



COUNTY OF SANTA BARBARA

Planning and Development

www.countyofsb.org/plndev

Appeal to the Board of Supervisors or Planning Commission (County or Montecito)

APPEAL TO THE BOARD OF SUPERVISORS OR PLANNING COMMISSION (APL) on the issuance, revocation, or modification of:

- All Discretionary projects heard by one of the Planning Commissions
- Board of Architectural Review decisions
- Coastal Development Permit decisions
- Land Use Permit decisions
- Planning & Development Director's decisions
- Zoning Administrator's decisions

THIS PACKAGE CONTAINS

- ✓ APPLICATION FORM
- ✓ SUBMITTAL REQUIREMENTS

AND, IF ✓'D, ALSO CONTAINS

South County Office 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2000 Fax: (805) 568-2030	North County Office 624 W. Foster Road, Suite C Santa Maria, CA 93455 Phone: (805) 934-6250 Fax: (805) 934-6258	Clerk of the Board 105 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2240 Fax: (805) 568-2249
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SUBMITTAL REQUIREMENTS

- _____ 8 Copies of the attached application.
- _____ 8 Copies of a written explanation of the appeal including:
- If you are not the applicant, an explanation of how you are an “**aggrieved party**” (“Any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by the other nature of his concerns or who for good cause was unable to do either.”);
 - A clear, complete and concise statement of the **reasons or grounds for appeal**:
 - Why the decision or determination is consistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; or
 - There was error or abuse of discretion;
 - The decision is not supported by the evidence presented for consideration;
 - There was a lack of a fair and impartial hearing; or
 - There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.
- _____ 1 Check payable to County of Santa Barbara.

Note: There are additional requirements for certain appeals including:

- a. **Appeals regarding a previously approved discretionary permit** – If the approval of a Land use permit required by a previously approved discretionary permit is appealed, the applicant shall identify: 1) How the Land Use Permit is inconsistent with the previously approved discretionary permit; 2) How the discretionary permit’s conditions of approval that are required to be completed prior to the approval of a Land Use Permit have not been completed; 3) How the approval is inconsistent with Section 35.106 (Noticing).
- b. **Appeals regarding Residential Second Units (RSUs)** – The grounds for an appeal of the approval of a Land Use Permit for a RSU in compliance with Section 35.42.230 (Residential Second Units) shall be limited to whether the approved project is in compliance with development standards for RSUs provided in Section 35.42.230.F (Development Standards).



PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: SWE.P in Lompoc

ASSESSOR PARCEL NUMBER: Multiple

Are there previous permits/applications? no yes numbers: ?
(include permit# & lot # if tract)

Is this appeal (potentially) related to cannabis activities? no yes

Are there previous environmental (CEQA) documents? no yes numbers: 18 EIR -00000-00001

1. Appellant: George Bedford Phone: (805) 698-9712 FAX: _____

Mailing Address: 1300 N. "H" Street, Lompoc, CA 93431 E-mail: _____
Street City State Zip

2. Owner: _____ Phone: _____ FAX: _____

Mailing Address: _____ E-mail: _____
Street City State Zip

3. Agent: _____ Phone: _____ FAX: _____

Mailing Address: _____ E-mail: _____
Street City State Zip

4. Attorney: Richard Adam Phone: (805) 922-4553 FAX: (805) 698-6091

Mailing Address: 625 E Chapel, SM, CA 93454 E-mail _____
Street City State Zip

COUNTY USE ONLY

Case Number: 20APL-00000-00008 Companion Case Number: _____
Supervisory District: _____ Submittal Date: _____
Applicable Zoning Ordinance: _____ Receipt Number: _____
Project Planner: _____ Accepted for Processing _____
Zoning Designation: _____ Comp. Plan Designation _____

COUNTY OF SANTA BARBARA APPEAL TO THE:

BOARD OF SUPERVISORS

PLANNING COMMISSION: COUNTY MONTECITO

RE: Project Title STRAUSS WIND ENERGY

Case No. 18BAR-00000-00113; 19APL-00000-00037

Date of Action February 26, 2020

I hereby appeal the approval approval w/conditions denial of the:

Board of Architectural Review – Which Board? _____

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? _____

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and "aggrieved party" as defined on page two of this appeal form:

See Attached letters

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

See Attached Letter

Specific conditions imposed which I wish to appeal are (if applicable):

- See Attached Letter*
-
-
-

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

REA
GD

↓ Stricken; makes no sense for appellant

Print name and sign - Firm _____ Date _____

RICHARD ADAM *[Signature]* 3/5/20
Print name and sign - Preparer of this form _____ Date _____

Print name and sign - ~~Applicant~~ Appellant _____ Date _____
George Bertold *[Signature]* 3.5.20
Print name and sign - ~~Applicant~~ Appellant _____ Date _____

Print name and sign - Landowner _____ Date _____

**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 Decision to Affirm the
Decision of CBAR to Grant Preliminary Design Review approval to Case No.
18BAR-00000-00113.**

Case Numbers: 18BAR-00000-00113 and 19APL-00000-00037.

