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IN THE SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA BARBARA  
SANTA MARIA BRANCH

GEORGE AND CHERYL BEDFORD,

CASE NO.

Petitioners,

VERIFIED PETITION FOR WRIT  
OF MANDATE (CCP § 1085)

vs.

COUNTY OF SANTA BARBARA BOARD OF  
SUPERVISORS; COUNTY OF SANTA  
BARBARA PLANNING COMMISSION; and  
COUNTY OF SANTA BARBARA CENTRAL  
BOARD OF ARCHITECTURAL REVIEW

Respondents,

STRAUSS WIND, LLC; and BAYWA R.E.  
WIND, LLC

Real Parties in Interest.

Petitioners petition this Court for a writ of mandate under Code of Civil Procedure ("CCP") §§ 1085 and 1086. Whereas no record of a proceeding is requested or required in this case under CCP § 1089.5 and Petitioner relies solely on the evidence noted herein, the documents attached hereto, and on such further evidence, including future briefs and supporting documents, that may be filed or otherwise presented in this matter by Petitioner, Respondent, or Real Party in Interest to form a record, Petitioner alleges the following:

**I. DESCRIPTION OF PARTIES TO THE ACTION**

1. Petitioners George and Cheryl Bedford, husband and wife (alternatively, the "Bedfords" or "Petitioner"), are and were, at all times herein mentioned, citizens residing in Santa Barbara County, California. The Bedfords reside in a home immediately adjacent to the proposed Strauss Wind Energy Project (the "Project"). The Bedfords routinely view the scenic nature and aesthetic qualities of the Project site and are personally and directly affected by the Project and the appropriate application of the Design Review section of the County of Santa Barbara Land Use and Development Code ("LUDC") which, to ensure the stability of surrounding property values, requires the County of Santa Barbara Central Board of Architectural Review ("CBAR"), and, if necessary, the County of Santa Barbara Planning Commission ("Planning Commission") and the County of Santa Barbara Board of Supervisors ("BOS") to apply certain standards in reviewing and approving any project design, including the Project. The Bedfords have a clear, present, and beneficial right to adherence of the laws of the County of Santa Barbara by its elected and appointed governing bodies with regard to the Project and a beneficial interest in the outcome of this proceeding. The Bedford's interests in preservation of adherence to laws of the County of Santa Barbara by its elected and appointed governing bodies with regard to the Project have been adversely affected by the violations noted herein and will continue to be adversely affected in the absence of the Court's issuance of the instant Petition.

2. Respondent County of Santa Barbara Central Board of Architectural Review was, and now is, a county board created and existing under the laws of the County of Santa Barbara, is the primary Design Review authority in Santa Barbara County, is primarily responsible for determining the Project's conformity with the standards set forth in the Design Review section of the LUDC, and has a present legal duty and ability to correct the actions being complained of in this Petition.

3. Respondent County of Santa Barbara Planning Commission was, and now is, a county commission created and existing under the laws of the County of Santa

Barbara, is the primary planning agency for most unincorporated portions of Santa Barbara County, is responsible for hearing appeals of qualifying CBAR decisions related to Design Review, typically *de novo*, and has a present legal duty and ability to correct the actions being complained of in this Petition.

4. Respondent County of Santa Barbara Board of Supervisors is the highest governing authority of the County of Santa Barbara, exercising legislative authority over County land use matters and controlling, through the Chairman of the Board, the conduct of the Board of Supervisors' hearings generally, and specifically, the hearings which led to final Design Review approval of the Project. Respondent BOS hears appeals of qualifying Planning Commission decisions related to Design Review, typically *de novo*, and has a present legal duty and ability to correct the actions being complained of in this Petition.

5. Petitioner is informed and believe that Real Party in Interest Strauss is the applicant for the Project and Real Party in Interest BayWa r.e. Wind, LLC is a subsidiary and/or affiliate of Strauss and also an applicant for the Project.

