



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

P L A N N I N G D E P A R T M E N T

Sandra Rivera
Interim Agency Director

Agenda Item # 5
November 10, 2022

Albert Lopez
Planning Director

November 1, 2022

224 West Winton Ave
Room 111

Honorable Board of Supervisors
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Dear Board Members:

www.acgov.org/cda

SUBJECT: APPEAL BY FRIENDS OF LIVERMORE OF THE DECISION OF THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS (BZA) APPROVING CONDITIONAL USE PERMIT PLN2021-00124 AND CERTIFYING THE ENVIRONMENTAL IMPACT REPORT, application by Soltage LLC/Lori Bilella to construct, operate, and maintain a solar photovoltaic (PV) energy generation facility. The solar facility would generate approximately 2 megawatts of power on approximately 23 acres of privately-owned land located at West Grant Line Road and Great Valley Parkway in the Mountain House area of unincorporated Alameda County, APN 99B-7650-7-1. A Draft Environmental Impact Report (EIR) was prepared and circulated on May 6, 2022, to allow a comment period that ended on June 19, 2022. Based on additional information provided at the October 13th hearing, an Addendum to the EIR was prepared, which provides minor modifications, clarifications, and enhancements to the EIR, including adoption of additional mitigation measures. Staff recommends that the Board adopt a resolution denying the appeal, certifying the EIR with the EIR addendum and exhibits, and approving the project.

Full record available at
<http://www.acgov.org/cda/planning/landuseprojects/currentprojects.htm>

PREVIOUS HEARING:

On October 13th the Board heard this item and voted to continue the item to allow staff sufficient time to respond to a request for Public Records submitted by the appellant. Staff has provided all of the requested records to the appellant in the form of project documents and emails.

In addition, at the hearing testimony was provided by the California Department of Fish and Wildlife where information was shared about a new listed species, the Crotch’s Bumblebee, and concern was raised about impacts to this new listed species. In response, and to ensure this species was considered appropriately, the County had prepared an addendum to the EIR, which discloses the evidence and analysis for why the project will not have a significant impact on the new listed species, and which, nevertheless adopts mitigation measures. The addendum makes minor modifications, provides clarifying analysis, and enhances the mitigation measures of the EIR. Although not required, it also meets the requirements for an addendum under CEQA

Guidelines § 15164. The addendum and the biological assessment indicate that no additional environmental review is necessary for this species. Out of an abundance of caution five additional mitigation measures (Bio 1.16 through 1.20) were added to the project in the event impacts or habitat is identified. The CEQA record and MMRP have been updated accordingly.

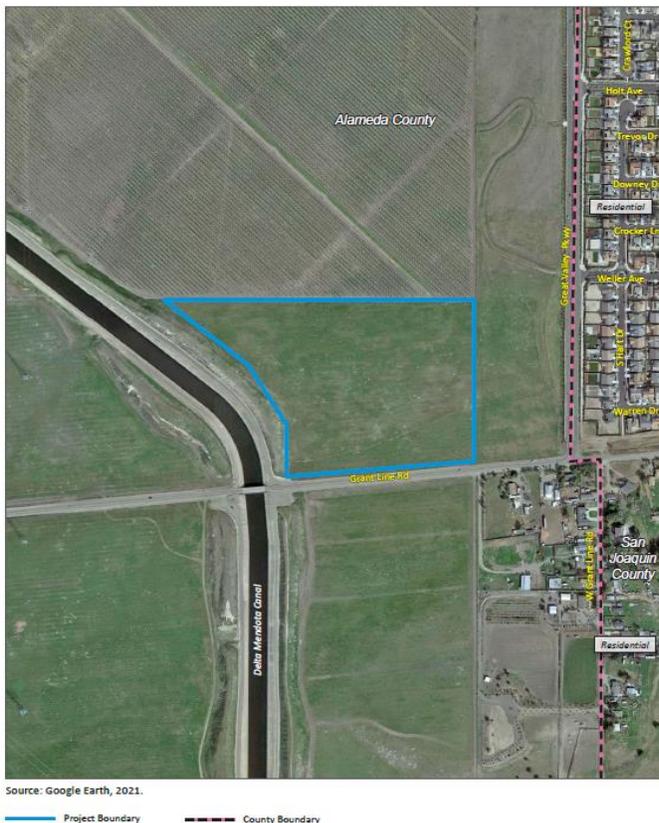
RECOMMENDATION:

East County Board of Zoning Adjustments: On September 8th, 2022 the East County Board of Zoning Adjustments voted 2-0 to certify the EIR and approve the project.

