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Contra Costa County Board of Supervisors
Via Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Attn: Nai Saephan

Subject: Formal Appeal of Planning Commission Decision Approving Removal of Protected Trees — Bryan Ranch Subdivision (CDTP24-00068 – 19 Jay Court, Alamo)

Dear Members of the Board,

I am submitting this formal appeal of the Contra Costa County Planning Commission's decision to approve the Application for removal of three protected oak trees located within the Bryan Ranch Subdivision. The decision was procedurally deficient, unsupported by substantial evidence, and in direct conflict with the County's General Plan, Municipal Code Section 816, and the core principles of open space preservation and responsible development.

Legal Grounds for Appeal

This appeal is filed under the County's applicable code provisions, in that:

- The **requirements for tree removal were not satisfied by the evidence** presented at the hearing;
- Conditions necessary to mitigate environmental and neighborhood impacts were **recommended but not imposed**;
- My and other property rights and property value are adversely affected by this decision;
- The findings of the Commission are **not supported by substantial evidence**;
- And, critically, the decision fails to comply with the **General Plan** and the County's own **Tree Protection Ordinance (Section 816)**.

1. Mischaracterization of the Issue by Commissioners

Two Commissioners (Wright and Mankin) incorrectly framed the issue as one simply of **personal property rights**, rather than assessing whether tree removal was reasonably necessary and reasonably justified under the law. The true legal issue was whether there were **no feasible and reasonable alternatives** to cutting down these protected trees. There is, in fact, a very reasonable and feasible alternative: **roof-mounted solar**, which meets the standards of the **California Solar Rights Act**, including the (no more than) "\$1,000 rule" for cost and the (less-than) 10% efficiency reduction threshold. The Commission ignored this in favor of an irrelevant and incorrect framing as set forth herein.

2. Staff's Failure to Include and Consider the Professional Engineer's Report

County Staff utterly failed to provide Commissioners with the **Professional Engineer's Risk Assessment Report**, which raised critical (unaddressed) risks (by Staff and Commissioners), including:

- **Hillside destabilization** due to removal of trees integral to slope integrity;
- **Inadequate pier depth** (current plan is insufficient to reach below clay soils), requiring redesign.
- **Violation of OSHA rules**, as the depth of piers necessitates **heavy equipment**, not hand tools.
- **No drainage plan** for the rain runoff from 600 sq. ft. of panels.
- **Seismic risk** due to proximity to the Green Valley fault.
- **Recommendation for a full Soils Report**, which was ignored by the applicant and the County.

The failure to consider these findings effectively constitutes a breach of due diligence and due process.

3. Dismissal of Feasible Roof-Mounted Solar Alternative

A proposal from state-licensed solar contractor Simply Solar quoting a \$30,000 rooftop solar system—**after federal tax credit** (\$41,366.00 gross)—was entered into the record. This alternative is **code-compliant, cost-effective, and preserves all three protected trees**. Yet it was **ignored by County Staff** and **dismissed and even derided** by some Commissioners without objective review. **This failure directly contradicts County policies requiring consideration of alternatives that would preserve trees.**

4. Improper Deferral by Commissioners and Abdication of Responsibility

Commissioners Wright and Mankin stated they were **deferring their judgment to County Staff** (stating that Staff had already decided this), who failed to analyze key evidence and failed to conduct an independent, site-specific analysis. This deferral is an abdication of the Commissioners' legal role. If the Commission exists solely to rubber-stamp staff decisions, it serves no meaningful oversight function.

In contrast, in a prior case also heard **on May 14**, the same Commissioners **praised an arborist's report** presented in support of another appeal—yet in this case, they **ignored a licensed engineer's report**. This selective treatment of professional opinions is **arbitrary and inconsistent**.

5. Inappropriate Reliance on “Private Property Rights” in a PUD

The subject property is part of the **Bryan Ranch Planned Unit Development**, which is governed by **strict CC&Rs** that restrict individual discretion on landscaping, structures, and alterations. Furthermore, the Bryan Ranch HOA has without consultation with the homeowner maintained this portion of the property for over 40 years—**planting of trees, watering, pruning, and mowing**, as part of common open space maintenance. The land has been treated and maintained as HOA-managed property since the subdivision's creation.

Thus, the argument that the Applicant has an unrestricted property right to alter this land is **factually and legally incorrect**.

