



March 1, 2021

VIA EMAIL

Andrew Young, andrew.young@acgov.org

Maria Palmeri, maria.palmeri@acgov.org

Re: Aramis Solar Energy Generation and Storage Project , Alameda County Planning
Application PLN2018-00117; Supplemental Appeal Letter

Dear Andrew Young and Maria Palmeri:

1. Introduction

Friends of Open Space and Vineyards is submitting this letter to expand on the issues raised in our Notice of Appeal of the East County Board of Zoning Adjustments (BZA) approval of the Aramis Solar Generation Project. There are numerous and significant defects in the EIR prepared for the project as well as legal errors which warrant overturning the Conditional Use Permit and EIR Certification.

The Aramis project will have a long-lasting impact in East Alameda County which will outlast the lifetimes of many who are actively opposing this project. It will set a precedent that will last for up to 50 years! The members of the Board of Supervisors were voted into office to obtain public input and create policies for the betterment of Alameda County. This role includes providing direction and guidance for staff to ensure uniformity in planning decisions. The failure to craft and adopt a comprehensive solar policy prior to approving individual projects is a failure of leadership, principally by the former Supervisor for District 1. Thus, we have ended up with a project approved by the Board of Zoning Adjustments that does not meet legal standards. The strained interpretations of applicable planning laws and the zoning ordinance by planning staff and county counsel in this case defies logic and common sense.

Many who support this project do so because they are worried about climate change and they feel that this concern outweighs any other environmental considerations or considering alternative locations and approaches to generating greater renewable energy. This thinking in itself sets a dangerous precedent. If long-term environmental impacts no longer matter, then in 50 years when the Aramis project is decommissioned, North Livermore will be profoundly damaged. The character of the valley will be changed, its agricultural heritage and productivity will be irreparably harmed, and habitat will be degraded and lost. The reality is that when an industrial project, even a solar plant, is allowed to be developed on protected lands, the desire to develop more such projects or to allow other commercial or industrial uses will be hard to resist. In North Livermore, protections for agriculture that preserve open space have been established by the people. Wide-open spaces like the North Livermore Valley are becoming less common in the Bay Area where development pressures are intense. The demand for this particular project is not so great as to warrant undermining the protections in place for these lands.

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The Board of Supervisors has a duty in deciding these appeals to follow the applicable laws and policies. However much there is a desire to fight climate change or provide good union jobs, the Board does not have the authority to misapply the rules.

This project will violate County laws and policies and should not be allowed. The underlying documentation presented in the EIR fails to warrant approval. The EIR is deficient in its analysis of cumulative impacts, habitat assessment, feasible alternatives, water usage, and fire risks. Mitigation measures for protection of endangered species and habitat protection are insufficient as currently designated in the CUP. The finding that there is a public need for the Aramis project is not supported by substantial evidence. The conditions imposed in the CUP fail to adequately protect against the environmental harm this project will cause. Looking at the record dispassionately, it is clear that the Aramis project approval must be overturned.

2. Changes in Project Description

Subsequent to the BZA approval of the Aramis project there was a de facto change in the project description which requires additional consideration by the Board of Supervisors. The project application and description assumed the inclusion of 100 acres belonging to the Stanley family as part of the overall 410 acre project area. Solar panels would have been placed on 38 of the 100 acres. (Final EIR (FEIR), Section 2-2, p. 2-1.) Undeveloped areas would have been available for sheep grazing (See FEIR, section 3.4.6, p. 3-6.) It turns out that the property had not been placed under lease by the Applicant as of the time the EIR was certified. Lawyers for the Stanley family have alleged the representatives of Intersect Power misrepresented facts to the Stanleys and tried to unduly pressure them directly to sign a lease agreement despite being represented by counsel, and lease negotiations have been terminated. The project size is no longer as described in the EIR. On top of that change, an additional 22 acres of Resource Management land was excluded from the project through the adoption of the Resource Management Project alternative by the BZA. (See FEIR, Fig. 2-3; BZA Resolution No. Z-20-23 Conditional Use Permit, PLN2018-00117 – Aramis Solar [“Resolution”], p. 6.) Overall, 122 acres has been removed from the project.

The Applicant has publicly stated that they can complete the project despite the loss of this acreage (despite prior statements stating that they required the entire site to achieve the project objective of 100 MW of energy). If this is true, and they intend to redesign the project to achieve the 100 MW objective on the remaining land, this could vastly change the environmental impacts of the project, and the Board of Supervisors should require a new project application and environmental review process. If the Applicant intends to proceed with a smaller scale project, the public should be informed of the reduced size and energy production, and the Supervisors should address the public need for the project in the context of the reduction.

3. Public Need

The Zoning Code requires a finding of public need to support the issuance of a CUP. In this case, the BZA’s finding is not supported by the evidence. The issue here is that the finding was based on climate action goals, and not on actual need. Concerns about climate change are real and emotionally compelling.

Again, those concerns do not prove need. Goals for mitigating climate change through developing renewable energy sources are important and helpful but they do not substantiate the need for any particular

project. It is necessary to detach from the emotionalism and look at need in a realistic way. When we engage in this analysis, it is clear that there is no need for this particular project. Whether or not the Aramis project is built, California is on track to meet its renewable energy production goals.

It is correct that the state of California has set a goal of obtaining 60 percent of its energy supply from renewable sources by 2030. (Domonoske, "California Sets Goal Of 100 Percent Clean Electric Power By 2045", (9/10/18), available at: <https://www.npr.org/2018/09/10/646373423/california-sets-goal-of-100-percent-renewable-electric-power-by-2045>). This goal includes energy from all renewable sources, and is not limited to solar. The 2020 goal was 33 percent. In 2019, California was already generating 36% of its renewable energy from utility scale solar, exceeding the 2020 goal. (<https://www.energy.ca.gov/news/2020-07/new-data-shows-nearly-two-thirds-californias-electricity-came-carbon-free>)

In 2019, California was already producing 1,648.4 MW of energy from solar photovoltaic sources, with 4,212,291 net megawatt hours of solar power generated. (California Energy Commission, "California Solar Energy Statistics and Data, available at: https://ww2.energy.ca.gov/almanac/renewables_data/solar/index_cms.php) This figure does not include energy from solar thermal sources, including imports. When that is added, the total capacity at that time was 14,169.1 MW with total net megawatt hours of 37,716,812. (Ibid.)

More large-scale solar photovoltaic projects are in process in other areas of the state. Sacramento County is developing a 100 MW project, Rancho Seco II, on the site of the former nuclear power plant that was decommissioned. (Sacramento Municipal Utilities District, "Rancho Seco Solar II Development: Sourcing More Renewable Energy", available at: <https://www.smud.org/en/Corporate/Environmental-Leadership/Power-Sources/Rancho-Seco-Solar-II-Development>) In Kern County, the newly completed Rosamond Central solar project recently came on-line. This project has a 192 MW capacity. (Misbrenner, Solar Power World, "Clearway Energy Group completes 192-MW Rosamond Central Solar Project" (1/5/21), available at: <https://www.solarpowerworldonline.com/2021/01/clearway-energy-group-completes-rosamond-central-solar-project/>). In fact, EBCE has contracted to obtain 112 MW from this project. In contrast, EBCE is planning to obtain only 25 MW from the Aramis project. The other 75 MW will be going to San Francisco.