Date of Action Taken by Planning Commission: February 26, 2020

We hereby appeal the approval of the above-mentioned matters by the Planning
Commission on February 26, 2020.

The basis for this appeal is detailed in the attached letter. In brief, neither the CBAR nor
the Planning Commission applied the law is required and, had they done so, Design
Review approval could not have been made.

Name and Address of Appellant:


George and Cheryl Bedford
P.O. Box 1057
Lompoc, CA 93436

Attorney for Appellant:

Richard E. Adam, Jr.
625 E. Chapel
Santa Maria, CA 93454

Appellant is a Third Party to the Approval.

Fees: \$ _____

Signature:  _____

Dated: March 5, 2020

FOR OFFICE USE ONLY

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

March 5, 2020

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 Decision to Affirm the Decision of The
CBAR to Grant Preliminary Design Review approval to Case No. 18BAR-
00000-00113.**

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 February 26, 2020 to affirm the Central Board of Architectural Review’s (“CBAR”) decision to grant preliminary Design Review approval of Case No. 18BAR-00000-00113.

I. Summary of the Code as it Relates to Design Review.

The Strauss Wind Energy Project (the “Project”) is a commercial wind farm consisting of 29 wind turbine generators (“WTGs”) up to 492 feet tall. When completed, each WTG will be the largest and most obtrusive structure in Santa Barbara County. Indeed, there is no structure that is taller between Los Angeles and San Jose.

The CBAR is required to make nine findings for every project that comes before it, including this Project. These nine findings are listed in the Santa Barbara County Land Use and Development Code (“LUDC”) Section 35.35-82.070(F)(1), which states the following:

- “A Design Review application shall be approved or conditionally approved only if the Board of Architectural Review first makes all of the following findings:
- a. Overall structure shapes, as well as parts of any structure (buildings, fences, screens, signs, towers, or walls) are in proportion to and in scale

with other existing or permitted structures on the same site and in the area surrounding the subject property.

b. Electrical and mechanical equipment will be well integrated into the total design concept.

c. *There will be harmony of color, composition, and material on all sides of a structure.*

d. There will be a limited number of materials on the exterior face of the structure.

e. *There will be a harmonious relationship with existing and proposed adjoining developments, avoiding excessive variety and monotonous repetition, but allowing similarity of style, if warranted.*

f. Site layout, orientation, and location of structures and signs will be in an appropriate and well-designed relationship to one another, and to the environmental qualities, open spaces, and topography of the site.

g. Adequate landscaping will be provided in proportion to the project and the site with due regard to preservation of specimen and landmark trees, existing vegetation, selection of plantings that are appropriate to the project, and that adequate provisions have been made for maintenance of all landscaping.

h. Signs, including associated lighting, are well designed and will be appropriate in size and location.

i. The proposed development is consistent with any additional design standards as expressly adopted by the Board for a specific local area, community, or zone.”

The CBAR *must* make these nine findings for all structures associated with *any* proposed project in order to grant approval of that project. Indeed, the entire reason for these nine findings is, as specifically enumerated in the LUDC, to “benefit surrounding property values, enhance visual quality of the environment, and prevent poor quality of design.”