Planning Staff: That the Board of Supervisors deny the appeal, certify the EIR with exhibits, approve the CEQA addendum, approve the project, and adopt a resolution reflecting the Board’s decision.

BACKGROUND

The subject application (PLN2021-00124) was submitted and has been in process since late 2021, occupying a small parcel in a primarily agricultural area located in the Mountain House area of eastern unincorporated Alameda County. (see location map, Figure 1)



PROJECT DESCRIPTION

Soltage, LLC is proposing to construct, install, operate, and maintain an approximately 2-megawatt (MW) alternating current (AC) solar photovoltaic (PV) facility known as the Alameda Grant Line Solar 1 Project. The project is located on a 23.07-acre site, half of which would be covered with photovoltaic solar panels in rows approximately 650’ feet in length in a north/south axis. The panels will be installed using the NextTracker system, with a maximum height of 9’ in the most open position. Minor fencing (3,200 linear feet) would secure the perimeter of the site and an ample setback (100+ feet) from adjacent roadways serves to reduce visual impacts (i.e. how the project is viewed from public roadways).

The proposed project was awarded a 15-year Power Purchase Agreement (PPA) with Pacific Gas and Electric (PG&E) under their Electrical Renewable Market Adjusting Tariff (REMAT) program, which is a program specifically designed for small utility-scale

local renewable energy projects (<5MW). The proposed project would interconnect to the local PG&E distribution grid immediately adjacent to the site through the construction of three new on-site utility poles along West Grant Line Road.

The project has been in review since late 2021 and since that time has undergone extensive review by staff and by a consultant team of land use experts, biologists, and other environmental professionals. As explained at the EBZA hearing, County staff has determined that the site has the appropriate land use

designations (both zoning and General Plan) to allow the project with approval of a CUP, and the EBZA agreed by certifying the environmental document (Final EIR) and granting the CUP at their September 8th, 2022 meeting.

The appellant (Friends of Livermore/David Rounds) submitted a timely appeal (9/18/2022) challenging the decision of the EBZA as to certifying the EIR and approving the CUP, which is the subject of this Board letter.

BASIS OF APPEAL

The Friends of Livermore submitted a 1-page appeal letter asking the Board of Supervisors to reject the EIR and CUP that the BZA approved for the Grant Line Solar 1 Project. The points of appeal (bold, italics) and Planning staff's responses are described below:

1. Appeal assertion: The proposed Project is not a permitted use under the applicable land use designation.

The concern about the lack of Zoning authority to approve a solar project has been the topic of much discussion since the County began processing and approving solar projects in 2008. At that time the Alameda County Planning Commission made findings pursuant to § 17.54.060 (Uses not Listed) that a solar electric facility would not be contrary to the specific intent clauses or performance standards established for the A District and could be permitted under a conditional use permit. The Planning Commission also acknowledged that the land use designation of Large Parcel Agriculture as defined by ECAP (which is the same as the project designation) allows uses that are similar to solar projects (e.g. public and quasi-public uses, quarries, landfills and related facilities, wind farms and related facilities, utility corridors, and similar uses compatible with agriculture). The County has reiterated these findings for similar solar projects approved in 2011 and 2012, and most recently in 2021.

The Board of Supervisors directed Planning staff to prepare an ordinance related to solar uses, based on a set of nonbinding solar policies approved earlier in 2022. The nonbinding solar policies would support a project such as this one, as it is well below the proposed 1,000 acre cap, is not on lands determined to be important farmlands, or subject to a Williamson Act contract. While not a binding policy, the BOS action provides direction to staff and applicants and is supportive of this project.