Additionally, 8minute Solar Energy's Aratina Solar Center, currently pending in Kern County, would provide another 250 megawatts of solar power in California. On top of that, the nation's largest solar farm was approved in Tulare County in 2020. The Rexford Solar Farm will place panels across 3,600 acres near Ducor to produce 700 megawatts of energy storage. (The Sun Gazette, "Nation's Largest Solar Farm Approved for Tulare County", (9/9/20), available at: <https://thesungazette.com/article/news/2020/09/09/nations-largest-solar-farm-approved-for-tulare-county/>)

In total, California had over 43.9 GW of utility-scale solar capacity in development at the end of 2019. (Berkeley Lab Electricity Markets & Policy, Utility-Scale Solar 2020 Data, tab Solar GW in Queues by Region, available at: https://emp.lbl.gov/sites/default/files/2020_utility-scale_solar_data_update.xlsx)

These projects don't tell the entire story. Rooftop solar in urban residential and commercial areas is growing as well. For example, Livermore currently has solar rooftop penetration of 11%. The total estimated potential capacity of rooftop solar is 679 MW. Going from 11% penetration to 25% penetration (adding a "mere" 14%) will produce 100 MW of additional installed capacity, the equivalent of Aramis's initial design. And that leaves 75% of additional potential capacity that could be installed. (See Environmental Insights Explorer, available at: <https://insights.sustainability.google/places/ChIJcSBaOIblj4ARcdhryzEi05g>). This doesn't even include any contribution from solar panels over the many parking areas in Livermore nor does it make any assumption about the additional roofs that will be built in Livermore going forward that could accommodate more solar. It is reasonable to assume that similar growth will occur in other communities.

Data also reveals that California is also leading the way in small-scale energy storage systems. "In 2018, 86% of reported small-scale storage power capacity in the United States was in California." (U.S. Energy Information Administration, "Battery Storage in the United States: An Update on Market Trends: (July 2020), available at: https://www.eia.gov/analysis/studies/electricity/batterystorage/pdf/battery_storage.pdf). 47 percent of this capacity was in the commercial sector, 24 percent was in the residential sector, and 15 percent was in the industrial sector." (Ibid.) State financial incentives for installing customer-sited distributed generation are considered responsible for influencing the growth of this type of electrical power capacity. (Ibid.) It can be anticipated that this sector will continue to develop. In other words, the need for the Aramis project's battery storage component is not urgent. Solar projects are going on throughout the state and significant capacity is being created that is moving California forward in achieving its renewable energy goals.

As the above information reveals, the applicant has created a false sense of urgency about the current public need for the Aramis project. It is easy to understand the emotional appeal of this project. Climate change is a prominent issue that attracts attention. But that appeal should not distract from a rational evaluation of the facts. Certainly, the need for this particular project at this particular time and at this particular location, involving a designated scenic corridor and environmentally significant habitat, is not borne out by the facts.

4. Measure D and ECAP

The EIR 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 (LPA) properties, and violations of the ECAP Scenic Corridor and open space preservation policies.

Measure D, entitled "Save Agriculture and Open Space Lands Act", is an initiative measure which was adopted by the voters in Alameda County in 2000. The purposes of the initiative are outlined in section 1 which states:

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. The measure establishes a County Urban Growth Boundary which will focus urban-type development in and near existing cities where it will be efficiently

served by public facilities, thereby avoiding high costs to taxpayers and users as well as to the environment. The ordinance is designed to remove the County government from urban development outside the Growth Boundary.

The limitations this measure imposes on the amount and location of development aim at preventing excessive growth and curbing the juggernaut of urban sprawl. The Initiative will reduce traffic congestion, air and water pollution, loss of historic and scenic values and the blighting of existing city centers; and will help maintain a high quality of life in Alameda County.

Among the findings made as part of the initiative are the following pertaining to agriculture and open space:

(b) Existing Plans: The existing East County and Castro Valley Area Plans are weak. They do not provide adequate safeguards against destructive growth nor adequate protection for agriculture and vital environmental qualities. The plans contain major loopholes; some areas are not covered by any meaningful protection. The plans have no permanency. They can be changed at any time.

(c) Agriculture: The protection of existing agriculture is important to Alameda County. Agriculture remains a major contributor to the County's diversified economy. It is key to preserving open lands. Agriculture can only be maintained and enhanced if the voters of the County make a firm commitment to its preservation.

(d) Open Lands: Preservation of agriculture and other open lands protects air and water quality, contributes to health and recreation, offers habitat for plants and animals, provides visual enjoyment and beauty, gives a sense of history and community, and generally is important to the quality of our lives.

The identified purposes and findings demonstrate a strong commitment to agriculture and open space values and prioritize these within Alameda County.

This priority is further demonstrated by Policy 85 of the ECAP, added by Measure D. Policy 85 states:

Policy 85: In areas designated Large Parcel Agriculture, the County shall permit limited agriculture enhancing *commercial uses that primarily support the area's agricultural production*, are not detrimental to existing or potential agricultural use, demonstrate an adequate and reliable water supply, and comply with other policies and programs of the Initiative. [Italics Added.]

This policy recognizes that commercial uses are only allowed to the extent that they primarily support agricultural production. The Aramis Project, as studied in the EIR, envisions a 410-acre industrial-scale solar facility whose primary purpose is to generate 100 megawatts of solar energy and provide energy storage facilities covering 5 acres. This is not a commercial operation that primarily supports agricultural production as required by Policy 85. The only "agriculture" envisioned for the site is a plan to bring sheep on-site to graze for two months a year to provide control of forage height, and to provide some unspecified level of honey production. This is not productive agriculture and can't be seriously viewed as meeting the goals and intent of Policy 85. These agricultural uses are tangential to the industrial operation.

Also concerning is that these uses are not made mandatory in the CUP. The wording of the mitigation measures in the CUP does not specifically state that sheep grazing is required. It uses conditional language reflecting what would occur in the project if approved, as it was described in the EIR. The wording leaves some “wobble-room” that could allow the Applicant to avoid pursuing these options. (See Resolution, Par. 72, BIO 7-h, p. 23.)

The failure to provide an Agricultural Management Plan in advance of project approval further 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. There is no information available to effectively assess the so-called “agricultural” component of this project both as a land use element and an environmental issue.

The inadequacy of the agricultural features of the Aramis project was recognized by the BZA. The BZA voted to impose additional conditions on the applicant to require a larger buffer around the project to be planted with actual agricultural crops, such as olive trees or vineyards. The BZA obviously saw that the project as designed does not provide a meaningful agricultural component. The applicant has appealed these conditions further revealing its lack of interest in supporting agriculture in conjunction with developing its industrial solar-energy facility.

Staff has taken the position that large-scale solar is a permitted use under Measure D on parcels designated as Large Parcel Agriculture (LPA). This interpretation involves a misreading of the initiative language. The ECAP, as amended by Measure D, is detailed about the types of uses permitted on LPA land:

Subject to the provisions of the Initiative, this designation permits agricultural uses, agricultural processing facilities (for example wineries, olive presses), limited agricultural support service uses (for example animal feed facilities, silos, stables, and feed stores), secondary residential units, visitor-serving commercial facilities (by way of illustration, tasting rooms, fruit stands, bed and breakfast inns), recreational uses, public and quasi-public uses, solid waste landfills and related waste management facilities, quarries, windfarms and related facilities, utility corridors, and similar uses compatible with agriculture.

(ECAP, p. 47.)