## **II. PROPRIETY OF VENUE**

6. This action is filed in this county and this Court has jurisdiction over this case because the property upon which the Project is proposed and forms the basis for this Petition is located wholly within this jurisdiction, because the Bedfords and their affected property are located wholly within this jurisdiction, and because all acts complained of as perpetrated by Respondent CBAR, Respondent Planning Commission, and Respondent BOS occurred in this jurisdiction. This Court further has jurisdiction over the CBAR, the Planning Commission, and the BOS as agencies with principal places of business in the County of Santa Barbara.

7. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law unless this Court grants this Petition and requires Respondent CBAR, Respondent Planning Commission, and Respondent BOS to set aside its "preliminary" and "final" Design Review approval of the Project and conduct a new and adequate

Design Review of the Project under the plain language of the standards required by law. In the absence of such remedy, said approvals will remain in effect in violation of the law.

### **III. FACTUAL BACKGROUND.**

8. The Project consists of placing a commercial wind farm consisting of twenty-nine (29) wind turbine generators ("WTG(s)"), associated infrastructure, and support facilities on natural, undeveloped and rural hillsides and ridgelines south of the City of Lompoc. The enormity of the WTGs cannot be overstated. As approved, the individual blades of the WTG's will be 224.7 feet in length ( $\frac{3}{4}$  the length of a football field and  $\frac{1}{2}$  as wide) and each WTG will reach up to 492 feet in height, blade inclusive.<sup>1</sup>

9. Under section 35.82.070 (entitled "Design Review") of the Santa Barbara County Land Use and Development Code ("LUDC"), a true and correct copy of which is attached hereto and incorporated herein as **Exhibit A**, all projects (including the Project), and all structures associated with any project (including the WTGs), are required to obtain both "preliminary" and "final" approval by CBAR. Both "preliminary" and "final" approval requires CBAR to "find" that a given project (including the Project) is consistent with nine findings ("9 Findings"). Those 9 Findings are found in LUDC § 35.82.070(F) (see Exhibit A at page 4). Said section states, in full, as follows:

"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.

<sup>1</sup> Stated differently, most of these structures will be 50 stories tall, taller than any other manmade structure between Los Angeles and San Jose (by a wide margin) and almost 200 feet taller than the Statue of Liberty (which stands at 305 feet tall).



- 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." (emphasis added).

10. According to said code section, the purpose of requiring that these 9 Findings be made is "to encourage development that exemplifies the best professional design practices, *to benefit surrounding property values, enhance the visual quality of the environment*, and prevent poor quality of design." (see Exhibit A, at § 35.82.070(A), emphasis added).

11. The Project and all structures associated therewith, including the WTGs, were subject to the above 9 Findings.

12. The site wherein these WTGs will be located consists of rural, largely untouched hilltop open space and pastoral cattle grazing ground. As described in the Supplemental Environmental Impact Report generated for the Project (true and accurate portions of which are attached hereto and incorporated herein as **Exhibit B**), "the Project site is located on approximately 5,887 acres of primarily rural land within the ridges of the Santa Ynez Mountains, along San Miguelito Canyon, and the White Hills...[most of said acreage] is zoned for agriculture (AG-II-100), and all are under Williamson Act agricultural preserve contracts...the current principal use of the land is cattle grazing...the terrain includes rolling hills and rugged, steep slopes."

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1           13.     Petitioner alleges that no reasonable person could conclude that these  
2     WTGs are consistent with the 9 Findings. For example, it is impossible to “find” that the  
3     50 story tall WTGs “are in proportion to and in scale with other existing or permitted  
4     structures on the same site and in the area surrounding the subject property,” or that the  
5     WTGs are “in an appropriate and well-designed relationship...to the environmental  
6     qualities, open spaces, and topography of the site.”

7           14.     The granting of “preliminary” approval of the Project and its consistency  
8     with these 9 Findings was heard by CBAR at a meeting on December 13, 2019. At that  
9     hearing, Petitioner informed the CBAR Board that it would be impossible for any  
10    reasonable person to make the 9 Findings on the 29 WTG structures because, among  
11    other things (a) the WTGs could not be found to be “in proportion to and in scale with  
12    other existing or permitted structures on the same site and in the area surrounding the  
13    subject property [i.e. pastoral hillside],” (b) the WTGs could not be found to be in “a  
14    harmonious relationship with existing and proposed adjoining developments,” and (c)  
15    the WTGs could not be found to be “in an appropriate and well-designed relationship to  
16    the environmental qualities, open spaces, and topography of the site.”

