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October 24, 2008

VIA E-MAIL AND U.S. MAIL

John Day
Energy Planner
Santa Barbara County Planning Department
123 East Anapamu Street
Santa Barbara, CA 93101



Re: Response to Bedford Appeal

Dear Mr. Day:

On behalf of Acciona Energy, we are submitting the following comments in response to George and Cheryl Bedford's October 9, 2008 appeal of the County Planning Commission's approval of the Lompoc Wind Energy Project (Bedford Appeal). We appreciate the opportunity to respond to the appeal prior to the County Board of Supervisors' hearing. Acciona values the County's efforts in conducting a thorough environmental review, and fully supports the County Planning Commission's unanimous decision to certify the Final Environmental Impact Report (FEIR) and approve the Conditional Use Permit (CUP) and Variance for the project. Acciona looks forward to resolving the issues raised in the Bedford appeal so that it can begin installation and operation of this important renewable energy project.

A. THE FEIR SUFFICIENTLY IDENTIFIES, DESCRIBES, AND ANALYZES PROJECT ALTERNATIVES.

1. The FEIR contains an adequate discussion of a reasonable range of alternatives.

The Bedford Appeal alleges that the FEIR's alternatives were not meaningfully developed because the FEIR did not "impart[] 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 that the FEIR contained no meaningful analysis of the identified alternatives. Bedford Appeal, pages 4-5. An "EIR must describe a reasonable range of alternatives to the project...that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any of the significant effects of the project..." CEQA Guidelines, § 15126.6, subd. (a). However, the EIR "need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation." *Id.* There is "no ironclad rule governing the nature of scope of the alternatives to be discussed other than the rule of reason." *Id.*

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Contrary to the Bedfords' assertion, the FEIR alternatives analysis described a reasonable range of alternatives sufficient to foster informed decisionmaking and public participation. In addition to describing four alternative site locations and seven alternative power line routes as "alternatives considered but not carried forward," FEIR pages 5-2 through 5-9, the FEIR contained a complete and thorough description and analysis of three alternatives to the project plus a No Project Alternative. As discussed on FEIR page 5-9, the first alternative (LWEF Alternative 1) would prohibit construction of up to 13 wind turbine generators (WTGs) on the southwestern border of the project site and construction of the one WTG that would be visible from Miguelito County Park. This description provides decisionmakers and the public with sufficient information to compare the impacts of the proposed project to the impacts that would occur if LWEF Alternative 1, a reduced project alternative, were implemented. Moreover, the FEIR provides a comparison of the impacts that could result from implementation of the project with the impacts that could result from implementation of LWEF Alternative 1. FEIR pages 5-10 through 5-13.

The FEIR then describes a reduced project alternative consisting of construction of Phase I of the proposed project only (LWEF Alternative 2), and goes on to provide a comparison of the impacts that could occur under the project with the impacts that occur under this reduced project alternative. FEIR pages 5-13 through 5-16. Finally, the FEIR discusses an alternative power line route (Power Line Alternative 1), which is designed to reduce visual impacts associated with the proposed project. Because this alternative was identified as the environmentally superior alternative, it is described and its impacts analyzed in detail in the FEIR. See FEIR pages 5.16 through 5-27.

Because three alternatives were identified, described, and analyzed in the FEIR, the Bedfords' basis for asserting that "no real alternative proposal was provided" is unclear. The Bedfords cite *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112 [*Laurel Heights II*], for the proposition that recirculation is required when an EIR is "so inadequate that public comment was meaningless." In *Laurel Heights II*, the California Supreme Court undertook review to "address the question of what constitutes 'significant new information' in a final...[EIR] so as to require its recirculation for public comment before [EIR] certification." *Id.* at page 1112. The Bedford Appeal fails to state that *Laurel Heights II* also held that "[r]ecirculation is only required when a discussion of a new feasible project alternative, which will not be implemented, is added to the EIR." *Id.* at 1141-1142. The Court in that case found that although an additional 12-page discussion of an alternative was included in the final EIR, meaningful public review had not been precluded. *See id.* at 1142. Again, even with the *Laurel Heights II* citation, it remains unclear what the Bedfords' basis for asserting that the alternatives analysis was inadequate. Under the holding in *Laurel Heights II*, recirculation would not be required because both the Draft EIR and the Final EIR identified, described, and analyzed alternatives to the proposed project.