2. Appeal assertion: The proposed Project is not replacement infrastructure.

Infrastructure is permitted in areas designated LPA. Certain replacement infrastructure is not barred by Measure D, but this doesn't require the project to be replacement infrastructure in order to be allowed. "Infrastructure shall include public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities." The following kinds of infrastructure are not barred: 1) new, expanded or replacement infrastructure necessary to create adequate service for the East County, 2) maintenance, repair or improvements of public facilities which do not increase capacity, and 3) public facilities or other infrastructure that have no excessive growth inducing effect on the East County area and have permit conditions to ensure that no service can be provided beyond that consistent with development allowed by Measure D (ECAP policy 13).

3. Appeal assertion: The proposed Project is not new infrastructure needed to serve growth allowed by Measure D.

This statement seems to be addressing the ECAP policy that new infrastructure allowed in the plan area should not be growth-inducing; that is, infrastructure should not be developed that would spur or be

constructed to allow for growth beyond that which is permitted by the ECAP. The approval of this project does in no way change the type, amount or size of permissible development, and all regulations, restrictions and standards in ECAP are unchanged by this project. Energy produced by this project would be deployed to meet local demand, and while there is no method to track or direct electric grid energy to a specific location it is expected the project will have both local and regional benefits.

4. Appeal assertion: Mitigation for impacts to special status species is inadequate.

The appellant makes no specific claims in terms of which special status species is impacted or where impacts are not mitigated. The Mitigation and Monitoring Reporting Program requires pre-construction surveys to identify any special species that may exist on the site prior to any ground disturbance (see exhibit B). Specific to the Burrowing Owl (a likely user of the site), the applicant would be required to coordinate with California Department of Fish and Wildlife (CDFW) if the species is found at the site, and the applicant would be required to follow their protocol for avoiding active nests. This mitigation is a condition of approval of the project. Additionally, the site will remain roughly 50% in a natural state, allowing small animals to traverse the site through friendly fencing, and the site will remain foraging area for raptors.

5. Appeal assertion: The California Department of Fish and Wildlife requested a continuance of the CUP proceedings, but that continuance was not granted.

The CDFW did not provide a comment letter on the Draft Environmental Impact Report indicating their concern with aspects of the project. It is correct that CDFW asked for more time to review the Final EIR just one day prior to the hearing, but their request was sent via email directly to EBZA members and not through the staff as is usually the case. Furthermore, during EBZA public comment the CDFW did not speak on the project, and since the EBZA approval they have not submitting a written response expressing any concern with specific species or mitigation. Staff does not believe the CDFW has serious concerns with the project, a conclusion based on their level of interaction or contact with staff.

6. Appeal assertion: The Project is not a permitted use in the applicable zoning district.

This appeal point is similar to #1, please see above for the response. In addition, the Planning Commission findings pursuant to §17.54.060 are intended to be applicable to future similar projects, and do not require a separate action for each subsequent project.

EAST COUNTY BOARD OF ZONING ADJUSTMENTS

This project was heard at a public hearing of the EBZA on September 8th, 2022 where the board reviewed the project, held a public hearing and heard testimony from approximately 12 members of the public. The comments were evenly split for and against the project. The Board discussed the item before approving the project on a 2-0-1 vote. The EBZA action included certification of the EIR and approval of the Mitigation and Monitoring Reporting Program.

At their hearing the EBZA made findings in support of the project (see EBZA proceedings), and in preparation for the current hearing those findings are repeated and have been refined in response to the appeal letter received. The findings in support of the project follow below and are also contained in the attached resolution for Board consideration.

Conditional Use Permit Findings Pursuant to 17.54.130

1. The use is required by the public need.

Yes, the use is required by the public need in that renewable energy demand will increase at the state and local level in addition to projected population increase inside the Urban Growth Boundary. The project will increase the County's supply of energy through renewable resources and supports the County's goals and policies of developing renewable energy in rural Alameda County. Energy generated at the site is sold to the public and incorporated into the PG&E distribution grid to meet local customer demand.

2. The use will be properly related to other land uses, transportation, and service facilities in the area.

Yes, the use will be properly related to other land uses, transportation, and service facilities in the area. No changes to allowed land uses, transportation, and service facilities are proposed. As the project is bounded on two sides by public roadways, and on a third side by a water canal, the impact on other uses is minimal. Adjacent uses will be unaffected by the project, and transportation and services in the area will not be impacted in any significant or measurable way.

