



January 19, 2021

Heather Littlejohn, Deputy County Counsel
Office of the County Counsel
1221 Oak Street, Suite 450 | Oakland, California 94612
heather.littlejohn@acgov.org

VIA EMAIL AND THE US POSTAL SERVICE

Re: New Intersect CUP and Environmental Review

Dear Heather,

This firm represents Save North Livermore Valley (“SNLV”), a coalition of hundreds of landowners, ranchers, farmers, environmentalists and proponents of good government. As you are aware, SNLV appealed the East County Board of Zoning Adjustments’ (“EBZA”) approval of the Aramis project.

We are informed that 38 acres have been eliminated from the project described in the May 4, 2020 Notice of Preparation, Nov. 24, 2020 Project staff report, and final project EIR. Meanwhile, the project applicant, Intersect Power, specifically tied the project’s acreage to its economic viability and benefits (more acres, more benefits). We know from the record that the EBZA balanced those benefits against the project’s unavoidable environmental impacts when deciding whether to approve the project. The EBZA’s balancing test – and therefore the EBZA approval – has been vitiated by the acreage reduction.

Given the above, it would be inappropriate to present the Board of Supervisors with, in effect, a new project – reduced by 38 acres and the benefits associated with those acres – and suggest that the Supervisors are evaluating an approved project that is on appeal. A project reduced by 38 acres was never, in fact, evaluated or approved by the EBZA. Accordingly, we strongly urge you to advise the Alameda Community Development Department that it must require Intersect to re-submit a conditional use application (“CUP”) for a new project if Intersect wishes to move forward.

Specifically related to CEQA, in a “statement of overriding considerations” (“SOC”) the EBZA determined that the project’s unavoidable significant environmental effects were outweighed by economic, legal, social, and other benefits tied to the Project’s acreage. As a result, the EBZA must review any new project minus the 38 acres to determine whether the new project’s environmental effects are similarly outweighed by its benefits. If so, the BZA must issue a new SOC. The answer must be determined by an EBZA review of a new project and its purported benefits and environmental effects. The Supervisors cannot review the EBZA’s previous determination of a project that no longer exists.

Finally, if Intersect wishes to move forward with a new project, the County must require a new CUP application in which Intersect provides evidence supporting key assertions about control of project parcels and the economic viability of any project Intersect might propose. As reported to you on Jan. 11, 2021 by the attorney for Leland Richard Stanley, Intersect improperly induced Mr. Stanley to sign a CUP application, and Intersect never had a lease for Mr. Stanley’s 38 acres. One obvious question is whether Intersect has authorization from the owners of the other project parcels or agreements to possess those parcels, contingent or otherwise. Thus far, Intersect has provided no such proof.

Impact of Fewer Acres on Project Economic Viability and “Community Enhancements”

Intersect has repeatedly claimed (both publicly and privately) that the project needed to be in the range of 400 acres in order to be economically viable, including to “achieve economies of scale to generate, store, and transmit 100 MW of affordable, local, wholesale solar electricity to Bay Area residents” and to “help Bay Area Community Choice Aggregators in fulfilling their local renewable energy procurement goals” (quotes from Nov. 24, 2020 staff report).

According to Intersect, loss of acreage (and MWs) is equally important to purported “community enhancements” (“enhancements”) that Intersect representatives have said may accompany the project. That’s because Intersect has directly tied the availability of the enhancements to the Project acreage (more acres, more benefits).

According to Intersect and the Nov. 24 staff report, the enhancements may include identifying land for a part of a public hiking trail, planting and maintaining plants favored by honeybees, and allowing for periodic sheep grazing on the project site. But, the EBZA project approval did not make the enhancements mandatory. The enhancements do not appear in the project’s conditions of approval and Intersect has no legal obligation whatsoever to provide them.

Based on previous Intersect statements, any new project with fewer acres might not be economically viable and would see its enhancements reduced. In an April 22 email to Andrew Young and Albert Lopez (obtained through a public records act request and attached herein), Intersect representative Marisa Mitchell expresses concern about losing 45 acres due staff’s conclusion that the project was incompatible with General Plan designations. In that context, she raised both the possibility that the Project would not be built and the unambiguous loss of enhancements.

