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: Strauss Wind, LLC: Appeal of Planning Commission Approval of (a) Conditional Use Permit and (b) Certification of Supplemental Environmental Impact Report for the Strauss Wind Energy Project SEIR

Case Numbers: 16CUP-00000-00031, and 18EIR-00000-00001

Date of Action Taken by Planning Commission: November 20, 2019

We hereby appeal the approval of the above-mentioned matters by the Planning Commission on November 20, 2019.

The basis for this appeal is detailed in the attached letter. The project does not conform to the applicable CEQA requirements and is inconsistent with various policies and ordinances.

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:
Mario A. Juarez
625 E. Chapel
Santa Maria, CA 93454

Appellant is a Third Party to the Approval.

Fees: $_____

Signature: _____ Dated: November 26, 2019

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

THE LAW FIRM OF
Juarez, Adam & Farley, LLP
A Limited Liability Partnership Including Professional Corporations
625 East Chapel Street
Santa Maria, CA 93454
Tel: 805-922-4553 • Fax: 805-928-7262

November 26, 2019

Clerk of the Board of Supervisors
Santa Barbara County Board of Supervisors
105 E. Anapamu Street
Fourth Floor
Santa Barbara, CA 93101

RE: Appeal of Planning Commission Approval of Conditional Use Permit and Certification of Supplemental Environmental Impact Report for the Strauss Wind Energy Project SEIR

Members of the Board of Supervisors:

This office represents George and Cheryl Bedford ("Appellants") in the above-mentioned matter. Please accept this appeal to the Board of Supervisors ("BOS") of the action of the Santa Barbara County Planning Commission on November 20, 2019 in approving the Conditional Use Permit ("CUP") (16CUP-00000-00031) and approval of certification of the Supplemental Environmental Impact Report ("SEIR") (18EIR-00000-00001) on the Strauss Wind Energy Project (the "Project").

I. Background and Summary of Appeal

This Project is a commercial wind farm consisting of 30 wind turbine generators ("WTGs") up to 492 feet tall, support facilities, a 7.3-mile transmission line, and associated infrastructure. 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 and the application of the Land Use and Development Code ("LUDC") concerning whether an applicant can propose a project that is patently inconsistent with policies and code sections and 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 codes and deny the CUP and approval of certification of the SEIR with direction to the Applicant to revise said SEIR for adequacy and reproduce it for public recirculation.

II. The Project EIR is Not Consistent With CEQA Requirements.

A. The EIR Was Approved Contrary to CEQA in That It Contained a Patently Insufficient Project Description.

Under CEQA, EIRs must contain a clear and comprehensive project description. This requirement is foundational. A clear and stable project description is critical to meaningful public review of any EIR. City of Redlands v. County of San Bernardino (2002) 96 Cal.App.4th 398, 406, 117 Cal.Rptr.2d 582.

Although California law does not require that an EIR describe every technical detail associated with the project, in this case, because of their size and resulting visual and noise related impacts, the placement of the WTGs is critically important and almost certainly required to meet the "stable" project description required under CEQA. Here, the SEIR states the following: "the *final locations of individual WTGs would be subject to minor adjustment, known as micro siting*, until the time of construction" (2-16). The SEIR goes on to state that "Micro-siting adjustments would be limited to a *100-foot shift* of the location of the footprint analyzed in the conceptual grading plan." *Id.*

This grading "footprint" covers 171.5 acres (identified as "disturbed areas" in Section 2.6.9 of the SEIR). This "footprint" also measures approximately 40,000 linear feet, or 7.57 linear miles (see, among others, the purple highlighted area in SEIR Figure 2-3a). First, the reader cannot ascertain whether the "micro siting" referred to above means that each WTGs can be "shifted" 100 feet from any part of the "grading footprint," or whether it means that each WTG can be shifted 100-feet from the currently proposed WTG location *within* the grading footprint. In either case, such ambiguity is contrary to the requirements of CEQA due to the fact that, according to the topographic maps presented in the SEIR (see, among others Figure 4.9-1), these 7.57 linear miles range from around 1,000 feet in elevation to 1,900 feet. Stated differently, ***a "shift" of WTG placement of 100 feet could very well equate to an elevation rise of 900 feet.*** Such a shift (whether from the grading footprint or the currently proposed location of each WTG) would make most of the environmental impacts associated with the Project – and particularly visual impacts and noise impacts (see below) on surrounding residences – vastly different than that which is actually presented in the SEIR.