The Aramis project as originally envisioned consisted of approximately 410 acres, 367 of which are designated as LPA, 22 acres are designated as Resource Management, and 21 acres are designated as Water Management. The permitted LPA uses listed in the quoted text do not include industrial-scale solar energy production and storage which are the fundamental purpose of the project. It is reasonable to conclude that the drafters of Measure D would have listed large-scale solar energy as a permitted use had it been intended given that other energy generation uses are listed. The findings made by the BZA avoid this conclusion by analogizing the solar energy generation project to windfarms and utility corridors. Each of these uses entails very tall “towers” that do not limit the availability of the land for traditional agricultural cultivation and grazing beneath. The Aramis project will eliminate the ability to graze cattle and harvest hay crops due to the significantly lower height of the solar panels. It should also be noted that utility corridors are intended for the transmission of power, not for the generation and storage of power. The analogy is flawed and cannot form the basis for a finding that the project is a permissible land use on LPA land.

This conclusion is further supported by examining language changes to the ECAP made by Measure D. Measure D deleted language formerly found in the ECAP that permitted “other industrial uses appropriate for remote areas and determined to be compatible with agriculture” on LPA parcels. This express reference to industrial uses was deleted and replaced with “similar uses compatible with agriculture.” (Measure D, full text, p. 8.) The deleted language had followed the listing of windfarms and utility corridors. Had the drafters of Measure D intended for industrial uses, such as large-scale solar energy generation, to be permissible, they would not have deleted this provision.

Staff, supported through the BZA’s decision, argue that industrial solar on the scale of the Aramis project has been found to be “compatible with agriculture” by the Planning Commission which means that solar has been formally determined to be allowed on LPA parcels. This position is based on the 2008 and 2012 approvals of the Greenvolts and Cool Earth Solar Projects. These decisions lack precedential value. They were made in quasi-judicial proceedings on individual projects. The Planning Commission is an appointed body which lacks the authority to amend the zoning ordinance. Citing these decisions as support for allowed uses in LPA and the A zoning district is tantamount to unlawfully amending the zoning ordinance and is contrary to Measure D. Standing alone, these approvals are individual planning rulings, no more.

Furthermore, these projects were distinguishable in terms of size and location. There is no logical basis to extend the potential rationale for their approval to the Aramis project. The Cool Earth project was explicitly not intended to serve as precedent for future solar projects within North Livermore as stated on the record by the Board and staff at the 2012 appeal hearing before the Board of Supervisors. (<https://www.youtube.com/watch?v=nYLmbaLL0c&t=2s>) The public reasonably 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.

In fact, the County was actively working on its solar policy at the time of the Cool Earth hearing. Many of the Supervisors who were in attendance at that meeting are still sitting on the Board today. They heard the staff providing further assurances that no additional solar power plants would be approved without first adopting a comprehensive solar policy. In response to Supervisor Chan's question, Albert Lopez, Director of the Alameda County Planning Department, stated, “We have been working on it for several months. Given this is a new land use type that wasn’t anticipated in the East County Area Plan, we think we are moving at a fairly rapid clip.” Chris Bazar, Director of the Community Development Agency, added, “We are doing a much more intensive policy review that we will bring to your board in a few months that could in fact result in a full blown [Environmental Impact Report].” (See <https://www.youtube.com/watch?v=W40jIXijAy0>.) The key point here is that staff recognized that solar was not contemplated in the ECAP which confirms that industrial solar is not a consistent land use given the absence of a current policy. No one at the hearing was treating the Planning Commission’s decisions as a finding of compatibility. The extent of the General Plan changes involved in developing a policy would require a full EIR, a far cry from relying on the Cool Earth approval as a sufficient justification for solar in North Livermore.

The primary reason for going forward with the Cool Earth Project despite the unfinished nature of the solar policy was that the project had very insignificant environmental impacts and was so far into the process that review should not be delayed (<https://www.youtube.com/watch?v=slmFY8geuE4&t=106s>). Bazar explained Cool Earth Solar “was a very innocuous project that fits in the with the community input we have received so far.” However, he also emphasized “that new rules we establish [for solar projects] will

be applied to . . . any future folks coming down the line.” (Ibid.) Unfortunately, that policy development effort was abandoned before completion, although the process was resumed in late 2020.

It cannot be over-emphasized that a project with extremely limited environmental impacts should not be used to foreclose an inquiry into whether industrial-scale solar is compatible with agriculture. Certainly, the Aramis Project EIR has confirmed a significant impact on aesthetics, already distinguishing it from Cool Earth. This a large-scale project affecting hundreds of acres of land. Additionally, habitat for threatened species is impacted and the mitigation measures in the EIR are insufficient, as will be more thoroughly described below. This is not an inconsequential project by any means. This is exactly the type of project that should have to comply with a solar policy, not the other way around. The danger of allowing the Aramis project to go forward now is that it will be viewed as setting precedent for the County solar policy that is now under development. The proverbial cart is being put before the horse which never works.

The inclusion of Water Management (WM) parcels within the project site presents additional problems under Measure D. WM lands are intended for very limited uses pursuant to the ECAP, as amended by Measure D. “Subject to the provisions of the Initiative, this designation provides for active sand and gravel quarries, reclaimed quarry lakes, watershed lands, arroyos, and similar and compatible uses. Sand and gravel quarries allow a range of uses including sand and gravel processing, associated manufacturing and recycling uses requiring proximity to quarries, reclamation pits, and public use areas.” The original language of the ECAP, unmodified by the passage of Measure D, recognizes this sensitivity: “Watershed lands generally are not open to the public but serve as passive open space and are protected from development. Arroyos are typically used for flood control and may be accessible for public use.”

The Atlas of the Biodiversity of California (St. of CA, The Resources Agency, Dept. of Fish and Game, 2003) recognizes the importance of these types of lands. The riparian areas of California are noted for their biological diversity, supporting over 225 species of birds, mammals, amphibians, and reptiles. (p. 56.) These areas are also environmentally valuable in that they “reduce flood flows and flood damage, improve groundwater recharge, prevent damaging chemicals and other compounds from reaching open water, and reduce wind and erosion on adjacent lands.” (Ibid.) Many of these areas have been damaged and fragmented over time, and are a high priority for conservation. (Ibid.)

The Aramis project includes, as stated above, 21 acres of WM land. WM is clearly an inappropriate location for industrial-scale solar based on the language from the ECAP quoted above and the environmental significance as described in the Atlas. The EIR included a project option that would exclude sensitive RM land from the project site (the “Resource Management Avoidance Alternative”). This alternative was approved by the BZA. The EIR included another alternative that would have excluded the WM land as well as the RM land. (the “Reduced Footprint Alternative”) The BZA failed to require the applicant to adopt the Reduced Footprint Alternative. Notwithstanding any attempt to mitigate the risks to Cayetano Creek, the ECAP and Measure D do not contemplate allowing the disturbance of WM land to install solar infrastructure. The project is setting up the opportunity for further degradation of important riparian land.

In approving the Aramis project the County has now created the precedent that an applicant can encroach on and occupy sensitive Water Management land to achieve its project objectives. At the very least, this

precedent should not be allowed to stand without obligating the Applicant to provide 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 if solar panels or similar structures are to be placed on Water Management parcels.

The project also violates Measure D and ECAP provisions relating to preservation of scenic views and rural character of the lands. Measure D includes findings in support of its provisions. Among these, Measure D recognizes the importance of historic and scenic land values and the need to protect agriculture and open space to secure these values. Policy 52 of the ECAP states: “The County shall preserve open space areas for the protection of public health and safety. . . protection of sensitive viewsheds, preservation of biological resources, and the physical separation between neighboring communities.” Other policies pertain to the preservation of ridgeline views in specified areas of the County. (Policy 102.) The importance of views is further emphasized by two additional ECAP policies:

Policy 107: The County shall permit no structure (e.g., housing unit, barn, or other building with four walls) that projects above a visually-sensitive major ridgeline.

