

# Friends of Livermore



1141 Catalina Drive # 263 • Livermore, CA 94550 • Phone: 925-963-0136 • E-Mail: d.michael.rounds@gmail.com

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VIA EMAIL

TO:

Dave Haubert, [david.haubert@acgov.org](mailto:david.haubert@acgov.org)

Nate Miley, [nate.miley@acgov.org](mailto:nate.miley@acgov.org)

Richard Valle, [richard.valle@acgov.org](mailto:richard.valle@acgov.org)

Wilma Chan, [wilma.chan@acgov.org](mailto:wilma.chan@acgov.org)

Keith Carson, [keith.carson@acgov.org](mailto:keith.carson@acgov.org)

Shawn Wilson, [shawn.wilson@acgov.org](mailto:shawn.wilson@acgov.org)

Tona Henninger, [tona.henninger@acgov.org](mailto:tona.henninger@acgov.org)

Chris Miley, [chris.miley@acgov.org](mailto:chris.miley@acgov.org)

Dave Brown, [dave.brown@acgov.org](mailto:dave.brown@acgov.org)

Amy Shrago, [amy.shrago@acgov.org](mailto:amy.shrago@acgov.org)

RE:

**Supplemental information regarding the Friends of Livermore Appeal of the:**

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

Greetings All:

On December 4th, 2020 The Friends of Livermore sent a notice of appeal of the East County Board of Zoning Adjustments(EBZA) decision of November 24, 2020 that certified the Final Environmental Impact Report (FEIR) and that issued a conditional use permit (CUP) for the Aramis Solar Energy Generation and Storage Project. With the release of the county staff reports addressing each item of our appeal we are compelled to respond to the specifics of the staff response to our appeal and correct and question, when appropriate, the staff interpretation of some of the information in our appeal.

The areas of our original appeal to be addressed here include the following concerns:

- The Aramis project violates the purpose, intent and language of Measure D.
- Large Parcel Agriculture areas of East County does not allow utility scale solar.
- Policy 13 of the East County Area Plan (ECAP) states that the County shall not authorize infrastructure in excess of that needed for development that is consistent with Measure D.
- The EIR for the project says that there are unavoidable scenic impacts to the area including impacts to the General Plan designation that North Livermore Valley is classified as a scenic rural route.
- The CUP should not have been approved until a solar policy that includes least impact siting evaluation is completed.

In order to make this document as efficient as possible we will not repeat every word of our original appeal and the staff response but instead focus on the key areas and information we question. The items below will be presented in the same order as in our original appeal.

## **Measure D and “new” uses in North Livermore Valley**

The staff argument is that ...”the General Plan designation of Large Parcel Agriculture (which is the bulk of the Aramis site) allowed utility corridors, public and quasi-public uses compatible with agriculture.” Staff then interprets the “uses compatible with agriculture” language to mean ...”that NEW uses were expected to appear within the area covered by measure D, and.....they would not require a vote of the electorate.”

Response to staff argument. The key provision that enabled the protections granted by Measure D was that a vote of the people would be required to allow uses not included in Measure D and new uses. This response by staff completely sidesteps this fact by making the determination that a utility scale solar factory is “compatible with agriculture.” Nothing has been shown to indicate that this is true. Bringing in a few hundred sheep for a couple of months a year to do weed control and having honey bees (which already occupy this area) does not remotely make the Aramis project “compatible with agriculture.”

Addition support for this position is the fact that the Measure D initiative removed zoning language that allowed “other industrial uses appropriate for **remote** areas and determined to be compatible with agriculture.” Other industrial uses appropriate for remote areas exactly describes the Aramis project. Removal of this language by Measure D was specifically intended to prevent the County from industrializing the rural areas of East County. The language of Measure D does not allow NEW uses and the staff interpretation that Utility Scale Solar is “compatible with agriculture” is incorrect. The Aramis project will not enhance agriculture but actually prevent any future efforts to increase agriculture on this land for the next fifty years.

The staff determination that in the Large Parcel Agriculture (LPA) area Utility Scale Solar facility is compatible with agricultural uses is predicated on a yet to be developed Agricultural Management Plan. What happens when that Plan shows that using sheep in the manner proposed won’t work? Will permits be withheld? That reality is that sheep graze plants down to dirt. Therefore the grazing crop will need to be replanted each year and done so on a cycle that allows the winter rains to sustain the crop. How will the land be cultivated and seeded when covered by almost 300,000, closely spaced solar panels that are not high enough off of the ground to allow tradition farming equipment to be used. When, as we expect, the Agricultural Management Plan ultimately shows that sheep grazing within the Aramis project is an impractical and inefficient agricultural use will the permitting for this project still be approved?