3. The use, if permitted, under all the circumstances and conditions of the particular case will not materially affect adversely the health or safety of persons residing or working in the vicinity or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

Yes, the use, if permitted as conditioned herein, will not materially affect adversely the health or safety of persons residing or working in the vicinity or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. The project will not generate any toxic substances into the air, earth or water, or otherwise expose site personnel or adjacent residents to contaminants that would harm their health or safety. The proposed project, as conditioned herein, will conform to all land use codes, standards and policies related to the siting of utility facilities, and to all codes required for construction. The Draft EIR found that the project would not cause substantial adverse effects on human beings, either directly or indirectly.

4. The use will not be contrary to the character or performance standards established for the District in which it is to be located.

The use will not be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered in that the proposed project is located in the A (Agriculture) zoning district, which has as its stated intent: "to promote implementation of General Plan land use policies for agriculture and other nonurban uses; to conserve and protect existing agricultural uses; and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary for the general welfare." The Alameda County Planning Commission on June 16, 2008 in consideration of Determination D-165 associated with an earlier solar project, pursuant to Sections 17.54.050 and 17.54.060 of the Zoning Ordinance that establish a procedure for resolving "doubt as to the district classification of a use not listed in any part of this title", voted unanimously affirming that the construction of a privately-owned solar energy production facility is: 1) an allowable use on lands such as the subject site that are designated by the East County Area Plan as Large Parcel Agriculture; and 2) a conditionally permitted use in the A (Agriculture). Through the CUP process and action by the County to approve the project, along with conditions of approval, will ensure the use is appropriately located in a non-urban area and will serve the public need for increased energy for the foreseeable future.

CONCLUSION

The Planning Department and EBZA have concluded that the current project is consistent with applicable zoning, Measure D and the East County Area Plan, that the CEQA analysis for this project was adequate and that approval of the Conditional Use Permit is appropriate. Additional biological analysis was completed recently for the Crotch's and Western Bumblebee, and it has been determined that this site does not provide suitable habitat, and an addendum to the EIR has been prepared to clarify and provide analysis for the lack of impact to those two species as well as to adopt mitigation measures out of an abundance of caution. Furthermore, the project is consistent with the nonbinding Statement of Policy adopted by the Board of Supervisors specific to Commercial Solar and Battery Storage projects.

Staff has thoroughly analyzed the appeal as detailed above and finds that it did not provide sufficient reasoning to grant the appeal; as such, staff recommends the Board of Supervisors deny the appeal, certify the EIR with the EIR addendum and exhibits, approve the project, and adopt the attached resolution.

The complete record is attached.

Very truly yours,

DocuSigned by:
Sandra Rivera
4C216765DCDF437...

Sandi Rivera, Interim Director
Community Development Agency

Attachments: Appeal Letter
Draft Resolution
Exhibit A – Findings of Fact
Exhibit B – Mitigation Monitoring Reporting Program (MMRP)
Exhibit C - Approved Plan Set
EBZA staff report and minutes
Draft and Final EIR inc. Response to Comments
CEQA addendum
Correspondence

Full record available at <http://www.acgov.org/cda/planning/landuseprojects/currentprojects.htm>

Friends of Livermore

1141 Catalina Drive # 263 • Livermore, CA 94550 • Phone: 925-963-0136 • E-Mail: d.michael.rounds@gmail.com

September 18, 2022

VIA EMAIL

Albert Lopez, Albert.Lopez@acgov.org

Maria Palmeri, maria.palmeri@acgov.org

Re: Grant Line Solar 1 Project , Alameda County Planning
Application PLN2021-00124; Notice of Appeal of East County Board of Zoning Adjustments Certification of
FEIR and Issuance of a Conditional Use Permit

Dear Albert Lopez and Maria Palmeri:

Please accept this letter as a notice of appeal by Friends of Livermore of the East County Board of Zoning Adjustment decision of September 8, 2022 certifying the Final Environmental Impact Report (FEIR) and issuance of a conditional use permit (CUP) for the Alameda Grant Line Solar 1 Project (Project). The following are the bases for this appeal.

1. The proposed Project is not a permitted use under the applicable land use designation.
2. The proposed Project is not replacement infrastructure.
3. The proposed Project is not new infrastructure needed to serve growth allowed by Measure D.
4. Mitigation for impacts to special status species is inadequate.
5. The California Department of Fish and Wildlife requested a continuance of the CUP proceedings, but that continuance was not granted
6. The Project is not a permitted use in the applicable zoning district.