Policy 108: To the extent possible, including by clustering if necessary, structures shall be located on that part of a parcel or on contiguous parcels in common ownership on or subsequent to the date this ordinance becomes effective, where the development is least visible to persons on public roads, trails, parks and other public viewpoints. This policy does not apply to agricultural structures to the extent it is necessary for agricultural purposes that they be located in more visible areas.

In 1966, the County designated North Livermore Ave., which runs alongside a large part of the project site, as a Scenic Rural Residential Corridor, with “outstanding scenic quality” with the goal to “conserve, enhance, and protect” scenic views.

The EIR concedes that the project will have a significant and unavoidable impact on the views in North Livermore even with mitigation (See Aramis EIR, pp. 4.1-11 to 4.1-12 and Exhibit A of EBZA Aramis Project Resolutions, Written Findings of Significant Effect.) Despite this finding, the Board adopted a Statement of Overriding Considerations (Exhibit C of EBZA Aramis Project Resolutions). The Board determined that state goals for renewable energy generation, the creation of 400 temporary construction jobs, the dedication of a section of land for a possible future trail to be developed by EBRPD or LARPD, the use of state-of-the-art technology, and project operation monitoring to provide bat and avian fatality data justify the decades-long loss of views of the ridges and the open rural character historically associated with North Livermore and the scenic corridor.

It is disheartening to think that planning policies designed to enhance the quality of life for residents of Alameda County have not been given more weight. These values are worthy of protection. The stated overriding considerations are not substantial. California is meeting its renewable energy goals and will continue to meet them even without the 100 MW Aramis project. As stated earlier, California surpassed its 2020 goal of 33 percent renewable energy in 2019. Also identified above, numerous utility scale solar projects are in process that will dramatically add to the amount of solar energy being produced in the state. (See also <https://www.bakersfield.com/news/large-solar-project-in-eastern-kern-would-be-developers-first->

[for-community-choice-groups/article_9e15c0da-b0f0-11ea-a21e-ff47014c91c8.html](https://www.greentechmedia.com/articles/read/california-renewable-curtailments-spike-as-coronavirus-reduces-demand), discussing solar projects in Kern County, and Green Tech Media, St. John, “California Renewables Curtailments Surge as Coronavirus Cuts Energy Demand, (4/2/20), available at: <https://www.greentechmedia.com/articles/read/california-renewable-curtailments-spike-as-coronavirus-reduces-demand>, discussing generally a glut of solar power generation in California.) Moreover, most of the energy produced by the Aramis facility is contracted to San Francisco, with only 25 percent allocated for East Bay use. Under these circumstances, sacrificing the area’s views and rural character for 50 years is hardly warranted.

The same reasoning applies to the job creation justification. 400 temporary jobs, even union jobs, for a few months doesn’t justify the loss of views and rural open space vistas for 50 years. During operations, the Aramis facility will only employ 2 people. Again, not an overriding consideration.

The latest technology as a consideration? Solar technology is constantly evolving. What might be cutting edge in the field today could be outmoded in five to ten years. Not sufficient.

The possibility of a trail? There will be no trail. It is not required under the CUP and was not part of the project’s EIR. Moreover, Aramis is not providing the funding; it will be necessary for another public agency to find the funds to construct it. Even if it were built what will there be to look at? The views will already be lost.

Bat and avian mortality studies? It defies logic to build a project to determine its danger. This reasoning should not be used as rationale for any overriding considerations, especially as in this case, where habitat will be lost due to the project, as will be more fully discussed below.

5. Biological Impacts

As written, the EIR’s analysis of biological impacts is inadequate, not supported by substantial evidence, and it should not have been certified by the BZA. Up until approximately a week before the scheduled appeal, Aramis stood by this analysis and maintained that the mitigation provided in the EIR was sufficient to protect threatened species. The applicant held to this position despite numerous criticisms of the biological analysis in the EIR comments from the California Department of Fish and Wildlife (CDFW), Karen Swaim of Swaim Biological, Inc. and her staff, East Bay Regional Parks, Save Mount Diablo and others. It was only in the wake of a scathing letter from the United States Fish and Wildlife Service (USFW) sent on January 26, 2021, critiquing the adequacy of the environmental analysis that the Applicant has agreed to work with the federal and state agencies to come up with a plan to protect threatened species that includes incidental take permits and the prospect of compensatory mitigation for the loss of habitat.

Despite its stated willingness to work with CDFW and USFW, Aramis is still not conceding any deficiencies in its environmental analysis. According to a letter from Intersect Power to Alameda County, “Intersect Power stands firmly behind the quality of the Aramis project’s biological survey work, which was conducted over multiple years by experts, and included protocol-level and focused surveys for amphibians and other taxa.” (2/22/21 letter, available at: https://www.intersectpower.com/wp-content/uploads/2020/04/2021-02-22_Aramis-Letter-to-Alameda-County-on-USFWSCDFW-EMBARGOED-DND.pdf). This position presents a stubborn resistance to acknowledging the very clear statements made by the agencies as to the habitats found on the project. It

calls into question the sincerity of any voluntary effort to work out a plan for incidental take permits and compensatory mitigation. One can only expect Intersect Power will be resistant to recommendations from the agencies in finalizing a plan and will do everything in their power to minimize their financial obligation as they have throughout the EIR preparation and approval process.

What did these agencies have to say about the habitat on the project site? Information in the USFW letter reflects the following findings:

- Surveys for CRLF and CTS were not adequate. The County did not follow the revised 2005 guidelines for site assessment and field surveys for CRLF. (pp. 2, 4-5, 6-7.)
- “[B]ased on the 12 known breeding occurrences of the California red-legged frog within 1.3 miles (65 percent of the known dispersal distance) of the project site, the availability of suitable upland habitat throughout the project site, and the biology and ecology of the species, the Service believes that the California red-legged frog is **highly likely** to disperse, shelter, forage, and aestivate throughout the proposed project site.” (p. 2.)
- Mitigation Measures indicated in the EIR are not sufficient to avoid incidental take (deaths) of CRLF and CTS. (pp. 4, 7-10.)
- Incidental take permits should be required for **loss of** CRLF, CTS, and San Joaquin Kit Fox. (pp. 4, 7, 11.)
- “After construction, **California red-legged frogs are likely to be harmed, injured, or killed** due to the permanent removal of 14.44 acres of annual grassland habitat and 3.67 acres of dryland grain crop habitat that the frog utilizes for foraging, sheltering, aestivating, and dispersal. The permanent removal of suitable upland habitat will increase the likelihood that any California red-legged frogs dispersing through the project site will desiccate or be preyed on due to the lack of suitable burrows, vegetation, and other cover for sheltering. Upland habitats also provide an important source of food for post-metamorphic and adult California red-legged frogs. A study of the stable isotopic contents of post-metamorphic and adult California red-legged frogs found that 90 percent of their diet was of terrestrial origin (Bishop et al. 2014). Therefore, the permanent loss of 14.44 acres of annual grassland and 3.67 acres of dryland grain crop foraging habitat will also harm the California red-legged frog through removal of habitat for its prey species.” (pp. 4-5.)
- “**Cattle grazing is a highly compatible land use** for the Central California tiger salamander and is an important land management tool for enhancing upland habitat for the Central California tiger salamander.” (p. 5-6.)
- “[T]he **disking of agricultural fields and [use of land for] hay production does not preclude the Central California tiger salamander from occurring** at the project site.” (p. 6.)