17          15.     In response, the members of the CBAR Board actually admitted on the  
18    record<sup>2</sup> that *they did not even review* the WTG structures as part of their review of the  
19    Project. As one Board Member (Mr. Marchi) explained at the December 13 meeting,  
20    “we didn’t have any say about those things [referring to the Wind Turbines] at all...We  
21    were only looking at this building and some grading, but we weren’t looking at the  
22    structure of the turbines,” to which another Board Member (Ms. Erickson) concurred:  
23    “That’s what I understood.” In fact, Mr. Marchi asked the rest of the Board Members the  
24    following: “we didn’t give any input to these things [the 29 turbines] whatsoever, right?”  
25    The remaining Board members answered as follows: “Right. Correct.” When the CBAR

26 \_\_\_\_\_  
27 <sup>2</sup> It should be noted that CBAR hearings are audiotaped only. Transcripts of relevant portions of the audiotape of the  
28    CBAR Meeting of December 13, 2019 were made by Petitioner and Petitioner can provide the Court with the full  
  audiotape should the Court so desire. It should be noted too that, although Petitioner is not certain as to which  
  Board Members are speaking on said audiotape, Petitioner has assigned a name to each statement noted herein  
  based upon information and belief.

1 Chair asserted that “we’ve reviewed substations...all of the project,” another Board  
2 Member (Ms. Erickson) corrected her: “Everything *except* the turbines” (emphasis  
3 added).

4 16. Just as importantly, at the December 13, 2019 CBAR meeting, the Board  
5 Members admitted on the record that, *even if they had* conducted a review of the  
6 WTGs, they could not, as a matter of fact, make each of the 9 Findings on said  
7 structures. The following exchange by the Board Members from the meeting is  
8 illustrative of this fact:

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

11 Member Marchi: ***I'll start it off, I can't make the findings to approve them.  
I can't.***

12 Member Erickson: ***I can't either.***

13 Member Brady: ***I agree. I can't make the findings.*** I don't know why they  
14 are before us.

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

19 17. Indeed, ten minutes before granting preliminary approval of the Project,  
20 the CBAR Chair concluded as follows: ***“literally, there is nothing we can support  
21 about the turbines in the Project with the [nine] regular land use findings.”***

22 18. Just before a motion was made to the deny the Project, however, a Santa  
23 Barbara County Planning & Development Department Supervising Planner (Mr. Briggs)  
24 was put on speaker phone. That Planner informed CBAR Board Members that they  
25 should make the nine findings for the Project “as a whole” and “accept” the fact that “the  
26 Project has features that are technical in nature and cannot be modified.” In support of  
27 this contention, he referred the CBAR to language found in a provision of a separate  
28 County document: to wit: Visual Resource Policy 2, one of the many public policies

1 found in a document not associated with the LUDC, the Land Use Element of the  
2 County's Comprehensive Plan.

3 19. Visual Resource Policy 2, a document that is not law (and instead, is used  
4 by lawmakers as a tool to help *create* law), states in pertinent part that "in areas  
5 designated as rural on land use plan maps, the height, scale, and design of structures  
6 shall be compatible with the character of the surrounding natural environment, *except*  
7 *where technical requirements dictate otherwise.*" The Planner asserted that the caveat  
8 found in this Policy ("except where technical requirements dictate otherwise") could be  
9 "used" by the CBAR to negate and/or modify the plain language of 9 Findings required  
10 under the LUDC as to each of the WTG structures.

11 20. Based upon Petitioner's knowledge and belief, this assertion (that a public  
12 policy can be used to negate, modify, or override the unambiguous language of codified  
13 law) was and is legally false,<sup>3</sup> particularly since doing so violates the stated purpose of  
14 the law (i.e. preservation of property values and surrounding environmental conditions)  
15 as set forth in the Design Review section of the LUDC (see Exhibit A).

