

STAFF REPORT

**Henry County Planning Commission
(November 17th, 2020 Meeting)**

Docket # / Project Title: B: 2240 Bellflower Solar 1 - CAU request to construct and operate a portion of a 152.5MW solar generating facility and substation.

Staff: Darrin Jacobs, Zoning Administrator

Applicant: Bellflower Solar 1, LLC, 400 Montgomery Street, 8th Floor, San Francisco, CA 94104

Owner: Trent Dishman, McFarland Farms Holding LLC, Dishman Joseph Trent Joe V Judy K JT RS, Dishman Joe V II Judy K Trustees JT REV TR, Dishman James B Joseph T TC, Halcomb Gary D Jean A Ie to Shirley T Henshaw

Property Size: Leased parcels total approximately 750 acres, Project size is approximately 500 acres

Current Zoning: Agricultural (A1)

Location: Bounded to the north by US Highway 40, to the east by South County Road 25 West, to the south by West County Line Road South, and to the West by South County Road 225 West

Parcel #: 012-03306-00, 012-03310-00, 012-03307-00, 012-03309-00, 012-03319-00, 012-03314-00, 004-02601-00, 004-02614-00, 004-02603-00, 004-02615-00, 004-02605-00

Staff Recommendation: To **APPROVE** the Commission Approved Use request.

Background Summary:

Lightsource bp is seeking a Commission Approved Use for a 152.5-megawatt solar energy generation facility known as the Bellflower Solar Project. The Bellflower Solar Project is proposed to be located in Southern Henry County and Northern Rush County. The total area for the project within Henry County covers approximately 500 acres of A1 zoned land within a fenced boundary. Lightsource bp is proposing to own and operate the facility on land leased through 35-year term lease agreements with a total of four landowners. Electricity that is generated from the project will be transmitted to a Point of Interconnection located in Henry County and within the project boundary on American Electric Power's Madison to Tanners Creek 138kV transmission line. Construction is proposed to begin in the fall of 2021 with electricity being generated in the fall of 2022.

Key Issue Summary:

The following key issue(s) should be resolved through the consideration of this application: Does the proposed use fit with the County Comprehensive plan? Will the proposed use of the property create conflicts with neighboring properties, become a burden to public services and infrastructure, and can the proposed use of the property meet all other federal, state, and county regulation requirements?

Decision Criteria for approving a Commission Approved Use:

1. The proposed Commission Approved Use is to be located in a Zoning District wherein such use may be permitted;
2. The requirements set forth in the Zoning District and this Section for such Commission Approved Use will be met;
3. The proposed uses are consistent with the spirit, purpose and intent of these regulations, will not substantially and permanently injure the appropriate use of the neighboring property and will serve the public convenience and welfare.

**Planning Commission Action:
Commission Approved use**

If the Planning Commission finds in the affirmative on the three questions for a CAU they will direct the Zoning Administrator to record their findings and grant an Improvement Location Permit for the Commission Approved Use.

Zoning Summary:

A1 Agricultural Districts are established to preserve and protect the decreasing supply of agricultural land by limiting indiscriminate infiltration of urban development into rural areas. The maximum density is one (1) dwelling unit per twenty (20) acres.

Utility use is allowable in A1 with a CAU (see Case B: 2176 REMC/Hoosier Energy Solar Farm)

Examples of Permitted (“by right”) Uses in Agricultural (A1):

Advertising Structure; Agriculture, Animal Raising; Agriculture, Farm; Agriculture, Farm Management; Agriculture, Feed and Fertilizer; Agriculture, Feed Lot; Agriculture, Grain; Agriculture, Grain Storage; Agriculture, Livestock; Auction Sale, Open; Agriculture, Nurseries, Truck Gardening, Farm Crops Dwelling, Conventional Home; Dwelling, Farm; Dwelling, Farm Worker, Seasonal Housing; Dwelling, Mobile Home; Dwelling, One-Family; Home for the Disabled, Residential; Greenhouse, Commercial; Lake, Artificial or Natural; Nursery or Greenhouse; Park, Playground or Recreational Facility, Public; Police or Fire Station; Produce Sales Stand, Roadside; Railroad Right-of-Way and Necessary Uses; School, Public

