



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
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Santa Barbara, CA 93101
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Department Name: Planning & Development
Department No.: 053
For Agenda Of: December 16, 2008
Placement: Departmental
Estimated Time: 2 hours
Continued Item: Yes
If Yes, date from: November 4, 2008
Vote Required: Majority

TO: Board of Supervisors

FROM: Department John Baker, Assistant CEO and Director, Planning & Development
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SUBJECT: **Bedford Appeal** (Case No. 08APL-00000-00034) of County Planning Commission approval of the Lompoc Wind Energy Project (Case No. 06CUP-00000-00009; 08VAR-00000-00003). Third Supervisorial District.

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

That the Board of Supervisors:

1. Deny the Bedford Appeal, Case No. 08APL-00000-00034.
2. Certify that the Lompoc Wind Energy Project Environmental Impact Report (August 2008) (06EIR-00000-00004; SCH #2006071008) reflects the independent judgment of the Board, has been completed in compliance with the California Environmental Quality Act (CEQA), and is adequate for the Lompoc Wind Energy Project.
3. Adopt the required findings for the project, including CEQA findings, attached to the Planning Commission Action Letter dated October 7, 2008, included as Attachment C to this Board Letter, including modifications to findings specified in Attachment D to this Board Letter, and including any modifications made by the Board in the public hearing.
4. Grant approval of Conditional Use Permit 08CUP-00000-00009 and Variance 08VAR-00000-00003, subject to the conditions of approval specified in the Planning Commission Action Letter and attachments dated October 7, 2008, included as Attachment C to this Board Letter, including modifications to permit conditions specified in Attachment D to this Board Letter, and including any modifications made by the Board in the public hearing.

Summary Text:

A. Proposed Project

The proposed project is a request for a Conditional Use Permit (CUP) and a Variance to allow construction and operation of a wind energy generation facility on approximately 2,950 acres of private property zoned AG-II-100, southwest of the City of Lompoc. The project layout and location of the Appellant's residence are shown in Figure 1. The CUP is requested pursuant to Section 35.82.060 of the County's Land Use and Development Code. The Variance from setback regulations is to allow placing wind turbines one turbine blade length instead of the overall turbine height from certain property lines.

Pacific Renewable Energy Generation, a subsidiary of Acciona Wind Energy USA, proposes to install and operate up to 65 wind turbine generators (WTGs), each of which would produce up to 1.5 megawatts of electricity and stand up to 397 feet tall. The proposed project includes a 5,000 square foot operations and maintenance building, a project substation, gravel access roads, and power lines to tie-in to the PG&E electrical grid system. A detailed project description is provided in Section 5.4 of the Planning Commission staff report (Attachment E) and Section 2.0 of the project EIR.

