



December 4, 2020

VIA EMAIL

Andrew Young, [andrew.young@acgov.org](mailto:andrew.young@acgov.org)

Maria Palmeri, [maria.palmeri@acgov.org](mailto:maria.palmeri@acgov.org)

Re: Aramis Solar Energy Generation and Storage Project , Alameda County Planning Application PLN2018-00117; Notice of Appeal of East County Board of Zoning Adjustments Certification of FEIR and Issuance of a Conditional Use Permit

Dear Andrew Young and Maria Palmeri:

This letter is to serve as a notice of appeal of the East County Board of Zoning Adjustment decision of November 24, 2020 certifying the Final Environmental Impact Report (FEIR) and issuance of a conditional use permit (CUP) for the Aramis Solar Energy Generation and Storage Project.

This appeal is based on the following grounds:

- As a procedural matter, the appeal time frame has been incorrectly calculated by the County. Section 17.54.670 of the County Code specifies that the 10 day appeal period runs from the date of the order made by the applicable board or commission. In this case, the BZA modified the original resolution that was drafted by the county planning staff. The final resolution/order was not issued, until yesterday, afternoon, December, 3, 2020, and, as of this filing, has not been posted on the County Website. As such, the time period did not start to run until at least December 3rd (assuming public posting is not required) which would make the final appeal deadline December 14<sup>th</sup> (December 13 is a Sunday). We have been unfairly harmed by the County's failure to timely publish the resolution/order issued by the BZA and consequent incorrect application of the filing deadline. It has been necessary in less than 24 hours to review the final documents issued yesterday to determine if they matched the motion and direction of the BZA at the hearing and whether to change any previously planned grounds for appeal or present new issues. It would be irresponsible to file this appeal without having done so. In addition, as an organization filing an appeal, it has been necessary to provide these documents to other board members and get their input. Because of the extremely narrow time frame, we can not be confident that our quick review of the voluminous record was complete. Presumably, these concerns would apply to other individuals and organizations who might be considering an appeal. The County's interpretation and application of section 17.54.670 in this case violate our due process rights. The Board of Supervisors should not hear any appeals of the Aramis project at this time and should instead provide for a new 10-day notice of appeal period.

- The FEIR and CUP violate the East Alameda County Area Plan (ECAP) and Measure D including, but not limited to, violation of the intent of Measure D and its restrictions on allowed uses on Large Parcel Agriculture properties, and violations of the ECAP Scenic Corridor and open space preservation policies. Industrial-scale solar is a commercial use, not allowed in the area. The expectation to bring an unspecified number of sheep on-site two months per year to provide vegetation control does not rise to the level of an agricultural operation, and does not replace the loss of traditional agriculture that will result from the project. The failure to provide an Agricultural Management Plan in advance of project approval impaired the BZA's and the public's ability to evaluate the viability of the use of sheep on the project site and their compatibility with biological species in the area. The project will result in a significant and unavoidable loss of the views and rural character of North Livermore which cannot be mitigated as acknowledged in the FEIR. Environmental values should not be sacrificed for a commercial operation in North Livermore.
- The County and BZA's reliance on the 2008 decisions of the Planning Commission and BZA approving the Greenvolts and Cool Earth projects should not be relied on as precedent. These projects were distinguishable in terms of size and location, and were explicitly not intended to serve as precedent for future solar projects within North Livermore as was stated on the record by the Board and staff at the 2012 hearing on the Cool Earth project. The public relied upon the assurances made by the County that these projects would not serve as precedent for the conversion of all remaining agricultural land in the East County into utility-scale solar plants. At the Cool Earth project hearing, the County further assured the public that no additional solar power plants would be approved without first adopting a comprehensive solar policy.
- The FEIR and CUP fail to provide adequate mitigation for significant environmental impacts caused by the project and are not supported by substantial evidence. This includes, but is not limited to, the failure to incorporate mitigation measures recommended by the California Department of Fish and Wildlife requiring compensatory mitigation for loss of habitat and the need for incidental take permits and larger buffer areas to protect species. The environmental surveys conducted by the applicant were insufficient to identify the extent of the presence of endangered species such as the California Tiger Salamander. The studies relied on to support the position that the project will provide foraging habitat for numerous raptor species are insufficient. Additional bird studies should be required to evaluate avian mortality risks prior to project approval. Adoption of the United States Department of Fish and Wildlife mitigation for Golden Eagles is not adequate to address all bird species in the area.
  - In addition, the FEIR fails to adequately evaluate the effects of high winds on the risks of fire danger in the area. Fire dangers are increasing in North Livermore with an increasing number of public safety power shutdowns being implemented due to fire risks. The FEIR solely analyzes monthly average wind speed in concluding there is no fire risk. This is deficient as any proper risk assessment must be based on maximum reported wind speed throughout the year in North Livermore Valley.
  - Furthermore, the FEIR does not sufficiently specify the planned battery storage proposed for the site. No site map of the 5-acre battery site is provided. Nor is any visual representation of the battery complex as seen from North Livermore Avenue provided. Energy storage is an inherently industrial use of the land and incompatible with the Zoning Code. The FEIR fails to specify the number of lithium-ion batteries that will be installed. It may number in the tens of thousands. Lithium-ion batteries pose an inherent fire risk. A