16 21. Notwithstanding such impropriety, approximately 10 minutes after they  
17 had just asserted (a) that they had not included the WTGs in their review of the Project,  
18 and (b) that even if they had included the WTGs in their review, they *could not* make the  
19 nine findings on those structures, the CBAR members did attempt to comply with the  
20 Planner's direction, which prompted the following exchange:

21 Ms. Erickson: I could start [making a proposed Motion] and you guys could  
22 start ripping it apart...based on a review of the project, a  
23 motion is made for preliminary approval of all aspects of the  
24 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...

25 Planner: [interjecting] Its ok to say that the turbines don't meet the  
26 height *restrictions*, but it's not ok to say that they don't meet  
the height "*findings*."

27 <sup>3</sup> It should be noted that the next Visual Resource Policy in the Land Use Element of the Comprehensive Plan (Visual  
28 Resource Policy 3) states that, "*in designated rural neighborhoods, new structures shall be in conformance with the  
scale and character of the existing community.*"

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

2 Planner: Correct.

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

4 22. Ultimately, despite such admissions and despite the plain language of the  
5 9 Findings, the CBAR complied with the direction of the Planner and granted  
6 "preliminary" approval of the Project (on a 4 to 0 vote with one Board Member  
7 abstaining) based upon the fact that the WTGs are "technical" in nature and cannot be  
8 modified pursuant to Visual Resource Policy 2.<sup>4</sup> A true and correct copy of the minutes  
9 of this CBAR meeting referring to Visual Resource Policy 2 as the basis for the granting  
10 of "preliminary" approval is attached hereto and incorporated herein as **Exhibit C** (see  
11 page 5 thereof).

12 23. The CBAR's granting of "preliminary" approval of Design Review without  
13 reviewing the WTGs was a violation of its ministerial duties and/or an abuse of  
14 discretion. The CBAR's grant of "preliminary" Design Review approval by refusing to  
15 follow the law as written and, instead, applying a standard that did not exist in the law  
16 (effectively rewriting the law) in order to approve the Project was a violation of its  
17 ministerial duties and/or an abuse of discretion.

18 24. Petitioner timely appealed the CBAR's preliminary approval to  
19 Respondent Planning Commission, which heard the appeal de-novo on February 26,  
20 2020. Santa Barbara County Planning & Development Department staff generated a  
21 Staff Report ("Staff Report") for the Planning Commissioner's use and the hearing. The  
22 Staff Report recommended that the Planning Commissioners "deny the  
23 appeal...thereby affirming the decision of the CBAR to grant preliminary Design  
24 Review" of the Project. Said Staff Report included proposed "findings" for the Planning  
25 Commission to use to "affirm" the CBAR's decisions. Those "findings" were included as  
26  
27

28 <sup>4</sup> Petitioner is informed and believes that, in the history of Santa Barbara County, no structure subject to Design Review has ever been approved based upon "technical requirements dictating otherwise."



1 Attachment A to the Staff Report, a true and correct copy of which is attached hereto  
2 and incorporated herein by this reference as **Exhibit D**.

3 25. Attachment A of the Staff Report was comprised of two elements: (1) it  
4 listed the 9 Findings that the Planning Commission is required to make in order to  
5 “affirm” the CBAR’s approval, and (2) it set forth “recommended language” for the  
6 Planning Commission to “adopt” as a basis for making those 9 Findings. The  
7 “recommended language” of Attachment A mirrored the language used by the CBAR to  
8 grant “preliminary” approval of the Project. To wit, it asserted that, notwithstanding the  
9 plain language of the 9 Findings, the Planning Commission should determine that the  
10 WTGs were consistent with the 9 Findings **because** the design of the WTGs is “dictated  
11 by technical requirements.” Again, such language does not exist in the Design Review  
12 section of the LUDC (see Exhibit A).

