

Implementation Policy of the East Contra Costa County Habitat Conservancy Regarding Installation of Solar Energy Facilities Outside the Urban Development Area (UDA)

Purpose

The purpose of this Policy is to set forth guidelines on how the East Contra Costa County Habitat Conservancy may provide permit coverage and apply the mitigation fee provisions of the HCP/NCCP to projects involving the installation of solar energy facilities on land outside of the Urban Development Area (UDA).

Background

On February 25, 2020, the Contra Costa County Board of Supervisors adopted a Solar Energy Facilities Ordinance. The County's commercial solar ordinance provides parameters for the establishment of commercial solar facilities to ensure the health, safety, and general welfare of the community. The adoption of the Solar Energy Facilities Ordinance was the next step toward the County's renewable energy goals, which grew out of the County's efforts to encourage the development of local renewable energy. Notable achievements in these efforts include the Board's 2015 adoption of the Climate Action Plan, 2017 decision to join the Marin Clean Energy (MCE) community choice aggregation energy program, 2017 decision to join the *We Are Still In Coalition* with its commitment to ambitious action on climate change, and 2018 completion of the Contra Costa County Renewable Resources Potential Study.

The adoption of County Ordinance No. 2020-09 Solar Combining District Rezoning applies a new overlay (-SG combining district) to a specific geographic area in East County. The area is shown in the attached Overlay Summary Area Map (Attachment 6 to the County Ordinance No. 2020-09 Solar Combining District Rezoning), attached to this policy as Exhibit A. The area was initially identified in the Renewable Resources Potential Study, completed by the County, by applying filters to the region to identify lands most suitable for commercial solar development in East County. These filters included slope, natural land cover, soil quality and classifications, zoning overlay status, General Plan land use designation, elevation, proximity to transmission lines and substations, and other factors. By including properties with necessary attributes to easily accommodate commercial solar development and excluding major agricultural resources and sensitive habitat resources, the area balances the County's interest in encouraging local renewable energy with long-term planning considerations in East County.

The County began receiving applications for commercial solar facilities upon the adoption of the new Solar Energy Facilities Ordinance. As a co-permittee of the HCP/NCCP (the Plan), the County extends permit coverage under the HCP/NCCP to eligible projects that require coverage. The area identified as the (-SG) combining district is outside of the Urban Development Area (UDA), and outside the UDA covered activities are limited to activities within HCP/NCCP preserves, specific named projects, and projects that opt in to the Plan for coverage as they are not automatically required to receive coverage under the HCP/NCCP. However, it would be reasonable to expect that these commercial solar energy projects would need an option for state and federal ESA take coverage due to their location and extent of disturbance.

Utilities and other activities that are not specifically identified in the HCP/NCCP may be covered if the following criteria are met:

- It would not preclude achieving the biological goals and objectives;
- It would be an activity type that has been evaluated in Chapter 4 of the HCP/NCCP; and
- It would be consistent with the amount of take coverage assumed for the project or activity and sufficient take coverage remains under the Permit.

In 2013, the Conservancy's Governing Board approved the *Implementation Policy of the East Contra Costa County Habitat Conservancy (Conservancy) Regarding Installation of Renewable Energy Facilities on Contaminated Land* ("Brownfield Solar Policy"). This implementation policy set forth guidelines on how to apply the mitigation fee provision of the HCP/NCCP to projects involving the installation of certain types of renewable energy facilities on contaminated land within the UDA. In the unusual circumstances associated with locating a solar energy project within the UDA on a contaminated property, the extent of pre-existing disturbance and the unique type of disturbance associated with a solar project were not specifically considered by the HCP/NCCP. The Brownfield Solar Policy was warranted to better define how to apply HCP/NCCP fees in these special circumstances. Per this implementation policy, renewable energy projects within the UDA are considered temporary impacts and may pay HCP/NCCP temporary impact fees on an annual installment basis (in lieu of one upfront payment) if they are located on contaminated land and if concluded before 2037 (the end of the permit term). One project in the City of Pittsburg has received HCP/NCCP permit coverage following the guidelines of the Brownfield Solar Policy and is paying their mitigation fees on an annual installment basis.

Renewable energy facilities *outside* the UDA are not explicitly identified as coverable activities through the HCP/NCCP. If covered through the HCP/NCCP, these projects would fall under the Rural Infrastructure Utility Construction description. Because of the uncertainty in their location and project footprint, the suitability for HCP/NCCP coverage for these utility projects is to be decided on a case-by-case basis by the Conservancy, USFWS, and CDFW. It should be noted that coverage of wind energy facilities is specifically excluded from the HCP/NCCP because analyzing and mitigating for the impacts of bird strikes was outside the scope of the HCP/NCCP.