“We proposed...measures as enhancements to make the development in and around Cayetano Creek more compatible. We proposed projects with these enhancements with the expectation that we might lose a few acres...but we are completely surprised by losing up to 45 acres of developable land. If the Department is now modifying our proposal to include far fewer acres for development, the project is far less economic (we have to buy more land and we will get to use less of it, and we will have significantly reduced economies of scale because we cannot fit 100 MW on so few acres). Some of these enhancements may no longer be possible to accommodate, and the project may not be economically viable.... [i]t’s very likely this project will not be built if we lose 45 acres. Either way, by eroding the project economics, our budget for community enhancements shrinks dramatically” (emphasis added).

Intersect has also made its concerns about reduced acreage clear in public documents. On December 4, Intersect sent a letter to the Board of Supervisors appealing its own project approval by repeating similar claims about a reduction of acreage (at that time, loss of only 8 acres due to increased setback) and fewer MW and community enhancements (see attached).

“The additional setbacks of 100 feet from North Livermore Avenue and Manning Road public rights of way, plus 80 feet from the project’s western project boundary, would eliminate at least 8 acres of an already highly constrained project footprint (emphasis added). With these additional setbacks, the project cannot meet its full potential to generate, store, and dispatch 100 MW of clean power to local residents. The Board of Zoning Adjustments approved the Resource Management Avoidance Alternative to balance the achievement of the project’s full generation potential while minimizing significant environmental impacts. However, the new condition requiring setbacks significantly erodes the benefits embodied by the project’s full generation potential.”

Intersect's Dubious Statements

Following the lease termination for the 38 acres owned by Mr. Stanley, and accusations from Mr. Stanley's attorney that Intersect improperly induced Mr. Stanley into signing a CUP application, Intersect published a statement contradicting its previous claims about lost acreage negatively impacting the project.

"While we were disappointed, we respect the Stanley family's decision to withdraw this property from the project....In fact, the parties have always contemplated the exclusion of this parcel. The inclusion of the property... gave optionality for both parties to possibly include it in the final project footprint, and offered the opportunity for the County to assess the largest possible project under CEQA."

The statement above, in addition to other questionable claims that Intersect has made during the project review process, cast doubt over Intersect, its application materials, and other representations. Requiring Intersect to submit a new application would give the County and the public a clean slate by which to evaluate Intersect. Allowing an appeal of the previous project has significant problems noted above. It also would perpetuate an application tainted by Intersect's questionable information and claims.

In sum,

- The previous Aramis project has lost significant acreage.
- Intersect stated that acreage reduction will harm the project's bottom line, reduce its environmental value, and shrink its enhancements.
- The BZA used a statement of overriding considerations to evaluate the previous project, which concluded that the project's unavoidable significant environmental effects were outweighed by economic, and other benefits tied to the Project's acreage (more acres, more benefits).
- Based on Intersect's own statements, any new, reduced project will include fewer benefits. As a result, a new project must be evaluated by the BZA to determine whether the new project's reduced benefits outweigh its expected environmental impacts.

Based on the above, we strongly urge you to advise the Alameda Community Development Department that it must require Intersect to re-submit a conditional use application ("CUP") for a new project, if Intersect wishes to move forward.

Respectfully,



Robert Selna
Representing Save North Livermore Valley

cc: Alameda County Board of Supervisors

paragraph)?

THANKS

ANDY

WORK CELL PHONE: 510-861-4557*

NOTE: Due to the ongoing shelter-in-place order by the state government, County office staffing will be limited, subject to further notice. However, most staff will continue to receive e-mail and will respond as regularly as possible.

CONFIDENTIALITY NOTICE: This e-mail message including attachments, if any, is intended only for the person(s) or entity(ies) to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

* Please leave a message and I will try to respond at my earliest opportunity.

From: Marisa Mitchell <marisa@intersectpower.com>

Sent: Thursday, April 23, 2020 10:23 AM

To: Young, Andrew, CDA <andrew.young@acgov.org>

Cc: Lopez, Albert, CDA <Albert.Lopez@acgov.org>; Seth Israel <seth@intersectpower.com>; Becca Perata <becca@voxpathulpr.net>; Jensen, Bruce, CDA <bruce.jensen@acgov.org>

Subject: Re: Aramis Solar project - PLN2018-00117

All,

Where do we stand with resolution of this issue and publication of the NOP? Let me know if a brief call or video meeting would be helpful.