single battery that is defectively manufactured or installed in the thousands of installed batteries could set in motion an explosion and/or fire.

- The FEIR cumulative impacts analysis is insufficient in that it fails to consider other projects that may be built in the North Livermore area. The FEIR should have included analysis of other potential projects that may be in the pipeline and could be discovered upon a reasonable inquiry. The FEIR should have considered the entire area within a reasonable distance surrounding the PG&E Cayetano substation in which solar might be feasible. This would have better enabled the public and BZA to understand the long-term implications of their decision and its broader impact on agriculture in North Livermore.
- The FEIR fails to consider appropriate feasible alternatives to the proposed projects in the form of a distributed energy alternative. Other project alternatives were deemed too expensive by the project applicant but these should have been analyzed because the public and board members evaluating the project might consider them as a preferable option for siting and providing renewable energy within Alameda County.
- The CUP violates the Zoning Ordinance in that the need for the project has not been established where California is well on its way to meeting its renewable energy goals and 75 percent of the power generated by the project is contracted to go to San Francisco.
- A portion of the project site is designated as Water Management Land. Solar is not a permitted use on Water Management land. The Reduced Footprint Alternative would have eliminated the portions of the project located on both Resource Management and Water Management land and would have been an environmentally superior alternative.
  - In approving the Aramis project the County has created the precedent that an applicant can encroach on and occupy sensitive Water Management land without being obligated to provide any off-site mitigation, e.g. placing other sensitive land under a permanent conservation easement. At minimum, the applicant should be required to purchase a conservation easement on equivalent land.
- The project applicant will be allowed to use an excessive amount of groundwater. As a matter of policy, groundwater access should be limited to agricultural uses. The water needs for this project are commercial. The project estimates water usage based on the assumption that solar panels will only be washed once per year. In contrast, the nearby proposed Sunwalker Project indicates that panels will be washed twice a year (See Sunwalker, EIR, p. 3-9.) Given the effects of winds and dry-season soil conditions on-site, it is reasonable to conclude that the Aramis project solar panels will need to be washed at least twice per year. Water usage assumptions in the FEIR are significantly understated and impacts on groundwater supplies should be re-evaluated to determine if there would be adequate water available for the project and agricultural users, and whether sufficient off-site water sources can be provided for the project if groundwater access is limited to agricultural users.
- No project should be approved in the absence of a county solar policy. Members of the public, local organizations, and the City of Livermore requested that the County refrain from approving any solar projects until a policy could be established which takes into account the appropriate sites for solar projects. The lack of a policy has resulted in an insufficient EIR which fails to adequately address cumulative impacts and feasible alternatives. This project will set a dangerous precedent and puts politics ahead of proper planning and following legal requirements.

Friends of Open Space and Vineyards (FOV), is a conservation organization based in Livermore. FOV was founded in 1981 in an effort to stop uncontrolled residential development from taking over the land in the South Livermore Valley and displacing our local vineyards, wineries, and open space resources. We actively participated in the development of the South Livermore Area Plan, and also participated on the Citizen's Advisory Committee which assisted in the development of the South Livermore Specific Plan adopted by the Livermore City Council in 1997. In subsequent years, our mission has been expanded to include protection and preservation of North Livermore agriculture and open space lands.

We request that the Board of Supervisors provide us with an opportunity to present our arguments in favor of overturning the BZA decision.

Sincerely,



Tamara Reus  
President

cc: Anika Campbell-Belton, Clerk of the Board of Supervisors  
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