

# ***MINUTES OF THE SOLANO COUNTY PLANNING COMMISSION***

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## **Meeting of June 21, 2012**

The regular meeting of the Solano County Planning Commission was called to order at 7:00 p.m. in the Board of Supervisors' Chambers, Fairfield, California.

PRESENT: Commissioners Boschee, Rhoads-Poston, Karah, Cayler and Chairman Mahoney

EXCUSED: \_\_\_\_\_

STAFF PRESENT: Mike Yankovich, Planning Program Manager; Jim Leland, Principal Planner; Harry Englebright, Contract Planner; Jim Laughlin, Deputy County Counsel; and Kristine Letterman, Planning Commission Clerk

Items from the floor - none

**The Minutes** of the regular meeting of June 7, 2012 were approved as prepared.

1. **PUBLIC HEARING** to consider Use Permit Application No. U-12-08 of **AT&T c/o Misako Hill** to install a 2' tower extension and relocate the existing six panel antennas to the top of the tower; install three new antennas, six remote radio units and other equipment improvements within the existing equipment shelter. The project is located at 6685 Bucktown Road adjacent to the City of Vacaville in an "A-40" Exclusive Agricultural Zoning District, APN: 0123-090-170. This project is determined to be categorically exempt from the provisions of the California Environmental Quality Act. (Project Planner: Jim Leland) **Staff Recommendation:** Approval

Jim Leland gave a brief presentation of staff's written report. He stated that this is a use permit filed on behalf of AT&T to allow a two foot increase in height to an existing co-located wireless communication facility and the installation of 3 additional antennas and related equipment. The facility is located on an existing 106 foot tall PG&E tower. He explained that a new use permit is required due to recent changes in the wireless communication facility regulations. The project has been reviewed by county agencies and is consistent with County policies, therefore staff recommended approval of the project.

The applicant's representative, Misako Hill thanked staff for their work on the project and stated that they concurred with staff's conditions of approval.

Chairman Mahoney opened the public hearing.

June Guidotti, 3703 Scally Road, Suisun, stated that the information for this project was not made available to the public. She stated that CEQA review has not been done and it has not been proven that there is not another safe location for the project. She objected to the height of the towers and stated that there would be negative impacts to birds and wildlife. She questioned

if there are any airports in the vicinity. Ms. Guidotti asked the commission not to approve the project until environmental review and public safety issues are addressed.

Since there were no further speakers, Chairman Mahoney closed the public hearing.

A motion was made by Commissioner Boschee and seconded by Commissioner Cayler to adopt the resolution and approve Use Permit Application No. U-12-08 subject to the recommended conditions of approval. The motion passed unanimously. (Resolution No. 4573)

2. **PUBLIC HEARING** to consider amendments to the County General Plan and County code to be included the 2012 Amendment to the Solano County Component of the Suisun Marsh Local Protection Program (LPP). The amendments include the following:

1. Amendments to the 2008 General Plan addressing the Suisun Marsh including Chapter 4, Resources and Appendix C, Suisun Marsh Policy Addendum.
2. Amendments to County Policy Regulating Sewage Disposal Systems in the Suisun Marsh.
3. Amendments to Chapter 28, Zoning of the Solano County Code applicable to the Suisun Marsh Management area including:
  - a. Definitions
  - b. Limited Agricultural Districts
  - c. Residential Traditional Community Districts
  - d. Commercial Districts
  - e. Manufacturing and Industrial District
  - f. Marsh Preservation District
  - g. Land Use Regulations
  - h. Marsh Development Permits.
4. Amendments to Chapter 31, Grading, Drainage, Land Leveling and Erosion Control, of the Solano County Code
5. Amendments to County Findings of Consistency between provisions of the Suisun Marsh Protection Act and Existing County Policy
6. Rezone properties to rename the Limited Agricultural District (A-L) to Suisun Marsh Agricultural (A-SM) District within the Secondary Management Area of the Suisun Marsh consistent with the 2008 General Plan
7. Rezone properties within the Collinsville Area of the Suisun Marsh from Water Dependent Industrial (I-WD) and Agriculture (A-20) to Marsh Preservation (MP), Suisun Marsh Agricultural (A-SM), Residential Traditional Community (R-TC-4) and Commercial Recreation – Limited (CR-L) consistent with the 2008 General Plan.
8. Rezone properties in the Parish Road area of the Suisun Marsh from Agriculture (A-20) and Marsh Preservation (MP) to Suisun Marsh Agricultural (A-SM-160) and Marsh Preservation (MP) consistent with the 2008 General Plan.