This implementation policy for permitting installation and operation of commercial solar energy projects on natural lands outside the UDA is needed to better define the conditions for permit coverage and the application of HCP/NCCP mitigation fees for these projects.

Policy Development and Permitting Considerations

The Conservancy reviewed many different factors in determining how HCP/NCCP permit coverage could apply to installation and operation of solar energy facilities outside the UDA. Discussion and research included: impacts to habitat and species, on-going research and data gaps, the HCP/NCCP permitting process, and the Brownfield Solar Policy precedent. Conservancy staff also consulted the following stakeholders and partners: solar energy developers, regulatory agencies, other California HCP/NCCP implementors, and the Conservancy's Public Advisory Committee (PAC). It should be noted that the PAC expressed concerns regarding project impacts to agriculture and farmland. Conservancy staff intends to review all projects on a case-by-case basis and will consider all aspects of the HCP/NCCP, including its

conservation strategy which addresses conservation of agriculture and farmland. The following key areas of implementation policy are integral to the Conservancy's ability to extend permit coverage to Solar Energy Facility projects outside the UDA.

Impact Area

The proposed policy defines the impact area of solar energy projects to be the total project area of the facility, and subsequently, mitigation fees will be charged over this area.

- **Biological:** Commercial solar energy facilities may be comprised of solar arrays/modules mounted on a steel racking system anchored to the ground using driven steel piers, power substations, paved or gravel roadways, and security fencing. There are potential effects from construction, operation and the eventual decommissioning of commercial solar energy facilities including the direct mortality of covered species. Other impacts to be accounted for include the modification of habitat, use of roads for construction, and off-site impacts related to construction material acquisition, processing, and transportation. Operation and maintenance of the facilities after construction has the potential effect of habitat fragmentation, microclimate alteration, and behavioral changes of species. There have been limited studies on the definite impacts of utility-scale solar energy development and some researchers have suggested the need for the consideration of alternatives and additional effort and review of avian mortality and habitat loss¹.
- **HCP/NCCP policy:** Chapter 9 of the HCP/NCCP details that the “*acreage of land permanently disturbed*” is broadly defined in this section to include all areas removed from an undeveloped or habitat-providing state and includes land in the same parcel or project that is not developed, graded, physically altered or directly affected in any way but is isolated from natural areas by the covered activity” (p. 9-17).
- **Consultation with USFWS/CDFW and the ECCC Habitat Conservancy PAC:** This policy recommendation is consistent with guidance from consultation with regulatory permitting partners and is supported by the Conservancy's Public Advisory Committee.

Having taken the above into consideration, the Conservancy has determined that impacts for solar energy facility projects outside the UDA will need to consider the entire parcel as the project site and impact area. If a commercial solar energy facility is to be developed on a portion of a parcel (via a lease), the project area will be the fenced in lease area, as the project proponent would have no rights to the area outside the lease area. If there are areas used outside the lease area for construction or installation purposes, then those areas will also be included in the impact area.

Impact Type

The proposed policy defines the impact type of a solar energy facility project to be permanent if it will not be decommissioned within the HCP/NCCP permit period.

At this time, it is unknown how many commercial solar energy facility projects will seek permit coverage under the HCP/NCCP. The (-SG) combining zoning district shown in Exhibit A, the Overlay Summary Area map, totals 7,443 acres but this does not mean the entire area will be developed as commercial solar energy facilities.

¹ Smallwood, K. S. 2020. Comparison of Bird and Bat Fatality Rates Among Utility-Scale Solar Projects in California

- HCP/NCCP policy: Chapter 9 of the HCP/NCCP states that “temporary impacts are defined as any impact on vegetation or habitat that does not result in permanent habitat removal” (p. 9-26). Temporary impacts permitted under the HCP/NCCP vary from pipeline repair work, staging and laydown areas, stockpile sites, temporary creek dewatering for bridge repair work, and use of existing ranch roads for access to work sites. The precedent set by the Brownfield Solar Implementation Policy describes temporary impacts as projects that do not result in permanent habitat removal, conclude before the Plan expires in 2037, and have assurances for site restoration. Projects inside the UDA on brownfield sites may be considered temporary impacts subject to payment of temporary impact fees. At the time of this Solar Energy Facility Implementation Policy proposal (2021), the Plan is in its 15th year of implementation, halfway into the permit’s term. Renewable solar energy facility projects have an estimated useful life of more than 20 years and those that will be constructed now are not anticipated to conclude before 2037.
- Regulatory agency practice: Conservancy staff reviewed solar energy facility projects in California that received endangered species permits from CDFW and USFWS. In general, the entire acreage of project sites (that require decommissioning and restoration back to pre-project conditions) have required compensatory mitigation at a permanent impact ratio.
- Consultation with USFWS/CDFW and the ECCC Habitat Conservancy PAC: Considering the impacts of a solar energy facilities to be permanent impacts is consistent with guidance from regulatory permitting partners and is supported by the Conservancy’s Public Advisory Committee.