- 2. The County Planning Commission recommended Power Line Alternative 1 and determined that the remaining two alternatives to the project were infeasible.**

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The Bedford Appeal alleges that the Planning Commission's certification of the EIR and approval of the proposed project violated CEQA because it is "impossible to conclude that any alternative...is 'infeasible'" and because the County's findings, which state that the reduced project alternative scenarios discussed in LWEF Alternatives 1 and 2 would fail to provide the benefits of the project and would possibly not be commercially viable, are irrelevant to the standard of infeasibility. Bedford Appeal, pages 5-6. The Bedfords are correct that a decisionmaking agency must balance the "economic, legal, social, technological, or other benefits of a project against its unavoidable environmental risks when determining whether to approve the project. CEQA Guidelines, § 15093, subd. (a). When the lead agency approves a project that will result in significant environmental effects, it must state in writing the specific reasons to support its action...." CEQA Guidelines, § 15093, subd. (b). The Bedfords are also correct that a public agency may not approve a project for which the EIR identifies a significant environmental effect unless the public agency "makes one or more written findings for each of those significant effects," which can include "[s]pecific economic, legal, social, technological, or other considerations" that make the alternative infeasible. CEQA Guidelines, § 15091, subd. (a).

In approving the proposed project, the Planning Commission adopted findings which identified Power Line Alternative 1 as feasible and recommended that alternative to minimize environmental effects. In addition, the Commission's findings specifically stated that LWEF Alternatives 1 and 2 were not feasible because they would 1) prohibit WTGs in prime wind resource areas thereby reducing the generation capacity of the project, 2) reduce the amount of allowed WTGs thus making the project economically infeasible, 3) limit the project so that the benefits of alternative energy would not be fully realized, 4) limit the project so that the benefits to sustained viability of agricultural uses would no longer exist, and 5) limit the project so that the benefits of additional tax revenues would not be fully realized.

The Bedfords point to *Uphold Our Heritage v. Town of Woodside* (1st Dist. 2007) 147 Cal.App.4th.1019, for the proposition that findings must evidence that additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.¹ In this case, although Acciona has not provided its proprietary financial analysis of the project, County staff independently verified that the southern ridge has much greater wind resource potential than the rest of the project site based on wind resource maps obtained from the California Energy Commission. In addition, it must be noted that the economic infeasibility of the reduced project alternatives was only one of many factors in determining that these alternatives were not feasible. Perhaps most importantly, as the Commission's findings state, the reduced project alternatives would "limit[] the project to less than its commercial power generation potential" and therefore would result in "not fully realiz[ing] the public and private project objectives or benefits, including development of alternative energy sources...."

¹ This rule was originally set forth in *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167; *Uphold Our Heritage* cites to *Citizens of Goleta Valley*.

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Moreover, in certifying the EIR and approving the proposed project, the Commission adopted a statement of overriding considerations which set forth the specific considerations that warrant approval of the project notwithstanding that significant environmental effects had not been fully mitigated to a less than significant level. In adopting the statement of overriding considerations, the Commission found that 1) the project will generate up to 285 million kilowatt hours of clean, renewable wind power annually, which will help meet regional energy needs in an efficient, sustainable, and environmentally sound manner, 2) the project will offset the need for additional electricity generated from fossil fuels and will therefore help California to meet its air quality goals and to reduce greenhouse gas emissions, 3) the project will promote long-term economic viability of agricultural uses in the County, and 4) the project will provide the County, school districts, and special districts, including the Lompoc Hospital, with additional tax revenues.

Because the Commission adopted findings that set forth the specific economic and social factors considered in determining that alternatives identified in the FEIR were not feasible, and because the Commission also adopted a statement of overriding consideration that set forth specific economic and social considerations used to determine that the benefits of the project outweigh the environmental effects, it did not violate CEQA in certifying the FEIR and approving the CUP and Variance for the proposed project.

B. THE FEIR CONTAINS A COMPLETE AND ADEQUATE PROJECT DESCRIPTION.

In alleging that the FEIR contains an inadequate project description, the Bedford Appeal relies on the fact that the precise locations of WTGs have not yet been identified and thus asserts that meaningful analysis of the project's impacts was precluded. Bedford Appeal, page 4. Regardless of these assertions, the FEIR provides a complete and adequate description of the project. The CEQA process often results in project changes to reduce the severity of environmental impacts. "The CEQA process is not designed to freeze the ultimate proposal in the precise mold of the initial project; ...new and unforeseen insights may emerge during investigation, evoking revision of the original proposal." *Kings County Farm Bureau v. City of Hanford* (5th Dist. 1990) 221 Cal. App. 3d 692, 736-737.