The Planning Commission will also hold a public hearing to consider the rezoning of the Water Dependent Industrial (I-WD) properties in the Collinsville area outside of the Suisun Marsh Management Area to Exclusive Agriculture (A-160) consistent with the 2008 General Plan.

The Planning Commission will also hold a public hearing to consider the 2012 Amendment to the Solano County Component of the Suisun Marsh Local Protection Program. (Project Planner: Mike Yankovich) **Staff Recommendation:** Approval

Mike Yankovich reviewed staff's written report which included the Suisun Marsh Preservation Act Requirements, the Existing Solano County Local Protection Program (LPP), the 2010 Amendment to the Solano County LPP, the Proposed 2012 Amendment to the Solano County LPP, General Plan Policies, and CEQA.

Chairman Mahoney asked county counsel to review the three alternatives that are proposed.

Jim Laughlin explained that the recommended proposal and the first two alternatives are very similar to each other and contain minor language changes. He said it may come down to the commission deciding which they think best clarifies the county policy if it needs clarification, but substantively there is really no difference between the recommended proposal and the first two alternatives. He explained that Alternative 3 is a significant change in direction for the county by prohibiting commercial wind development in the Secondary Management Area of the Suisun Marsh. He noted that this is the option that several commenters have asked for, however by being a change in policy, the county would have to adopt various amendments to the General Plan to keep the plan internally consistent; there would also be some zoning amendments that would go along as well. If that approach is taken, staff would have to bring back those various changes to the commission. Mr. Laughlin stated that his concern is that someone might raise a CEQA challenge saying that the county would need to do CEQA on the environmental impacts of prohibiting wind development in the secondary management area.

Commissioner Rhoads-Poston wanted to know if BCDC objected to the use of the secondary marsh lands when the existing wind policy was originally passed in 1982. Mr. Laughlin stated that he did not believe the county has any record of objection from BCDC.

Commissioner Boschee asked for clarification with regard to the agenda and the indication that there will be multiple public hearings. Mr. Yankovich stated that the public hearings are not separate items and would be held concurrently.

Commissioner Rhoads-Poston asked about the CEQA review issue with regard to Alternative 3 and the difference in opinion between the county and several outside agencies. Jim Laughlin stated that he was not sure if those agencies understood that the recommended proposal is essentially the same as the existing policy, or whether they thought this was a change in policy which would normally require CEQA review. Mr. Laughlin stated that the comments he has seen focus on the fact that wind turbines within the secondary management area could have environmental impacts. He noted that staff would certainly look at those as part of the use permit process for any wind turbine project within that area.

Mr. Yankovich stated that all of the wind projects that have come before the commission have required an Environmental Impact Report (EIR) and so the environmental assessment was made when those projects were reviewed. He stated that this would continue with the existing policy.

Commissioner Karah referred to page 17 of the report and asked for clarification with regard to Policy SM.P-35(2) where it states "Projects should not be allowed to proliferate in the marsh, but should be allowed only where monitoring has shown productivity to be feasible."

Mr. Yankovich said that before a company invests in a project they perform wind monitoring and he believed that is what is being referred to. He said a company will assess the wind speed to determine whether or not it is feasible to put a project there. Mr. Yankovich noted that the wind resource maps that are produced by the California Energy Commission are what will be used for the basis for any type of development that would take place in the county. He said if that map shows essentially there is adequate wind speed for a commercial size wind project then that would be an area that would be considered for such a project. He said it does not necessarily mean that a project could not be put somewhere else, but it would have to be shown that there is adequate wind as a resource to be able to support a project.