Having taken the above into consideration, the Conservancy has determined that impacts for solar energy facility projects outside the UDA will need to be treated as permanent impacts if they do not commit to restoring the project site to pre-project conditions before the end of the HCP/NCCP permit term.

Mitigation Fees

The proposed policy allows for the option of phasing mitigation fee payments.

- HCP/NCCP policy: The HCP/NCCP requires mitigation fees to be paid in one payment prior to issuance of take coverage. There have been a few circumstances where applicants have submitted fee payments in a phased manner based on phased grading permits. For these projects, there were assurances provided by that applicant that grading/construction work would be contained to the area where mitigation fees had been paid. Instead of an upfront payment at the time of ground disturbance as required by the HCP/NCCP, for solar energy facility projects the Conservancy could consider a phasing of the projects’ mitigation fees. If an applicant requests to phase their fee payments, some form of financial security will need to be provided to ensure the full payment of mitigation fees prior to the end of the HCP/NCCP permit term.

The phased payment plan would require an upfront payment amount of the project’s total mitigation fees, with the remainder to be collected over a set term, (e.g., 5 years, or over the remainder of the HCP/NCCP permit term, whichever is more appropriate). Specific details of this phasing of mitigation fee payment will need to be determined with the applicant due to the

varied nature of each project and applicant. Some potential options are provided below.

- A potential method to determine the upfront amount is using the HCP/NCCP's 30-year permit term and the year the activity is permitted. For example, projects that are permitted in 2021 would require an upfront payment of 47% of their total mitigation fees. (2020 is the 14th year of the 30-year term), projects permitted in 2022 would require an upfront payment of 50%, and on.
 - Another potential method would be to use the project's "ground coverage ratio" to determine the upfront payment amount and phase the remainder of fee payment over a set term, as noted above.
- Consultation with USFWS/CDFW and the ECCC Habitat Conservancy PAC: This policy recommendation is consistent with guidance from consultation with regulatory permitting partners and is supported by the Conservancy's Public Advisory Committee.

Based on preliminary conversations with potential project proponents, the Conservancy has determined that it would be advantageous for the solar energy facility projects to have the flexibility to pay a portion of their mitigation fees in phases. A form of financial security is necessary for the Conservancy to allow for phases mitigation fee payments.

ECCC Habitat Conservancy Guidelines for Permitting Commercial Solar Outside the UDA

These guidelines have been developed to work within the framework of the HCP/NCCP, the policies adopted by the Conservancy, and the precedent set by other projects that have received take coverage either under the HCP/NCCP or through direct consultation with USFWS and CDFW.

Criteria for Projects

Coverage will be determined on a case-by-case basis by the Conservancy, USFWS, and CDFW, and will meet all the following conditions:

- a) The project site is located on a parcel designated as Solar Energy Generation (-SG) combining zoning district, as shown in Exhibit A, the Overlay Summary Map;
- b) The project is located in Fee Zone 1 in the HCP/NCCP;
- c) In the most recent Annual Report, the HCP/NCCP is exceeding terrestrial land cover, wetland, or species-specific stay ahead requirements;
- d) Permit coverage for the project will not exceed the limits of take coverage as authorized under the HCP/NCCP.
- e) Permit coverage for the project will not preclude the HCP/NCCP from providing coverage for a named rural infrastructure project outside the UDA.

Guidelines for Permitting and Mitigation for Solar Projects Outside the UDA

Once coverage eligibility has been determined based on the above criteria, the following guidelines will be followed:

- 1) The impact area includes the entire project site, which is at a minimum the leased/owned area, if the project is not on the entire parcel;
- 2) All impacts are considered permanent impacts;
- 3) Phased payment of mitigation fees may be considered; an upfront payment and financial assurances acceptable to the Conservancy for the remainder of the fee must be provided;
- 4) Any grading or fill of jurisdictional wetlands and waters will be mitigated as required in the HCP/NCCP in one complete payment prior to issuance of take coverage; and
- 5) The approved mitigation strategy would be made enforceable through conditions of approval and/ or a separate agreement with the Conservancy.

