Clerk of the Board of Supervisors Mike Allen
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Fourth Floor
Santa Barbara, CA 93101

RE: Pacific Renewable Energy Generation, LLC (a subsidiary of Acciona Wind Energy, USA LLC) : Appeal of Planning Commission Approval of Conditional Use Permit to the Board of Supervisors

Clerk Brown and Members of the Board of Supervisors:

This office represents George and Cheryl Bedford ("Appellants") in this matter. Please accept this appeal to the Board of Supervisors ("BOS") of the action of the Santa Barbara County Planning Commission on September 30, 2008 in approving the Conditional Use Permit ("CUP"), Case No. 06CUP-00000-00009 (the "Project").

I. Background and Summary of Appeal

This project (the "Project") is a commercial wind farm consisting of as many as sixty-five (65) immense wind turbine generators ("WTGs"), associated infrastructure, and support facilities.

The Project's enormity cannot be overstated. As approved, the individual blades of the WTGs can stretch up to 135 feet in length, comparable to the wingspan of a Boeing 747 or half the length of a football field. Likewise, as approved, each WTG can reach up to 397 feet in height, blade inclusive. To put this number into perspective, it is more than six times taller than a Boeing 747 (which stands at 63 feet tall) and 100 feet taller than the Statue of Liberty (which stands at 305 feet tall). Each supporting tower will be at least fifteen feet wide.

The location of the project is somewhat amorphous, a fact that, as discussed below, illustrates a significant and insurmountable flaw in the EIR. Although Pacific Renewable Energy (the "Applicant") has admitted that each WTG will be located "along the ridges" of the Lompoc Valley, as currently approved, the exact location of each

WTGs is unknown, and may be located anywhere within a "construction corridor" of approximately three thousand acres.

The public does know, however, that the Project will require a minimum of 490,000 cubic yards of earthen material to be graded. It will also require the construction of 5.5 miles of new roads, and an additional 8.3 miles of expansion to existing roads (in order to support the enormous equipment and machinery necessary for the construction of the Project). Finally, in addition to the structures noted above, the Project includes a 5,000 square foot building, associated substations, and communication facilities.

When completed, this will be the largest – and most obtrusive – project in the history of Santa Barbara County.

This appeal raises significant questions pertaining to the application of the California Environmental Quality Act ("CEQA"); to wit, whether Santa Barbara County applies CEQA principals in a fair and adequate fashion. This appeal also raises significant questions pertaining to Santa Barbara County's land use policies: whether an applicant can propose a project that is patently inconsistent with said policies yet obtain approval nevertheless.

The Appellants respectfully request that the BOS endorse a plain reading of the mandates of CEQA and applicable County policies and deny the CUP with direction to the Applicant to revise said EIR for adequacy and reproduce it for public recirculation.

II. The Project EIR in No Way Comports With CEQA

A. The EIR is Inadequate Under CEQA in that Neither Project Alternatives Nor The Project Itself Has Been Sufficiently Set Forth, Let Alone Adequately Explained.

Public Resources Code § 21002 establishes the legislative intent that CEQA take into account less environmentally onerous alternatives to a project when such alternatives are available. Specifically, "public agencies should ***not*** approve projects as proposed if there are ***feasible alternatives*** or ***feasible mitigation measures*** available which would substantially lessen the significant environmental effects of such projects" (emphasis added). The foregoing section is echoed by Section 15126.6(a) of the CEQA Guidelines, which states that every Environmental Impact Report "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."

An examination of the Final EIR in the instant case clearly demonstrates that this standard has, in no meaningful way, been met. Instead, with regard to the placement of the WTGs, the EIR cursorily addresses only two real "alternatives,"[1] the last of which (the so-called "Environmentally Superior Alternative") being the alternative that was actually approved within the four corners of the document itself. These two so-called

[1] Although the EIR purports to address three "alternatives" relative to the WTGs, there are in actuality only two; the first, off-site placement (which was discounted due to infeasibility), and the second (and third) being a combination of on site WTG reduction and downsizing. However, neither of these latter alternatives were meaningfully considered (i.e. the EIR did not identify precise locations – or even the number of WTGs to be placed – in its discussion of these so-called alternatives).