Commissioner Cayler asked about the requirements for a commercial facility.

Mr. Yankovich stated that it would require an application with a basis for the selection of the area, either the use of the wind resource maps or some type of wind study and environmental assessment. He noted that all of the wind projects up to this point have required an EIR.

Since there were no further questions, Chairman Mahoney opened the public hearing.

Joe LaClair, Chief Planner, Bay Conservation and Development Commission (BCDC), San Francisco, thanked both Mike Yankovich and Harry Englebright for their professionalism and good humor in working through this plan. He stated that BCDC's comments on the Final LPP are that they agree with county staff's conclusion that most of the proposed changes in the LPP are consistent with the Marsh Act and the marsh plan, and would not have significant environmental impacts. However, BCDC staff believes that commercial wind energy development in the Suisun Marsh allowed by the LPP could result in significant adverse environmental impacts, and therefore they support the proposed Alternative 3 which recommends amending the wind policy to prohibit commercial wind development within the secondary management area.

Mr. LaClair stated that BCDC staff believes wind energy development harm migratory and resident birds and bats of the Suisun Marsh. Recent EIRs prepared by the county, and advice from resource agencies have provided new information about the impacts of wind energy projects on birds and bats that were unavailable 30 years ago when the county's LPP component was certified. For example, the county's 2011 DEIR for the Shiloh IV wind energy project concludes that the project would have significant adverse cumulative impacts related to special status birds, raptors, and bats that could not be mitigated. The turbines would foreseeably result in 3,800 total avian fatalities including raptors, and 3,156 total bats per year.

Mr. LaClair stated that they consulted with the Department of Fish and Game (DFG) as is required by the plan and DFG recommended that allowing wind development in the secondary management area be precluded because of their concerns about its effect on wildlife. He stated that they also consulted with the U.S. Fish and Wildlife Service and they agreed. Mr. LaClair said that wind energy development in the secondary management area can also degrade scenic

qualities of the marsh and scenic vistas. He noted that in 1985 a wind energy project came forward that was authorized by the county and it was appealed to BCDC by the DFG and the Suisun Resource Conservation District (SRCD). He noted that when the commission concluded that there was a significant issue, the project proponents withdrew the project. In the last decade over 800 wind turbines have been installed in the county to the east of the marsh. Although the county and resource agencies and wind energy developers have worked to reduce the impacts of wind turbines on resident and migratory birds and bats, new studies and information indicate that cumulative impacts from these projects on wildlife may be significant. Mr. LaClair stated that the legislature established the secondary management area in the marsh act as an upland buffer to preserve the integrity and ensure continued wildlife use of the Suisun Marsh including the preservation of its waterfowl and retention of its diverse flora and fauna. The marsh plan requires the commission to protect and enhance upland areas in the marsh to protect wildlife and habitat. One marsh plan policy states that existing uses should continue in the upland grasslands and cultivated areas surrounding the critical habitats of the Suisun Marsh in order to protect the marsh and preserve valuable marsh related wildlife habitats. Mr. LaClair reiterated that BCDC staff are in support of Alternative 3.

Steven Chappell, Executive Director, Suisun Resource Conservation District, 2544 Grizzly Island Road, Suisun, stated that SRCD supports staff's recommendation for Alternative 3 to eliminate the possibility of wind development in the secondary marsh. He pointed out on the area map the acreage in which he is responsible for maintaining noting that it consists of 116,000 acres with 52,000 acres of managed wetlands, 6,300 acres of tidal wetlands, and 2,700 acres of uplands. He said that those uplands are a critical component that protects beneficial uses in the wetland and wildlife resources that the marsh provides. It also supplies 30,000 acres of bays and sloughs and is a unique aspect of Solano County. He said the stewardship of the marsh has provided Solano County with a resource that is unique in the Bay Area. Mr. Chappell noted that he has also been an active participant in the county's process to update the general plan and participated in the Collinsville special work groups for the zoning modifications and grading ordinances that were changed. He stated that he has tried to be involved and represent the marsh interest to make sure that the process before the commission is not only complete, but is addressing the needs of the land use and the landowners in the marsh.