Current Property Information:	
Zoning and Land Use:	Agricultural (A1) farm ground/row crop and wooded areas. Four parcels in the leased area also have single family dwellings.
Site Features:	Approximately 750 acres, mostly open field with some woods. Three houses and one mobile home owned by the lease signers are in the project area. Multiple agricultural barns and structures.
Flood Hazards or County Tiles/Open Drains:	Several County tiles and ditches cross through proposed project area No Floodplain. Project is in the Huber Martin McFarland watershed and a portion is in the John Adams watershed.
Special Circumstances: (Airport Hazard Area, Wellhead Protection Area, etc.)	Near US Highway 40. Borders Rush County. Near a former rail line that is now a part of the County's Trail System.
Vehicle Access:	Field entrances and driveways for dwellings at this time.
Septic or Sewer: Municipal water or well:	South Henry Regional Waste District has infrastructure along US 40 and down S 225 W No municipal water available and no municipal water wells near the project.
Subdivision Restrictions:	N/A

Surrounding Zoning and Land Use:		
	Zoning & Owners:	Land Use:
North:	Agricultural (A1) Wilson, Gillespie, Warren, Surface,	Row crop/single family dwellings/trail
South:	Rush County & Rural Residential (RR) Hicks, Delay, McFarland, Welsh, Kitchen Dance LLC	Row crop/single family dwellings
East:	Agricultural (A1) Reichart, Haley, House of Prayer	Row crop/single family dwellings
West:	Agricultural (A1) & Residential (R1) Halcomb, McMillion, Alafogians, Lines, Lohse,	Row crop/single family dwellings

Property Development Standards

	Agricultural (A1)
Minimum Lot Area:	1.5 acres for residential use
Minimum Lot Width:	150 ft.
Maximum Building Height:	35 ft.
Minimum Front Yard Setback:	85 ft - abutting a Principal or Major Collector Highway 60 ft - abutting a Minor Collector Road or Local Road or Street
Minimum Side Yard Setback:	50 ft.
Minimum Rear Yard Setback:	50 ft.
Accessory Structure Setback:	10 ft.

History of this Location:

The relevant history of this property includes the following:

1. 04-16-2015 – The Planning Commission heard case B: 2176, Hoosier Energy requesting a Commission Approved Use for a Utility Solar Farm on a parcel zoned Agricultural (A1). The request was approved 8-0.
2. 09-17-2020 - Vince Green of Lightsource bp introduced himself and the Bellflower Solar project to the Planning Commission during their regular meeting.
3. 10-14-2020 - Bellflower Solar 1, LLC filed a request for a Commission Approved Use Hearing.

Comprehensive Plan Consideration(s):

- A. Page 12; The key takeaways from the planning process and resulting plan are: Henry County is seeking a paradigm shift in both the categorization/classification and use/development of agricultural land.
- B. Page 57; At the time of this study, agricultural land accounted for nearly 88 percent (or 223,148 acres) of Henry County's 395 square miles of land area.
- C. Page 57; In more rural settings like that of Henry County, working lands are often romanticized. The public's appetite for the farm aesthetic can impede real conversations about the future of agriculture in a community. Nearby residents often view the land as an extension of their backyard, and land use conflicts become harder to mitigate over time.
- D. Page 57; Encourage all new residential subdivisions to be constructed contiguous to existing development.
- E. Page 73; The county's roads are intended to accommodate vehicular and truck traffic, as well as farm equipment. Thoroughfare classifications for the roadways that traverse the county include: Minor arterials – US 40, US 36, US 35, SR 3, and SR 38
- F. Page 73; By most accounts, the grid system remains as the most efficient way to layout a community. The advantages of a grid, or modified grid street pattern, includes: Ease of navigation and addressing