13 26. At this February 26, 2020 hearing, Petitioner (and others) informed the  
14 Planning Commission (a) that the Planning Commission could not grant preliminary  
15 approval of the WTGs because the WTGs could not meet the plain language of 9  
16 Findings, and (b) that it was legally improper to circumvent making the 9 Findings by  
17 creating and applying a standard that does not exist within those 9 Findings.

18 27. Notwithstanding these facts, on a vote of 3 to 2, the Planning Commission  
19 adopted the improper findings of Attachment A, thereby affirming the CBAR’s  
20 “preliminary” approval of the Project.

21 28. The Planning Commission’s affirmation of CBAR’s grant of “preliminary”  
22 approval of Design Review of the Project by refusing to follow the law as written and,  
23 instead, applying a standard that does not exist in the law (effectively rewriting the law)  
24 in order to approve the Project was a violation of its ministerial duties and/or an abuse  
25 of discretion.

26 29. Petitioner timely appealed the Planning Commission’s decision to the  
27 BOS, which heard the appeal de-novo on March 31, 2020. Santa Barbara County  
28 Planning & Development staff again generated an Agenda Letter (“Agenda Letter”) for

1 the Board of Supervisor's use at the hearing. The Agenda Letter recommended that the  
2 BOS deny the appeal and "make the required findings for approval of Preliminary  
3 Design Review." Those "findings" were included as Attachment 1 to the Agenda Letter,  
4 a true and correct copy of which is attached hereto and incorporated herein by this  
5 reference as **Exhibit E**.

6 30. Attachment 1 of the Agenda Letter was (again) comprised of two  
7 elements: (1) it listed the 9 Findings that the BOS was required to make in order to  
8 approve the Project, and (2) it set forth the recommended language for the BOS to use  
9 as a basis for making those 9 Findings. The "recommended language" mirrored the  
10 language used by the CBAR and the Planning Commission in granting preliminary  
11 approval of the Project. To wit, it asserted that, notwithstanding the plain language of  
12 the 9 Findings, the Planning Commission should determine that the WTGs were  
13 consistent with the 9 Findings **because** the design of the WTGs was "dictated by  
14 technical requirements." Again, such language does not exist in the Design Review  
15 section of the LUDC (see Exhibit A).

16 31. At the March 31, 2020 hearing, Petitioner (and others) informed the BOS  
17 (a) that the BOS could not grant preliminary approval of the WTGs because the WTGs  
18 could not meet the plain language of 9 Findings, and (b) that it was legally improper to  
19 circumvent making the 9 Findings by creating and applying a standard that does not  
20 exist within those 9 Findings.

21 32. On a vote of 4 to 0 (with one recusal), the BOS adopted the improper  
22 findings of Attachment 1, thereby affirming "preliminary" approval of the Project by  
23 CBAR and the Planning Commission.

24 33. The decision by the BOS to uphold the decision of CBAR and the  
25 Planning Commission and grant "preliminary" approval of Design Review of the Project  
26 by refusing to follow the law as written and, instead, applying a standard that does not  
27 exist in the law (effectively rewriting the law) in order to approve the Project was a  
28 violation of its ministerial duties and/or an abuse of discretion.

1           34. On April 3, 2020, three days after the BOS denied Petitioner's appeal, the  
2 Project went back to CBAR for "final" approval. Again, Santa Barbara County Planning  
3 & Development Department staff generated a Memorandum ("Memorandum") for  
4 CBAR's use at the hearing, a true and correct copy of which is attached hereto as  
5 **Exhibit F**. The Memorandum recommended that CBAR "grant Final Design Review  
6 approval for the Project," and again provided CBAR with "findings" to adopt to make  
7 such approval.

8           35. The findings of the Memorandum were (again) comprised of two elements:  
9 (1) it listed the 9 Findings that the BOS was required to make in order to approve the  
10 Project, and (2) it set forth the recommended language for the CBAR to use as a basis  
11 for making those 9 Findings and granting final approval of the Project. The  
12 "recommended language" mirrored the language used at all previous hearings on  
13 "preliminary" approval of the Project. To wit, it asserted that, despite the plain language  
14 of the 9 Findings, CBAR could nonetheless make each of the 9 Findings because the  
15 design of the WTGs is "dictated by technical requirements." Again, such language does  
16 not exist in the Design Review section of the LUDC (see Exhibit A).