Mr. Chappell stated that in 1985 the SRCD, along with the DFG, appealed a wind development project in the marsh which was then withdrawn by the proponent. He stated that they also opposed the enXco II wind development project because it proposed to build windmills along the boundary of the secondary marsh. Through negotiations with enXco, they agreed to a ¼ mile setback from the boundary of the marsh. Mr. Chappell stated he would like to encourage the commission to consider adopting the policies to eliminate encroachment into the marsh and to preserve the wetland resources and the upland resources that protect this buffer from development. He stated that this is very important to those who own and operate and maintain the marsh. Mr. Chappell stated that when wind development was discussed 30 years ago the windmills were very small, more like what is seen in an urban setting today. He said that there was actually development in the Montezuma Hills and landowners did not have problems at that time, but the windmills today are 340 feet in height, provide night lighting, strobe lights, and are a visual disturbance. He stated that they are inappropriate for protecting resources.

Dennis Dudzik, Manager, URS Corporation, 2870 Gateway Oaks Drive, Sacramento, stated that his company has been active in Solano County with wind projects for more than 10 years. He spoke on behalf of the City of Santa Clara and their electric utility called Silicon Valley Power. Mr. Dudzik noted that more detailed comments can be found in the letter they submitted dated June 21, 2012. He stated that his comments concern the proposed revisions to the wind energy policy as it relates to the buffer land described as the secondary management area. He said the City of Santa Clara does not object to the revised policy SM.P-35 as originally proposed and for which the county completed a negative declaration. The city is also in agreement with the county and commenters who stated that the potential impacts to wildlife and scenic vistas are important considerations that must be analyzed prior to the installation of any wind turbines. However, the commission is considering three alternatives that are not all consistent with the action described in the negative declaration. In particular, Alternative 3 would seek to prohibit wind turbines from all of the primary and secondary management areas. The city asks that the commission reject Alternative 3 and any outright prohibition at this time. Any future wind turbine project will be subject to a thorough environmental review, commensurate with the project specific impacts. Any significant impacts would have to be analyzed in an environmental document such as an EIR prior to construction. Alternative 3 states that the installation of turbines in the Suisun Marsh could have a significant impact on maintenance of the area then concludes that turbines anywhere in the entire secondary management area would have the same affect, rather than identifying specific locations with particular hazards. Alternative 3 also contains the unsupported and in this case, erroneous assumption, that other alternative locations within the county have similar potential for wind energy development with lower environmental impact. The city asks the commission to either adopt policy SM.P-35 as originally proposed or to adopt Alternatives 1 or 2 and reject Alternative 3 and any other outright prohibition on wind turbines, on the basis that this alternative has not undergone environmental review and circulation to the public for adequate analysis and comment.

Zachary Walton, 6218 Manoa Street, Oakland, spoke on behalf of the Montezuma Wetlands Company. He stated that over the past year they have been in discussions with county staff over the development of a 40 turbine wind farm on the upland portion of the Montezuma wetlands site which includes the secondary marsh. Although the area has undergone extensive environmental evaluation in connection with the wetlands project, the environmental review of the proposed wind farm has not yet begun. He said that they speak in support of the originally proposed amendment of the LPP with regard to wind development. The proposed amendment clarifies the turbines in the secondary marsh may only be appropriate after "careful" consideration and given on a case-by-case basis to ensure that significant adverse impacts are avoided. This policy is consistent with the existing language in the plan. Mr. Walton stated that they do not support Alternative 3 which is briefly mentioned in the staff report, but is not otherwise discussed, particularly in the negative declaration because it would provide a blanket prohibition against any wind development under any circumstances within the secondary area, notwithstanding the careful consideration the county would otherwise provide. It is important to emphasize that Alternative 3 presents a significant change to the local protection plan but there is no evidence actually in the record to substantiate that there is a need for such a change that would divest the county of its discretion. He commented that the attachments to the staff report include some letters in opposition, but as outlined in those letters they do not actually site any real evidence. The DFG letter for example, discusses the potential for water bird mortality by referencing post construction mortality for the Shiloh II wind project, but that same report goes