"alternatives," however, are woefully inadequate. Neither is meaningfully developed. Rather than imparting a full description as to exactly what each alternative would entail (with regard to such items as placement, a concise description of the visual/aesthetic impacts of said placement, and the like), each alternative consists of merely a bare bones paragraph with no detail whatsoever. In short, the Applicant does not know (because it has not bothered to investigate) any of the hard details related to the application of each WTG relative to this Project. This fact is readily apparent via the language of each alternative. The following passages, taken from the "Alternatives" section of the EIR itself, illustrate the insufficiency of each alternative:

(a) "The number of WTGs would be reduced, ***or*** WTGs would be microsited in portions of the LWEF, ***or both***." (Alternative 1)

(b) "***It is expected that***...the Applicant would be able to demonstrate through performance measures that the installation of fewer WTGs could be prohibited ***as long as*** no portions of the tower or nacelle would be visible above the ridgeline from Jalama Beach County Park" (Alternative 1)

(c) "***It is expected that***...there is also the ***potential*** to relocate additional WTGs on ***other portions*** of the Project sites. ***Depending on the feasibility*** of these two options, the maximum electrical generating capacity would range from 76.5 MW to 97.5 MW." (Alternative 1)

(d) "***It is expected that*** construction would be maximized to the extent feasible in those corridors with the most favorable meteorological conditions, and therefore, fewer access roads ***are expected*** to be required because construction ***in some*** corridors would not occur." (Alternative 2)

(e) "This alternative would allow the construction and operation of ***between 28 to 55 WTGs*** versus the 65 WTGs proposed by the Applicant" (Alternative 2).

(f) "The relocation of ***up to*** four WTGs within ***other portions*** of the Project sites to achieve the 82.5 MW maximum electrical generating capacity ***could be*** required" (Alternative 2).

The above descriptions are patently insufficient. The reader is left to speculate not only about the feasibility of these alternatives, but about the subject of the alternatives themselves. Would there be *actually* be WTG reduction under either alternative? From which location would the WTGs *actually* be eliminated in either alternative? Where would roads *actually* be eliminated under either alternative? Exactly how many WTGs would be required under either alternative? These basic questions (and many others) remain wholly unanswered in the EIR.

It should be noted that the Project that was formally approved by the Planning Commission is likewise deficient in this respect. If one does not know the precise location of each WTG (and we do not), it is impossible to definitively and meaningfully discuss its impact. This fact was admitted by the authors of the EIR relative to "non-participating" properties in the immediate vicinity. As stated in the EIR:

> "Although the precise locations of the WTGs <u>have not been established</u>, the residents of nonparticipating ranches would be subjected to what could be considered significant and unavoidable (*Class I*) visual impacts if they

were a public place. More precise detail regarding the location of the WTGs in relationship to potentially affected private residences would be required to analyze visual impacts on them." (EIR, §3.2.5.5, emphasis added).

If "more precise detail regarding the location of the WTGs" is required in order to sufficiently discuss visual impacts from adjacent properties, it is also necessarily required in order to sufficiently discuss visual impacts from all other locations, a fact that the authors of the EIR admit has not been done in the instant case.

Case law on this matter is clear. If there is evidence of one or more potentially significant impacts relating to a proposed project, the environmental impact report (EIR) required pursuant to CEQA must contain meaningful analysis of alternatives or mitigation measures which would avoid or lessen such impacts. Kings County Farm Bureau v. City of Hanford (App. 5 Dist. 1990) 270 Cal.Rptr. 650, 221 Cal.App.3d 692. (emphasis added). Likewise, under the California Environmental Quality Act, the public agency bears the burden of affirmatively demonstrating that, notwithstanding a project's impact on the environment, the agency's approval of the proposed project followed meaningful consideration of alternatives and mitigation measures. Committee For Green Foothills v. Santa Clara County Bd. of Sup'rs (App. 6 Dist. 2008) 75 Cal.Rptr.3d 112, 161 Cal.App.4th 1204 (emphasis added).

Here, no such "meaningful analysis" of alternatives occurred. As pointed out above, no real alternative proposal was provided at all. The public does not know where the WTGs would be placed in either of the alternatives, nor does it even know the number of WTGs that would actually be placed in either of the two alternatives. Because of this flaw, there can be no meaningful (let alone definitive) discussion on either alternative's impact on biological resources, land use, and in particular, visual and aesthetic resources. As pointed out by the Court in Laurel Heights Improvement Assn. v. Regents of University of California (1993) 26 Cal.Rptr.2d 231, 6 Cal.4th 1112, 864 P.2d 502, "recirculation of an environmental impact report is required when...the EIR was so inadequate that public comment was meaningless." (emphasis added). That is exactly the case with the instant Project.