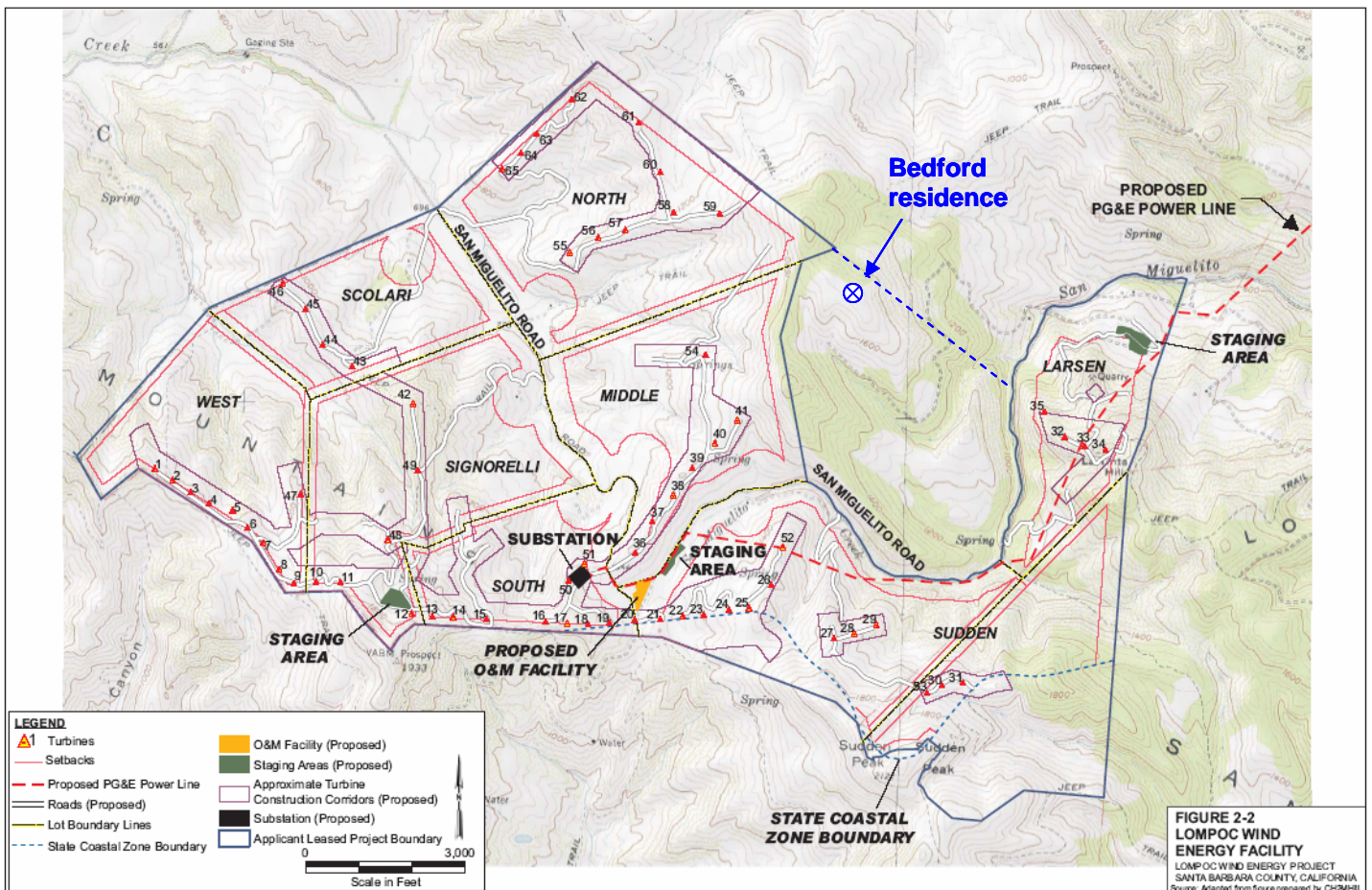


Figure 1: Tentative LWEF Layout

B. Background

The Appellants, George and Cheryl Bedford, reside near the proposed project site on a 426-acre parcel, zoned AG-II-100 (see Figure 1). No wind turbines are proposed to be located on the Bedford property. The proposed turbines nearest to the Appellants' residence would be approximately one half mile away. Mr. and Mrs. Bedford raised their concerns about the proposed project in the public comment hearing on the draft EIR (August 30, 2007); in written comments on the draft EIR (August 8, 2007); at a Central Board of Architectural Review hearing (October 5, 2007); and at the Planning Commission hearing (September 30, 2008).

C. Appeal Points

Appeal Section 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."

1. Appellant contends that the project description analyzed in the Environmental Impact Report (EIR), particularly proposed locations for the wind turbines, is not adequately defined for analysis of environmental impacts.

This contention runs throughout the appeal and underlies other issues raised. For example, the Appellant states:

"the exact location of each WTGs is unknown, and may be located anywhere within a "construction corridor" of approximately three thousand acres." (p.2)

"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." (p.4)

"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."(p.9)

Response:

The above statements mischaracterize the project approved by the Planning Commission. Although the project description provides a degree of flexibility, as discussed below, it is sufficiently defined and adequate for meaningful analysis of environmental impacts, consistent with California Environmental Quality Act (CEQA).¹

Contrary to the Appellants assertions, the wind turbines would be located within specific, mapped "turbine corridors" as shown in EIR Figure 2-2. These corridors occupy 626 acres out of

¹ Note that a general, guiding principle for CEQA adequacy provided in CEQA Guidelines is: "An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible... The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." [CEQA Guidelines §15151].

the 2,950 acre total project area.² The turbine locations are further constrained within the mapped corridors due to County-required setbacks from roads, occupied structures, and property lines. The numbers of turbines proposed in each corridor are listed in EIR Table 2-2 (p.2-5). Thus, although the exact locations of the wind turbines are not known, they will be confined to relatively narrow strips³ in known locations. Similarly, the exact wind turbine model has not been determined; however, the turbine characteristics (including design, dimensions, power output, color, and noise characteristics) have been sufficiently delimited in the project description [EIR §2.3.1] for meaningful EIR analysis. The other project elements, including access roads, operations and maintenance building, and project substation are also mapped on Figure 2-2 and described in EIR §2.3. Any substantial deviations from the project description would necessitate additional environmental review and appropriate permitting actions by the County.

The project description provides some flexibility in project layout and design. The flexibility is essential for this project for several reasons, and will result in a better project. Ongoing wind studies on the project site may require shifts in turbine locations within the corridors analyzed in the EIR prior to final site plan approval. Turbine and road locations shown on the preliminary site plans may need to be adjusted based on preconstruction studies, including geotechnical studies and detailed biological or archeological surveys. Ability of the project proponent to procure a particular wind turbine model in timely way may affect the final turbine selection. The characteristics of the particular turbine selected may affect the layout. Finally, adjustments to location of any one turbine may require adjustments to many other turbines, because the entire network of turbines operates as a coordinated wind energy capture system.

The focus of the EIR analysis on turbine corridors rather than precise individual turbine locations provides an adequate project description to comprehensively identify and analyze project impacts and alternatives in several ways.

- First, the analysis was based on “worst case” scenarios. For the visual impacts analysis, the EIR consultant was directed to create a layout of 80 turbines of the maximum proposed size in the delineated turbine corridors that would result in the maximum visual impacts from public viewing areas. Likewise the noise consultant was charged with creating a layout with maximum noise levels at nearby residences.⁴

As an illustration of how we analyzed the “worst case”, the noise modeling study was done as follows: The EIR noise consultant developed a “worst case” turbine layout by positioning the maximum proposed number of turbines within each corridor, based on the project description (EIR, Table 2-2, p. 2-5), so as to simulate the highest possible noise level at the affected residences, while limiting the total number of turbines to 80. The noise at each turbine was modeled using the maximum turbine height and noise level specified in the

² However, the total, permanent ground disturbance area for all roads, turbines, and facilities combined is estimated at approximately 40 acres [EIR p.2-20].

³ Approximately 400 feet wide in most cases.

⁴ For other issue areas that are not challenged in this appeal (e.g., biological and cultural resources), the impact analyses are based on reconnaissance surveys of the entire turbine corridors, which guarantees that the actual specific turbine sites are included in the surveys. The EIR and CUP conditions require focused, site-specific surveys at the final proposed turbine sites and implementation of appropriate avoidance and mitigation plans prior to approval of final project plans and issuance of the Land Use Permit.

project description. The noise modeling assumed the turbines are point sources over a flat reflecting surface, thereby ignoring topography, ground roughness and vegetation, all of which will reduce noise propagation. The model assumes the sound is travelling downwind from each turbine toward each residence. The analysis does not compensate for increases in wind noise at the residences that would tend to mask turbine noise as the wind picks up. Finally, the model assumes that all the turbines are operating simultaneously 24 hours per day. The EIR states:

“These assumptions result in a conservative, worst-case estimate. Depending on the daily variation in wind speeds, the Ldn may be 13 dBA lower than predicted.” (EIR, p.3.11-6)

Though neither the visual nor noise analysis shows exactly what the actual impacts will be, both provide reliable appraisals of reasonable worst case scenarios; and with this information the Planning Commission voted unanimously to approve the project. It should be noted that after the draft EIR was circulated the project proponent amended the project description, reducing the maximum number of turbines from 80 to 65 and reducing the maximum turbine height from 495 to 397 feet. These changes will reduce the visual and noise impacts of the project, but the reductions are not reflected in most of the visual simulations [EIR §3.2.5.5] or the noise modeling [EIR §3.11.3.3].