II. Substantial Evidence Supports the Fact that CBAR Approval Was Improper and An Abuse of Discretion.

The CBAR granted Preliminary Approval of the Project despite the fact that they had never reviewed Wind Turbine Structures. This fact was admitted by the CBAR Board Members on the record at the December 13, 2019 CBAR Hearing. As one Board Member (Mr. Marchi)¹ explained, “we didn’t have any say about those things [the Wind Turbines] at all...We were only looking at this building and some grading, *but we weren’t looking at the structure of the turbines,*” to which another Board Member (Ms. Erickson) concurred: “That’s what I understood.” In fact, Mr. Marchi asked the rest of the Board Members the following: “we didn’t give any input to these things [the 29 turbines] whatsoever, right?” The remaining Board members answered as follows: “Right. Correct.” When the CBAR Chair asserted that “we’ve reviewed substations...all

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¹ Note that the names of the individual Board Members making statements may be incorrectly stated in some sections of this letter due to the fact that the December 13 Hearing was memorialized by audio only. In some cases, therefore, it is unclear which Board Member is speaking.

of the project,” another Board Member (Ms. Erickson) corrected her: “*Everything except the turbines.*”

Why were the Wind Turbine Structures not reviewed by the CBAR? This question was answered by a Board Member (Ms. Erickson), who explained as follows: “there’s been...*a consistent opinion that was directed towards us [by Staff], that due to the complexity of the technical issues, any review by us [of the Wind Turbines] would be somewhat superfluous because we’re not engineers,*” to which another Board Member (Chair Clough) responded, “exactly.” Or, as Mr. Marchi explained, “we were told [by Staff] that they [the Wind Turbines] were sort of out of our purview...But these turbines...*I mean these are the biggest structures in the county, and we were told not to really look at them.*”

In order to grant approval under the LUDC, the CBAR is required not only to “review” the Wind Turbine Structures, but also to make the nine required findings for those structures. This fact should be self-evident. The Wind Turbine Structures make up almost the entirety of the “structures” associated with the Project. Moreover, the Wind Turbine Structures were specifically identified on the December 13 agenda as “structures” requiring review before Project approval. It goes without saying that granting preliminary approval of the Project *without* reviewing the Wind Turbine Structures at all (which, as the CBAR admitted, is exactly what they did) is not only inappropriate, but also constitutes an abuse of discretion and a violation of ministerial duty.

Perhaps more importantly, at the December 13 Hearing, the CBAR Members made clear that, even if they had reviewed the Turbines during their review, they could not make the nine required findings on those structures. The following is an example of such admission:

Chair Clough: Well, what is the pleasure of the Board? Are you comfortable making these nine findings [on the Wind Turbine Structures]?

Mr. Marchi: *I’ll start it off, I can’t make the findings to approve them. I can’t.*

Ms. Erickson: *I can’t either.*

Ms. Brady: *I agree. I can’t make the findings.* I don’t know why they are before us.

Ms. Erickson: I would like to note that the “structures” that we have been reviewing...*absent the turbines*...that the applicant has been working with us on...I have no trouble making the findings on these specific structures, with the exception of the wind turbines. *It is impossible to make these findings, at literal face value...to make these findings [on the wind turbine structures].*

As the CBAR Chair ultimately concluded, “*literally, there is nothing we can support about the turbines in the Project with the [nine] regular land use findings.*”

Here, the CBAR Members were absolutely correct. It is abundantly clear that the Wind Turbine Structures cannot meet the nine findings required for approval. To do so, the CBAR would be required to make, among other things, the finding (a) that the Wind Turbine Structures “are in proportion to and in scale with other existing or permitted structures in the area surrounding the subject property,” (b) that the Wind Turbine Structures will be in “harmonious relationship with existing and proposed adjoining developments,” and (c) that the Wind Turbine Structures “will be in appropriate and well-designed relationship to one another and to the environmental qualities, open spaces and topography of the site.” All of these findings are impossible.

Just before a motion was made to deny the Project, however, a Supervising Planner (Mr. Briggs) was put on speaker phone. That Planner informed the CBAR that they could and/or should make the nine findings for the Project “as a whole” and “accept” the fact that “the Project has features that are technical in nature and cannot be modified.” In support of this contention, he referred the CBAR to language found in a provision of a separate County document: to wit: Visual Resource Policy 2, one of the many policies found in the Land Use Element of the County’s Comprehensive Plan.

Visual Resource Policy 2 states, in pertinent part, that “in areas designated as rural on 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.*” The Planner suggested that the caveat found in this Policy (“except where technical requirements dictate otherwise”) could be “used” by the CBAR to negate and/or modify the plain language of nine findings required under the LUDC as to the Turbine Structures.

This assertion (that a policy can override the unambiguous language of codified law) is simply false. A “policy” is not an “ordinance.” A policy merely outlines general guiding principles to be followed in *making* law. Policies do not carry the force of law. As has been explained, “policies are only documents and not law, but policies can lead to new laws.” In contrast, an ordinance (here, the LUDC) is a law. Ordinances set standards, principles, and procedures that *must* be followed.