The EIR cannot sidestep the above requirement merely by including the word "Alternative." The Applicants have made no attempt to provide any "meaningful alternatives," as the phrase is defined under California law, relative to the approved Project. Indeed, the "Alternative" section of the EIR raises more questions than answers. The EIR is therefore wholly deficient under CEQA and must be rejected as such or, at the very lease, an adequate discussion of both placement of the WTGs and viable alternatives must be completed and the EIR must thereafter be recirculated for public comment.

B. The Alternatives Have In No Way Been Determined To Be "Infeasible" as Required By CEQA

As a threshold matter, as pointed out above, neither the Project nor any "alternative" to the Project was meaningfully studied or seriously considered, a fact which, in and of itself, is fatal to the EIR.

However, even if such alternatives were adequately studied (and they were not), Public Resources Code § 21002 makes clear that such superior alternatives cannot be overridden unless there are "specific economic, social, or other conditions [that] make

infeasible such project ***alternatives*** or such mitigation measures" (emphasis added). This sentiment is further supported by California Public Resources Code § 21081, which states that "no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless ... ***specific*** economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make ***infeasible*** the mitigation measures or ***alternatives*** identified in the environmental impact report...and, the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project ***outweigh*** the significant effects on the environment." (emphasis added).

Because no adequate discussion related to Project alternatives has taken place at all, it is simply impossible to conclude that any alternative (or mitigation) is "infeasible." Notwithstanding this fact, page six (6) of the *Report for the Lompoc Wind Energy Project* indicates that the environmentally preferred downsizing alternative (Alternative 2) "would fail to confer the full measure of benefits promised by the proposed project." Further, the Staff Report reasons, "it is uncertain whether Alternative 2 would be commercially viable" for the Applicants. These two rationales (full benefit and uncertain commercial viability), however, are wholly irrelevant to the standard of infeasibility.

In evaluating an environmental impact report, an agency must find both that the alternatives and/or mitigation measures are infeasible and that the benefits of a project outweigh the alternatives and/or unmitigated effects on environment; it is not sufficient merely to find that benefits outweigh effects on environment. Los Angeles Unified School Dist. v. City of Los Angeles (App. 2 Dist. 1997) 68 Cal.Rptr.2d 367, 58 Cal.App.4th 1019. Under CEQA, the fact that an alternative to the proposed project may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible; what is required is ***evidence*** that the additional costs or lost profitability are ***sufficiently severe*** as to render it impractical to proceed with the project. Uphold Our Heritage v. Town of Woodside (App. 1 Dist. 2007) 54 Cal.Rptr.3d 366, 147 Cal.App.4th 587. Further, the record must support the finding that ***all alternatives*** included within an EIR are infeasible. *Id.* This fact was illustrated recently by the court in Preservation Action Council v. City of San Jose (App. 6 Dist. 2006) 46 Cal.Rptr.3d 902, 141 Cal.App.4th 1336. In that case, the court found that the mere fact that an alternative size to a proposed home improvement warehouse might be less profitable, and therefore produce fewer tax dollars, did not itself render the alternative infeasible without actual evidence that the reduced profitability was sufficiently severe as to render it impractical to proceed with the project.

Again, no such findings were made in the EIR for the instant Project. Instead, the Staff Report merely opines (without justification and without support, due the fact that no alternative has been adequately presented) that a downsized project **may** confer less benefits, or that it **may** be less commercially viable for the applicants. In either case, this rationale is insufficient under California law. Likewise, both rationales constitute mere guess work. For example, if the EIR does not identify the number of WTGs to be included in a given alternative – as is the case in the instant EIR – it is impossible to identify the correlating energy benefits, let alone the commercial viability of that given alternative.

The inadequacy of the instant EIR cannot be legitimately disputed on this point. At a minimum, alternatives must be more adequately and meaningfully explored prior to acceptance of infeasibility.

III. The Project Conflicts With The Santa Barbara County General Plan.

The General Plan has been described as the "constitution for all future development." Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 570. For obvious reasons, all projects must be consistent with the general plan and the policies contained therein. As is discussed more fully below, in approving the Project, the County has ignored, and therefore violated, its own policies.

A. The Project Conflicts With The County's Visual Resource Policy And The Visual Resource Provisions in the LUDC

Visual Resources Policy 2 states that "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...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."