Marisa Mitchell

Principal

INTERSECT POWER

415.846.0730

(e) marisa@intersectpower.com

www.linkedin.com/in/marisa-mitchell-ab320a10

On Wed, Apr 22, 2020 at 9:51 AM Marisa Mitchell <marisa@intersectpower.com> wrote:

Thanks, Andy, Albert, and Bruce, for your hard work and dedication to getting this NOP in shape. The NOP looks good from my perspective, except for two points:

1. The "proposed Project", as you've described it herein is *not* the Applicant's proposal from our CUP application. We proposed continued agriculture, honeybee forage production, hiking trail dedication, and other high-variable-cost measures as enhancements to make development in and around Cayetano Creek more compatible. We proposed the project with these enhancements with the expectation that we might lose a few acres at the north side due to the RM designation, but we were completely surprised by losing up to 45 acres of developable land. If the Department is now modifying our proposal to include far fewer acres for development, the project is far less economic (we have to buy more land and we will get to use less of it, and we will have significantly reduced economies of scale because we cannot fit 100 MW on so few acres). Some of these enhancements may no longer be possible to accommodate, and the project may not be economically viable. We are running economic models now to determine potential viability at the prices we've proposed to CPSF and EBCE, but it's very likely this project will not be built if we lose 45 acres. Either way, by eroding the project economics, our budget for community enhancements shrinks dramatically. Therefore, preserving the option for the EIR to consider development within the RM and WM designations is imperative, and I was reassured by our last video conversation that we *would* be given the opportunity to make our case, which leads me to my next point...

2. The following text makes a conclusion that would be best reserved for the EIR, since you and Albert have previously stated that the EIR will consider an alternative with panels and other infrastructure within the RM and WM designations, and it will be the Applicant's job to show that the use is compatible as mitigated through floodplain management measures, biological resources protection, enhancement measures, etc.

December 4, 2020

VIA ELECTRONIC MAIL

Clerk, Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, California 94612
Attention: Anika Campbell-Belton
Email: CBS@acgov.org

Re: Applicant Appeal of Board of Zoning Adjustment Condition of Approval; Aramis Solar Project; Conditional Use Permit PLN2018-00117

To Whom It May Concern:

This is an addendum to an appeal dated December 2, 2020 by the applicant, IP Aramis, LLC, additionally appealing another condition approved by the Board of Zoning Adjustment for Conditional Use Permit PLN2018-0017, which authorized development of a solar facility at 1815 Manning Road and 4400 North Livermore Avenue. This appeal is filed pursuant to Alameda County Code Section 17.54.670.

Upon receipt of Resolution No. Z-20-23 provided on December 3, and upon review of the final text of the conditions of approval added to the project's Conditional Use Permit by the Board of Zoning Adjustments during its November 24th virtual public webinar meeting, the condition requiring increased setbacks and agricultural plantings are infeasible. This addendum serves to appeal the conditions, copied below:

“WHEREAS, based on facts in the record regarding the significant effects of the project on scenic qualities and preservation of agriculture as a quality of open space, the Board determined that [sic] an additional condition of approval is necessary and proper providing for increased setbacks of 100 feet from the public rights-of-way of North Livermore Avenue and Manning and Hartman Roads, and 80 feet from the western project boundary, within which, instead of decorative trees and landscaping the project developer shall plant agricultural crops such as olive trees and/or grape vines to the extent that such species are native to California, drought-resistant, avoid excessive irrigation requirements and maintain the prevailing visual and and [sic] agricultural character...”

Detailed rationales for the infeasibility of each component of this condition are enumerated below.

1. Newly required setbacks eliminate 8 acres and 2 MW of the project's capacity

The additional setbacks of 100 feet from North Livermore Avenue and Manning Road public rights of way, plus 80 feet from the project's western project boundary, would eliminate at least 8 acres of an already highly constrained project footprint. With these additional setbacks, the project cannot meet its full potential to generate, store, and dispatch 100 MW of clean power to local residents. The Board of Zoning Adjustments approved the Resource Management Avoidance Alternative to balance the achievement of the project's full generation potential while minimizing significant environmental impacts. However, the new condition requiring setbacks significantly erodes the benefits embodied by the project's full generation potential.

The project, as proposed, already includes minimum setbacks of 50 feet from the public rights of way to the solar panels, providing ample allowance to accommodate 20 feet of open space, 20 feet of planting, a fence, and a 10-foot internal access road setback. An additional 50 feet offers no supplemental benefit to the public, but rather detracts from the public benefits embodied by the project's full renewable energy generation potential.