- Second, potential impacts were limited by mitigation measures. The EIR noise analysis showed that noise levels could potentially (in the worst case) exceed established noise thresholds, depending on final turbine design and layout. Therefore, specific, enforceable mitigation measures were developed to ensure that the noise levels at nearby residences (measured outside the house) could not exceed acceptable levels. These mitigation measures are implemented as required permit conditions, briefly summarized as follows (see also our response to appeal Section IV):

NOI-4: Noise Complaint Resolution Plan. The Applicant must implement a plan to investigate and resolve any noise issues that arise.

NOI-7: Acoustical Analysis. Before Land Use Permit approval – Requires a modeling study demonstrating that the final project plan complies with noise thresholds.

NOI-8: Noise Monitoring and Control Plan. After wind farm operations begin – Requires on-site noise studies demonstrating compliance with thresholds. If not in compliance, requires measures to reduce noise to below the thresholds.

As discussed in our response to Appeal Point III, no comparable mitigation measures are feasible to reduce the visual impacts of the proposed turbines to a less than significant level.

- Finally, the standard permit conditions for this project include an appealable County process for each phase of project development. Condition 4 of the permit states, in part:

“A Substantial Conformity Determination (SCD) shall be required following approval of final project plans for each project development phase, including the final layout of wind turbine generators and other project components and mitigation plans, prior to issuance of a Land Use Permit (LUP) for that development phase.” [See Planning Commission Staff Report, Attachment B, p.3.]

The steps required for final approval (for each project development phase) are as follows:

- a) Approval of all required mitigation plans, grading plans, building permits, and County and outside agency permits (as stipulated in the conditions of project approval);
- b) Planning and Development staff review final project plans;
- c) P&D Director issues a Substantial Conformity Determination, which must be based on the finding that the final project conforms to the previously approved Conditional Use Permit [LUDC §35.84.040.c.3.b];
- d) P&D Director approves Land Use Permit (public notice to surrounding properties, project mailing list, and anyone who requests notification) [LUDC §35.82.110];
- e) 10-day appeal period, during which the decision to approve the Land Use Permit may be appealed to the Planning Commission [LUDC §§35.102.020; 35.102.040.2.c];
- f) Land Use Permit issued (if no appeal) or Planning Commission hearing (if appeal).

This condition provides additional assurance to the public that the final project, as proposed for construction, is within the bounds of the originally approved project description and environmental impact analysis.

2. The Appellant alleges that alternatives are not adequately developed or meaningfully analyzed; that they are vague and ill-defined. Appellant states that there are only 2 real alternatives, offsite location and reduced project.

General response:

The basic goal of developing EIR project alternatives is to lessen environmental impacts. In addition to lessening impacts, alternatives must be feasible and meet the basic project objectives. The Applicant and County worked together at an early point of the EIR preparation to articulate the project objectives, which appear in EIR §1.3 [p.2-3]. The project objectives are as follows:

“The Applicant has proposed to develop an economically viable wind energy project in Santa Barbara County to generate and deliver renewable energy to the power grid. As a private project, the most basic objectives are as follows:

1. To develop a wind energy project that will produce from 80 up to 97.5 MW in an area where the wind resources are known to be sufficient to do so;
2. To develop an economically viable wind energy project that will support commercially available financing;
3. To provide Project property owners with a stable, secondary source of income to supplement income from ranching and farming operations to support ranch maintenance and improvements;
4. To help PG&E meet its Renewable Energy Portfolio requirements by adding significantly to its portfolio of wind-generated power; and
5. To begin operating the wind project in time to meet milestones of an existing power purchase agreement and to qualify for certain tax credits.

In addition, the Project meets the following public objectives:

1. To meet regional energy needs in an efficient, sustainable, and environmentally sound manner, as provided in the Energy Element of the Santa Barbara County Comprehensive Plan, which encourages use of alternative energy for environmental

- and economic benefits, and encourages opportunities for businesses that develop or market alternative energy technologies;
2. To assist California in meeting its legislated Renewable Energy Portfolio standards for the generation of renewable energy in the state, which require investor-owned utilities to purchase 20 percent of their power from renewable sources by the year 2010;
 3. To offset the need for additional electricity generated from fossil fuels and thereby assist the state in meeting its air quality goals and reducing greenhouse gas emissions;
 4. To promote the long-term economic viability of agricultural uses in the Santa Barbara County, including grazing and dry land farming, by developing an agriculturally compatible land use to supplement income from traditional agricultural activities; and
 5. To provide Santa Barbara County, school districts, and special districts, including the Lompoc Hospital with additional tax revenues.”

These project objectives cannot be met with any of the alternative project alternatives, whether sited at a different location or with a different layout or design in the same location. The alternatives were developed in an effort to identify such a location or design.

The project alternatives considered in the EIR are sufficiently well defined, and the analysis is adequate under CEQA. The EIR analyzes **four alternative locations** [EIR §5.2.1]. Based on the analysis, the alternative locations were dismissed as infeasible. The EIR also analyzes **two alternative project configurations** [EIR §5.3.1]. The alternative configurations were considered potentially feasible project alternatives in the EIR, and one of them was identified as the environmentally superior alternative [EIR §§5.4.2, 5.4.4]. However, the alternative project configurations were subsequently determined to be infeasible, based on substantial evidence, and the Applicant’s proposed project was recommended by staff and approved by the Planning Commission. The alternatives are discussed further in the following paragraphs.

The alternative locations are those identified as the “Most Promising Wind Regions in Santa Barbara County” in an in-depth study by the Santa Barbara Community Environmental Council, which identifies five promising wind development areas including the proposed project site.⁵ [See EIR §5.2.1, pp. 5-2 et seq.] The EIR analysis demonstrates that the alternative sites are not feasible on several grounds. First, they are not currently feasible for the applicant to develop, due to need for long term technical studies to establish site suitability; lack of infrastructure; inconsistency with the County’s Comprehensive Plan, regulatory limitations, and issues with jurisdictional boundaries; inability to obtain site control; and economic viability. Second, the alternative sites would not avoid or substantially reduce environmental impacts (and might increase them), including impacts to aesthetic/visual resources, terrestrial and marine biology, archeological and paleontological resources, and land use. Third, the alternative sites would fail to satisfy six of the public and private project objectives. [see EIR §§5.2.1.1, 5.2.1.2, 5.2.1.3]. Detailed descriptions of these alternatives were not developed, because they are not needed to exclude these sites from further consideration [see Findings for Approval, Planning Commission Staff Report, Attachment A, p.4].