As discussed on FEIR page 2-6, the "final locations of individual WTGs in each corridor would be subject to adjustment in the corridor until the time of construction. This flexibility in WTG layout is needed in the event that...pre-construction field surveys...or further wind studies indicate that a modified layout is preferable." In fact, this flexibility led to important changes in the project during the environmental review process that have significantly reduced the aesthetic and environmental impacts of the proposed project. Although the final locations of the individual WTGs have not yet been precisely determined, analysis of the WTG corridors provided the most conservative analysis of impacts that could result from WTG construction and operation.

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C. THE PROJECT IS CONSISTENT WITH THE SANTA BARBARA COUNTY COMPREHENSIVE PLAN AND DEVELOPMENT CODE.

The Bedford Appeal alleges that the proposed project is inconsistent with the Santa Barbara County Comprehensive Plan and its implementing policies. Bedford Appeal, page 7. However, the project's consistency with the Comprehensive Plan is adequately addressed in the EIR and in the Commission's adopted findings. Every City and County in California must adopt a "comprehensive, long-term general plan for the physical development of the county or city...." Cal. Govt. Code, § 65300. The propriety of "virtually any local decision affecting land use and development depends upon consistency with the applicable general plan...." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570. A project is consistent with the general plan "if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." Governor's Office of Planning and Research, *State of California General Plan Guidelines* (October 2003) (citing 58 Ops.Cal.Atty.Gen. 21, 25 (1975)). While a project is inconsistent with a general plan when it conflicts with a "fundamental, mandatory and specific land use policy," *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1332, 1342 (*FUTURE*), a project "need not be in perfect conformity with each and every [general plan] policy" since "no project [can] completely satisfy every policy stated in [a general plan]. *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1st Dist. 1993) 23 Cal.App.4th 704, 719.

In the case where an EIR is prepared, a reviewing court must evaluate the agency's consistency determination under the substantial evidence standard. *The Pocket Protectors v. City of Sacramento* (3d Dist. 2004) 124 Cal.App.4th 903, 933-934 (citing *Sequoyah, supra*, 23 Cal.App.4th at pages 707, 712, 717). An agency's finding of a project's consistency would be reversed "only if, based on the evidence before the [agency], a reasonable person could not have reached the same conclusion." *No Oil, Inc. v. City of Los Angeles* (2d Dist. 1987) 196 Cal.App.3d 222, 243. Moreover, an inconsistency between a project and a general plan does not in itself mandate a finding of environmental significance. *Lighthouse Field Beach Rescue v. City of Santa Cruz* (6th Dist. 2005) 131 Cal.App.4th 1170, 1207. Rather, a planning inconsistency is "merely a factor to be considered in determining" the significance of changes in the physical environment caused by the project. *Id.*

1. The project is consistent with the Comprehensive Plan's Visual Resources Policies.

The Bedford Appeal alleges that the proposed project conflicts with Comprehensive Plan Visual Resources Policy 2. Visual Resources Policy 2 provides that "in areas designated as rural on the land use plan maps, the heights, 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." Santa Barbara County Comprehensive Plan (*italics added*). In determining a project's consistency with a general plan, the "nature of the policy and the nature of

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the inconsistency are critical factors to consider.” *FUTURE*, *supra*, 62 Cal.App.4th at page 1341. In *FUTURE*, the court distinguished between policies that are “amorphous in nature” or afford officials discretion and policies that are “fundamental, mandatory and specific.” *Id.* at pages 1341-1342.

Visual Resources Policy 2 is amorphous in that it leaves some discretion when it provides for an exception where “technical requirements dictate otherwise.” Because Visual Resources Policy 2 is not a fundamental, mandatory, and specific policy, even if the proposed project is not in perfect conformity with it, the project is nonetheless in conformity with the general plan. *See Sequoyah*, *supra*, 23 Cal.App.4th at page 719. The FEIR explains that the proposed project is consistent with this policy in that with adoption of Power Line Alternative 1, visual impacts with respect to the power line would be less than significant. FEIR page 3.10-18. With regard to significant and unavoidable visual impacts related to the WTGs and views from Jalama Beach County Park, San Miguelito Road, and Miguelito County Park (see discussion on FEIR pages 3.3-22 and 3.3-26 through 3.3-28), the proposed project was nonetheless determined to be consistent with the Policy because the height, scale, and design of the WTGs are dictated by technical requirements to produce wind energy and because impacts would be mitigated to the extent feasible. FEIR page 3.10-19. Also, as explained in the Planning Commission’s findings, even though the WTGs would result in significant visual impacts, locating the WTGs on and near ridgelines is technically necessary to exploit the wind resources effectively. Moreover, the Planning Commission’s finding that the project is consistent with Visual Resources Policy 2 would be upheld by a reviewing court because there is no evidence that a “reasonable person could not have reached the same conclusion. *See No Oil*, *supra*, 196 Cal.App.3d at page 243.