- G. Page 78; Efforts can and should be made to improve both the quantity and quality of stormwater runoff in both the incorporated and unincorporated parts of the county.
- H. Page 80; Cities and counties are uniquely positioned to support economic growth, strengthen the country's energy independence, and reduce pollution by using solar energy. For these, and other reasons, it is the policy of Henry County to support the inclusion of solar technologies and design in development projects, and to allow for solar energy farms, or "brightfields," throughout much of Henry County, provided that solar energy farms do not cause a net reduction in the county's total number of acres of prime agricultural land.
- I. Page 81; Allow for and accommodate the siting of wind and solar energy projects, by ensuring that applicable regulations offer both clarity and stability, as well as a degree of flexibility so that regulators can continue to incorporate new information and properly mitigate impacts.
- J. Page 84; Reduce the risk of flood damage now and in the future by: restricting (re)development in the 100-year floodplain; expressly prohibiting (re)development in the 100-year floodway; protecting and enhancing riparian corridors; and by adopting best practices in stormwater quantity and quality management for all new public and private infrastructure investments.
- K. Page 84; Plant trees, shrubs, and native species and increase natural cover across the entire county. Encourage the use of cover crops, no-till, or minimum-till conservation tillage, and maintain crop residue in the more rural parts of the county. Maintain tree lines that serves as windbreaks along roadsides or fields, prevent erosion, and connect woodlots. Plant and maintain streamside buffers to slow down and hold overland flow of water, prevent erosion, and provide plant and wildlife habitats.
- L. Page 90; According to past studies, target industries for Henry County include: Energy production, including solar and biofuels such as ethanol and soy diesel
- M. Page 102; Establish and protect a series of wildlife corridors capable of boosting the biodiversity of the county's plant and animal species.
- N. Page 110; Update the county's subdivision control ordinance to limit development in unincorporated areas, especially the development of civic, institutional, or public-serving uses (i.e., schools, jails, hospitals, etc.), or rural residences in areas where the primary land use is (or should be) agricultural uses.

Preliminary Staff Recommendation & Findings:

Staff recommendation is to **APPROVE** the request for the following reasons:

1. The proposed Commission Approved Use is to be located in a Zoning District wherein such use may be permitted;

- a. The parcels in the project area are zoned Agricultural (A1) which permits utility use with a Commission Approved Use. (Title 1, Section 4.2 Table 2 *A1 Districts: Permitted Uses, Accessory Uses and Commission Approved Uses*)
- b. On April 16th, 2015 the Henry County Planning Commission heard case B: 2176, Hoosier Energy requesting a Commission Approved Use for a Utility Solar Farm on a parcel zoned Agricultural (A1). The request was approved 8-0 and established that solar energy development was a permitted use in A1 zoned districts with a CAU.
- c. On April 20th, 2017 the Henry County Planning Commission heard case B: 2212, Indiana Municipal Power Agency requesting a Commission Approved Use (CAU) on Parcel #026-01711-00 for the purpose of constructing a 6,500 sq. ft. Utility Garage and 0.53 megawatt Solar Field. On parcel zoned Highway Business (HB1). The request was approved 8-0 and further established that solar energy development was considered a utility and therefore a permitted use with a CAU.

2. The requirements set forth in the Zoning District and this Section for such Commission Approved Use will be met;

- a. The established setbacks for non-residential buildings or structures on A1 zoned parcels are 60 feet from the center of a Minor Collector or Local Road, and 50 feet from a side or rear property line. (Title 1, Section 4.3 Table 3 *A1 Districts: Property Development Standards*)
- b. The applicant is proposing the following setbacks be accepted by the Planning Commission as part of their CAU request:
 - i. The Project Permit Boundary will be set back 100 ft. from non-participating property lines containing residences.
 - ii. The Project Permit Boundary will be set back 30 ft. from non-participating property lines without residences.
 - iii. The Project Permit Boundary will be set back 50 ft. from the centerline of county roads.
 - iv. Project inverters will not be located any closer than 150ft from any non-participating property line
- c. Henry County Code states *“A Commission Approved Use is a Special use or conditional use that is permitted in accordance with the provisions of this Section and other provisions of this Code. The Henry County Planning Commission is appointed as the hearing officer, pursuant to Indiana Code 36-7-4-923, and subject to the provisions of Indiana Code 36-7-4-924, for the purpose of hearing and determining whether to approve or deny a request for a Commission Approved Use.”* I.C. 36-7-4-923 allows for the establishment of a hearing officer who would hear cases normally heard by the Board of Zoning Appeals.
- d. Indiana Code 36-7-4-923 states a hearing officer has the power of a Board of Zoning Appeals to approve or deny a request including a variance from the development standards of the zoning ordinance.
- e. Indiana Code 36-7-4-924 states the hearing officer may impose conditions and may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel.
- f. The Planning Commission as the hearing Office for the Board of Zoning Appeals on CAU request has the authority to accept development standards less than are required by the Development Code or impose requirements greater than the Development Code requires.
- g. The applicant will need to follow all requirements and receive approval from the Drainage Board, Highway Department, and Health Department for their respective ordinances and rules.
- h. The applicant will need to follow all Federal, State, and Local regulations in order to use this property as requested.