⁵ See *A New Energy Direction: A Blueprint for Santa Barbara County*, Community Environmental Council, 11/30/07. <http://www.communityenvironmentalcouncil.org/EnergyBlueprint/CompleteBlueprint.pdf>

The two other project alternatives (Project Alternatives 1 and 2) are alternative configurations of the proposed project. They were formulated and analyzed in the EIR because they appeared potentially to be feasible and could reduce environmental impacts. They are similar in that they would both prohibit wind turbine placement where the turbines can be seen from Jalama Beach County Park and Miguelito County Park. They differ in that Alternative 1 would allow the full 65 wind turbines proposed by the Applicant, whereas Alternative 2 would limit the number to 55 and restrict the project to a single construction phase. The analysis indicated that these alternatives would reduce visual impacts from the County parks to less than significant and could reduce other project impacts to some extent. [EIR §§5.3.1.1, 5.3.1.2; Planning Commission Staff Report p.32] The project proponent states, and staff has verified independently, that these alternative configurations are infeasible, because they would preclude siting wind turbines along the southernmost ridges of the project site, which comprise the prime wind resource area available for development [see Section II.B, below]. These are therefore infeasible, because they do not meet essential project alternatives, as stated above and discussed further below [pp.10-11].

Specific responses:

The Appellant alleges that:

“These two so-called "alternatives," however, are woefully inadequate. Neither is meaningfully developed. Rather than imparting a full description as to exactly what each alternative would entail...” [Appeal p.3]

“... 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.”

The contention here is that the project alternatives are ill-defined, which echoes the allegation that the project description is inadequate, discussed in appeal point II.A.1 above. This argument (and examples provided to support it) rejects out-of-hand the element of flexibility built into the project description regarding turbine siting. As also discussed in point II.A.1, the flexibility provided is necessary to ensure a better project, for more effective siting to both exploit the wind resource, and to limit environmental impacts. This approach does not compromise the ability of the EIR to characterize environmental impacts of the project or support informed decisionmaking. The project description delineates turbine construction corridors in which the wind turbines must be located. The two alternatives eliminate portions of these corridors and analyze the resultant impacts [EIR §5.3.1.1, 5.3.1.2]. As in the proposed project, the exact locations of turbines within the corridors is uncertain, but the corridors themselves and siting restrictions imposed in the alternatives are explicit.

The Appellant selectively cites CEQA Guidelines §15126.6(a) [Appeal p.3]. The full section of the Guidelines states (emphasis added):

Alternatives to the Proposed Project. 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. An 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. An EIR is not required to consider alternatives which are infeasible. The lead

agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.
[CEQA Guidelines §15126.6(a)]

The analysis of alternatives in the EIR does, indeed, “consider a reasonable range of potentially feasible alternatives” and accomplish their basic purpose, which is to “foster informed decisionmaking and public participation.” These alternatives were presented to the Planning Commission at the September 30, 2008, hearing and were eliminated from consideration based on staff’s recommendations and public comments.

- 3. The Appellant states: “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.”^{6, 7}**

Response:

The magnitude of the visual impacts is clearly communicated in the EIR both explicitly and at a more general level, as appropriate. As discussed in point 1 above, the EIR analyzes the worst case visual impacts from public viewing areas. The visual impact analysis assessed impacts from a reasonable range of public viewing areas, with an emphasis on vantage points with potentially significant visual impacts. For this purpose, it is not necessary to know the exact, final turbine locations; nor is it necessary or feasible to create site-specific simulations from every conceivable location. The EIR concludes that the wind turbines would create significant visual impacts along San Miguelito Road in the project area, describing them as a “dominant presence.” [EIR p. 3.2-27, 2nd paragraph]. The visual impacts will obviously vary from point to point along the road, but there is no specific vantage point of particular significance that would call for additional, site-specific analysis. A site-specific analysis from a particular fixed vantage point of special interest (e.g., the Appellant’s front porch) could involve a greater level of specificity than needed for purposes of the EIR. Even if conducted, such a study would not add meaningful information that would alter the findings of the EIR.

B. “The Alternatives Have In No Way Been Determined To Be ‘Infeasible’ as Required By CEQA”

The Appellant argues that to dismiss alternatives identified as environmentally superior, the County must demonstrate that they are both infeasible and that benefits of the project outweigh the significant impacts it would cause. Appellant claims the EIR does not demonstrate infeasibility of the alternatives, in part because alternatives are not sufficiently described and in part because evidence of that the alternatives are economically infeasible is lacking.

⁶ Appeal, p.5, top. This comment refers to EIR §3.2.5.5, p. 3.2-30, 5th full paragraph.

⁷ Although the appeal does not stress impacts to the Appellant’s property, it should be noted that the EIR analysis of visual impacts correctly considers only impacts from public viewing areas, not from private property, consistent with Santa Barbara County Environmental Thresholds and Guidelines Manual, October 2008, pp. 149-150.

Response:

We assume this complaint refers only to Alternatives 1 and 2, the alternative project configurations [EIR §§5.3.1.1, 5.3.1.2].⁸ These alternatives are summarized in Section A.2 [p.7], above. Both alternatives would prohibit siting of turbines on a portion of the southern ridge in the project area (to eliminate significant visual impacts at Jalama Beach County Park) and at a site on the Larsen property (to reduce significant visual impacts at Miguelito County Park). The alternatives were determined to be infeasible, because they would preclude siting wind turbines in some of the best wind resource areas. The CEQA findings for approval, as currently written, state in part:

“The Planning Commission finds Project Alternatives 1 and 2 infeasible and rejects them in favor of the proposed project, for the following reasons. These alternatives would prohibit WTGs in areas of prime wind resources and limit the generation capacity of the project in the most productive areas. The project proponent states that the restriction of WTGs along the southern ridges would make these project alternatives economically infeasible. Although the County has not been provided with the proponent’s proprietary wind study data or financial analysis, County staff have independently verified that the southern ridge has much greater wind resource potential than the rest of the project site. Wind resource maps obtained from the California Energy Commission show that the wind power potential along the southern ridge ranges from Class 3 to 6, on a scale of 1 to 7, whereas the rest of the project site is in the range of Class 1-4. The only large acreages in buildable areas with Class 5-6 wind potential are located on the western part of the southern ridge. The wind resource maps strongly support the proponent’s contention that the alternatives are economically infeasible.