on to state that the impacts from the project were not “biologically significant” or that they would result in a decline of any species. The only potential wind farm for consideration in the secondary marsh currently is Montezuma Wetlands. Mr. Walton asked that they be given the same opportunities as others in the past and to have their project evaluated on its merits. The county has demonstrated on countless occasions that it can and does evaluate projects on their merits and that it can and does exercise discretion when approving, denying, or conditioning those projects. Mr. Walton stated that there is no problem that exists or any good reason to take the county’s discretion away. He urged the commission to approve the originally proposed language and if they do consider Alternative 3 that it be done in a reasoned manner and allow the parties additional time to consider and present additional evidence.

*The following is verbatim testimony:*

June Guidotti, 3703 Scally Road, Suisun, I’m reading the attorney’s letter and he joins in with BCDC’s May 31, 2012 regarding the inappropriate commercial wind turbines in the Suisun Marsh or secondary management. He urges the adoption of Alternative 3 as it is the best option to protect the marsh flow and flow (*sic*). Referring to BCDC’s letter November 22, 2011, paragraph 7, first phase, please add June Guidotti after flat ron (*sic*) to (*inaudible*) her previous non-agriculture use, she continues to request zoning referred to her prior status of solid waste, waste to energy plant if property is not in the....and my property is not in the Williamson Act for which that brings me to the attention of something that Mike Yankovich said and BCDC. They wanted to eliminate facility, public facility. Do not eliminate that from the general plan because I gave my word that I would supply electricity and gas to the prison that was going to be built on my....east side of the section of land that was south of Travis AFB and I think that is what Harry, Mike Yankovich is referring to and I asked Mike Yankovich and he didn’t say anything. And also the other thing, do not delete I....delete the new showing of the right-of-way. It says ROE (*sic*) in the new general plan. No you are going to have to show before you put in electricity line, gas line, easement, road, you have to show it you just don’t because you can get a permit and then we have to fight you another 30 years. As to the 1982 wind energy policy we agree with the bay institute that the draft negative dec is clearly inefficient and to meet CEQA current requirements. Solano County Measure E as passed by the voters continues to be ignored even as it remains the law of the land. In keeping with Measure E the marsh protection plan the amendment of Chapter 8 Solano waste should be changed to the first sentence to delete, delete but may be expanded to reach long term capacity of 2049. Furthermore we believe that the marsh protection plan only allows one solid waste permit to exist within the boundaries of the Suisun Marsh. Which facilities would it be allowed Potrero Hills Landfill or Tonneson’s Pet Cemetery? Refer to Policy FFP31 that state, shall be limited to only 1 waste facility that is established consistent with the Solano County Suisun Marsh protection plan and the Suisun Marsh protection plan Mrs. Guidotti reserves the right to modify and objects to these conditions. The other thing is that you have forgotten is to identify the habitat for the endangered species that are protected under Prop 19 Fish and Wildlife Habitat Enhancement Act of 1984 within the designation of Solano County. Maps that you have shown up on the wall are inadequate and are not, they are not legal maps that have been drawn up and you need to go back to BCDC for the maps that are...I think are 2003 or 2005 that when they drew the new maps. You have on here on Cordelia Road that’s under BDCD’s jurisdiction that big, where the sewer plant is, where Seeno’s property is. You can’t just draw that on a map. You cannot just change these maps. You have to go back to the original maps. I appreciate the time that I got to speak and I did not like having to....on Jim Levine, on the power lines, I have tons of pictures where all the

plastic bags and plastic blowing off the landfill just on my property. PG&E has to come out there and the fires that is causes because of getting on the electrical lines. I would like to add in the Solano County Mosquito Abatement with Charles Tonnesen a vice president and I would like to add this letter as part of the record because of the deed on the PG&E that is connected to some of the people on the panel.

Jim Starr, California Department of Fish and Game, 4001 N. Wilson Way, Stockton, stated that he is an environmental program manager for the Bay Delta Region which oversees the Suisun Marsh. He noted that the department is the largest landowner in the marsh. Mr. Starr indicated that DFG has submitted a letter in support of Alternative 3, and that they would not like to see wind energy in the secondary area of the marsh.