17           36. At the April 3, 2020 meeting, Petitioner again informed the CBAR (a) that  
18 CBAR could not grant final approval of the WTGs because the WTGs could not meet  
19 the plain language of 9 Findings, and (b) that it was legally improper to circumvent  
20 making the 9 Findings by creating and applying a standard that does not exist within  
21 those 9 Findings.

22           37. Without discussion or deliberation pertaining to any aspect of the WTGs,  
23 CBAR voted unanimously to grant final approval of the Project by adopting the improper  
24 findings set forth in the Memorandum.

25           38. The CBAR's granting of "final" approval of Design Review without  
26 reviewing the WTGs was a violation of its ministerial duties and/or an abuse of  
27 discretion. The CBAR's granting of "final" approval of Design Review of the Project by  
28 refusing to follow the law as written and, instead, applying a standard that did not exist

1 in the law (effectively rewriting the law) in order to approve the Project was a violation of  
2 its ministerial duties and/or an abuse of discretion.

3 39. The CBAR's decision to grant "final" approval of the Project was not  
4 administratively appealable and Petitioner has exhausted all available administrative  
5 remedies prior to the filing of this Petition.

6 **FIRST CAUSE OF ACTION**

7 **(WRIT OF MANDATE – Code Civ. Proc., §1085)**

8 40. Petitioner refers to and realleges all of the above paragraphs and by this  
9 reference incorporates those paragraphs as if fully set forth at length herein.

10 41. The County of Santa Barbara Land Use and Development Code §  
11 35.82.070(F) (see Exhibit A) states specifically that all Design Review applications shall  
12 be approved "only if" the Board of Architectural Review makes the 9 Findings for all  
13 structures that make up a given project. Four of the 9 Findings that must be made are  
14 as follows:

- 15 1. Overall structure shapes, as well as parts of any  
16 structure (buildings, fences, screens, signs, towers, or  
17 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;
- 18 2. There will be harmony of color, composition, and  
material on all sides of a structure;
- 19 3. There will be a harmonious relationship with existing  
and proposed adjoining developments, avoiding  
excessive variety and monotonous repetition, but  
20 allowing similarity of style, if warranted; and,
- 21 4. Site layout, orientation, and location of structures and  
signs will be in an appropriate and well-designed  
22 relationship to one another, and to the environmental  
qualities, open spaces, and topography of the site.

23 42. It is well established that if the actual words of a statute are unambiguous,  
24 decision-making bodies are required to give them their usual and ordinary meaning.  
25 *See, among others, Whaley v. Sony Computer Entertainment America, Inc.* (2004) 121  
26 Cal.App.4th 479, 486–487. In such a case, it is improper to consider various extrinsic  
27 aids, such as the purpose of the statute, the evils to be remedied, the legislative history,  
28 public policy, or the statutory scheme encompassing the statute." *Id.*

1           43. The language of the 9 Findings, including the four above-mentioned  
2 findings, is unambiguous.

3           44. The 9 Findings, including the four above-mentioned findings, must be  
4 made by the CBAR before “preliminary” or “final” Design Review approval of any  
5 project, including the Project.

6           45. No reasonable person could find that the 29 WTG structures can be found  
7 to be consistent with the plain language of the 9 Findings, including the four above-  
8 mentioned findings.

9           46. No portion of the 9 Findings (including any of the four above-mentioned  
10 findings) is premised or in any way preconditioned upon “technical requirements  
11 dictating otherwise.” The word “technical” does not even exist in the Design Review  
12 section of the LUDC (see Exhibit A), nor does any portion of the Design Review section  
13 of the LUDC remotely suggest that a project’s “technical constraints” can be used to  
14 circumvent the requirement that the WTGs be found to be consistent with the plain  
15 language of the 9 Findings (including the four above-mentioned findings) prior to  
16 approval.