- **After construction, Central California tiger salamanders are likely to be harmed, injured, or killed** due to the permanent removal of 14.44 acres of annual grassland and 3.67 acres of dryland grain cropland dispersal and upland refugia habitat that will increase the likelihood that any Central California tiger salamanders dispersing through the project site will desiccate or be preyed upon due to the lack of suitable burrows and other cover for shelter. (p. 10.)

(USFW Letter, 1/26/21, copy attached as Exhibit A; emphasis added.)

CDFW also made comments respecting burrowing owl habitat:

The Project may therefore adversely impact burrowing owl by resulting in nest abandonment, loss of young and reduced health and vigor of chicks (resulting in reduced survival rates), permanent and/or temporary loss of nesting and foraging habitat, and breeding and foraging disturbance through Project activities.

(FEIR, Appendix A, Comment 138, p. 10, copy attached as Exhibit B.)

In short, the habitat value of the project area has been borne out by experts who are tasked with the protection of the threatened species on the site. The Applicant's claims that this habitat is poor because their inadequate surveys (carried out by a firm selected by the applicant with an inherent bias in favor of the project) did not locate the species in question don't hold water.

This fact is further demonstrated by more recent sightings of California Tiger Salamanders in February 2021. On February 11 and 21, wildlife biologist Karen Swaim located tiger salamanders in the vicinity of the project site and issued the following comment:

Due to the many documented occurrences of the California tiger salamander in every direction near the Aramis project site, and 15 confirmed breeding sites within the dispersal area of the salamander and the Aramis project, it has always been clear that the California tiger salamander was highly likely to be present at the site." . . . "The detection of a juvenile California tiger salamander within 25 feet of and headed toward the site conclusively demonstrates its presence. This would be no surprise to anyone who has any understanding of the local conditions and understanding of the species ecology. I'd call it a no-brainer.

(Save North Livermore Valley Newsletter, 2/23/21, avail. at: <https://www.savenorthlivermorevalley.com/news-updates/>).

It should be noted that the analysis presented here primarily addresses California Tiger Salamanders and California Red-Legged Frogs but there are also numerous other species found on the project site, including numerous bird species as well as bats and there is potential habitat for the endangered San Joaquin Kit Fox. Other concerning issues raised in the comment letters include loss of habitat for the Western Bumblebee, accepted as a candidate for listing as endangered under the California Endangered Species Act (Ex. B, CDFW letter, p. 5), risks to CTS and CRLF from the water detention basins planned on the project site (CDFW letter, pp. 6-7, Swaim Biological Letter, p. 14, attached as Exhibit C.), lack of lake effect studies on water birds (Ex. C, Swaim Letter, p. 10), and inadequacy of Mitigation Measure BIO-2A to detect CTS during pre-construction surveys (CDFW letter p. 7, described as "highly inadequate"), to name only some.

The possibility of incidental take permits and compensatory mitigation are somewhat of a red herring. What the foregoing discussion demonstrates is that the project site is located in a diverse biological habitat area. In fact, the site is located among 6 conservation preserves, located within 1.5 miles in all directions. The project site represents an important connector to these preserves. It allows for habitat connectivity and serves as a wildlife linkage allowing for the movement of species between nature preserves within Alameda County and to and from the open space and protected lands of Contra Costa County. As noted in the East Alameda County Conservation Strategy, (EACCS) “Habitat connectivity and wildlife linkages are particularly important in the current setting of climate change; species need to disperse to find suitable habitat they can tolerate, which is fluctuating due to shifting climate patterns. Maintaining and preserving wildlife corridors is critical to the persistence and survival of many species.” (EACCS, Chapter 2, sec. 2.4.4, p. 2-76.) The EACCS also states, “A linkage that does not function properly can become a ‘death trap’ either by isolating individuals from a core population or by not delivering them to habitat that meets basic requirements for survival and reproduction.” (Id. at p. 2-77.) The intense disturbance of the land from the construction and operation of the Aramis project, should it be approved, will likely harm or kill the California tiger salamander and other threatened species, and could disrupt the wildlife linkages in the northern portion of North Livermore Valley.

We should be preserving habitat as much as possible, not destroying it, as this project will do. With the increasing pressure for housing in the County, and loss of habitat areas, we should not be running the risk of having to go out of the area to compensate for loss of habitat but should be making sure it remains available locally. The importance of habitat conservation in the fight against climate change has been recognized recently by California Governor Newsom who issued an executive order in October 2020 setting a goal to conserve 30 percent of the state’s land and coastal water by 2030 to fight species loss and ecosystem destruction. (<https://www.gov.ca.gov/2020/10/07/governor-newsom-launches-innovative-strategies-to-use-california-land-to-fight-climate-change-protect-biodiversity-and-boost-climate-resilience/>). Incidental take permits mean that individual animals and habitat will be lost. This should not be the outcome of a project that is intended to benefit the environment. There are other ways to achieve our energy goals as discussed elsewhere in this letter.

The resulting species and habitat losses from this project are yet another reason why a solar policy is needed before any industrial solar projects are approved. The County should be determining where the least conflict areas are so that solar is appropriately sited to minimize biological impacts.

Should this project be approved by the Supervisors, despite all the evidence to the contrary, it is clear that additional mitigation conditions must be made mandatory in the CUP, including specific ratios for compensatory mitigation as set forth in the East Alameda County Conservation Strategy as well as requirements for incidental take permits as specified by USFW and CDFW. This level of mitigation to be required should not be left open for negotiation. The Applicant is preparing to develop an industrial scale project on valuable habitat. They should be held to the highest standard of conservation management of the land. In addition, no building permits should be issued until a final habitat conservation plan is submitted to the County providing for compensatory habitat locally, and public comment is obtained. This should also be a condition of the CUP. Too much is at stake to leave any chance that threatened species and their habitat will be unnecessarily harmed.

6. Fire

The EIR for the project did not provide a sufficient analysis of the fire risks. The EIR only assessed fire risks based on long-term average wind speeds. (FEIR, p. 14.8-5--7.6 mph April to September, with 9.6 mph in June.) It downplayed the fire risks associated with climate change. A closer look at the wind data history tells a different story. The following table lists the average wind speeds and wind gusts by percentages of reporting days during the months of April through September for the years 2018 through 2020.

[CONTINUED ON NEXT PAGE]

Year	Month	Number of Days of Avg. Wind Speed in MPH (Percentage of days at that average wind speed in reporting period)				Total Avg. Wind Speed Reporting Days in Month	Avg. Wind Gust Speeds in MPH (Percentage of days in reporting period experiencing these speeds)		
		>10	>15	>20	>25		>15	>20	>25
2018	April	20 days (83%)	7 days (29%)	2 days (8%)	0	24	8 days (100%)	6 days (75%)	3 days (38%)
	May	25 (100%)	19 (76%)	6 (24%)	0	25	18 (100%)	15 (83%)	8 (44%)
	June	30 (100%)	17 (57%)	3 (10%)	0	30	20 (100%)	13 (65%)	6 (30%)
	July	31 (100%)	17 (55%)	0	0	30	15 (100%)	6 (40%)	0
	Aug	31 (100%)	17 (39%)	0	0	31	12 (100%)	7 (58%)	0
	Sept	23 (96%)	7 (29%)	1 (4%)	0	24	10 (100%)	4 (40%)	1 (10%)
2019	April	24 (100%)	11 (46%)	2 (8%)	1 (4%)	24	13 (100%)	6 (46%)	2 (15%)
	May	25 (100%)	20 (80%)	6 (24%)	0	25	15 (100%)	10 (67%)	5 (33%)
	June	24 (100%)	17 (71%)	2 (8%)	0	24	15 (100%)	7 (47%)	2 (13%)
	July	25 (100%)	21 (84%)	3 (12%)	0	25	15 (100%)	12 (80%)	2 (13%)
	Aug	25 (100%)	22 (88%)	12 (12%)	0	25	13 (100%)	9 (69%)	1 (8%)
	Sept	24 days (100%)	12 days (50%)	0	1 day (4%)	24	13 (100%)	7 (54%)	2 (15%)
2020	April	24 (100%)	9 (38%)	2 (8%)	0	24	11 (100%)	7 (64%)	1 (9%)
	May	25 (100%)	21 (84%)	8 (32%)	0	25	20 (100%)	12 (60%)	6 (30%)
	June	24 (100%)	20 (83%)	9 (38%)	0	24	18 (100%)	11 (61%)	7 (39%)
	July	31 (100%)	27 (87%)	3 (10%)	0	31	20 (100%)	13 (65%)	1 (5%)

