

**FINDINGS IN SUPPORT OF DECISION TO DENY COUNTY FILE #CDRZ21-03259 / CDLP21-02010; PETER BOBRO, E-GROUP SF, LLC (APPLICANT) MARINA MARTINEZ (OWNER)**

The proposed project includes rezoning the subject property, presently zoned General Agricultural (A-2), for inclusion within the Solar Energy Generation (-SG) Combining District, and a Land Use Permit to establish a commercial solar energy generation facility on the subject property.

The County Board of Supervisors denies the proposed Rezoning and Land Use Permit application on the following grounds and finds as follows:

**FINDINGS:**

- 1. The proposed change in land use district is not consistent with the General Plan** because it would not comply with the policies of the Land Use, Conservation, and Open Space elements listed below.

- *Land Use Policy #3-12: Preservation and buffering of agricultural land shall be encouraged as it is critical to maintaining a healthy and competitive agricultural economy and assuring a balance of land uses. Preservation and conservation of open space, wetlands, parks, hillsides and ridgelines should be encouraged as it is critical to preserve the continued availability of unique habitats for wildlife and plants, protect unique scenery, and provide a wide range of recreational opportunities.*
  - *Implementation Measure #3-t: 3-t. Enforce the restrictions on open hillsides and significant ridgelines in the Open Space Element and protect hillsides with a grade of 26 percent or greater through implementing zoning and other appropriate measures and actions.*

Approximately 50 percent of the subject property exceeds 26 percent in slope. The portions of the property exceeding 26 percent in slope primarily correspond to the proposed area of solar development. Project plans indicate that near the highest elevations where solar panels are proposed (between 600' and 700' contours) the project site has slopes up to 55% grade.

- *Land Use Policy #3-70: Southeastern Contra Costa County contains a range of natural and cultural resources which warrant special recognition in the General Plan. Mineral and meteorological resources exist which have the potential to be developed as additional uses within this essentially agricultural area. Multiple uses of the land which assist in its long-term protection as an agricultural area are to be encouraged. Policies regarding these specific natural and cultural resources are briefly summarized below. However, a more detailed discussion and additional policies should be referred to in other elements of this General Plan, separated into the following topics:*

- ◇ *East Contra Costa County (Byron) Airport (Transportation and Circulation*

*Element);*

◊ *General circulation uses (Transportation and Circulation Element);*

◊ *Los Vaqueros Reservoir (Public Facilities/Services Element);* ◊ *Existing and planned recreation uses in the area (Public Facilities/ Services Element and Open Space Element);*

◊ *Wind turbine development or wind energy "farms" (Conservation Element);* ◊ *Mineral resource areas (Conservation Element);*

◊ *Vegetation and wildlife resources (Conservation Element); and*

◊ *Historical, cultural, and archeological resources (Open Space Element).*

*The southeastern portion of the county is blessed with archaeological and wildlife resources which are unique and worthy of long-term protection and preservation. While in certain portions of the planning area multiple uses of the land may conflict with the need for environmental protection and enhancement, there are other areas where multiple uses may reinforce preservation. 3-55 3. Land Use Element As a practical matter, it should be recognized that historically it has been the agriculturalists that have protected the unique environmental resources of the area. Their continued efforts in this regard are critical to the long-range preservation of the area's resources.*

This policy, combined with area analysis performed in the East Contra Costa County HCP/NCCP, supports staff's position that the project site/vicinity are areas of ecological significance. Thus, conservation policies 8-6 through 8-9 and 8-13 through 8-15 are especially relevant in considering the proposed discretionary action.

- *Policy 8-6: Significant trees, natural vegetation, and wildlife populations generally shall be preserved.*

The subject property and its vicinity predominantly consist of undeveloped or sparsely developed grasslands. These grasslands are potential habitat for several special status plant and animal species known to occur in this area of the County. The proposed project would introduce several thousand solar panels over a majority of the project site and would detract from the natural land cover that is characteristic of the area.

- *Policy 8-7: Important wildlife habitats which would be disturbed by major development shall be preserved, and corridors for wildlife migration between undeveloped lands shall be retained.*

The herbaceous grasslands that are characteristic of the area are of high habitat value to several special status species known to occur in the area. The undeveloped and sparsely developed nature of the surrounding grasslands provide the opportunity for wildlife corridors for migration between undeveloped lands. The introduction of manmade structures over a majority of the project site would affect established habitat and wildlife corridors between undeveloped lands, and thus, is not consistent with this policy.