## **East County Area Plan - Policy 13 of ECAP and modified by Measure D prohibits infrastructure in excess of that needed for development that is consistent with Measure D**

The staff argument is that ECAP does not bar new expanded or replacement infrastructure necessary to create adequate service for East County and infers that we believe it is (housing) growth inducing.

Response to staff argument. Our appeal did not say that the project was capacity-increasing infrastructure. The appeal says that the Aramis project violates Policy 13.

Aramis is infrastructure that is not necessary to serve the existing needs of East County. Seventy-five percent of the total energy credits from Aramis are going to an entity outside of Alameda County. The actual power generated by Aramis is not guaranteed to serve just East County’s existing homes but will serve a much wider area and therefore is not allowed by Measure D because it is expanded infrastructure, located on Measure D land, that is greater than is necessary to serve East County

In other words we are not saying that the project is (development) capacity increasing infrastructure. We are saying that the Aramis Utility Scale Solar plant will be new infrastructure that far exceeds what is necessary to serve the immediate area. This is not allowed by Measure D.

**ECAP - Large Parcel Agriculture (LPA) zoning does not allow utility scale solar.**

To paraphrase the staff argument, there is no violation of the LPA designation because the Project includes solar arrays, honey bees, sheep, roads and other “agriculture type” uses that are allowed by ECAP.

Response to staff argument. This is not what our appeal said. Our appeal actually said that the inclusion of solar voltaic power facilities as an approved use in LPA zoning was an illegal zoning change that violated ECAP and Measure D. Several years ago staff allowed and subsequently the Board of Supervisors (BOS) approved a change in LPA zoning language to include solar voltaic power generation. We strongly disagree with this conclusion. Including solar voltaic power generation at a utility scale is a new use for Agricultural land in ECAP. Our appeal said that since most of the land subject to Measure D is zoned LPA, a zoning change in the ECAP to allow solar power generation, is a defacto new use and a therefore a significant change to Measure D. A change that is not allowed by Measure D without public hearings and a vote of the people.

**There are significant and unavoidable impacts to the Scenic Rural Route designation.**

County planning staff and the EIR for this project agree that there are unavoidable significant impacts to views of scenic vistas, visual quality and character and cumulative aesthetic impacts. However, the EBZA adoption of a Statement of Overriding Considerations (Exhibit C of EBZA Resolution Z-20-23) that overrides these esthetic impacts.

Response to the staff determination.

The first sentence of the Measure D initiative says; “The purposes of this Initiative are to preserve and enhance agriculture and agricultural lands, and to protect the natural qualities, the wildlife habitats, the watersheds and the beautiful open spaces of Alameda County from excessive, badly located and harmful development.” This statement describes the most important, overarching goal of the Measure D initiative. Sixty percent of the voters in all of Alameda County agreed with this statement when they approved the Measure D initiative. Ignoring this statement by the county should only happen with the most significant of “overriding considerations.” The overriding considerations outlined in the EBZA Resolution (Z-20-23) are not significant enough to override the key premise of Measure D which is to preserve and enhance agriculture and agricultural lands in East County. Here is a review of the six overriding considerations as determined by the County staff and our response to each.

**Overriding Consideration (1) Environmental Benefits:** The Resolution said that: 1) the project would assist California in meeting the legislated Renewables Portfolio Standard (RPS); 2) Implementation would allow the County and the rest of the Bay Area to meet their energy needs in an environmentally and efficient manner; 3) the projects 4 hour battery storage system would help stabilize energy supplies...well into the peak-demand hours.

In order, here is our response

1) California already produces 22.3% of its electricity with solar and according to the Solar Energy Industries Association (SEIA) and as of Q3 2020 California has a solar production capacity of 29.2GW The Aramis project would add to this a potential equal to about 0.34% of total solar capacity in the State. The SEIA says

that California is on track to add another 17.2GW of capacity in the next five years. It is further predicted that by 2025 100% of “roof-top” solar will include battery backup. California has a glut of solar today with significantly more solar to be added over the next 5 years. So yes, Aramis will assist California in achieving its RPS, but Aramis is a drop in the bucket (0.34%) of California total solar output. Therefore violating the main premise of Measure D to build a utility scale solar plant in North Livermore for the reason that it will help California achieve its clean energy goals is a gross overstatement and application of the overriding considerations policy.

