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January 9, 2020

Via U.S. Mail and Email

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Kathy Pfeifer

Planning Department

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Re: **Agenda Item A-33) Request for Continuance of Bedford; Citizens for Responsible Wind Energy; and California Native Plant Society Appeals of the Strauss Wind Energy Project Conditional Use Permit and Variance, Case Nos. 19APL-00000-00033, 19APL-00000-00034, 19APL-00000-00035, 16CUP-00000-00031, & 18VAR-00000-00002, Third Supervisorial District**

Dear Chairman Lavagnino, Board Members, Clerk of the Board, and Ms. Pfeifer:

We are writing on behalf of **Citizens for Responsible Wind Energy** (“Citizens”) to respectfully request that the County of Santa Barbara (“County”) Board of Supervisors (“Board”) continue the appeal hearing proposed to be set for January 28, 2020 regarding the County Planning Commission’s decision to approve the Conditional Use Permit (16CUP-00000-00031) and Variance (18VAR-00000-00002) requests and certify the Supplemental Environmental Impact Report (“SEIR”) (18EIR-00000-00001) (SCH#2018-071002) for the Strauss Wind Energy Project

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(“Project”) proposed by Strauss Wind, LLC, an affiliate of BayWa re: Wind, LLC (“Applicant”). Pursuant to Board Resolution 91-33,¹ this request is timely made in writing prior to the January 14, 2020 hearing to consider setting the appeal hearings for January 28, 2020.

I. INTRODUCTION

The proposed Project is a commercial scale wind energy project which would generate up to 98 megawatts of energy with 29 wind turbine generators located over 5,887 acres in an unincorporated area south of Lompoc.² On November 20, 2019, the Planning Commission approved the Project’s conditional use permit and variance request and certified the SEIR pursuant to the California Environmental Quality Act.³ On December 2, 2019, the Planning Commission’s decisions were appealed by Citizens, George and Cheryl Bedford, and the California Native Plant Society.⁴ The County’s Planning and Development Department (“Planning Department”) has requested that the Board set a hearing on January 28, 2020 to consider the three appeals.⁵

On December 13, 2019, the Central Board of Architectural Review (“CBAR”) granted preliminary approval of the Project by oral motion despite the board members repeated concerns throughout the hearing that they could not make the applicable design review findings with respect to the Project’s turbines.⁶ On December 23, 2019, Citizens appealed the CBAR’s decisions to the Planning

¹ County of Santa Barbara, Resolution 91-333: Procedural Rules Governing Planning, Zoning and Subdivision Hearings Before the Board of Supervisors and Planning Commission (June 4, 1991) (*hereinafter* “Resolution 91-333”).

² Letter from Lisa Plowman, Planning and Development Department to Board of Supervisors re: Bedford; Adams, Broadwell, Joseph, & Cardozo, LLP; and California Native Plant Society Appeals of the Strauss Wind Energy Project Conditional Use Permit and Variance, Case Nos. 19APL-00000-00033, 19APL-00000-00034, 19APL-00000-00035, 16CUP-00000-00031, & 18VAR-00000-00002; Third Supervisorial District (received Jan. 6, 2020).

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Letter from Andrew J. Graf, Adams Broadwell Joseph & Cardozo to Chairman John Parke, County of Santa Barbara, Planning Commission re: Appeal to the County of Santa Barbara Planning Commission of the Central Board of Architectural Review’s Decisions to Grant Preliminary Approval and Adopt the Findings Required for Approval and Conditions of Approval for the Strauss Wind Energy Project (18BAR-00000-00113, 18CUP-00000-00031, 18VAR-00000-00002) (Dec. 23, 2019). 4377-033acp

Commission.⁷ If the Planning Commission denies the appeal and upholds the CBAR's findings, that decision is then appealable to the Board.

II. THE BOARD SHOULD CONTINUE THE HEARING TO CONSIDER ALL PROJECT APPROVALS CONCURRENTLY

The Board may grant a continuance for good cause upon a request by an interested person.⁸ The requestor must show that "for reasons beyond that person's control, it would cause undue hardship or create an injustice to proceed at the scheduled time."⁹ A continuance is necessary because consideration of the conditional use permit and variance requests and certification of the SEIR before design review approval would violate the applicable procedures under the Land Use and Development Code ("LUDC").