Year	Month	Number of Days of Avg. Wind Speed in MPH (Percentage of days at that average wind speed in reporting period)				Total Avg. Wind Speed Reporting Days in Month	Avg. Wind Gust Speeds in MPH (Percentage of days in reporting period experiencing these speeds)		
		>10	>15	>20	>25		>15	>20	>25
	Aug	26 (100%)	19 (73%)	4 (4%)	0	26	12 (100%)	7 (58%)	2 (17%)
	Sept	21 (88%)	9 (38%)	2 (8%)	0	24	6 (100%)	4 (67%)	1 (17%)

(Source: <https://www.windalert.com/spot/978>, Wind Statistics, daylight data only.)

As the above table illustrates, the wind speeds vary from month to month and day to day. The averages over time aren't what illustrates the risk level; the risk is a function of the windiest days. The table also reveals that the averages relied on in the EIR are much lower than what one can expect to see at any given time during the months of April through September.

The analysis of risk doesn't end there, however. With the growing incidence of drought and increasing number of dry months, it is reasonable to conclude that wind trends in additional months should be considered. For example, October 22, 2020 saw a high wind speed of 17 mph with gusts recorded up to 30 mph. October 26, 2020 recorded a high wind speed of 23 mph with gusts up to 35 mph. November 26, 2020 saw a high wind speed of 24 mph with gusts up to 32 mph. (Source: <https://www.windalert.com/spot/978>.) These are not low numbers. The Bay Area, including Alameda County, experienced public safety power outages during October 2020. (See <https://abc7news.com/weather/bay-area-wind-updates-gusts-ease-fire-threat-remains/7385995/>.) The risk of fires associated with high winds is only getting worse.

Most recently, on January 18 of this year, Livermore experienced high winds of 28 mph with gusts up to 37 mph. On January 19, winds were clocked at a high of 29 mph with gusts up to 41 mph. The reality is that fires are becoming a year-round concern. As noted in the San Francisco Chronicle in an article published on January 21, 2021:

Sanchez [CalFire Battalion Chief of Communications] said the window for wildfires to break out and impact communities, and potentially become large, destructive fires, is widening. In just the first few weeks of 2021, Cal Fire reported 143 fires that have burned 861 acres so far. Last year during the same time frame, 48 fires resulted in 15 acres burned. The five-year average for the same interval is 62 fires and 44 acres burned.

(Hwang, "Is Fire Season Now a Year-Round Reality? Experts Weigh In On Extreme Bay Area Weather" available at: <https://www.sfchronicle.com/bayarea/article/Warm-days-and-historic-winds-Winter-fire-season-15886169.php>). This current data points up that the EIR analysis based on winds averaging 7-9 mph from April to September just isn't meaningful.

Furthermore, the EIR fails to specify the number of lithium-ion batteries that will be installed. 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. These batteries 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. This is not speculation. In April 2019, a fire destroyed a 2MW grid-connected lithium ion battery storage array in Arizona. The fire was determined to have been caused by a “cascading thermal runaway.” (Powers, “Utility Report on Energy Storage Battery Blast Cites Equipment Flaw” (7/29/20), available at: <https://www.enr.com/articles/49809-utility-report-on-energy-storage-battery-blast-cites-equipment-flaw>.) In September 2020, a container unit at a 20MW Battery Storage Facility in Liverpool caught on fire. As with the Aramis project, the facility did not have permanent staff on-site. (Energy Storage News, “Fire at 20MW UK battery storage plant in Liverpool” (9/16/20), available at: <https://www.energy-storage.news/news/fire-at-20mw-uk-battery-storage-plant-in-liverpool>.)

Battery storage units pose numerous risks. The most significant is thermal runaway (the cause of the Arizona fire mentioned above). Thermal runaway is a cycle in which excessive heat causes more heat. (AIG Industrial Energy Group, (Jan. 2018) “Lithium-Ion Battery Energy Storage Systems: the risks and how to manage them”, available at: <https://www.aig.co.uk/content/dam/aig/emea/united-kingdom/documents/Insights/battery-storage-systems-energy.pdf>, p. 5.) Another risk is the difficulty of fighting these fires:

Battery fires are often very intense and difficult to control. They can take days or even weeks to extinguish properly, and may seem fully extinguished when they are not.

They can also be very dangerous to fire fighters and other first responders because, in addition to the immediate fire and electricity risks, they may be dealing with toxic fumes, exposure to hazardous materials and building decontamination issues. Different types of batteries also react differently to fire, so firefighters must be knowledgeable about how they react and how to respond. Otherwise they may decide to contain the fire but leave it to burn itself out leading to the loss of the entire facility.

(Ibid.)

Another identified risk is the potential for failure of control systems. (Ibid.) This is a particular concern with the Aramis project given that, as in the Liverpool battery fire incident, there is no permanent staff on site, and systems are to be monitored remotely. If a control system fails it may not be evident prior to a fire igniting and spreading. And with the closest Alameda County fire stations 10 miles away, the possibility of a fire spreading before firefighters arrive is a legitimate issue.

A further risk is due to the sensitivity of Lithium Ion Batteries to mechanical damage and electrical transients:

Contrary to existing conventional battery technology, Li-ion batteries are very sensitive to mechanical damage and electrical surges. This type of damage can result in internal battery short circuits which lead to internal battery heating, battery explosions and fires. The loss of an individual battery can rapidly cascade to surrounding batteries, resulting in a larger scale fire.

(Ibid.)

All of these risks present a real threat in this case in which the battery complex will be unstaffed and will be surrounded by dry fuel material. Moreover, the batteries are to connect to the PG&E Cayetano substation via overhead electrical wires in order to avoid damage to Cayetano Creek.

Thus, there is a risk of fires spreading to the electrical wires from a failed battery system and to the surrounding solar panels. Even without a battery problem, the risk of high winds, which has not been properly assessed in the EIR, creates a possibility of downed wires which could also start fires in the vicinity of the plant. This in turn could lead to fires spreading onto the solar cells and releasing toxic chemicals into the soil and air. It could also lead to fires threatening nearby residential areas. Not knowing how the battery complex will be configured affects the ability to gauge the risk from fires on-site and to surrounding areas during high-wind events.