2. The project is consistent with Land Use and Development Code § 35.57.050(K): visual standards for issuance of CUPs for wind energy systems.

The Bedford Appeal also asserts that the proposed project conflicts with County Land Use and Development Code Section 35.57.050(K), which provides visual impact standards for wind energy systems. Specifically, Section 35.57.050(K) provides that wind energy systems “[i]o the greatest extent feasible...1) [s]hall not project above the top of ridgelines, 2) [i]f visible from public viewing areas, shall use natural landforms and existing vegetation for screening, 3) [s]hall not cause a significantly adverse visual impact to a scenic vista from a County or State designated scenic corridor, [and] 4) [s]hall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.”

Just as Visual Resources Policy 2 leaves some discretion when it provides an exception to its application where “technical requirements dictate otherwise,” Development Code Section 35.57.050(K) leaves discretion by limiting its application “to the greatest extent feasible.” As discussed above, because these policies are not fundamental, mandatory, and specific, even if the proposed project is not in perfect conformity with them, the project is nonetheless in conformity with the general plan. *See Sequoyah*, *supra*, 23 Cal.App.4th at page 719.

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The FEIR explains that the proposed project is consistent with this policy because mitigation measures have been provided to address adverse visual impacts to Jalama Beach County Park and San Miguelito County Park. FEIR page 3.10-25. Additionally, consistent with the policy, the FEIR states that the “wind resource distribution along the ridges renders mitigating the impact to less than significant infeasible,” FEIR page 3.10-25, and therefore, as required by the policy, the project was designed to minimize visual impacts to “the greatest extent feasible.” Also, as explained in the Planning Commission’s findings, even though the WTGs would result in significant visual impacts, locating the WTGs on and near ridgelines is technically necessary to exploit the wind resources effectively. Moreover, the Planning Commission’s finding that the project is consistent with the policy would be upheld by a reviewing court because there is no evidence that a “reasonable person could not have reached the same conclusion. *See No Oil, supra*, 196 Cal.App.3d at page 243.

3. The project is consistent with Santa Barbara County Ridgeline and Hillside Development Guidelines.

With regard to plan consistency, the Bedford Appeal also asserts that the proposed project conflicts with County Land Use and Development Code Section 35.62.040, Ridgeline and Hillside Development Guidelines. Section 35.62.040 is intended to provide “visual protection of the County’s ridgelines and hillsides by requiring that the Board of Architectural Review evaluate each proposed structure within [certain] areas...in terms of the [development] guidelines” and “*encourage* architectural designs and landscaping that conforms to the natural topography on hillsides and ridgelines.” Land Use and Development Code, § 35.62.040(A) (italics added). Section 35.62.040(C) sets forth specific development guidelines while reserving for the Board of Architectural Review “*discretion* to interpret and apply” them. As explained in the Bedford Appeal, the development guidelines state that “[t]he height of a structure *should not* exceed 25 feet wherever there is a 16 foot drop in elevation within 100 feet of the proposed structure’s location,” and that “development on ridgelines shall be discouraged *if suitable alternative locations are available* on the lot.” Development Code, § 35.62.040(C)(1)(a) (italics added).

As discussed above for Visual Resources Policy 2 and Land Use and Development Code § 35.57.050(K), the County Ridgeline and Hillside Development Guidelines leave discretion by “*encouraging* designs...[to] conform to the natural topography on hillsides and ridgelines,” by providing the Board of Architectural Review with “*discretion to interpret and apply*” the identified development standards, by providing heights that “*should not* [be] exceed[ed],” and by “*discouraging*” development on ridgelines “*if suitable alternative locations are available* on the lot.”