17           47. It is legally impermissible to ascribe language into the 9 Findings that does  
18 not exist, particularly in a manner that negates the plain language of the 9 Findings and  
19 the stated purpose thereof.

20           48. Respondent CBAR had a legal duty to include the WTGs as part of their  
21 review of the Project. Respondent CBAR violated its ministerial duty and/or abused its  
22 discretion in failing to include the WTGs as part of their review of the Project before  
23 granting “preliminary” review of the Project.

24           49. Respondent CBAR further had a legal duty to apply the plain language of  
25 the 9 Findings to the WTGs as part of their review of the Project. Respondent CBAR  
26 violated its ministerial duty and/or abused its discretion by granting “preliminary”  
27 approval of the Project without applying the plain language of the 9 Findings to the  
28 WTGs.



1           50. Respondent Planning Commission had a legal duty to apply the plain  
2 language of the 9 Findings to the WTGs as part of Petitioner's appeal of "preliminary"  
3 approval of the Project. Respondent Planning Commission violated its ministerial duty  
4 and/or abused its discretion by upholding CBAR's "preliminary" approval of the Project  
5 without applying the plain language of the 9 Findings to the WTGs.

6           51. Respondent BOS had a legal duty to apply the plain language of the 9  
7 Findings to the WTGs as part of Petitioner's appeal of the Planning Commission's  
8 "preliminary" approval of the Project. Respondent BOS violated its ministerial duty  
9 and/or abused its discretion by upholding the Planning Commission's "preliminary"  
10 approval of the Project without applying the plain language of the 9 Findings to the  
11 WTGs.

12           52. Respondent CBAR violated its ministerial duty and/or abused its discretion  
13 in failing to include the WTGs as part of their review of the Project before granting "final"  
14 approval of the Project. Respondent CBAR further violated its ministerial duty and/or  
15 abused its discretion by granting "final" approval of the Project without applying the plain  
16 language of the 9 Findings to the WTGs.

17           53. Petitioner had and has a clear, present, and substantial right to  
18 performance of Respondents CBAR, Planning Commission, and BOS to (a) include the  
19 WTGs as part of their review of the Project's consistency with the 9 Findings prior to  
20 granting both "preliminary" and "final" approval, and (b) apply the plain language of the 9  
21 Findings to the WTGs and determine that the WTGs are consistent with those 9  
22 Findings prior to granting both "preliminary" and "final" approval.

23           54. Petitioner has a physical and pecuniary beneficial interest in the issuance  
24 of a writ of mandate in that, if this Petition is not granted and the WTGs are constructed,  
25 Petitioner will suffer irreparable injury to the quiet enjoyment and aesthetic values of its  
26 residence and will incur a severe and irreversible decrease in property value, both of  
27 which are contrary to the stated purpose of the Design Review section of the LUDC.

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56. Petitioner has exhausted all possible administrative remedies to this issue as described herein.

57. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law other than the relief sought in this Petition and Petitioner is informed and believes that there are no available legal procedures to redress the harm that Petitioner has and will suffer if its requested relief is denied.

## PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court

1. Issue a peremptory writ of mandate that
  - (a) directs Respondents CBAR, the Planning Commission, and the BOS to rescind and set aside their “preliminary” and “final” approvals of Design Review of the Strauss Wind Energy Project, and
  - (b) directs CBAR to initiate a new and adequate Design Review of the Strauss Wind Energy Project that
    - i. includes the WTGs as a subject of said review; and
    - ii. applies the plain language of the 9 Findings enumerated in Santa Barbara County LUDC § 35.82.070(F), and refrain from ascribing language to those 9 Findings that is outside the scope of those 9 Findings, when considering whether said WTGs are consistent with said code section.
2. Award Petitioner reasonable court costs and attorneys’ fees in the amount to be proven; and,
3. Grant such other further relief as the Court may deem proper.

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1 DATED: April 24, 2020

JUAREZ, ADAM & FARLEY, LLP

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3 By: 

4 Richard E. Adam, Jr., Attorneys for  
5 Petitioners George and Cheryl Bedford  
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