The EIR concludes the risk is minimal due to fire safety systems already installed in the battery system. As stated, these systems are not infallible, and cannot guarantee fire safety. In fact, the CUP fails to include conditions to ensure that these systems are properly maintained and adequately supervised or that fire fighters will have the proper training to fight these fires should one occur. These points may have been mentioned in the EIR but they have not been required as a condition of approval. Without the inclusion of specific fire safety prerequisites in the CUP, the BZA finding that the project doesn't represent a material risk to health and safety is unsupported. Clearly, the risk exists and assurances that there will be fire suppression systems in itself does not, without more, demonstrate safety. Moreover, with the high risk of fires due to wind-related events, the fact that the battery units include fire suppression technology, does not mitigate the possibility that winds could trigger fires that would spread to the surrounding areas, putting wildlife and residents at risk.

The EIR takes a lackadaisical approach to the entire analysis of fire potential inherent in the Aramis project, inappropriately understating and insufficiently evaluating the risks. The project approval should be overturned on this basis. In the alternative, the Applicant should at minimum, be required to underground all power lines in the project to reduce the risk of fire caused by downed wires.

7. Cumulative Impacts

The FEIR cumulative impacts analysis is insufficient in that it fails to consider other projects that may be built in the North Livermore area and understates the combined impacts from the surrounding projects, the 59 acre Sunwalker Community Solar Farm Project, and the Oasis Cannabis Grow Facility, a 92.5 acre project. 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 identification of only two projects within the vicinity of the project site for purposes of the EIR's cumulative impacts analyses was insufficient. Alameda County is in the process of developing a solar policy. This policy is expected to identify appropriate sites for solar facilities and may put other limits on the production of solar energy in Eastern Alameda County. In the absence of a policy, it is impossible to effectively analyze the cumulative impacts of the proposed project. Nevertheless, it is reasonable to expect

the applicant to have exercised its due diligence in identifying other feasible sites for solar facilities in the area and have discussed those sites in analyzing cumulative impacts.

At minimum, it would have been possible to discuss cumulative impacts of broader scale solar development on aesthetics, wildlife stewardship, and land use. For example, the EIR repeatedly states that the proposed project site is not a high quality forage site for animals and that there is higher quality foraging on surrounding sites. If North Livermore continues to be developed with solar facilities, what will the cumulative impact be on the availability of high quality foraging areas? The prospect of additional solar facilities coming into the area is not speculative. The October 19, 2020 staff report prepared for the Board of Supervisors Transportation and Planning Committee noted that the planning department has three active solar project applications (presumably this includes the proposed project and the Livermore Community Solar Farm) with inquiries for more having been made.

(http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_10_19_20/GENERAL%20ADMINISTRATION/Regular%20Calendar/Draft_solar_policies_AC_ECAP_10_19_20.pdf, p. 2.)

A reasonable follow-up with the Planning Department could have provided additional information about possible projects, including the third active application mentioned in the staff report, and others that may be sited in North Livermore which would greatly enhance the cumulative impacts analysis presented in the EIR. Approval of the current project will set a precedent which will justify more such projects in the future. The public deserves to know what the realistic potential for solar development is in North Livermore and how this could affect the environment at build-out in order to fully understand what the approval of the proposed project means for North Livermore.

The EIR has acknowledged the significant cumulative impacts at an aesthetic level from the identified projects. This goes hand in hand with the overall change in the character of the land use in the area which will be cumulatively experienced if all these projects are built. The project would bring 267,000 solar panels onto LPA parcels. Adding the 59 acres of the Livermore Community Solar Energy Farm to the area, located just across the street from the proposed project, creates a massive solar energy “district” in North Livermore which clearly is a fundamental change to North Livermore land uses as contemplated in the ECAP as amended by Measure D, and drastically changes the agricultural character of the area. When you add in the 34,000+ square foot greenhouse building and the 6480 square foot processing building for the Oasis facility, you have an intensely developed area which profoundly reshapes the open grazing agricultural region. This represents a significant cumulative impact that cannot be mitigated.

The BZA adopted a statement of overriding considerations to support the project despite this significant impact. As discussed above, these considerations provide an inadequate justification for adopting the project. The combined projects will result in a significant and unavoidable loss of the views and rural character of North Livermore which cannot be mitigated. Important environmental values should not be sacrificed for a commercial operation in North Livermore.

On top of these considerations, the cumulative impacts analyses are incomplete for other reasons. The cumulative impact of the combined projects on foraging habitat is not addressed. The premise that higher quality habitat is available in other areas of North Livermore than the project site falls apart when projects are considered cumulatively. How much habitat can be disrupted by development before there is no habitat left for animals to use? As explained in the Swaim Biological Letter:

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www.fov.org

To state that a project will not result in cumulative impacts because the habitat is of "low quality" is not a defensible statement given the recognition by multiple regional plans that the habitat within the project area occurs on lands with high ecological integrity and lands that are important to facilitate the movement of multiple species and maintain ecological processes and conserve biodiversity within the region.

As stated above, the project does not accurately describe take of listed species, temporary and permanent impacts, or provide enforceable measures that require the project impacts to be fully mitigated in compliance with state and federal endangered species acts. Lacking these enforceable measures, the project cannot be considered less than significant and the DEIR is not adequate to meet CEQA standards.

(Swaim Letter, p. 16.)

The EIR does not provide adequate mitigation for the biological impacts of the project. How much more this is so when the adjacent Sunwalker Project is added into the mix along with a cannabis-growing and processing operation, which, though agricultural, represents a difference in the use and impacts on the land than the traditional grazing and haying operations.

The cumulative impacts analysis is therefore inadequate to support the certification of the EIR.

8. Project Alternatives

The EIR analysis of project alternatives was incomplete and it should not have been certified. The EIR failed to consider a reasonable feasible alternative to the project in the form of a distributed energy alternative. The applicant rejected consideration of this alternative as infeasible without documentation. In fact, there is ample information indicating that there are abundant opportunities for distributed energy generation in Alameda County.

This conclusion is borne out by the loss of the Stanley property as discussed earlier. With the loss of the 100 acres of the Stanley property which included a sizable area for solar energy production, as well as the 22 acres of Resource Management land excluded from the CUP, the project has become significantly smaller than intended. Thus, the conditions affecting the alternatives analysis have now changed.

East Bay Community Energy (EBCE) commissioned a solar siting survey for distributed energy generation within Alameda County. The study was performed by Climate Coalition and "identified over 650 megawatts (MW) of technical solar siting potential on over 250 discrete sites — enough to power 165,000 homes. Each site identified has the potential to host at least 1 MW on rooftops, parking lots, and parking structures located at the site." (Clean Coalition, "Solar Siting Survey: East Bay Community Energy", available at: <https://clean-coalition.org/solar-siting-survey-east-bay-community-energy/>, *emphasis added*). This finding did not include siting for smaller solar projects with minimum project sizes of 500 kW or 100 kW which would have likely uncovered up to 2 gigawatts of solar siting potential. (Ibid.) The study pointed out the benefits of distributed generation:

Developing the local solar projects identified in this survey can help create a stronger, more resilient grid in Alameda County. By pairing distributed solar with other distributed energy resources, such as energy storage, demand response, and electric vehicle charging infrastructure, the County can establish Community

Microgrids and Solar Emergency Microgrids. These innovative configurations can be designed to provide indefinite renewables-driven backup power to critical facilities in the event of regional power outages. With the addition of energy storage combined with solar, many of the large solar sites identified in this survey are prime candidates for these applications.

Section 15126.6(a) of the State CEQA Guidelines state that:

An EIR shall describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.

