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December 12, 2019

Via Email and U.S. Mail

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Re: **Agenda Item No. 7: Strauss Wind Energy Project (SWEP)**
(18BAR-00000-00113)

Dear Chair Clough and Board Members:

We write on behalf of **Citizens for Responsible Wind Energy** (“Citizens”) to urge the Central Board of Architectural Review (“CBAR”) to continue to a future date its preliminary and final review of the Strauss Wind Energy Project (“Project”), 18BAR-00000-00113, proposed by Strauss Wind, LLC (“Applicant”), an affiliate of Bay Wa r.e. Wind, LLC, until after the County of Santa Barbara (“County”) Board of Supervisors (“Board”) completes its environmental review of the Project. Any approval by the CBAR prior to certification of a Final Supplemental Environmental Impact Report (“FSEIR”) (18EIR-00000-00001) (SCH#2018071002)¹ by the Board

¹ County of Santa Barbara, Planning and Development Department, Final Supplemental Environmental Impact Report Strauss Wind Energy Project (Nov. 2019) (*hereinafter* FSEIR). 4377-029acp



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would be premature and in violation of the California Environmental Quality Act (“CEQA”).²

I. BACKGROUND

On December 21, 2016, the Applicant submitted a Conditional Use Permit (CUP16-00000-00031) application for the development of a utility-scale windfarm to the County’s Planning and Building Department (“Planning Department”),³ as well as a Variance (18VAR-00000-00002) request for reduced property line setbacks for wind turbine generators.⁴ On July 2, 2018, the Planning Department submitted a Notice of Preparation to the State Clearinghouse indicating that it would prepare an SEIR for the proposed Project because the Planning Department determined that the Project may have new significant impacts on the environment.⁵

On April 23, 2019, the Planning Department released the draft SEIR (“DSEIR”) for public review and comment.⁶ The Planning Department received oral comments on the DSEIR at an environmental hearing held on May 30, 2019 in Lompoc, California.⁷ Citizens, and other members of the public, submitted written comments on the DSEIR to the Planning Department prior to the close of the public comment period on June 14, 2019.⁸

While the Planning Department prepared responses to comments on the DSEIR, the CBAR scheduled the Project for preliminary review on September 13, 2019.⁹ Citizens alerted the CBAR that preliminary approval of the Project would be premature because the County had not completed environmental review for the Project pursuant to CEQA.¹⁰ The CBAR considered the matter, but did not grant preliminary approval of the Project because it required further clarification from

² Pub. Resources Code § 21000 *et seq.*

³ County of Santa Barbara, Department of Planning and Development, Strauss Wind Energy Project, <http://www.countyofsb.org/plndev/projects/energy/Strauss.sbc> (last accessed Dec. 12, 2019). The Applicant also submitted a Coastal Development Permit (“CDP”) application, but that permit request was abandoned in favor of a modified project layout.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ FSEIR at pp. 8-1 to 8-470.

⁹ County of Santa Barbara, Central Board of Architectural Review Agenda (Sept. 13, 2019).

¹⁰ Letter from Andrew J. Graf, Adams Broadwell Joseph & Cardozo to Chair Clough and Board Members, Central Board of Architectural Review re: Strauss Wind Energy Project (Sept. 12, 2019). 4377-029acp



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County Counsel regarding its review authority.¹¹ The following month, the CBAR agendized the Project for preliminary review, but then it accepted the Planning Department's recommendation to drop the Project from consideration because "it would be procedurally premature to seek preliminary approval from the CBAR" as the Project had not yet received approval from the Planning Commission.¹²

On October 31, 2019, the Planning Department made the FSEIR available on the County webpage and scheduled a Planning Commission hearing for November 20, 2019.¹³ Prior to and during the public hearing, Citizens and other members of the public submitted written comments to the Planning Commission.¹⁴ Following deliberation, the Planning Commission approved the Project's conditional use permit and variance requests, certified the final SEIR, and adopted staff's Findings for Approval and Conditions of Approval.¹⁵ Three aggrieved parties timely appealed the Planning Commission's decision to the Board.¹⁶

The Applicant now returns to the CBAR for both preliminary and final approval for the proposed Project.¹⁷ The CBAR must postpone the Project's design review until the CEQA process is complete.

II. THE CBAR WOULD VIOLATE CEQA IF IT GRANTS PRELIMINARY OR FINAL APPROVAL

The CBAR cannot grant preliminary or final approval of the Project until after the Board considers the FSEIR. A governmental agency is required to comply

¹¹ County of Santa Barbara, Central Board of Architectural Review Unapproved Minutes (Sept. 13, 2019).

¹² Memorandum from Errin Briggs to Central Board of Architectural Review re: Strauss Wind Energy Project (Oct. 9, 2019).