Based on the reasons outlined above we request that the Board of Supervisors reject the EIR and CUP that the BZA approved for the Grant Line Solar 1 Project.

Sincerely,



David Rounds,
for Friends of Livermore

cc: Anika Campbell-Belton, Clerk of the Board of Supervisors
anika.campbell-belton@acgov.org; cbs@acgov.org

Friends of Livermore is a community organization dedicated to protecting open space and improving the quality of life in the Livermore Area. We formed in early 2002 during the fight to protect North Livermore from a developer initiative that would have allowed massive housing developments in North Livermore.

RESOLUTION NO. _____

RESOLUTION CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT, INCLUDING THE EIR ADDENDUM, ADOPTING MITIGATION MONITORING AND REPORTING PROGRAM, AND APPROVING CONDITIONAL USE PERMIT PLN2021-00124, AND MAKING FINDINGS FOR THE ALAMEDA GRANT LINE SOLAR 1 PROJECT, ADOPTED AT THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA HEARING OF NOVEMBER 10, 2022

WHEREAS, Soltage, LLC (“Applicant” and “Permittee”) has filed an application for CONDITIONAL USE PERMIT PLN2021-00124, to construct, install, operate, and maintain the Alameda Grant Line Solar 1 Project, an approximately 2-megawatt (MW) alternating current (AC) solar photovoltaic (PV) facility on a 23.07-acre site in the A (Agricultural) District, located at West Grant Line Road and Great Valley Parkway in eastern unincorporated Alameda County bearing Assessor’s parcel Number 99B-7650-7-1; and

WHEREAS, the proposed project has been reviewed for compliance with the California Environmental Quality Act and the County of Alameda, acting as the Lead Agency as defined in Public Resources Code (PRC) §21067, has prepared an Environmental Impact Report (EIR) to ascertain whether the proposed project may have a significant effect on the environment; and

WHEREAS, the EIR disclosed that all potential environmental impacts from the project would be mitigated to less than significant; and

WHEREAS, a Public Review Draft EIR was prepared pursuant to CEQA Statute and Guidelines and was filed with the State OPR Clearinghouse on May 6, 2022; and

WHEREAS, the County provided notice to interested parties of the opportunity to review and comment on the Draft during the public review period which lasted for 45 days from May 6, 2022, to June 19, 2022; and

WHEREAS, public comments were submitted on the project and the Draft EIR during the indicated 45-day comment period including those of state and local agencies, districts, non-governmental organizations, opponents to and advocates for the project, and responses to the comments received during this period are included with the Final EIR that was made available for public review the minimum of ten (10) days before the current hearing; and

WHEREAS, the East County Board of Zoning Adjustments did hold a virtual meeting to consider certification of the Final EIR, and approval of the Conditional Use Permit (CUP), at the hour of 1:30 p.m. on the 8th day of September 2022; and

WHEREAS, it satisfactorily appears from affidavits on file that proper notice of said public hearing was given in all respects as required by law; and

WHEREAS, a Pre-Hearing Analysis was submitted recommending certification of the Final EIR, and that the CUP application be approved; and

WHEREAS, the applicant did appear at said virtual hearing and provided testimony in favor of the project, and members of the public did appear also virtually and provided testimony both in opposition to and in support of the application; and

WHEREAS, after deliberation on the CUP and review of the Final EIR, the East County Board of Zoning Adjustments determined that the Final EIR complies with the California Environmental Quality Act and reflects the independent judgment and analysis of the Planning Department, and the East County Board of Zoning Adjustments approved certifying the Final EIR and approving the Conditional Use Permit as reflected in East County Board of Zoning Adjustments Resolution 2022-24; and

WHEREAS, in a letter of September 18, 2022, appellant Friends of Livermore filed a timely appeal of both the certification of the Final EIR and the approval of the project on the grounds that the project is not permitted under the Large Parcel Agriculture land use designation, is not replacement infrastructure, is not new infrastructure needed to serve growth allowed by Measure D, that mitigation for special status species is inadequate, that the California Department of Fish and Wildlife requested a continuance of the CUP proceedings, which was not granted, and that the project is not a permitted use in the A (Agriculture) Zoning District; and

WHEREAS in written reports and oral presentation to the Board, County staff has responded to each assertion contained in the appeal using discussion of existing County policy, information from the historical record, technical information from accepted reliable sources and other statements of fact.