The record is clear that the massive project is neither "compatible with the character of the surrounding natural environment," nor "subordinate in appearance to the natural landforms." Further, the Project is sited ***to impose itself*** on the skyline. In fact, it is well established in the EIR and accompanying Staff Report that the WTGs will utterly dominate the view not only in the immediate vicinity, but also far reaching areas.

(a) "Standing nearly 400 feet high, with blades up to 135 feet long, ***the WTGs would cause major visual impacts from public viewing places.***" (Staff Report, p 20).

(b) "The rotating blades would ***cause flicker and draw viewer attention.***" (Staff Report, p. 20).

(c) "The WTGs would be ***visually dominant*** in immediate project surroundings along San Miguelito Road, which receives some public recreational use." (Staff Report, p. 20).

(d) "***Visual impacts*** of the WTGs from more distant views, including Highway 1 (5 miles east of the project) and La Purisima Mission State Park (7 miles north of the project) ***would be adverse.***" (Staff Report, p. 20).

(e) "The WTGs would be ***located on ridges*** that vary between 1,200 and 1,500 feet in elevation...one of the structures would be sited above 1,800 feet." (EIR, § 3.2.2.1).

(f) "The WTGs are located ***on or just below ridge tops*** with a ***potential visibility of up to 25 miles***...[and could affect visual impacts within a] ***600 square mile area.***" (EIR, § 3.2.4.1)

(g) "The potential area for ***visual impacts in this case approaches 600 square miles***, approximately an 18.5-mile radius from the nearest Project component. Within this area, ***nearly 270 square miles have the potential to be clearly visible with moderate impact***: becoming less distinct and rising through intensity levels to a point where the Project ***could create a dominant impact*** due to large scale, movement, proximity and number' of WTGs." (EIR, §3.2.4.1).

(h) "Only the northern portions of the City of Lompoc would have the potential to see the WTGs, but ***almost all of the northern portions of the Santa Ynez Valley would be able to view the LWEF site***." (EIR, §3.2.4.2).

(i) "The WTGs might be visible at some time of the day and are, therefore, ***considered an introduction of a relatively incompatible element*** into this otherwise somewhat intact scene." (EIR, §3.2.5.5).

The evidence of extraordinary visual impacts within the EIR is overwhelming. Indeed, the EIR itself characterizes the visual impact of the WTGs (and associated electrical support) as either "moderate" or "high" for each of the following locations; (a) Rural Highway 1, (b) Highway 1 at Lompoc, (c) San Miguelito Road, (d) Jalama Beach, (e) West Lompoc, (f) Harris Grade Road, (g) VAFB main gate, and (h) Miguelito Park. ***This list constitutes the vast majority of the valley***. It is further supported by Figure 3.2-5, a map depicting the "Zone of Visual Impact" from the WTGs that clearly and unambiguously identifies the project's visual impact from various points within a 25 mile radius.

All approved project must comport with – must be harmonious with – the Santa Barbara County General Plan and policies associated therewith. See, for example, Woodland Hills Residents Ass'n, Inc. v. City Council of Los Angeles (App. 2 Dist. 1975) 118 Cal.Rptr. 856, 44 Cal.App.3d 825 and Friends of B St. v. City of Hayward (App. 1 Dist. 1980) 165 Cal.Rptr. 514, 106 Cal.App.3d 988. Both the EIR and the Staff Report speak for themselves. This project in no way comports with Visual Resources Policy 2. This point is inarguable. The WTGs are in no way "compatible with the character of the surrounding natural environment," are not "subordinate in appearance to natural landforms," and are not "sited so as not to intrude into the skyline as seen from public viewing places." These facts are admitted in the EIR itself. To hold otherwise is to utterly reject the clear mandate of the Policy.

B. The Project Violates Land Use & Development Code § 35.57.050(K)

Santa Barbara County Land Use & Development Code ("LUDC") §35.56.050 specifically discusses standards for the issuance of CUPs for "Wind Energy Systems." Section 35.56.050(K) enumerates the standards for visual impacts allowable for such systems. Specifically, said section mandates that "the system be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails)." Said section also mandates that, to the greatest extent feasible,

> "the wind energy system (1) Shall not project above the top of ridgelines, (2) 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, and (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."

As detailed in the previous section,[2] these standards – findings that are required prior to approval of any Wind Energy System – have clearly not been satisfied, a fact that is readily apparent in both the EIR and the Staff Report. In short, the WTGs do, in fact "project above the top of ridgelines." They will also "cause a significantly adverse visual impact to a scenic vista from a County of State designated scenic corridor" (i.e. California Highway 1).