3. The proposed uses are consistent with the spirit, purpose and intent of these regulations, will not substantially and permanently injure the appropriate use of the neighboring property and will serve the public convenience and welfare.

a. The proposed uses are consistent with the spirit, purpose and intent of these regulations

- i. Henry County Code states that A1 Agricultural Districts are established to preserve and protect the decreasing supply of agricultural land by limiting indiscriminate infiltration of urban development into rural areas.
 1. The Comprehensive Plan states that agricultural land accounted for nearly 88 percent (or 223,148 acres) of Henry County's land area (Page 57) and that Henry County is seeking a paradigm shift in use/development of agricultural land (Page 12).
 2. The proposed project area is not identified as "Prime Agricultural Land" on the Comprehensive Plan's Future Land Use & Transportation Map (Pages 54 & 56).
 3. The proposed project would account for less than a quarter of one percent (.22%) of Henry County's agricultural land being temporarily taken out of production as opposed the permanent loss of agricultural land for residential, commercial, and industrial use.
 4. The Comprehensive Plan states it is the policy of Henry County to allow for solar energy farms throughout much of Henry County, provided that solar energy farms do not cause a net reduction in the county's total number of acres of prime agricultural land (Page 80) and that Henry County should allow for and accommodate the siting solar energy projects, by ensuring that applicable regulations offer both clarity and stability, as well as a degree of flexibility so that regulators can continue to incorporate new information and properly mitigate impacts (Page 81).
 5. The Comprehensive Plan states the county should limit development in unincorporated areas, especially the development of civic, institutional, or public-serving uses or rural residences in areas where the primary land use is agricultural uses (Page 110).
 6. The proposed project, by its nature, is temporary and will therefore not permanently reduce agricultural land and will in fact preserve agricultural land by preventing the construction of permanent residential, commercial, or industrial structures.
- ii. Henry County Code states the purpose of this Code is to regulate the use and development of land within Henry County specifically to: (Title 1, Section 1.3)
 1. Support the goals, objectives and policies of the Henry County Comprehensive Plan
 - a. The Comprehensive Plan states it is the policy of Henry County to

allow for solar energy farms throughout much of Henry County, provided that solar energy farms do not cause a net reduction in the county's total number of acres of prime agricultural land (Page 80) and that Henry County should allow for and accommodate the siting solar energy projects, by ensuring that applicable regulations offer both clarity and stability, as well as a degree of flexibility so that regulators can continue to incorporate new information and properly mitigate impacts (Page 81).