David Marianno, 3915 Denver Road, Suisun, voiced his concern with development occurring within the Suisun Marsh. He questioned the accuracy of the maps that are being used to depict the secondary marsh area. Mr. Marianno stated that he is in opposition to placing wind turbines in the secondary marsh.

Mike Marianno, 1861 Minnesota Street, Fairfield, stated that he owns property in the marsh. He stated that he is in favor of protecting and preserving the marsh and has funded his own habitat development and preservation on his property. He stated that having property in the secondary marsh limits his ability on what he can do on his land whether it is to provide income or just building a residence. He stated that he did not believe the marsh should be covered with windmills, but he did feel that there probably are areas where windmills could be placed that are not going to have an adverse impact. He said that instead of an absolute ban on windmills he believed that they deserve a rigorous environmental impact study. He said that he would not object to having a couple on his own property. He said that it could provide income, help pay taxes, and would help with developing more habitat. Mr. Marianno stated that if windmills are going to cause a severe problem with either migration paths or flight patterns he would be more than willing to agree with not allowing them, but he believed that one should at least have the ability to do an EIR.

Sam Levit (sp?) stated that he has been working with Jim Levine for the past several years on the Montezuma Wetlands project. He agreed with Zach Walton's testimony that they would like to be able to go through the normal CEQA process. He noted that they have spent a great amount of time evaluating the biological constraints to be able to go through the normal CEQA process and to be able get this project permitted and help meet California's RPS goals.

Since there were no further speakers, Chairman Mahoney closed the public hearing.

Mike Yankovich summarized the three alternatives available to the commission: Alternative 1 – would change the first three sentences of the policy and delete reference to the Collinsville-Montezuma Hills wind resource area; Alternative 2 – would retain the existing commercial wind energy policy with no amendment; and Alternative 3 – would prohibit commercial wind energy development within the Secondary Management Area.

A motion was made by Commissioner Boschee and seconded by Commissioner Cayler to recommend to the Board of Supervisors: Approval of the proposed amendments to the Solano



County General Plan, County Codes and County policy as part of the 2012 Amendment to the Solano County component of the Suisun Marsh Local Protection Program including Item Nos. 1-8 as listed on the agenda with the selection of Alternative 3; Approval of the rezoning of the Water Dependent Industrial (I-WD) properties in the Collinsville area outside of the Suisun Marsh Management Area to Exclusive Agriculture (A-160) consistent with the 2008 General Plan; and Adoption of the 2012 Amendment to the Solano County Component of the Suisun Marsh Local Protection Program. The motion failed 1-4 with commissioners Rhoads-Poston, Karah, Cayler, and Chairman Mahoney dissenting.

A motion was made by Commissioner Cayler and seconded by Commissioner Karah to recommend to the Board of Supervisors: Approval of the proposed amendments to the Solano County General Plan, County Codes and County policy as part of the 2012 Amendment to the Solano County component of the Suisun Marsh Local Protection Program including Item Nos. 1-8 as listed on the agenda with the selection of Alternative 2; Approval of the rezoning of the Water Dependent Industrial (I-WD) properties in the Collinsville area outside of the Suisun Marsh Management Area to Exclusive Agriculture (A-160) consistent with the 2008 General Plan; and Adoption of the 2012 Amendment to the Solano County Component of the Suisun Marsh Local Protection Program. The motion passed 4-1 with Commissioner Boschee dissenting.

### 3. **ANNOUNCEMENTS and REPORTS**

Mike Yankovich informed the commission that the Ag. Advisory Committee has set up a sub-committee that will be reviewing solar projects in the county and coming up with some development standards. He said this would probably come before the commission later in the year.

Commissioner Karah announced that this year's annual California County Planning Commissioner's Association Gala Dinner will be on October 13<sup>th</sup> at the Blue Victorian in Suisun Valley.

4. Since there was no further business, the meeting was **adjourned**.