Furthermore, limiting the project to less than its commercial power generation potential would not fully realize the public and private project objectives or benefits, including development of alternative energy sources, sustained viability of agricultural uses, and additional tax revenues.”

[Planning Commission Staff Report, Attachment A, p.4, excerpt from *Finding 1.7 – No Feasible Alternative Identified*].

This finding suggests but does not focus clearly on the basis for finding Project Alternatives 1 and 2 to be infeasible. The fundamental reason these alternatives are infeasible is that eliminating proposed wind turbines in these areas would fail to achieve the Applicant’s fundamental project objectives (as set forth in the EIR §1.3 and stated above), by preventing the Applicant from taking advantage of one of the most productive wind resource areas. In consequence, these Project Alternatives may also be economically infeasible and fail to accomplish other stated objectives.

As stated in Finding 1.7, the wind resource maps examined by staff clearly demonstrate that a large fraction of the wind resources the Applicant seeks to exploit would be excluded under Project Alternatives 1 and 2. Staff’s qualitative assessment is reinforced by new information provided by the Applicant’s technical expert, who is responsible for the ongoing wind resource studies at the project site, in a letter dated December 3, 2008, and included as Appendix F of this Board Letter. The letter states that the average generating capacity of the turbines in question is 19% greater than the other turbines on the site, which shows why the Applicant considers them critical to project viability. The letter explains that relocating the turbines to other areas of the project site is prevented by steep slopes and ridgeline-related turbulence. Furthermore, removing the turbines entirely would reduce the project generating capacity to 76.5 megawatts, thereby failing to accomplish the Applicant’s first

⁸ The infeasibility of the alternative project locations is documented in the EIR §§5.2.1.1, 5.2.1.2, 5.2.1.3. See Section A.2, paragraph 2, above.

project objective, which is: "To develop a wind energy project that will produce from 80 up to 97.5 MW in an area where the wind resources are known to be sufficient to do so." EIR §1.3 [p.2].

Therefore, in consideration of the above, Staff recommends that the Board adopt modifications to Finding 1.7. The modified finding states explicitly that Project Alternatives 1 and 2 are infeasible because they would fail to achieve fundamental project objectives. The proposed revised Finding is included in Attachment D of this Board Letter.

The Appellant argues:

"...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." [Appeal, p.6]

The quote is a general statement drawn from the issue summary section of the EIR. *Finding 1.7*, as modified in Attachment D, provides the actual basis for determining the alternatives are infeasible.

The Appellant further states:

"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." [Appeal, p.6]

Staff concluded that by prohibiting wind turbines in a large fraction of the most productive wind resource areas, Project Alternatives 1 and 2 would fail to achieve fundamental project objectives and, therefore, were determined to be infeasible.

Appeal Section III: "The Project Conflicts With The Santa Barbara County General Plan."

Response: The project is not in conflict with the policies or ordinances, as discussed point-by-point below. Consistency with County policies and ordinances was reviewed in Section 3.10.4 of the Final EIR and Sections 6.2-6.3 of the Planning Commission Staff Report.

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

The Appellant states that the wind turbines will have major visual impacts, based on citations from the EIR and staff report. The Appellant argues that, as a result of these visual impacts, the Project conflicts with the County's Visual Resources Policy 2, which is misquoted 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... 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." [Appeal, p.7]

Response:

The Appellant is correct that the wind turbines would be visually dominant in the immediate project area and would be visible on the skyline from certain viewing locations and from distant views. However, the Appellant has misquoted Visual Resources Policy 2 in defense of their claim of conflict. The policy actually states (emphasis added):

“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.” [SBC Comprehensive Plan, Land Use Element, Visual Resources Policy 2]

The Appellant’s omission of the technical requirements exception misrepresents the policy. It is precisely because “technical requirements dictate otherwise” that the Project was found consistent with this policy. Technical necessity dictates that the wind turbines must be very large and be located on or near ridgelines, where the wind is. This point is made clear in the policy consistency finding in the Staff Report, which states in part:

“The WTGs and power poles⁹ associated with the Project would be visible from public viewing places as discussed in EIR Section 3.2 and would result in significant impacts to views from Jalama Beach, San Miguelito Road, Miguelito County Park, and SR-1... It would be infeasible to reduce the visual impacts from the WTGs to less than significant levels. However, the Project would be consistent with this policy because the height, scale, and design of the WTGs and power poles are dictated by technical requirements, and impacts would be mitigated to the maximum extent feasible.” [Planning Commission Staff Report, 9/17/08, p.42]

Visual impacts of the project would be mitigated to the maximum extent feasible; however, feasible options for doing so are extremely limited, because the large scale of the wind turbines renders visual screening impracticable. The choice of project site will help reduce potential impacts, as views from a large part of the surrounding region are screened by intervening topography (see Zone of Visual Impact Analysis, EIR Figure 3.2-5). The matte, light gray finish specified for the turbines is intended to harmonize with the surroundings under variable lighting and atmospheric conditions. In order to further reduce visual impacts, Permit Condition LU-1 requires that lighting on the turbines not exceed the minimum level consistent with the Federal Aviation Administration requirements, and several other permit conditions will minimize visual impacts during construction and also help ensure compatibility of landscaping, lighting and appearance of ancillary structures with the surroundings during operations. However, no other feasible measures were identified during the environmental review that could reduce visual impacts of the wind turbines themselves, as their form and scale is a technical necessity.

Historically, the County has applied the “*where technical requirements dictate otherwise*” exception to permit projects and project modifications that would otherwise be precluded by Visual Resources Policy 2, for example mining operations and broadcast towers. The Board of Supervisors recently reaffirmed that the exception is applicable specifically to wind turbines. In a hearing on September 26, 2006,¹⁰ the

⁹ Note that potential significant visual impacts of the proposed PG&E power line along Highway 1 just south of Lompoc will be reduced to less than significant by constructing Power Line Alternative 1 [EIR §§5.3.2, 5.4.2].

¹⁰ Santa Barbara County Board of Supervisors, hearing of September 26, 2006, Departmental Agenda Item 8, Ord. 4623.