2. Provide for the efficient development of natural resources, agriculture, business and industry
 - a. The proposed project presents a plan that protects natural habitats and resources, increases natural habits, temporarily rests agricultural land, provides new agricultural uses for the project area, allows for additional revenue and business opportunities for Henry County farmers, and mitigates residential property owner issues.
3. Provide for the conservation of property values and natural resources
 - a. The project's proposed residential screening, landscaping, and use of pollinator plantings should both mitigate potential property value losses and add new additional natural habitats.
 - b. The applicant has also worked out financial agreements with adjoining property owners to help offset any perceived reduction in property values.
4. Provide for the growth of communities commensurate with the Comprehensive Plan and promote efficient and economical use of property
 - a. The Comprehensive Plan states the county should limit development in unincorporated areas, especially the development of civic, institutional, or public-serving uses or rural residences in areas where the primary land use is agricultural uses (Page 110)
 - b. The potential growth areas around the Town of Dunreith are most likely along US Highway 40 and State Road 3.
5. Prohibit uses, buildings or structures incompatible with the stated purpose of such Zoning Districts, respectively
 - a. Henry County Code states that A1 Agricultural Districts are established to preserve and protect the decreasing supply of agricultural land by limiting indiscriminate infiltration of urban development into rural areas.
 - b. The proposed project is temporary in construction terms, removable, and restorable; and will therefore not permanently reduce agricultural land. The proposed project will in fact preserve agricultural land by preventing the construction of permanent residential, commercial, or industrial structures.
6. Fix standards to which the uses, buildings or structures within each Zoning District shall conform, therein restricting and regulating their location, construction, reconstruction or alteration
 - a. The applicant will have to comply with all existing Development Code requirements prior to receiving Improvement Location Permits and Building Permits.

- b. As the BZA's hearing officer on CAU cases the Planning Commission has the authority to set standards for each specific case that comes before them.
- 7. Regulate the intensity of the use of each lot by requiring open areas around buildings and structures, to provide adequate light and ventilation
 - a. The applicant has presented a plan indicating setbacks, open areas, and landscaping buffers.
 - b. As the BZA's hearing officer on CAU cases the Planning Commission has the authority to set standards for each specific case that comes before them.
- 8. Limit congestion in the public roads and streets by providing for the off-street parking, loading and unloading of vehicles and by the provision of alternative transportation modes where appropriate;
 - a. The Comprehensive Plan states the county's roads are intended to accommodate vehicular and truck traffic, as well as farm equipment. Thoroughfare classifications for the roadways that traverse the county include: Minor arterials – US 40, US 36, US 35, SR 3, and SR 38 (Page 73).
 - b. The Comprehensive Plan states by most accounts, the grid system remains as the most efficient way to layout a community. The advantages of a grid, or modified grid street pattern, includes: Ease of navigation and addressing (Page 73).
 - c. The applicant will present a plan indicating which roads would be used.
 - d. The proximity and use of US Highway 40 reduces the number of local roads that will be effected.
 - e. The local county roads are straight and allow for good visibility of oncoming traffic.
 - f. The county roads are currently used for local traffic and are not major collect roads funneling traffic elsewhere, and therefore would not be a major distribution to normal community traffic patterns.
 - g. There are only approximately a dozen residential properties that might be inconvenienced by increased traffic.
- 9. Preserve and enhance features of environmental or historic significance;
 - a. The proposed project presents a plan that protects natural habits and resources, increases natural habits, and could benefit stormwater runoff in the area.
 - b. The Comprehensive Plan states efforts can and should be made to improve both the quantity and quality of stormwater runoff in both the incorporated and unincorporated parts of the county (Page 78)

- c. The applicant has presented a study stating that no historically significant sites will be affected in their project area.

b. The proposed uses will not substantially and permanently injure the appropriate use of the neighboring property.

- i. The zoning and use of the neighboring properties are agricultural and residential.
 1. There are less than a dozen non-participating residential properties possibly affected by the proposed project.
 2. The Comprehensive Plan states working lands are often romanticized. The public's appetite for the farm aesthetic can impede real conversations about the future of agriculture in a community. Nearby residents often view the land as an extension of their backyard (Page 57).
 3. Nothing in the application indicates that the proposed project would prevent the use of the neighboring properties for residential or agricultural use.
 4. The applicant has proposed landscaping and screening to mitigate any perceived loss of the farm or country aesthetic.
 5. The applicant has proposed to locate inverters at least 150ft from any non-participating property line to mitigate any possible noise distribution.
 6. The applicant also submitted a study that states the maximum sound impact at the nearest residence to a solar inverter was calculated to be 41.4 dBA and a maximum sound impact from the substation transformer was calculated to be 39.6 dBA.
 7. The major source of traffic and noise would come during the construction phase, just like home construction. Unlike the construction of a new home there will be very little traffic or noise associated with the project once it has been completed.
 8. The applicant has submitted a study asserting that there is no significant impact to property values, but has worked with the neighboring property owners to alleviate any perceived financial concerns they may have.
- ii. The proposed use will not permanently injure the project area or the neighboring properties.
 1. The applicant is leasing the parcels for 35 years with an agreement with the land owners to return it back to its original condition at the end of that agreement.
 2. The applicant has submitted a decommissioning plan outlining the cost they expect to incur and the steps they will take once the project has met the end of its life.
 3. There is no expectation that the county would be responsible for removing any equipment from this site. The county currently has no decommissioning requirements for any other current projects. The county has no funding, plan or process to remove any dangerous or blighted residential, commercial, or industrial structures in Henry County. Over a 6 year period with the Blight Elimination Program where the state of Indiana paid 90 percent of the cost of removal of blighted structures the county only took advantage of the program to remove 2 houses in the unincorporated parts of the county. Henry County has not made it a priority to seek the removal of vacant or abandoned structures.