The LUDC expressly requires that design review occur *before* a public hearing on the conditional use permit. After receiving an application for a conditional use permit, the Department must first complete environmental review consistent with California Environmental Quality Act.¹⁰ Next, the Department must provide notice of the application's filing.¹¹ After that, the Department refers the application to the Subdivision/Development Review Committee for review and recommendation.¹² The application is then subject to design review.¹³ Finally, the review authority holds a noticed public hearing on the requested conditional use permit.¹⁴ The County failed to follow the proper procedure when the Planning Commission approved the conditional permit prior to completion of the design review by the CBAR.

Similar procedural requirements are found in the CBAR bylaws. For example, the bylaws explicitly state that "[p]ermits for actual development may not be issued until the CBAR has granted final approval and the appeal period has

⁷ *Ibid.*

⁸ Resolution 91-333 at p. 7.

⁹ *Ibid.*

¹⁰ Land Use and Development Code ("LUDC") § 35.82.060.D.1.

¹¹ *Id.* § 35.82.060.D.2.

¹² *Id.* § 35.82.060.D.3.

¹³ *Id.* § 35.82.060.D.4.a.

¹⁴ *Id.* § 35.82.060.D.5.

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expired without the filing of an appeal.”¹⁵ The bylaws also explain that final approval by the CBAR is required *prior to* approval of a development permit for, among other things, (1) all new structures subject to the Ridgeline and Hillside Development Guidelines or (2) any structure where BAR review is required as specifically provided under the applicable zoning district regulations.¹⁶ Here, the County acknowledges that the turbines are subject to the Ridgeline and Hillside Development Guidelines.¹⁷ In addition, design review is specifically required for the Project because it needs a conditional use permit to be sited on parcels zoned for agriculture.¹⁸ Because the County failed to follow the proper application procedure, it should delay consideration of this Project until design review is completed.

A continuance is also necessary to ensure compliance with CEQA’s procedural requirements. Citizens alerted the CBAR that preliminary approval of the Project prior to certification of the SEIR would be premature due to CEQA’s prohibition against granting any approvals prior to the completion of environmental review for the Project.¹⁹ To avoid conflicts under CEQA, the Board should continue the hearing until the design review process is completed or the CBAR’s decision is appealed to the Board and all Project approvals can be considered concurrently by the Board.

Finally, the Applicant, other appellants, and the public would not be severely prejudiced by a continuance because the Project must obtain CBAR approval before construction can begin regardless of the Board’s action on the instant appeals.²⁰ To the contrary, it would be more efficient for the Board to consider all Project approvals simultaneously to ensure compliance with the law, consistency between condition approvals, and proper environmental review.

¹⁵ Central County Board of Architectural Review, Bylaws & Guidelines (Feb. 2006) p. 12 (*hereinafter* “CBAR Bylaws”).

¹⁶ *Id.* at p. 5.

¹⁷ Memorandum from Kathy McNeal Pfeifer to Central Board of Architectural Review re: Strauss Wind Energy Project (Dec. 11, 2019).

¹⁸ LUDC §§ 35.21.030.B. (Table 2-1); 35.57.030 (Table 5-3); 35.82.060.D.1.a.

¹⁹ Letter from Andrew J. Graf, Adams Broadwell Joseph & Cardozo to Chair Bethany Clough and Board Members, County of Santa Barbara, Central Board of Architectural Review re: Agenda Item No. 7: Strauss Wind Energy Project (SWEP) (18BAR-00000-00113) (Dec. 12, 2019).

²⁰ CBAR Bylaws at p. 12.

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III. CONCLUSION

We respectfully request that the Board grant this request for a continuance of the appeal hearings for the Project. Any decisions regarding scheduling a new hearing date should take into consideration the time it will take for the Planning Commission to issue a decision on the CBAR appeals.

Thank you for your consideration.

Sincerely,



Andrew J. Graf
Associate

Enclosures

AJG:acp