Board voted unanimously to amend Section 35-276.A.1 of the Inland Zoning Ordinance (now referenced as LUDC §35.30.090.E.3.d) to reconcile an inconsistency in the zoning code. The amendment explicitly exempts wind turbines and certain other industrial structures in the inland areas of the County from the County's general regulations limiting the height of structures, based on technical infeasibility, as follows:

E. Exemptions for specific structures and equipment. The following structures and equipment may exceed the applicable height limit as provided below where the excess height is not prohibited by Section 35.28.060 (Airport Approach Overlay)

3. Inland area only.

- a. Silos used to store and load concrete ready-mix in the M-1 zone may exceed applicable height limits where compliance would render operations technically infeasible.
- b. Structures and equipment associated with facilities in the M-2 zone may exceed applicable height limits where compliance would render operations technically infeasible.
- c. Temporary drilling rigs necessary to explore for and develop oil and gas reservoirs, or to inject gas or fluids into subsurface reservoirs, allowed in compliance with Article 35.5 (Oil and Gas, Wind Energy and Cogeneration Facilities).
- d. Wind turbines allowed in compliance with Chapter 35.57 (Wind Energy Systems) may exceed applicable height limits where compliance would render operations technically infeasible. [emphasis added]

[LUDC §§35.30.090.E]

In adopting the amendment, the Board found it consistent with Visual Resources Policy 2, explicitly underscoring the technical feasibility exception. The Comprehensive Plan consistency findings state:

“The proposed amendments would provide an exemption to height limitations where a land use would otherwise be technically infeasible, consistent with the foregoing policies...” [Board Letter for 9/26/06 hearing to adopt Ordinance 4623]

The Board Minute Order, Ordinance 4623, and the applicable Findings of Approval are included as Attachment G of this Board Letter. The Board action demonstrates that the project is consistent with Visual Resources Policy 2, and that the Planning Commission finding to that effect is squarely aligned with the intent of the policy.

B. “The Project Violates Land Use and Development Code § 35.57.050(K)”

The Appellant states that the Project violates the applicable visual impacts standards for wind energy systems, Santa Barbara County Land Use and Development Code, §35.57.050.K (which is incorrectly cited as §35.56.050). The Appellant states the following:

“As detailed in the previous section, 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).” [Appeal, p.8]

Response:

The development standard in question states (emphasis added):

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

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

[LUDC §35.57.050.K]

These standards are not absolute, but must be met to the greatest extent feasible. This regulation is concordant with the Visual Resources Policy 2, in providing an exception where adherence to the standard is infeasible. Because siting on or near the ridges is considered a technical necessity for this wind energy project, the standard allows projection above the ridgeline. Similar to a mining project, the location of the resource, in this case wind, dictates facility siting. The staff report finds the project consistent with §35.57.050.k, stating:

“The wind resource distribution along the ridges renders mitigating the impact to less than significant infeasible... [Planning Commission Staff Report, 9/17/08, p.50]

In addition, although visual screening of wind turbines is generally infeasible due to their size, the choice of project location actually does make use of natural landforms to screen the project from much of the surrounding landscape, and views from inside Miguelito County Park are largely hidden by the existing, mature tree canopy.

The Appellant is incorrect in stating that the WTGs would cause a significant visual impact to a scenic vista from Highway 1. Most views of WTGs from Highway 1 are blocked by intervening hills, except at a distance of approximately 5 miles. The visual impact at this location was examined in the EIR and determined to be less than significant [EIR Sec. 3.2.5.5, KOP-1].

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

The Appellant argues that approval of the proposed project disregards requirements of the County Ridgeline and Hillside Development Guidelines §35.62.040, including a 16 foot building height limitation and consideration of alternative project locations. The Appellant selectively cites the Guidelines, as follows:

“[Section 35.62.040] 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.” [Appeal, p.9]

and "development on ridgelines shall be discouraged if suitable alternative locations are available on the lot." [Appeal, p.9]

Response:

The project was found consistent with the Guidelines, based on technical constraints of wind turbine design and siting and minimization of impacts. The rationale is similar to that given in the preceding sections III.A and III.B.¹¹ The issues of indefinite turbine siting and alternative locations, which the Appellant emphasizes, are addressed above in our responses to Appeal Sections I.A-I.B.

Additionally, and more fundamentally, the Guidelines are not hard-and-fast regulations, but are *guidelines*, to be interpreted and applied at the discretion of the County Board of Architectural Review (BAR). The pertinent section of the Guidelines states (*emphasis added*):

C. Development Guidelines. Ridgeline and hillside development shall comply with the following guidelines as specified in Subsection C.1 (Guidelines - Application and interpretation) below, except where a project is exempted from the guidelines in compliance with Subsection B. (Applicability) above.

1. Guidelines - Application and interpretation. The Board of Architectural Review shall have the discretion to interpret and apply the following guidelines.

[LUDC §35.62.040.C]

The project is subject to design review by the Board of Architectural Review, due to siting on ridgelines, unless determined to be exempt under §35.62.040.B *Applicability*. In a public hearing on August 3, 2007, the Central Board of Architectural Review (CBAR) decided to review the project. The CBAR Chairperson stated that CBAR review authority encompasses the entire project,¹² not just those components of the project that trigger the ridgeline guidelines. CBAR members noted that they could provide useful input on certain project components, particularly placement of roads, but recognized that the design and placement of the wind turbines themselves were determined by technical considerations.

In a subsequent CBAR hearing on October 5, 2007, the Appellants presented their concerns about visual and noise impacts. CBAR responded that "Although the project will have visual impacts to neighboring properties, the scope of CBAR's review is limited to public viewing areas." [Minutes from CBAR Hearing 10/5/07]. They also noted that noise concerns are outside their purview. CBAR made no specific design recommendations at the hearing, but required the project to return to CBAR for further conceptual review following the Planning Commission hearing, to review details of project elements, including roads, buildings, turbine lighting, and guy-wires. In the hearing September 30, 2008, the Planning Commission reiterated CBAR's role in reviewing building design to ensure compatibility with the surroundings.

Further CBAR hearings have not been scheduled, pending the outcome of the current appeals, but must be held prior to final land use clearance. CBAR will exercise their discretion in interpreting and applying the Guidelines. Decisions of the BAR to grant or deny preliminary or final approval may be appealed to the Planning Commission [LUDC §35.102.040.A.1].