6. Prescriptive Easement Held by Bryan Ranch HOA

The area between the Applicant's backyard fence and the street is subject to a **prescriptive easement** in favor of the Bryan Ranch HOA. The HOA has maintained this area—through annual discing, tree planting, and irrigation—for **decades without interruption**. The Applicant (a 25+ year resident at 19 Jay Court) has never landscaped or maintained this area, as required by the HOA Architectural Rules. His prolonged inaction and the HOA's continuous use constitute legal abandonment and satisfy the requirements for **prescriptive easement** under California law. The permit should not have been approved without consideration of this legal encumbrance.

7. Misleading Comparison to Neighboring Installation

An attempt was made during the hearing to justify the Applicant's project by citing a neighboring solar installation. However, this comparison is **misleading and invalid**:

- The neighbor's **unauthorized pool solar heating and fencing** was installed **without prior approval from the Architectural Review Committee** and is itself a **violation of HOA rules**.
- The solar heating panels **lie close to the ground**, for pool water heating (not electricity generation), and are **not visible** to the neighborhood.
- The Applicant's proposed solar system infrastructure and panels will be **over 5 feet tall**, on a **30-degree hillside slope**, and **fully visible** above any fence or proposed landscaping due to neighboring terrain.

Two wrongs do not make a right. An illegal or unsightly structure elsewhere in the subdivision cannot justify new violations of code, policy, or aesthetics.

8. Reasonable Alternatives Exist That Respect Neighborhood Character and Solar Rights

The roof-mounted solar alternative referred to above would **not only preserve the neighborhood's visual harmony but provide the Applicant with the same Annual Electricity Production at far lower overall project cost and use the same number of solar panels. It would also allow him to retain his NEM2.0 status**

However, the Applicant has **refused to consider any alternatives**, regardless of the impact on his neighbors or the subdivision's appearance. This narrow perspective disregards the vision of **Harold Smith, the original Developer of the Bryan Ranch PUD**, who designed the community to preserve the **natural topography and scenic integrity** of the land.

9. Failure to Apply Required Findings Under County Municipal Code 816-6.8010

The Commission failed to apply the required findings under **Municipal Code 816-6.8010**, which outlines the legal factors for tree removal.

Approval Factors Not Met:

- The trees are healthy, stable, and **pose no structural or fire hazard**;
- No arborist found the trees to be **unsalvageable or unsafe**;
- Reasonable development of the lot **does not require** tree removal due to the viable alternative of roof solar.

Denial Factors That Apply:

- Reasonable redesign **could avoid** tree removal.

- Removal would likely adversely impact **erosion, slope stability, and drainage**.
- The Roof Solar alternative would eliminate the need for 120' of trenching required in the Applicant's proposed plan.
- The value of the trees to the neighborhood **outweighs** any hardship to the Applicant.
- Alternatives such as **relocating site improvements or using alternative foundation types** were ignored.

The Commission's failure to address these statutory criteria is grounds for reversal.

10. Change.org Petition – Over 100 Residents Signed via Word of Mouth

When the change.org petition was started, it stated a "solar farm" was being installed and "heritage oaks" were being removed. A neighbor pointed out that term "solar farm" implies a commercial structure, and the trees are not heritage; therefore, the day after the petition started, the petition was changed to correct both concerns. There was never an intent to deceive neighbors – "solar farm" is not a defined term. We know that Change.org petitions can be signed by anyone – currently 276 people signed our petition of which at least 100 are currently confirmed homeowners in Bryan Ranch. Just because the petition shows a different city than Alamo, CA doesn't mean they don't live there – the location is dependent on where their internet connectivity (ip address) comes from when they sign in. Several residents show Concord, Lafayette or Pleasant Hill and live one street up from the subject property. Also making matters more difficult is distribution of a complete, easy to use list of residents is prohibited per CA law.

No one purchased a home in Bryan Ranch to have the entrance to the neighborhood be solar panels. The entire neighborhood is surrounded by open space – so much so every home opens to open space. Solar panels that will be seen by every homeowner and guest entering and exiting Bryan Ranch either on foot, bike, or car will see the 28 solar panels instead of beautiful open space. Harold Smith, the developer of Bryan Ranch, would never have wanted such an eyesore as an entrance to one of his residential masterpieces.

Conclusion

The Planning Commission's decision was factually unsupported, procedurally flawed, and legally deficient. The proposed tree removal violates Municipal Code Section 816, contradicts County planning principles, and dismisses the rights of neighboring homeowners and the community.

For the reasons outlined above, it is respectfully requested that the **Board of Supervisors accept this Appeal of the Planning Commissioners' decision** on this code-protected tree removal permit request.

Sincerely,

Robert Eisele