It is well established that if the actual words of a statute are unambiguous, decision-making bodies (and courts) are required to give them their usual and ordinary meaning. Here, no interpretation is necessary. The words on the page speak for themselves. To “insert” words into the statute that do not exist is impermissible, as it effectively amounts to a rewriting of the law.

Moreover, even if the words of the Design Review section of the LUDC were subject to “interpretation” (and they are not), the fact that other sections of the LUDC (i.e. sections other than the Design Review section) actually contain language similar to Visual Resource Policy 2 is a clear indication that legislature’s specific intent to *exclude* such language in the Design Review section.

It should be noted too that, even if Visual Resources Policy 2 did, in fact, carry the force of law (and, again, it does not), LUDC Section 35.10.040(F)(1) appears to prevent its application in this case. As said code section states: “If conflicts occur between requirements of...this Development Code and the Santa Barbara County Code or other regulations of the County, *the most restrictive shall control* unless specifically indicated otherwise.”

Notwithstanding the above facts, approximately 10 minutes after they had just asserted that they *could not* make the nine findings, the CBAR members did attempt to comply with the Planner’s direction, which prompted the following exchange:

Ms. Erickson: I could start [making a proposed Motion] and you guys could start ripping it apart... “based on a review of the project, a motion is made for preliminary approval of all aspects of the project...and we would list them...that meet the findings necessary for approval, *acknowledging that the turbines, which have been evaluated and reviewed, cannot meet the findings* due to height...”

Planner: [interjecting] Its ok to say that the turbines don’t meet the height restrictions, *but it’s not ok to say that they don’t meet the height “findings.”*

Ms. Erickson: We can’t say that they don’t meet the height findings?

Planner: Correct.

Ms. Erickson: *I mean they obviously don’t, but we can’t say that?*

Ultimately, despite such admissions and despite the plain language of the nine findings, the CBAR complied with the direction and approved the project based upon the fact that the Wind Turbines are “technical in nature and cannot be modified” on a 4 to 0 vote with one Board Member abstaining.

III. On a 3 to 2 vote, the Planning Commission Improperly Affirmed the CBAR’s Design Review Approval of the Project on the Same Grounds, Constituting a Further Abuse of Discretion.

The CBAR approval of the Project was appealed to the Planning Commission. In a Staff Report generated for the Planning Commission hearing of February 26, 2020, Staff recommended that the Commission “deny the appeal...thereby affirming the decision of the CBAR to grant preliminary Design Review” of the Project. Said Staff Report indicated that the Planning Commission to “use” the Final SEIR Revision letter to “fulfill environmental review requirements for preliminary Design Review approval.” The Staff Report also included proposed “findings” for the Planning Commission to use to “affirm” the CBAR’s decisions. Those “findings” were included as Attachment A to the Staff Report.

Attachment A is comprised of two elements: (1) it lists the nine LUDC findings that the Planning Commission is required to make in order to “affirm” the CBAR’s approval, and (2) it sets forth recommended language for the Planning Commission to use as a basis for making those nine findings. However, this “recommended language” is identical to the language inappropriately used by the CBAR in order to approve the Project: to wit, Attachment A indicates that, despite the plain language of the LUDC, the Planning Commission could make each of the findings *because* the design of the wind turbines are “dictated by technical requirements” (see, for example, Section 2.1, 2.3, 2.5, and 2.6 of Attachment A). Stated differently, the findings of Attachment A are based upon language that does not exist in the development code.

Notwithstanding these facts, on a vote of 3 to 2, the Planning Commission adopted the findings of Attachment A, thereby affirming the CBAR’s approval of the Project.

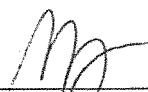
The plain language of the LUDC is not susceptible to ambiguity. Because it is both logically and legally impermissible to “insert” language (from a separate and inapplicable policy no less) to negate making the nine required findings, the Planning Commission erred in “affirming” the CBAR’s approval.

IV. Conclusion

Substantial evidence supports the position that both the CBAR approval and the Planning Commissions affirmation of said approval constituted an abuse of discretion insofar as each failed to comply with the plain language of the law in undertaking their duty. Moreover, as a matter of fact and law, Visual Resource Policy 2 in no way provides either body the “discretion” to circumvent making the nine required findings on the Wind Turbine Structures.

Respectfully Submitted,

JUAREZ, ADAM & FARLEY



Richard E. Adam, Jr., attorneys for
Appellants