- 2) Alameda County does not need Aramis to achieve its clean energy goals. East Bay Community Energy (EBCE) was offered an opportunity to purchase 100% of the energy credits from the Aramis project. EBCE only purchased 25% of the credits from Aramis and apparently was encouraged to do so by being offered a discount. If the County’s community energy aggregator did not see a need to purchase 100% of the Aramis projects output, presumably because they are achieving their clean energy goals, then it is again a gross overstatement to say there are overriding considerations around County energy needs that would allow the key premises of Measure D to be ignored.
- 3) Yes, battery back up for 4 hours would be helpful in stabilizing the energy grid and preventing short term local blackouts. Again though, 4 hour storage of 100MW of power is a drop in the bucket. The County uses about 30GWh per day on average. During a blackout or power outage the Aramis plant battery backup will only replace a fraction of a percent of the need. This is insignificant and does not support the determination that an overriding consideration applies.

Our conclusion is that while we believe in the importance of clean energy and that solar energy is important, California and Alameda County are already ahead of the curve in achieving clean energy goals. The Aramis project is not a necessary nor significant nor urgently needed contributor toward achieving these goals. There are proven longer term alternatives to utility scale solar that do not have a negative impact on protected scenic open space. These alternatives include continuing the good ongoing work by the County and the cities in the county to expand distributed solar on rooftops. This determination that the Aramis project is so environmentally essential that it is acceptable to sacrifice the protected, scenic rural character of North Livermore and to disregard the key premise of Measure D is not supported by the facts around solar energy goals and solar energy projections at the County or State level.

**Overriding Consideration (2) Economic Benefits.** A summary of the key points made by the County staff are 1) that the project will create 400 temporary living wage jobs and the economic benefit from the concurrent community spending that results from these jobs; 2) trades people would learn new skills and reduce their commute; 3) the project would promote the long term viability of grazing in unincorporated Alameda County by providing financial support (through land leases to Intersect Power) to property owners who can then use the funding to continue and enhance agricultural operations.

In order, here is our response to these stated overriding considerations around economic benefit in the order mentioned above.

- 1) The conclusion by the County is that 400 temporary (1-2 years) jobs is more important than preserving a designated Scenic Rural Route and disregarding the key purposes of the Measure D as stated in the first sentence of the Measure D initiative (“The purposes of this Initiative are to preserve and enhance agriculture and agricultural lands, and to protect the natural qualities, the wildlife habitats, the watersheds and the beautiful open spaces of Alameda County from excessive, badly located and harmful development.”). Creating 400 temporary jobs and the short term economic benefit of these jobs to the community do not

support overriding for fifty years, the general plan protections for a Scenic Rural Route and the key purposes of a voter initiative.

- 2) There is no guarantee that trades people who benefit from these jobs will be untrained in installing solar. In fact, it is likely that whoever the contractor is will prefer hiring experienced workers. There is also no guarantee that the commute of these workers will be decreased unless the contractor hiring these workers only hires local workers who are now commuting to a job and, with their hire for this project, they stop commuting. It is specious to use this supposition as justification for an overriding consideration.
- 3) The bulk of the land being leased for the Aramis project belongs to the Crosby Family Trust and any income received for leasing this land will go to absentee trustees. This income will do little or nothing to provide, as the County concludes, financial assistance to local farmers and ranchers that will promote agriculture and grazing. These facts do not support this as an overriding consideration to justify the project.

**Overriding Consideration (3) Social Benefits.** A summary of the key social benefits provided in the statement of overriding consideration include; 1) Employment stability because of the creation of these 400 temporary jobs; 2) Land would be made available for a public trail west of the project; 3) The project would minimize power outages and reduce rolling blackouts at peak times of energy use.

In order, here is our response to these overriding considerations around the Social Benefits in the order mentioned above.

- 1) It is difficult understand the long term economy stability provided by temporary jobs. The project has a lifespan of fifty years. The temporary jobs will be for 1-2 years. This is not significant enough to support an overriding consideration. This has already been covered in the economic benefit paragraphs above.
- 2) The CUP for this project does not guarantee that Aramis will provide land for public use and therefore it is inappropriate to use this statement as support for an overriding consideration.
- 3) It is a given that any additional, reliable power available to the grid will help prevent power outages. However, this is not a unique benefit of this particular project and if the project was located elsewhere or if the project was replaced over time by distributed solar it would also accomplish the same goals and reduce power outages. Plus, once the power from the Aramis project is on the grid, the exact decisions around power generation during an emergency is not guaranteed but rather subject to decisions made by the electrical grid operator.