Just as the Project was incompatible with Visual Resources Policy 2, it is also wholly incompatible with LUDC § 35.57.050(K). To ignore this fact is to violate the basic tenets of orderly growth and makes a mockery of foundational planning rules.

C. The Project Violates Santa Barbara County Ridgeline and Hillside Development Guidelines.

Santa Barbara County Land Use and Development Code § 35.62.040 (*Ridgeline and Hillside Development Guidelines*) states, in pertinent part, that ridgeline and hillside development "shall comply with the following guidelines...the height of any structure should not exceed 16 feet wherever there is a 16 foot drop in elevation within 100 feet of the proposed structural location." Clearly, this guideline has been thrown out relative to the instant project. As approved, each WTG (i.e. a "structure") can be 397 feet in height, just a tad in excess of the 16 feet mandated in the above code section.

Perhaps more importantly, LUDC §35.62.040 also states that "development on ridgelines shall be discouraged if suitable alternative locations are available on the lot." However, as was made clear above, ***the public does not know whether "suitable alternative locations are available" within the 3,000 acre project because no adequate alternatives were actually studied in any meaningful way***. Indeed, the public does not even know where the WTGs will actually be located in the approved project.

This fact is both indefensible and appalling. However, it does illustrate the careless and piecemeal approach to land use that was employed for this Project by the Planning Commission. Because the Project does not comport with the Ridgeline and Hillside Development Guidelines, and indeed, because the public has been denied access to information related to the Project's most basic information (i.e. the location of the approved WTGs themselves, and their location and number in any alternative scenario, etc.), the Board must reject the CUP approval.

IV. The Project Violates Both CEQA and County Policy Relative To Noise

As a threshold matter, it must be noted that, similar to its "Visual Resources" analysis, the entire "Noise" section of the EIR rests upon sheer speculation. As admitted within said document, the Applicant has not presented the authors, the public, or the

[2] See discussion of Visual Resources Policy 2, *supra*.

decision-makers with sufficient information to make any definitive noise determinations. The following statements, enumerated in the EIR, illustrate both the factual truth of the above point and the base inadequacy of the EIR in general:

(a) "The noise analysis is based on a ***conceptual layout*** of 80 WTGs located in the Applicant defined WTG corridors; the WTGs ***would be microsited*** within these corridors based on environmental and technical considerations" (EIR 3.11.3.1)

(b) "Operational noise levels at or near the LWEF site ***would depend on the make, model, size, and location of the WTGs selected for installation. Because this information is not finalized, a conceptual layout and set of potential WTGs were analyzed.***" (EIR 3.11.3.3)

(c) "The WTGs would be set back from private property lines a distance equal to or greater than the height of the system (from the top of the concrete slab foundation to tip of a blade), ***which is between approximately 300 and 500 feet, depending on the type of WTG selected***." (EIR §3.11.3.1)

(d) "The turbines ***are anticipated*** to have a maximum sound power level of 112 dBA." (EIR §3.11.3.1)

In other words, neither the public nor the authors of the EIR have any real idea whether noise impacts from the WTGs will be significant. Santa Barbara County should not and cannot approve a CUP for a *"conceptual"* project: a project that is so vague that legitimate studies cannot be undertaken with any degree of accuracy. Again, approval of such a project is contrary to basic planning principles and inconsistent with the basic tenets of CEQA. As pointed out by the Court in Laurel Heights Improvement Assn., *supra*, "recirculation of an environmental impact report is ***required*** when...an EIR was so inadequate that public comment was meaningless." That standard is more than met in the instant case.

Aside from the fact that the EIR violates CEQA in that it is impermissibly vague, it is also clear from the four corners of the EIR that the Project does not comport with County noise elements. The Noise Element of the Santa Barbara County Comprehensive Plan indicates that, in land use planning, 65 dBA (decibels) is regarded as the ***maximum*** exterior noise exposure compatible with noise-sensitive uses. Noise-sensitive land uses are considered to include residential uses (including single and multifamily dwellings), mobile home parks, and the like.