¹¹ See Planning Commission Staff Report, 9/17/08, pp. 51-52, 54.

¹² Excluding the proposed PG&E power line.

Appeal Section IV: “The Project Violates Both CEQA and County Policy Relative to Noise.”

Response: Noise from the project, as mitigated, would be consistent with the County Noise Element and would not exceed the general County Noise Threshold. A more restrictive noise threshold was applied for project noise at residences not participating in the project. Adherence to the thresholds will be assured through enforceable permit conditions.

A. Appellant states that significance of noise impacts is unknown, due to vagueness of the EIR on wind turbine characteristics and siting, and that the noise analysis is inadequate under CEQA.

The Appellant claims the noise section of the EIR “rests upon sheer speculation,” that “the Applicant has not presented... sufficient information to make any definitive noise determinations,” and that the EIR is impermissibly vague.

Response:

To the contrary, the level of project information is adequate for assessing potential noise impacts in the EIR. As discussed above in our responses to Appeal Section I.A, the wind turbines would be sited within clearly delineated turbine construction corridors. The final turbine layout may be adjusted only within those corridors. The original, proposed layout included up to 80 turbines, up to 492 feet high, with a maximum noise level of 112 dBA at the source, except in the Larsen Corridor and a portion of the North Corridor, where maximum turbine noise would be 106 dBA [draft EIR, July 2007, pp. 2-5 to 2-6]. The Appellant is incorrect that the “project is so vague that legitimate studies cannot be undertaken with any degree of accuracy.” In fact, the wind turbine noise modeling was conducted using a “worst-case layout”¹³ of 80 turbines and conservative modeling assumptions. This resulted in a “conservative, worst-case estimate” of potential turbine noise at nearby residences [EIR, p. 3.11-6, last paragraph]. Estimated maximum noise levels at potentially affected residences are summarized in EIR Table 3.11-5 (p. 3.11-11) and Figure 3.11-5. The Applicant revised the project description subsequent to release of the draft EIR, reducing the maximum number of turbines to 65 and maximum turbine height to 397 feet [EIR pp. 2-5, 3.11-6]. As a result, potential noise levels throughout the project area will be further reduced below those modeled.

The modeling demonstrated that turbine noise could potentially exceed the County’s established Noise Thresholds, depending on final turbine model(s) selected and exact project layout. Therefore, consistent with CEQA, enforceable mitigation measures were formulated to ensure that impacts do not exceed the thresholds [EIR §3.11.3.4; see below]. The EIR analysis determined wind turbine noise to be a significant impact, mitigable to less than significant (Class II) [EIR §3.11-11].

B. Appellant claims that wind turbine noise will exceed County’s Noise Thresholds.¹⁴

The Appellant emphasizes that wind turbines create high noise levels and that residents will be exposed to noise levels that exceed the Noise Thresholds [Appeal, pp.10-11]. The arguments raise issues with the

¹³ See response to appeal point II.A, first bullet.

¹⁴ References to Noise Thresholds refer to the County of Santa Barbara Environmental Thresholds and Guidelines Manual, 2006, §12.B.

noise modeling, application of Noise Thresholds, and appear to overlook the mitigation measures recommended in the EIR and required in the permit conditions approved by the Planning Commission.

General Response:

The noise at participating residences will not exceed the County threshold of 65 dBA (CNEL) nor will the noise at the non-participating residences exceed the more stringent threshold established in the EIR of 50 dBA (CNEL). The background ambient noise in this area is assumed to be approximately 40 dBA (CNEL) in this area, which is typical of similar rural areas.¹⁵ (The “CNEL” measure is a day-night average noise level that is weighted so as to boost the importance of nighttime noise, because it is more noticeable against the quieter nighttime noise levels.) The 10 dBA increase in noise at the non-participating properties would likely be audible at certain times. Because wind speeds are higher aloft than at ground level, turbine noise could be audible when the wind speed aloft is high enough for the turbines to operate, but the wind at ground level is quiescent and wind noise at ground level is low.

Specific Responses:

1. The noise levels present at the wind turbines are immaterial. The Noise Thresholds are based on noise levels measured at “sensitive receptors,” not at the noise source. The noise modeling provides “worst case” estimates of wind turbine noise levels at affected residences [EIR §3.11.3].
2. The EIR noise modeling provides conservative estimates of maximum noise levels resulting from the original project, without mitigation. The Appellant mischaracterizes the noise impacts (emphasis not added) as follows:

“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.*” [Appeal, p. 10, bottom]

What the EIR actually states is:

Impact NOI-2: Long-term Wind Turbine Generator Noise. Predictions based on a “worst-case” analysis of WTG noise are presented in Table 3.11-5. (See Section 3.11.3.1 for modeling assumptions.) These predictions show that five adjacent nonparticipating residences could be exposed to noise levels greater than 43.3 dBA Leq (over 50 dBA CNEL and Ldn). These predictions also show that four of the nine participating residences could be exposed to noise levels at or greater than 59 dBA Leq (at or over 65 dBA CNEL and Ldn). This level of Project-induced noise would result in significant, but mitigable impacts (Class II). [EIR p.3.11-9]

This means that, based on “worst case” modeling, the wind turbine noise could potentially exceed the threshold noise levels at nearby residences if no mitigation were required. However, the prescribed mitigation measures would ensure that wind turbine noise levels at residences do not exceed the thresholds (see response points 3 and 4 below).

3. The Appellant claims that turbine noise would exceed the Noise Thresholds of 65 dBA (CNEL) (citing Noise Thresholds §12.B.3.a and b); and that the EIR failed to consider that a substantial

¹⁵ As documented in the EIR [p. 3.11-5], background noise in a typical rural environment is expected to be approximately 40 dBA during the day and 30 dBA at night. Background noise levels are generally near 35 dBA Ldn in wilderness areas; near 40 dBA Ldn in rural residential areas; and near 44 to 45 dBA Ldn in agricultural cropland.

increase in ambient noise can result in a significant impact [citing Noise Thresholds §12.B.3.c]. Both claims are without merit.