¹³ County of Santa Barbara, Planning and Development Department, Transmittal of Proposed Final Environmental Impact Report: Strauss Wind Energy Project 18EIR-00000-00001 (State Clearinghouse #2108071002) (Oct. 31, 2019).

¹⁴ See Letter from Andrew J. Graf, Adams Broadwell Joseph & Cardozo to Chairman John Parke, Planning Commission, County of Santa Barbara re: Agenda Item No. 1: Comments on the Final Supplemental Environmental Impact Report (18EIR-00000-00001) for the Strauss Wind Energy Project (16CUP-00000-00031, 18VAR-00000-00002) (Nov. 18, 2019) (detailing numerous legal deficiencies with the final SEIR and the Project).

¹⁵ Santa Barbara County Planning Commission, Staff Report for Strauss Wind Energy Project (Nov. 12, 2019).

¹⁶ Memorandum from Kathy McNeal Pfeifer to Central Board for Architectural Review re: Strauss Wind Energy Project (Dec. 11, 2019).

¹⁷ County of Santa Barbara, Central Board of Architectural Review Agenda (Dec. 13, 2019).
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with CEQA procedures when the agency proposes to carry out or approve an activity.¹⁸ The lead agency is the agency responsible for preparing an EIR.¹⁹ Before granting any approval of a project subject to CEQA, every lead agency must consider a final EIR.²⁰ It must certify that “[t]he final EIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project.”²¹ While the lead agency may assign specific functions to its staff to assist in administering CEQA, the decision-making body cannot delegate review and consideration of a final EIR prior to approving a project.²²

Although the County delegated the responsibility of preparing the SEIR to staff and initial consideration of the CEQA document to the Planning Commission, the Board must consider the SEIR prior to any other project approvals. As explained previously, the CBAR’s preliminary approvals undoubtedly qualify as an “approval” under CEQA. Approval means any “decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person.”²³ “With private projects, approval occurs upon the earliest commitment to the issuance by the public agency of a discretionary ... permit, license, certificate, or other entitlement for use of the project.”²⁴

Preliminary review by CBAR is a formal review of an application prior to preparation of working drawings for a project.²⁵ It is “the most important step in the approval of plans. This step determines the site plan configuration and design that must be followed in preparing the subsequent working drawings. All significant elements of the project’s appearance, landscaping, site and/or building orientation must be found consistent with the applicable CBAR findings and guidelines in order to receive approval at this level of review.”²⁶

¹⁸ 14 Cal. Code Regs (“CEQA Guidelines”) § 15002(e).

¹⁹ *Id.* § 15050.

²⁰ *Id.* § 15004(a), 15089, 15352.

²¹ *Id.* § 15090(a)(2).

²² *Id.* § 15025.

²³ *Id.* § 15352(a).

²⁴ *Id.* § 15352(b).

²⁵ Santa Barbara County Planning and Development, Central County Board of Architectural Review Bylaws and Guidelines (Feb. 2006) p. 13.

²⁶ *Ibid.*

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Likewise, the CBAR must wait until after the Board considers the FSEIR before it can grant final approval. After a project receives preliminary approval, it proceeds to final review. “The final plans will be approved only if they are in substantial conformance with the plans given preliminary approval. If substantial changes to the plans are proposed at this stage by the applicant, a new preliminary approval may be required.”²⁷ Final approval by the CBAR is required prior to the approval of a development permit.”²⁸

Any approval by the CBAR before the Board’s considers the FSEIR would thwart CEQA’s primary function. “The purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list the ways in which the significant effects of such project might be minimized; and to indicate alternatives to such a project.”²⁹ “A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures that would substantially lessen any significant effects that the project would have on the environment.”³⁰

The CBAR cannot make an informed decision regarding the Project’s design when the Board retains discretion to revise the FSEIR, including the authority to make changes to the SEIR’s discussion or analysis of impacts relevant to the CBAR’s review. For example, the Board could amend conclusions related to the Project’s visual impacts and mitigation measures. Therefore, the CBAR must wait until the County completes its CEQA review. Moreover, as a practical matter, the CBAR would benefit from the potential input by the Board regarding the Project’s visual impacts since the purpose of design review is to enhance the visual quality of the environment.

III. CONCLUSION

We strongly urge the CBAR to continue the preliminary and final review hearing to consider approval of the propose Project until after the CEQA process is completed. If the CBAR grants preliminary and final approval at the upcoming December 13, 2019 hearing, it would do so in violation CEQA’s procedural requirements.

²⁷ *Ibid.*

²⁸ *Id.* at p. 5.

²⁹ Pub. Resources Code § 21061.

³⁰ CEQA Guidelines § 15021.

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Thank you for your consideration of these comments.

Sincerely,



Andrew J. Graf
Associate

AJG:acp

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