4. The farmers with lease agreements still own the land and have the ability to take legal recourse in the event that the company is no longer meeting its requirements under their private agreement.
5. The Comprehensive Plan states Henry County should encourage all new residential subdivisions to be constructed contiguous to existing development (Page 57).
6. The proposed project serves as a way to temporarily preserve agricultural land from increased pressures to subdivide land for permanent residential use.

c. The proposed uses will serve the public convenience and welfare.

i. Potential Economic Benefits

1. The proposed project would create additional assessed value that should remain stable through the majority of the life of the project. The project also adds diversity to the assessed value that is not dependent on the housing or commercial real estate market.
2. The applicant states that they expect that the project will generate approximately \$15 million dollars for Henry County and other local units of government through tax revenue throughout the 35-year life of the project, making it one of the top taxpayers within the county.
3. Henry County fees for the project will amount to hundreds of thousands of dollars, almost all will go into the general fund for the Council and Commissioners to spend as they see fit.
4. The proposed project would generate an additional revenue stream for at least 3 local farm families that would not be reliant on the weather or crop prices.
5. Non-participating neighboring property owners may also receive additional revenue from the applicant.
6. The applicant believes that the project will employ approximately 300 people during the 12 month construction period. It can be assumed that a high percentage of those people will be eating, shopping and renting hotel rooms in Henry County, and thereby adding some additional revenue to the local economy.

ii. Potential Community and Environmental Benefits.

1. The project would help diversify Henry County industries as stated in the Comprehensive Plan, which says; “target industries for Henry County include: Energy production, including solar and biofuels such as ethanol and soy diesel” (Page 90).
2. The proposed project would temporarily preserve farm ground for future use.
3. The applicant will be required to fix any roads that are damaged during construction and thereby paving or repairing roads that the county may not currently be able to.
4. The applicant would be required to replace any county drainage tile that is damaged or needs to be moved to accommodate the project and thereby upgrading tile that the county may not be able to.
5. The Comprehensive Plan states that efforts can and should be made to improve both the quantity and quality of stormwater runoff in both the incorporated and unincorporated parts of the county (Page 78). Fields maintained in grasses and pollinator plantings year round should help slow and improve stormwater runoff.

6. The Comprehensive Plan states that Henry County needs to plant trees, shrubs, and native species and increase natural cover across the entire county. Encourage the use of cover crops, no-till, or minimum-till conservation tillage, and maintain crop residue in the more rural parts of the county. Maintain tree lines that serves as windbreaks along roadsides or fields, prevent erosion, and connect woodlots. Plant and maintain streamside buffers to slow down and hold overland flow of water, prevent erosion, and provide plant and wildlife habitats (Page 84). The applicant's landscaping plan and plan to use pollinator friendly planting would be in line with the Comprehensive Plan.
7. The Comprehensive Plan states that Henry County should establish and protect a series of wildlife corridors capable of boosting the biodiversity of the county's plant and animal species (Page 102). The applicant's landscaping plan and plan to use pollinator friendly planting would be in line with the Comprehensive Plan.

This report was compiled by the staff with the best available data at the time. Any errors or omissions are unintended. If errors are discovered please inform staff as soon as possible.