As explained in EIR §3.11.3.2 (pp. 3.11-7 to -8), two noise thresholds were used in the EIR to assess and mitigate impacts of wind turbine noise. First, the County's general threshold of 65 dBA (CNEL) [Noise Thresholds §12.B.3.a, and b] was applied to residences owned by property owners participating in the project, to ensure they will not be exposed to noise levels exceeding the basic County standards.

Second, a more stringent threshold was formulated and applied to non-participating residences. This threshold is based on the principle expressed in Noise Thresholds §12.B.3.c, which is that a substantial increase in ambient noise may result in a significant impact. As explained in the EIR (p. 3.11-8), the threshold at non-participating residences is defined as follows: "WTG noise levels that exceed 43.3 dBA Leq (1 hour)¹⁶ or cause an increase of more than 10 dBA at nonparticipating residences would be considered significant." This threshold is compatible with the rural environment and comparable to noise limits in other regions that have developed restrictive noise standards for wind projects. The background ambient noise level in the project area was assumed to be approximately 40 dBA (CNEL), which is typical of comparable, relatively quiet rural settings. Ambient noise was not measured. However, because the actual noise threshold is based on the noise produced by the wind turbines and their contribution to the overall noise level, an on-site ambient noise study was not considered necessary for the EIR.

4. The required mitigation measures and corresponding permit conditions would ensure that turbine noise is below the established thresholds, contrary to Appellants repeated assertions.

The worst case modeling shows that the project, without mitigation, could result in noise levels above the applicable thresholds at four project-participating residences and five non-participating residences (Impact NOI-2, above). Mitigation measures NOI-7 and NOI-8 would reduce noise below threshold levels, and NOI-4 provides for complaint resolution. These measures will be implemented by Permit Conditions Noise-4, Noise-7, and Noise-8, which are briefly summarized as follows:¹⁷

Noise-4: Noise Complaint Resolution Plan. Require the Applicant to develop and implement a plan to investigate and resolve any noise issues that arise throughout all construction and operation periods of the project.

Noise-7: Acoustical Analysis. Prior to final zoning clearance by the County, the Applicant must demonstrate in an approved noise modeling study based on the final project layout and turbine design that noise levels will be in compliance with the established thresholds.

Noise-8: Noise Monitoring and Control Plan. After wind farm operations commence, the Applicant must demonstrate with on-site noise studies that the actual, as-built noise levels are in compliance with the thresholds. If not, the Applicant is required to develop and implement measures to reduce the noise to below the thresholds.

¹⁶ Note that continuous noise at 43.3 dBA Leq (1 hour) is equivalent to 50 dBA (CNEL), which is a weighted, day-night average.

¹⁷ For the full text of the permit conditions, see Attachment C of this Board Letter: Planning Commission Action Letter, Attachment B, pp. 54-57.

D. Planning Commission Action

The County Planning Commission approved the LWEP by a vote of 5-0 at their special hearing of September 30, 2008. The Commission's decision was appealed to the Board of Supervisors on October 9, 2008. One other appeal of the Commission's decision was filed by the California Department of Fish and Game. The Planning Commission's October 7, 2008 action letter with findings and conditions of approval, and the Planning Commission staff report are included herein as Attachments C and E, respectively.

E. Recommended Modification to Permit Conditions – Indemnification

The proposed permit specifically states that it does not authorize the "take" or "harassment" of any species protected under the California or Federal Endangered Species Acts. Additionally, after preparation of an extensive EIR, Staff has proposed project conditions to provide the maximum mitigation feasible for avian protection. No specific impact to an endangered species has been predicted; however, due to the uncertainty of the science and methodology for predicting impacts to birds from wind turbines, Staff has concluded there is a risk of such impacts and has therefore recommended findings that conclude the avian impacts are Class I and, further, has proposed the adoption of statements of overriding consideration. This finding and the adoption of a statement of overriding consideration is recommended in an abundance of caution.

Under these facts, the County should not be liable under either the federal or State Endangered Species Act. It should be noted, however, that several court cases have held a municipality can be liable under the Endangered Species Act, 42 U.S.C. section 1501 et seq. for taking a regulatory action that will foreseeably cause a "take" of an endangered species. The law in this area is not well settled; hence, it is difficult to predict liability with certainty under the ESA. Therefore, County Counsel recommends a condition be added to the permit that requires the permit holder to indemnify County for any potential liability under either the federal or State ESA. The County has previously required indemnification for projects that might arguably cause a "take" of an endangered species, (e.g., Cervantes SFD and Grading Permit, Case No. 01LUP-00000-00935, April 2003). The proposed condition for the Lompoc Wind Energy project is set forth in Attachment D.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

Narrative: There are no facilities or staffing impacts to the County. The costs of this appeal are partially funded by the \$443 appeal fee paid by the Appellant per the Planning and Development Department Fee Schedule in effect on the date the appeal was filed (Resolution 08-022 adopted by the Board of Supervisors on January 22, 2008, and effective 60 days thereafter). The fee was collected from the Appellant. Remaining costs of the appeal are funded by the Applicant, Pacific Renewable Energy Generation, pursuant to the Planning and Development Department's Land Development Fee Schedule, Section IX. Fees paid by alternative energy project applicants are budgeted in the Permitting and Compliance Program of the Energy Division on page D-313 of the budget for Fiscal Year 2008-2009.

Special Instructions:

P&D Hearing Support Staff shall publish legal notice in the Lompoc Record and Santa Barbara Daily Sound. Energy Division staff shall complete the mailed noticing requirements for the project at least ten (10) days prior to the December 16, 2008 hearing.

The Clerk of the Board will forward a copy of the Minute Order to Planning and Development, Attention David Villalobos, Hearing Support Staff and John Day, Planner.

Energy Division staff will notify interested parties of the Board of Supervisors' final action.

Attachments:

- A. Bedford Appeal to Board of Supervisors dated October 9, 2008.
- B. LWEF Final Environmental Impact Report, August 2008 (*provided under separate cover*).
- C. Planning Commission Action Letter with Attachments dated October 7, 2008.
- D. Recommended modifications to permit conditions and findings.
- E. Planning Commission Staff Report dated September 17, 2008 with Attachments.
- F. Letter from Applicant concerning project alternatives.
- G. Ordinance 4623 and Findings on height limit exception.

Authored by:

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cc: Case Files: 06CUP-00000-00009; 08VAR-00000-00003
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