The “rule of reason” supports a conclusion that a distributed energy alternative should have been more thoroughly analyzed. The predominant reasons for rejecting analysis of the alternative is that it would be too expensive relative to the cost of utility-scale solar and because the applicant doesn’t have control over the potential sites, and it couldn’t achieve the project objective of generating 100 MW of solar power. (See FEIR, Vol. 1, pp. 147-148, Response to Comment 141-23.). These arguments may explain why the applicant does not want to pursue these options but it doesn’t mean it is an unreasonable and infeasible alternative for inclusion in the EIR. More and more solar can be seen going up on buildings and parking lots everywhere. It is obviously not so expensive as to be infeasible. Infeasible is not the same as expensive. Moreover, the project objective of 100 MW of solar power appears to no longer be applicable with the exclusion of the Resource Management land and the loss of the Stanley Property, which calls into question the applicant’s stated reasons.

The EIR is a guide for the public and decision makers to understand the environmental impacts of a project and to weigh those impacts before approving it. The staff and BZA have only made this an issue of the applicant’s preferences. The community and its representatives need to be informed about alternatives that could offset environmental damage. In this case, we have significant aesthetic impacts, as well as significant land use considerations such as allowing project placement on Water Management land, not to mention the habitat issues which have not been adequately mitigated by the applicant. A distributed generation alternative could have eliminated or reduced these impacts. Given the changed circumstances, the applicant should be required to evaluate a distributed generation alternative to provide a basis for assessing the best project under all the circumstances.

The Applicant’s desire to develop a 100 MW project, assuming it is still possible, and its claim that a distributed generation option is infeasible should not control. As discussed above, the Applicant has not demonstrated a particular need for 100 MW of energy from this project. The 100 MW figure seemingly is derived from the amount of land available and the profit to be made. The applicant could achieve the scale of 100 MW of energy output by combining a distributed generation alternative with a scaled-back version

of the project. As a policy matter, the Board of Supervisors could conclude that the environmental values of protecting the agricultural open space character of the North Livermore area justifies requiring all or a portion of this project or all solar projects, for that matter, to include a distributed generation element even if it is more expensive.

In this case, the Reduced Footprint Alternative (which was analyzed in the EIR and rejected) combined with a distributed generation alternative would have analyzed the feasibility of achieving the project objective of 100 megawatts with fewer site-specific environmental impacts. This is not the same as a completely distributed generation alternative. The assessment in the EIR that distributed generation is infeasible cannot be automatically extended to a hybrid model. Under this analysis, the Reduced Footprint Alternative could provide for 75 megawatts of power while the balance could be obtained on distributed generation sites either through Intersect Power or through other power producers. This would satisfy the goal of 100 megawatts of power in total towards meeting state renewable targets. It would also allow for the exclusion of the sensitive Water Management area from the project site. The EIR failed to include such an analysis, rejecting distributed generation generally as too expensive. The hybrid project option should have been more thoroughly analyzed in terms of generating only the additional 25 MW lost under the Reduced Footprint Alternative which may have provided a feasible alternative in weighing the competing environmental values at stake. At minimum, this analysis should have been made in the EIR.

Thus, the EIR is deficient in its alternatives analysis for failure to consider a distributed generation alternative to the project by itself or as part of the Reduced Footprint Alternative. The certification should be overturned.

9. Water Usage

The Aramis project is planning to use local groundwater for all or part of its operations. The estimate provided in the EIR is that 12.85 acre feet of water will be needed annually. This is equivalent to 4.1 million gallons per year. This estimate is based on the assumption that the solar panels will only need washing once per year. This assumption is unsupported and raises the issue that the water use estimates have been significantly understated.

The project site is located in an area of high winds and high dust, as those who live here know well. It is located in a rural agricultural area with active ranching and hay production. It is near a major interstate freeway (I-580) which experiences heavy commuter traffic. It is also a connector for Interstate Highway 5 used by large diesel semi-trucks throughout the day. These uses generate large particulate matter which can travel in the air and settle on the solar panels. (See generally, Bay Area Air Quality Management District, Staff Report, Particulate Matter, Proposed New Regulation 6: Common Definitions and Test Methods, pp. 3-4 (June 2018) available at https://www.baaqmd.gov/~media/dotgov/files/rules/archive-2018-regulation-6/bundled-documents/20180801_50_sr_0600-pdf.pdf?la=zh-tw). The air quality conditions in the valley are getting worse not better. The Bay Area has seen increasing numbers of Spare the Air Days, indicating unhealthy air quality, over the past several years, with 26 days in 2019 and 52 in 2020. (Spare the Air, Data and Records, available at: <https://www.sparetheair.org/understanding-air-quality/data-and-records/ozone-data>). This increase is primarily attributable to large wildfires which have been increasingly prevalent during the summer and fall months. Despite these conditions, the Aramis EIR assumed that the solar panels will only need washing once per year, and estimated water use based on this

erroneous assumption. 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, dust, air pollution from cars and fires, 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. Thus, water usage assumptions in the EIR 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.

Moreover, groundwater is a limited resource. It should not be available for what is primarily a commercial use, especially one with a potential 50-year lifespan. Clearly, the applicant would prefer to source as much water as possible on-site to save money versus importing water. Groundwater resources should be available only for users whose primary business is agriculture.. This policy would be consistent with the ECAP which envisions North Livermore as an agricultural zone. At minimum the conditions of the CUP should be modified to restrict access to groundwater for the project.

10. Conclusion

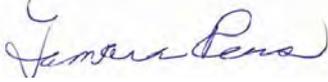
The foregoing discussion confirms that the EIR and CUP approving the Aramis project are deficient in numerous ways:

- The project is in conflict with the requirements and intent of Measure D and numerous ECAP policies.
- The applicant has not proven a public need for this project.
- The project will result in the inevitable deaths of threatened species and loss of habitat which should instead be preserved for the benefit of biodiversity and connectivity.
- The project EIR and CUP as currently written do not provide adequate mitigation for loss of habitat for numerous species.
- The project EIR failed to adequately consider feasible alternatives especially in light of changed conditions due to the loss of the Stanley property.
- The project improperly includes Water Management lands which should be excluded from the project site, or a conservation easement should be required as a condition of project approval.
- The project EIR failed to adequately address the cumulative impacts of the project by understating the combined impacts from the Sunwalker Project and the Oasis Grow Facility and by failing to consider the potential for other solar development that might reasonably be developed in the vicinity.
- The project EIR failed to appropriately assess the fire risk due to high winds and from the lithium ion storage batteries included in the project, and the CUP failed to mandate proper fire safety requirements based on the unique risks presented by the solar project as designed.
- The EIR water analysis underestimates the amount of water to be used by the project. The CUP should restrict the applicant from accessing groundwater for construction or operational use, and the Board of Supervisors should limit groundwater use to agricultural users only.

It is incumbent upon the Board of Supervisors to act responsibly in deciding the appeals of the Aramis project approval. This is not the time to fall into the overly simplistic mindset that because California has renewable energy goals, all solar project applications must be approved. It seems that Staff, however well-intentioned, has bent over backwards to justify this project and recommend minimal conditions on its

construction and operation. The fact is that this project doesn't pass muster as a matter of law or as approved. The project should be rejected. Environmental values must not be tossed aside in the process of addressing climate change. Alameda County has time to develop a comprehensive solar policy that will guide this process in an environmentally responsible way. At minimum, proper conditions to protect species through incidental take permits and compensatory mitigation, offset the loss of Water Management land, ensure fire safety, and protect the groundwater for agricultural use should be imposed, and the agricultural planting requirements imposed by the BZA should be upheld.

Sincerely,



Tamara Reus
President

Enc.

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