The term "micro-siting," therefore, appears to be a misnomer. The only way for the decision-makers and the public to meaningfully assess the impacts (particularly the visual and noise related impacts) associated with this Project, and the only way for the SEIR to comply with CEQA, is to more precisely site the WTGs today, *before* Project construction.

B. The EIR Was Approved Contrary to CEQA In That The Noise Analysis Was Inadequate And Employed the Wrong Standard.

CEQA Guidelines §15124, among others, requires a project description to include a "description of the project's technical, economic, and environmental characteristics." Case law clarifies that this applies to a project's noise characteristics.

The nearest private residence outside of the Project area boundary (the Bedford Residence) is located approximately 2000 feet southeast of the proposed location for WTG N-7. (see Section 4.13.1). The SEIR states unambiguously that "Noise from WTG

operation would impact quality of life of certain residences near the turbine corridors." (Table 4.13-1). Section LU-5b of the SEIR states the following:

> "SEIR Section 4.14.4, *Noise*, describes the ***predicted*** WTG noise levels for participating and nonparticipating residences within the Project area. The threshold for a substantial increase in noise levels was determined to be ***50 dBA... for nonparticipating residences***, and 65 dBA for participating residences. The noise analysis conducted for SWEP (summarized in Table 4.14-6) indicates that none of the five adjacent nonparticipating residences would be exposed to noise levels greater than ***49 dBA***."

The above conclusion is objectively speculative. As pointed out above, ***we don't know the true locations of the WTGs at this point.*** Indeed, the applicant is specifically allowed to "shift" each WTG "100 feet from the current grading footprint." In light of the fact that the "predicted" conclusion indicates that the current configuration only meets the significant threshold standard by 1 decibel, this potential "shift" could have enormous implications for the Bedfords relative to noise. It also brings into question the legitimacy of the conclusions enumerated in the SEIR.

Clearly, neither the public nor the decision-makers have any real idea what the actual noise impacts from the WTGs will be on adjacent residences. Approval of such a vague project is contrary to basic planning principles and inconsistent with the basic tenets of CEQA. Additionally, although our consultant has not had sufficient time to provide conclusions (due to the fact that appeal of this matter was required within 10 days of the decisions which took place over the holidays), we believe that the SEIR noise analysis separately violates CEQA in that it does not comport with applicable county noise standards.

C. The EIR Was Approved Contrary to CEQA In That It Deferred Both Environmental Assessment And Potentially Necessary Mitigation.

The requirement that an applicant adopt "mitigation measures" which may be implemented as a result of a "future study" is in direct conflict with the guidelines implementing CEQA because this approach masks potential impacts of the actually approved project. *See, among others,* CEQA Guidelines § 15126.4(a)(1)(B) ("Formulation of mitigation measures should not be deferred until some future time."); Instead, CEQA requires environmental review at the earliest feasible stage in the planning process. Cal. Pub. Res. Code, §21003.1.

Here, the SEIR defers both (a) adequate environmental assessment and (b) potentially necessary environmental mitigation. The following examples illustrate this point:

> (1) **MM BIO-5** – "The Applicant shall retain a County-approved botanist to conduct appropriately timed pre-construction surveys [i.e. future surveys] for sensitive native plant species, bryophytes, and lichens in all areas to be disturbed, including power line pole locations and access roads, and within a 100-foot buffer. Surveys will be valid for a period of one year. In the unlikely event that a federally listed plant species is found on or near an area to be disturbed by the Project, other

than Gaviota tarplant impacts evaluated in this SEIR, which are addressed in MM BIO-6, the USFWS will be consulted and the Project will be adjusted [i.e. in the future] to avoid impacts to the extent feasible. Other species protection measures recommended by the USFWS [i.e. in the future] will be implemented, as needed."

(2) **MM BIO-6** – "The Project owner/operator shall retain a qualified botanist approved by the County, USFWS, and CDFW to prepare a Gaviota Tarplant Mitigation Plan [i.e. in the future] and shall obtain an Incidental Take Permit (CDFW) and Biological Opinion (USFWS) for impacts to Gaviota Tarplant."

(3) **MM BIO-11.a** – "The Applicant shall retain a County-approved biologist to perform a wildlife survey [i.e. in the future] prior to ground disturbance, including grading and the excavation of the WTG sites. The biologist shall survey the surrounding area (where access allows) out to a 300-foot radius from the WTG site, the WTG footings, access roads, and staging, parking, and lay down areas."