- *Policy 8-8: Significant ecological resource areas in the County shall be identified and*

*designated for compatible low-intensity land uses. Setback zones shall be established around the resource areas to assist in their protection.*

General Plan *Figure 8-1 Significant Ecological Areas and Selected Locations of Protected Wildlife and Plant Species Areas* depicts the generalized locations of ecological resource areas within the County. The subject property and vicinity correspond with the Los Vaqueros ecological resource area depicted on Figure 8-1. Additionally, the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan ("HCP/NCCP") has identified grasslands between existing preserve lands and Alameda County to the South, and San Joaquin County to the southeast, as critically important to maintaining migration corridors for special status species, noting that disturbances to such grasslands, including the subject property, would be especially detrimental to grassland species such as the San Joaquin Kit Fox. Consequently, the project vicinity is identified by the HCP/NCCP as a high priority for conservation. The proposed rezoning would allow for the establishment of a commercial solar energy generation land use, which is of comparatively high intensity to agricultural land uses that are permitted under the present zoning district. The allowance of this land use would not be appropriate given the ecological sensitivity of the area. Therefore, the project is inconsistent with this policy.

- *Policy 8-9: Areas determined to contain significant ecological resources, particularly those containing endangered species, shall be maintained in their natural state and carefully regulated to the maximum legal extent. Acquisition of the most ecologically sensitive properties within the County by appropriate public agencies shall be encouraged.*

As mentioned previously, the project site is located in a significant ecological area identified on General Plan Figure 8-1. The General Plan specifies that the project vicinity is an "area of biological importance because of the presence of historical eagle nests and other outstanding natural features. This area provides habitat for the following species: San Joaquin Kit Fox, Alameda Whipsnake, tricolored blackbird, California red-legged frog, California Tiger Salamander, western pond turtle, freshwater shrimp. [The area] also contains Alkali Meadows and Northern Claypan Vernal Pools, both of which are considered to be rare statewide." Although the property has been previously disturbed by construction activity associated with the Buena Vista Windfarm, this activity has been limited to the southwestern and northeastern extents of the subject property. Interior portions of the property where the proposed solar arrays would be located have not been previously disturbed by development activity and this policy requires preservation in its natural state.

The applicant contends that the use of portions of the property as a windfarm have degraded the natural land cover, which warrants consideration of the project proposal. In fact, the disturbance to the subject property associated with wind farming is localized to an extremely small percentage of the property acreage. The subject property is approximately 77 acres. Two turbines are currently located on the subject property. Each turbine is located upon a 4,800 s.f. turbine pad in a southwesterly area

of the lot. An existing 16' wide gravel access road traverses approximately 1,000 linear feet over the subject property from the turbines to the western property boundary. Additionally, an electrical substation exists at the northeasterly corner of the subject property upon a pad that is approximately 15,000 s.f. in size. Thus, the combined footprint of structural improvement on the subject property is currently just over 1/2 acre in area ( $\pm$  25,000 s.f.). Gravel access roads are located only along peripheral areas of the property. The interior portions of the lot have never been developed with wind turbines. Therefore, the vast majority of the 77-acre subject property is undisturbed. In addition, the HCP/NCCP designates virtually all of the Buena Vista and neighboring windfarms as a high priority for conservation because of the high habitat values these areas possess despite the presence of turbines. In fact, thousands of acres of land within these active windfarms have already been acquired for conservation purposes pursuant to the HCP/NCCP. Therefore, the existence of the Buena Vista windfarm is not a significant consideration in the preservation value of the natural land cover existing on the subject property.

- *Policy 8-13: The critical ecological and scenic characteristics of rangelands, woodlands, and wildlands shall be recognized and protected.*

The project would be detrimental to the ecological and scenic characteristics of the subject property and surrounding wildlands due to the fact that it would introduce several thousand solar arrays amongst the natural land cover of the subject property.

- *Policy 8-14: Development on hillsides shall be limited to maintain valuable natural vegetation, especially forests and open grasslands, and to control erosion. Development on open hillsides and significant ridgelines throughout the County shall be restricted, and hillsides with a grade of 26 percent or greater shall be protected through implementing zoning measures and other appropriate actions.*

Approximately 50 percent of the subject property exceeds 26 percent in slope. The portions of the property exceeding 26 percent in slope primarily correspond to the proposed area of solar development. Project plans indicate that near the highest elevations where solar panels are proposed (between 600' and 700' contours) the project site has slopes up to 55% grade. Additionally the property is characterized by open grasslands. Therefore, restricted development of the hillside property is warranted to maintain valuable natural vegetation and to control erosion.