2. Newly required agricultural plantings on the western project boundary offer no aesthetic benefit to the public

The western project boundary is adjacent to a combination of grazing land and agricultural fields and screening is not appropriate. The O'Brien property is located west of the western boundary of the northernmost portion of the project. However, because the O'Brien property is located at an elevated position relative to the approved solar field, landscaping installed at the lower elevation project boundary will offer no screening benefits to the O'Briens. The applicant has privately offered to fund and install landscaping at the O'Brien property, which would achieve complete screening of the facility from their property.

Furthermore, the applicant has proposed to dedicate land for a hiking trail to the public along the western project boundary of the primary project parcel. The hiking trail will offer views of the solar panels, and we envision STEM educational signage for students of renewable energy, ecology, and climate. The new requirement to plant agricultural crops on the western project boundary would eliminate the educational benefit of the hiking trail by attempting to screen views of the project facility.

3. The applicant has committed to plant pollinator-enhancing landscaping, which can no longer be achieved

Working closely with the Alameda County Beekeepers Association, the Natural Resources Defense Council, and the Audubon Society, the applicant has long proposed to ensure all landscape plantings are pollinator enhancing, to provide habitat for both native and managed pollinators, which are essential to both our natural and agricultural ecosystems in California. The

applicant would like to fulfill this commitment, but the new condition requiring agricultural plantings would preclude our ability to do so.

4. Agricultural crops provide insufficient visual screening of the solar facility compared with ornamental landscaping

Grapes are deciduous and offer significant foliage in the spring and summer months but lose their leaves for 5-6 months of the year, offering poor screening capabilities. Olives are slow growing, taking around 10 years to mature, and at maturity offer little foliage at ground level, providing poor screening for a solar facility. Other permanent agricultural crops like fruit trees are also deciduous, losing their foliage for significant portions of the year.

Evergreen ornamental landscaping offers maximum visual screening benefits while also including a wide range of drought tolerant options from which to select. The project's proposed landscaping plan (see Final EIR Appendix J) and proposed plant list were carefully selected by professional landscape architects familiar with the soil and water constraints of the area to ensure maximum screening, enhanced aesthetics, and optimal survivability.

5. Agricultural crops require additional irrigation water compared with drought-tolerant ornamental landscaping plants

The soils at the project site are unsuitable for unirrigated agricultural crops. The project's proposed landscaping plan and plant list were carefully selected to require only minimal irrigation to become established in the first three years, after which time they would require no additional irrigation water. Agricultural crops on this particular site are doomed to failure because the soils lack the capability to support permanent dryland crops. Planting agricultural crops therefore negatively impacts the project's ability to conserve water.

6. Agricultural crops often rely on pesticide use for survival, and the applicant has committed to no pesticide use

In addition to irrigation water, most agricultural crops require the use of pesticides to ensure they do not become diseased. Permanent agricultural crops subjected to drought conditions tend to suffer from increased disease compared with well irrigated crops. Because the applicant has long committed to not use pesticides to protect and enhance wildlife and honeybee habitat, agricultural plantings are not appropriate at the project site.

7. California native agricultural crops are inappropriate for this use

Agricultural crops have been domesticated from their wild ancestors, which largely originate from Europe and Asia. There are few species that could be considered native California agricultural crops, but acorns, prickly pear, and pine nuts top the list. Oaks, cacti, and pines are inappropriate



9450 SW Gemini Drive, PMB #68743
Beaverton, OR 97008-7105

for screening a solar facility from public views, as they offer insufficient foliage between ground level up to 15 feet. Grapes and olives are both Middle East natives.

Sincerely,

IP ARAMIS, LLC,
a Delaware limited liability company

By: IP Pipeline Portfolio Holdco, LLC,
a Delaware limited liability company,
its sole member

By: IP Portfolio I, LLC
a Delaware limited liability company,
its sole member

By: IP Renewable Energy Holdings LLC,
a Delaware limited liability company
its sole member

By: 

Name: Luke Dunnington

Title: Vice President

cc: Chris Bazar, Community Development Director, chris.bazar@acgov.org
Albert Lopez, Planning Director, Albert.Lopez@acgov.org
Andrew Young, Senior Planner, andrew.young@acgov.org