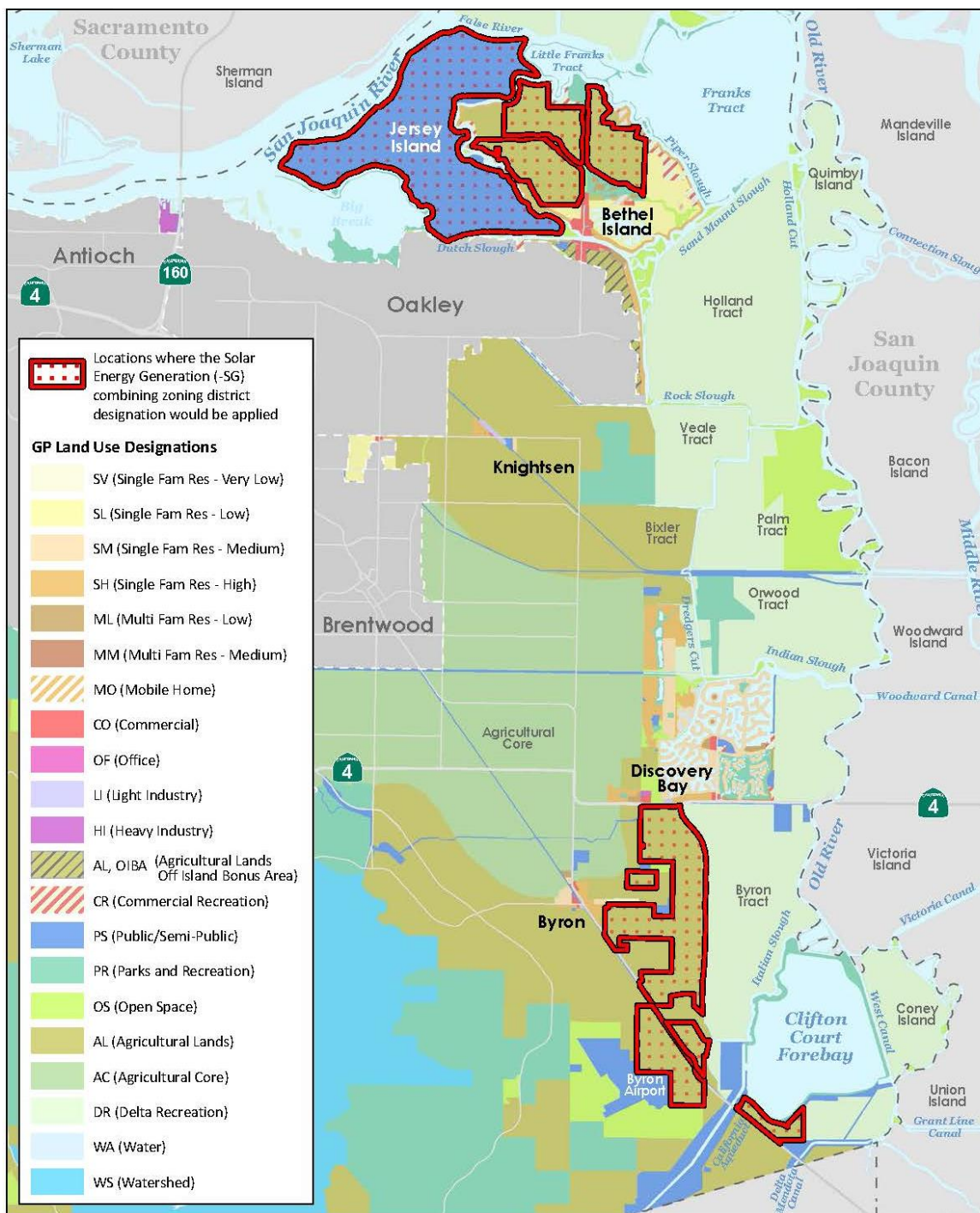
Alternatives to Take Coverage Under the HCP/NCCP

Solar Energy Facility project proponents are opting into the HCP/NCCP for permit coverage. The alternative to permit coverage from the HCP/NCCP is for these projects to obtain permits and coordinate mitigation with USFWS and CDFW and other regulatory agencies.

Exhibit A

(Attachment 6 to County Ordinance No. 2020-09 Solar Combining District Rezoning)

Locations where the Solar Energy Generation (-SG) combining zoning district designation would be applied



Map created 01/15/2020
 by Contra Costa County Department of
 Conservation and Development, GIS Group
 30 Main Road, Martinez, CA 94553
 37.59-41.791N 122.07-03.758W

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