(4) **MM VIS-4** – "the Applicant shall be required to submit a landscaping plan [i.e. in the future] to the County for review and approval. The landscaping portion of the Landscape and Lighting Plan shall include but not be limited to (as appropriate): (1) salvaging top soil for reuse; (2) revegetating cut and fill slopes and graded areas visible to the public; (3) applying appropriate colorants to reduce the visual contrast between lighter-colored exposed rock and soils or introduced gravel and the adjacent darker vegetation; and (4) planting vegetation to screen the switchyard pad from public view discussed under KOP 2 and Impact VIS-6)."

The above constitute but a few examples wherein the SEIR deferred environmental assessment and potentially necessary environmental mitigation in violation of CEQA. Indeed, we are at a loss as to why these studies and assessments were not conducted *prior* to SEIR certification and made part of the document. In any case, because the SEIR deferred both environmental assessment and mitigation measures, environmental review of this project has been severely hampered and the basic principles and functions of CEQA have been violated. Moreover, postponing the dissemination of this crucial information raises significant concerns regarding the accuracy of conclusions in the EIR, particularly with regard to aesthetics, geology, biology, and policy consistency.

D. The EIR Was Approved Contrary to CEQA In That It Contained an Inadequate Analysis of Project Alternatives.

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."

Here, the SEIR only analyzed 4 alternatives (see Section 5-5). However, none of these analyzed "alternatives" adequately analyze the alternative that is likely the *least* environmentally intrusive alternative: to wit, reducing and/or eliminating the environmental impact associated with the visibility and avian impacts of these 50 story structures *by locating them away from ridgelines*. In fact, the SEIR specifically rejects discussion of this alternative in four unsupported paragraphs (see Section 5.4.5) buried in the back of the 3,571-page document. In eliminating this alternative from detailed evaluation, the SEIR authors assert, among other things, the following: "The earth movement required to locate the WTGs away from ridgelines would be significant and the loss of WTG generating capacity ***is expected*** to be substantial." This "explanation" is insufficient. The term "significant" (relative to "earth movement") is left undefined in this section. Is the "earth movement" associated with this rejected alternative significantly larger than that associated with placing the WTGs along the ridgeline? If so, by how much? What is the "expected" loss of generating capacity? Certainly, there is a significant difference between a 1% reduction and a 90% reduction. This information is necessary to analyze this alterative. The SEIR also includes a passage that contradicts the above explanation: "relatively little cutting and filling would be required along canyon bottoms or draws because of the relatively gentle slopes; however, these lower-elevation locations are the most sensitive biologically and would necessitate the removal of a large number of trees and other vegetation." (Section 5.4.5). However, Figure 4.5-1(a) of the SEIR ("Vegetation Mapping") undermines even this conclusion, indicating that ***the currently proposed site contains the exact same vegetation as that at lower elevations***.

Because this alternative (i.e. placement of the WTGs below the ridgelines) would appear to be preferable due to the reduction and/or elimination of both aesthetic impacts and impacts to birds and bats, the generalized conclusions enumerated in this section are insufficient. Instead, a more complete analysis must be made and a discussion of the "trade-offs" between the various impacts associated with this alternative and the proposed Project should be undertaken in compliance with CEQA.

E. The EIR Contained No Support For The Finding That The Above Mentioned (Environmentally Superior) Alternative Was Infeasible.

Public Resources Code § 21002 makes clear that superior alternatives cannot be overridden unless there are "specific economic, social, or other conditions [that] make infeasible such project alternatives or such mitigation measures." (*see also* Cal. Public Resources Code § 21081). Even as to alternatives that are rejected, however, EIRs must explain why each suggested alternative either does not satisfy the goals of the proposed project, does not offer substantial environmental advantages, or cannot be accomplished. "If various alternatives were considered and found infeasible, those alternatives and the reasons they were rejected must be discussed in the EIR ***in sufficient detail*** to enable public participation and criticism as well." Stand Tall on Principles v. Shasta Union High Sch. Dist. (1991) 235 Cal.App.3d 772, 786, 1 Cal.Rptr.2d 107.

Here, as discussed above, the SEIR sidesteps not only meaningful discussion of the superior alternative (i.e. siting the WTGs below ridgelines), but it also avoids cogent discussion as to the reasons this alternative was rejected, and instead, relies on wholly unsupported conclusions (i.e. "The earth movement required to locate the WTGs away

from ridgelines would be significant [a conclusion that is undermined by other sections of the SEIR] and the loss of WTG generating capacity ***is expected*** to be substantial"). Such analysis is insufficient under CEQA and associated case law.