**Overriding Consideration (4) Technological Benefits.** The key point made in the Resolution is that this state-of-the-art battery storage technology would provide a proof of concept for other potential large utility-scale facilities with battery storage in the Bay Area.

Our response is that providing “proof of concept” for a developer is not the business of Alameda County and certainly is not justification for destroying the scenic and rural character of a protected area for the next 50 years. We are also concerned that this implies that unproven potentially dangerous technology is being placed in North Livermore Valley and that Alameda County will be building more utility scale solar in North Livermore Valley, and elsewhere in the future, which might or might not happen.

**Overriding Consideration (5) Safety Benefits.** The key point made by the county here is that project will employ safety features including keeping vegetation low to minimize fire danger and “if asked” the applicant would cover the costs of additional training opportunities for Alameda Fire and Cal Fire agencies on how to deal with “solar emergencies.” This training would benefit the county because Alameda and Cal Fire would

then be better prepared to deal with “solar emergencies” at other large utility scale solar facilities to be build in Alameda County.

Our response is that these safety features and training should be the minimum offered by a developer for such a huge, potentially dangerous project. It is also important to note that “solar emergencies” means toxic lithium battery fires. The items discussed as Safety Benefits are not overriding considerations, they are sales pitches by the developer.

**Overriding Consideration (6) Benefits to the Knowledge Base** The summary point here is that once completed the project would offer operational monitoring to provide data to quantify the actual extent of bat and avian fatalities from solar panels and fencing and this will contribute to the body of knowledge about bat and avian fatalities in the Tri-Valley region associated with utility scale solar projects.

Our response is that 1) if the solar facilities were not built there would be no subsequent bat and avian fatalities and 2) unless other utility scale solar facilities are built in the Tri-Valley this data will be useless. There is no overriding consideration here.

Summary: It is clear that there is no single, significant overriding consideration that would allow this violation of Measure D and the destruction of the scenic, rural and protected lands in North Livermore Valley.

**The CUP should not be approved before a solar policy is approved.**

County staff argument is that work on solar policies continue, in lieu of having completed this policy a moratorium on new development is not appropriate and the County is required to review pending solar projects on a case by case basis. County staff also states the the Aramis project substantially complies with the draft solar policy that was written in 2018.

Friends of Livermore response to the County argument.

A quote from a famous baseball player describes the county claims perfectly...”it is deja vu all over again.” In 2011-2012 two, relatively small utility scale solar facilities were reviewed for a CUP by the EBZA and approved. The decision by the EBZA was appealed and heard by the BOS. At that appeal, Supervisor Miley was very concerned that this decision was being made absent a solar policy. He expressed that he did not want the project to set precedent for building future commercial solar on agricultural land. Supervisor Miley was assured by staff that there was no precedent being established if the project was approved and that no future project would be approved until a solar policy was in place. Yet, six years later in 2018, Intersect Power proposed the Aramis project and it was put in the pipeline for development, without a solar policy. At that time, county legal and planning staff should have not accepted or encouraged the application for this project by Intersect Power. How many more times will this same set of circumstances be replicated until all of the developable land in Alameda County is covered with utility scale solar. This lack of planning by the County will eventually lead to a situation where there will be no need for a solar policy because there will be no place left on which to build a solar facility.

The staff response that the Aramis project substantially complies with the draft solar policy from 2018 is misleading at best. Key to a successful solar policy is determining where utility scale solar can be located so as to have the least impact on the environmental and other stakeholder issues in the County. Without having this critical piece in place it is false to say that the Aramis project substantially complies with the draft solar policy from 2018. Contra Costa County has successfully implemented a solar policy with input from stakeholders that

includes least impact siting before they moved forward with entertaining large solar projects. This would be a good model for Alameda County to follow.

In conclusion, the Aramis solar project should be rejected because it does not comply with land use policy, violates the scenic element of the General Plan, violates the actual and implied goals of the citizen initiative Measure D and the project is not critical and necessary to enable the county to achieve its economic and clean energy goals.

Sincerely,

David Rounds

for

Michael Frederich  
Chair, FOL Solar Committee

cc:

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

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

[anika.campbell-belton@acgov.org](mailto:anika.campbell-belton@acgov.org); [cbs@acgov.org](mailto:cbs@acgov.org)

[cheryl.perkins@acgov.org](mailto:cheryl.perkins@acgov.org)