- *Policy 8-15: Existing vegetation, both native and non-native, and wildlife habitat areas shall be retained in the major open space areas sufficient for the maintenance of a healthy balance of wildlife populations.*

The subject property is located in an area consisting of thousands of acres of open space and agricultural preserve lands, which predominantly consist of herbaceous grasslands natural land cover type. The proposed rezoning would increase the intensity of permitted land uses which would both diminish the appearance of the open space area and affect existing wildlife habitat areas. The continued prohibition of commercial solar energy generation land uses would be conducive to the continued maintenance

of a healthy balance of wildlife populations.

- *Policy 9-1: Permanent open space shall be provided within the county for a variety of open space uses.*

The permitted uses within the existing A-2 zoning and Agricultural Lands (AL) general plan land use designation are consistent with open space uses. Considering the high habitat value of the project site and its vicinity, as well as its location abutting parklands and agricultural preserve lands where the proposed land use is prohibited, the establishment of commercial solar energy generation would not be consistent with this policy by increasing the intensity of permitted land uses in an area with ecological, scenic, and recreational resources that are indicative of open space lands.

- *Policy 9-2: Historic and scenic features, watersheds, natural waterways, and areas important for the maintenance of natural vegetation and wildlife populations shall be preserved and enhanced.*

A tributary of Brushy creek meanders through the subject property. The proposed project involves the construction of 9,240 solar panels assembled in arrays up to 915 square feet in area and arranged in rows traversing the subject property. The panel arrays would result in a condition where stormwater runoff of the arrays is channelized between the structures. Such a condition would substantially affect the flow and concentration of stormwaters across the subject property. Since the topography of the land would direct stormwater downhill towards the creek, this condition increases the risk for erosion of the creek bank. The preservation of watershed, natural waterways, and areas important for the maintenance of natural vegetation and wildlife populations would preclude the allowance of land uses that substantially alter the existing drainage pattern in this manner.

- *Open Space Scenic Resources Policy #9-11: ...Slopes of 26 percent or more should generally be protected and are generally not desirable for conventional cut-and-fill pad development. Development on open hillsides and significant ridgelines shall be restricted.*

See responses to Policy #3-12 and 8-14 above.

**2. The uses authorized or proposed in the -SG land use district are not compatible with uses authorized in adjacent districts.**

The adjacent parcel to the north of the subject property is a portion of the approximately 5,364-acre Byron Hills Management Area managed by the East Bay Regional Park District (EBRPD) and has a Parks and Recreation (PR) general plan land use designation. The General Plan Land Use Element specifies that the construction of commercial uses is inconsistent within the PR land use designation. Thus, commercial solar generation facilities are not compatible with the PR General Plan land use designation in which these abutting park lands are located.

Adjacent parcels east and southwest of the subject property are subject to Williamson Act

contracts with the County. These Agricultural Preserve Contracts specify that these lands shall not be used for any purpose, other than the production of food, fiber, and compatible uses allowed in the A-4 Agricultural Preserve District. Commercial solar activity is not an allowed use within the A-4 district and the -SG district ordinance (Chapter 84-88) does not authorize the establishment of commercial solar activity within the A-4 district. Thus, the establishment of commercial solar facility on the subject property would be incompatible with existing Agricultural Preserve contracts applicable to these abutting parcels. Therefore, the project would result in an area zoned for uses that are not compatible to uses authorized in adjacent districts.

**3. The Land Use Permit would adversely affect the orderly development of property within the County.**

The proposed land use is not consistent with the allowed uses within the present A-2 zoning district in which the subject property is located. Additionally, the proposed land use is not permitted on parklands or agricultural preserve lands which surround the property to the north, west, and east. Therefore, allowing the proposed land use, which is generally prohibited in this area of the County, may encourage similar project proposals for this land use in this area of the County. The orderly development of property within the County is dependent upon the consistent interpretation and application of Zoning and General Plan policies throughout Contra Costa County, which overwhelmingly support the preservation and protection of the project site and its vicinity from high intensity land uses.

**4. Special Conditions and unique characteristics of the subject property and its location and surroundings support denial of the proposed project.**

The subject property is located in an area of high habitat value and abuts substantial acreage of parklands and agricultural preserve lands. The County Board of Supervisors established the -SG combining district on February 25, 2020 after conducting a comprehensive renewable resource potential study to identify appropriate locations for renewable resource development, including commercial solar generation on agricultural and open space lands. The ecological significance of this area within Contra Costa County, its physical characteristics, and its location were determining factors in the Board's decision to exclude the area from the -SG combining district. Therefore, in recognition of these special conditions, the proposed project should be denied in the interest of their long-term protection and preservation.