The proposed project is consistent with these guidelines because, as stated on FEIR page 3.2-7, the proposed project would “be reviewed by the Central Board of Architectural Review...” and as discussed above, the Board would have discretion in interpreting and applying the development standards. In addition, again, as explained in the Planning Commission’s findings, even though the WTGs would result in significant visual impacts, and although development on ridgelines is discouraged, no “suitable alternative locations are available on the lot” because locating the WTGs on and near ridgelines is “technically necessary to exploit the wind resources effectively.” Perhaps

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most importantly, it should be noted that the Development Guidelines speak in terms of “proposed building footprint,” and thus, decisionmakers should be aware that the guidelines were written with an eye toward building development rather than renewable wind energy facilities. Moreover, the Planning Commission’s finding that the project is consistent with the policy would also be upheld by a reviewing court because there is no evidence that a “reasonable person could not have reached the same conclusion. *See No Oil, supra*, 196 Cal.App.3d at page 243.

D. THE PROJECT’S NOISE IMPACTS WERE ADEQUATELY ANALYZED.

The Bedford Appeal asserts that the EIR does not contain sufficient information to make a definitive noise determination. Bedford Appeal, page 10. Specifically, the appeal states that the EIR analysis is impermissibly vague because exact WTG locations have not yet been determined. *Id.* As discussed in Section B, above, although the final locations of the individual WTGs have not yet been precisely determined, analysis of the WTG corridors provided the most conservative analysis of impacts that could result from WTG construction and operation. The Bedfords point to statements in the FEIR to show uncertainties in the project design. However, although the FEIR acknowledges there are some uncertainties in project design, it then explains that where there is uncertainty, assumptions were made to arrive at a “conservative, worst-case estimate.” *See* FEIR page 3.11-6. FEIR pages 3.11-5 through 3.11-7 provide a detailed description of project noise impact assessment methodology. In addition, worst-case long-term WTG noise impacts are discussed in detail on FEIR page 3.11-11.

The Bedford Appeal also states that each WTG will “exceed 100 dBA.” *Id.* While it is true that the WTGs – at each of their individual locations – would have maximum sound levels that exceed 100 dBA, offsite noise levels would be significantly lower. As described in FEIR Mitigation Measure NOI-7, the WTGs must be designed and operated to ensure that the noise level attributable to the proposed project does not exceed 43.3 dBA L_{eq} (1 hour) under normal operating conditions at any existing nonparticipating residences. FEIR page 3.11-14; Planning Commission Conditions of Approval.

The Bedford Appeal cites to *Los Angeles Unified School Dist. V. City of Los Angeles* (2d Dist. 1997) 58 Cal.App.4th (LAUSD) and *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (1st Dist. 2001) 91 Cal.App.4th 1344 for the proposition that the project’s noise analysis contained in the FEIR was inadequate. In LAUSD, the court held that the EIR was inadequate because it failed to consider the cumulative impact of existing and projected traffic noise. LAUSD, *supra*, 58 Cal.App.4th at page 1024. And in *Berkeley Keep Jets Over the Bay*, the court held that the EIR failed to adequately address noise impacts because, although the EIR “recognized that air cargo activity generally takes place during noise-sensitive nighttime hours,” it provided “no mitigation measures...to mitigate the project’s noise impacts” on affected residences. 91 Cal.App.4th at pages 1372, 1374. Contrary to the EIRs in both LAUSD and *Berkeley Keep Jets Over the Bay*, the FEIR for the proposed project provided a worst-case noise impact analysis of all project components, including a discussion regarding cumulative noise impacts, *see* FEIR page 4-13, and



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provided mitigation measures to address its potential adverse noise impacts. FEIR pages 3.11-12 through 3.11-15.

Because noise impacts of the proposed project were estimated using a conservative worst-case scenario and because conditions have been set forth to ensure that noise impacts remain less than significant, the FEIR provides sufficient information regarding the project's noise impacts.

Acciona appreciates the opportunity to address the issues raised in the Bedfords' appeal of the Planning Commission's approval of the Lompoc Wind Energy Project, and hopes that these responses have provided clarification to allay any concerns the appeal may have raised. Again, Acciona appreciates the County's efforts in conducting a thorough environmental review of the project and looks forward to constructing and operating this clean renewable energy project.

Very truly yours,

A handwritten signature in black ink that reads "S. Wayne Rosenbaum". The signature is written in a cursive style with a large, prominent 'S' and 'R'.

S. Wayne Rosenbaum