F. The SEIR is Excessively Convoluted and Improperly Relies on a 10-Year Old EIR.

CEQA requires that environmental impact statements be comprehensible not only to decision-makers, but also to the affected public. This SEIR is 3,571 pages long and, in multiple places, refers the reader to another 10-year old EIR (the "LWEP EIR") which itself is in excess of 3,000 pages. As many speakers noted during the public process, the interplay between the original LWEP EIR and the SEIR is not only confusing, but also, in some cases, almost impossible to reconcile. For example, the SEIR often refers back to the LWEP EIR without adequate page reference. In response to this concern, the County stated the following: "it is unfortunate that the Draft SEIR needs to be so lengthy, but the public and interested agencies and organizations tend to request more information rather than less, which is why the Draft SEIR contains so many pages." However, it is not the length that is the problem here, but the comprehensibility. As currently written, it is extraordinarily difficult (and in some cases, impossible) to decipher not only the information that the SEIR is trying to impart, but also what real environmental impacts will occur.

Along these same lines, we would also note that the SEIR improperly relies on the 10-year old EIR for various facts, analysis, and conclusions despite the fact that the project at issue in the former EIR is a vastly different project than that which is proposed today. The Turbines being proposed today are *significantly* taller, the blades are *substantially* longer, and the environmental impacts have the possibility of being *exponentially* greater than those associated with the LWEP project.

III. The Project Conflicts With Various Parts of the General Plan And Local Policies And Objectives.

A. The Project Conflicts with LUDC §35.82.060.E.1(e).

Pursuant to LUDC §35.82.060.E.1(e), no CUP can be approved without a finding that "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." This finding cannot be made here. The instant Project consists of, among other things, thirty WTGs that are 50 stories tall located in the middle of a rural and scenic area. To assert that the Project is "compatible with the surrounding area" is demonstrably false and intellectually and logically dishonest. The Project is inconsistent with this code section.

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

Santa Barbara County LUDC §35.62.040(C)(1)(b)(1) (*Ridgeline and Hillside Development Guidelines*) states, in pertinent part, that all ridgeline and hillside development shall comply with the following guideline: "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." As is abundantly clear from the topographical maps found within the SEIR, this project is inconsistent with this code section.

C. <u>The Project Violates LUDC Visual Policies Specifically Enumerated for Wind Energy Systems.</u>

With respect to LUDC Visual Policies applicable to Wind Energy Systems, the Board's findings similarly do not reconcile the clear disparity between the policy and the facts of the Project.

Santa Barbara County LUDC §35.57.050(K) specifically addresses standards for the issuance of permits for "Wind Energy Systems." Said section provides that each 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.

The Planning Commission's finding of consistency on this point is inappropriate. They appear to have employed the rationale that the Policy's inclusion of the phrase "to the greatest extent feasible" acts to effectively eliminate the requirements of the first sentence of the section. *Interpreting this code section in this manner effectively eviscerates the very protections set forth in the Policy* (under this interpretation, for example, one would be prohibited from placing a WTG in a location wherein it intrudes into the skyline unless he *really* wanted to put it there).

D. <u>The Project Conflicts With the County's Visual Resource Policy</u>.

Santa Barbara County visual resource policies contain express language requiring that structures be sited and designed in a manner that comports with the existing natural environment and features. One such policy provides as follows:

> 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.

As identified above, we (i.e. the public, the decision-makers, and even the Applicant) do not know whether "technical requirements" actually require the project to violate this Policy *because the SEIR did not analyze the alternative that is most appropriate in this matter*: locating the WTGs below the ridgeline.

IV. Conclusion

The objections raised herein are not new. They were voiced over and over in public comment, both written and verbal, by a broad cross section of the public during the Planning Commission's hearing on the Project. 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 Strauss Wind Energy Project CUP as approved by the Planning Commission on November 20, 2019. At the very least, the SEIR 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.

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

Additionally, as of the date of this appeal, the Project has yet to obtain approval (whether preliminary or final) from the Central Board of Architectural Review ("CBAR"). We do not believe that such approval can be made due to the fact that the Project is inconsistent with the required findings applicable to CBAR as enumerated in the LUDC. Should such approval ultimately be made of any CBAR decision, said decision will be subject to a separate appeal. Pursuant to the appeal procedures enumerated in the LUDC, such appeal, if required, shall first be made to the Planning Commission and then (again, if required) to the BOS.

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

Respectfully Submitted,

JUAREZ, ADAM & FARLEY

Mario A. Juarez, attorneys for Appellants