However, the EIR unambiguously acknowledges that each WTGs (again, depending on the make, model and location, all of which have yet to be determined) ***will exceed 100 dBA***. Specifically, according to §3.11.3.1 of the EIR, "the Applicant has provided confidential one-third octave band sound power level data for a turbine ***representative of those being considered*** [note the qualifier] for this Project, corresponding to a maximum sound power level of 104.3 dBA ± 1.0 dB." Another section of the EIR appears to contradict even this number, stating that "the turbines ***are anticipated*** [again, resorting to a qualifier] to have a maximum sound power level of 112 dBA." (EIR §3.11.3.1) Indeed, according to the EIR, this decibel level is roughly equivalent to a "jet takeoff at a 200 foot distance" (120 decibels) and "loud rock music" (110 decibels) and can be subjectively characterized as "very loud" to "threshold of pain." (EIR, Table 3.11-3). Moreover, the EIR does not attempt to hide the fact that "adjacent nonparticipating residences would be exposed to noise levels greater than [50

dBA]" (EIR, §3.11.3.3). ***This fact alone violates the Noise Element of the Comprehensive Plan, a fact wholly ignored in both the EIR and the Staff Report.***

That the Project violates County noise elements is further supported by the County of Santa Barbara Environmental Thresholds and Guidelines Manual, a document that establishes the thresholds of significance for assisting in the determination of significant noise impacts under CEQA (County, 2006). Among other guidelines, the Thresholds Manual states clearly that;

(a) Proposed development that would generate noise levels in excess of 65 dBA and could affect sensitive receptors generally would be presumed to have a significant impact;

(b) Outdoor living areas of noise-sensitive uses that are subject to noise levels in excess of 65 dBA generally would be presumed to be significantly affected by ambient noise; and,

(c) A project generally would have a significant effect on the environment if it substantially increases the ambient noise levels for noise-sensitive receptors in adjoining areas.

The plain language of the EIR confirms that the Project would exceed the two former thresholds of significance (excess of 65 dBA) relative to noise. Conveniently enough, however, ***the EIR failed to even study*** the latter of the thresholds of significance (ambient noise), unabashedly stating that "***ambient noise measurements were not collected for this analysis." (EIR §3.11)***

This fact is further established by section XI of Appendix G of the California Environmental Quality Act Guidelines (California Code of Regulations [CCR], Title 14, Appendix G), a document that sets forth similar audio characteristics that could signify a potentially significant impact. Under the CEQA Guidelines, a significant effect from noise could exist if a project would result in

(a) exposure of persons to, or generation of, noise levels in excess of standards established in the local General Plan or noise ordinance (as has been formally established in the instant matter);

(b) exposure of persons to or generation of excessive ground-borne vibration or ground-borne noise levels (a fact that the public cannot ascertain because it has not been studied), or

(c) substantial temporary, periodic or permanent increase in ambient noise levels in the project vicinity above levels existing without the project (again, a fact that the public cannot ascertain due to inadequate study).

It cannot be emphasized enough that these major flaws are readily apparent in the plain language of the EIR, and they cannot be brushed aside. Inadequate documentation and/or consideration of noise impacts have routinely resulted in the rejection of EIRs by California Courts. *See, for example,* Los Angeles Unified School Dist. v. City of Los Angeles (App. 2 Dist. 1997) 68 Cal.Rptr.2d 367, 58 Cal.App.4th 1019, and Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs (App. 1 Dist. 2001) 111 Cal.Rptr.2d 598, 91 Cal.App.4th 1344

Based upon the foregoing, the Board of Supervisors must reject the Planning Commission's approval or, at a minimum, should require the Applicant to revise and substantiate the EIR with respect to noise and submit it for recirculation as is required under California law.

V. Conclusion

The above policy objections are not new. They were voiced over and over in public comment, both written and verbal, by a broad cross section of the public, including the Appellant. The Board of Supervisors cannot allow special interests to override the clear law. Based upon the foregoing, the Appellants respectfully request that the Board of Supervisors approve this appeal and deny the Lompoc Wind Energy Project CUP as approved by the Planning Commission on September 30, 2008. At the very least, the EIR should be made adequate with regard to both specifications regarding the approved project and its discussion of alternatives and the EIR should thereafter be re-circulated pursuant to California Public Resources Code § 21092.1 (*Addition of new information; notice and consultation*).

The Appellants reserve the ability to submit additional materials in this matter prior to the Board's consideration of this appeal.

Thank you for your careful consideration of the important issues contained herein.

Respectfully Submitted,

BRENNEMAN, JUAREZ & ADAM

Richard E. Adam, Jr., attorneys for Appellants