WHEREAS, at the October 13th, 2022 hearing on this item, the Board of Supervisors continued the item to November 10th to allow time for staff to respond to a Public Records Act request,

WHEREAS, the California Department of Fish and Wildlife provided information on two bees, the Crotch's Bumblebee and the Western Bumblebee, two newly listed special status species of concern; and

WHEREAS, the information on these new special status species was disclosed and evaluated in Biological Analysis included in an addendum to the Final EIR, which demonstrated that the potential environmental impacts to these species would be less than significant, because this site is not suitable habitat for either of these species, but in an abundance of caution five new Mitigation Measures were included in the addendum and are now part of the County's Final EIR and Mitigation Monitoring and Reporting Program.

NOW THEREFORE

BE IT RESOLVED

1. The Board certifies that the above recitals are true and correct.
2. The Board certifies that it has been presented with all of the information described in the above recitals and has reviewed and considered this information and the Final EIR, including its addendum prior to adopting this Resolution and considering approval of the Project.
3. The Board certifies and approves the Final EIR, including its addendum, which it has determined reflects the County's independent judgment and analysis and has been completed in compliance with CEQA.
4. Notice of the Board's hearings on the Draft EIR and Final EIR (including its addendum) have been given as required by law and the actions were conducted pursuant to the State

Planning and Zoning Law, CEQA, the State CEQA Guidelines and the County's CEQA Guidelines.

5. The Board is the elected decision-making body of the local lead agency, and certification of the Final EIR, including the addendum is the final decision of the County of Alameda.
6. All individuals, groups and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the Draft EIR and Final EIR, including its addendum, which met or exceeded the requirements of State Planning and Zoning Law and CEQA.
7. All comments submitted during the public review and comment period on the Draft EIR were responded to adequately in the Final EIR and its addendum.
8. No new comments or information has been submitted during the hearing on the Final EIR and addendum that would substantially change the analysis or conclusions of the Final EIR and addendum.
9. The Friends of Livermore appeal of the EBZA's action relating to the Final EIR is denied.

BE IT FURTHER RESOLVED that this Board hereby adopts and makes the findings contained in the Written Findings of Significant Effects, attached herein as Exhibit A, in compliance with Section 15091 of the CEQA Guidelines, providing a brief explanation of the rationale for each finding, supported by substantial evidence in the record, that changes or alterations have been required in or incorporated into the Project, including by identified mitigation measures which would avoid or substantially lessen all identified significant environmental effects.

BE IT FURTHER RESOLVED that the Board hereby adopts the Mitigation Monitoring and Reporting Program (MMRP) for the Project, attached herein as Exhibit B, which is required to be implemented by the Permittee and by the County as a condition of approval of the Project and that is fully enforceable through permit conditions, agreements, or other measures.

BE IT FURTHER RESOLVED that this Board hereby makes the following findings in support of the Conditional Use Permit:

1. The use is required by the public need. Renewable energy demand will increase at the state and local level in addition to projected population increase inside the Urban Growth Boundary. The project will increase the County's supply of energy through renewable resources and supports the County's goals and policies of developing renewable energy in rural Alameda County. Energy generated at the site is sold to the public and incorporated into the PG&E distribution grid to meet local customer demand. The provision of services such as electrical infrastructure/utilities is a policy of the East County Area Plan (ECAP) (policy 218).

2. The use will be properly related to other land uses, transportation, and service facilities in the area. No changes to allowed land uses, transportation, and service facilities are proposed. As the project is bounded on two sides by public roadways, and on a third side by a water canal, the impact on other uses is minimal. Adjacent uses will be unaffected by the project, and transportation and services in the area will not be impacted in any significant or measurable way.

3. The use, if permitted, under all the circumstances and conditions of the particular case will not materially affect adversely the health or safety of persons residing or working in the vicinity or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. The project will not generate any toxic substances into the air, earth or water, or otherwise expose site personnel or adjacent residents to contaminants that would harm their health or safety. The proposed project, as conditioned herein, will conform to all land use codes, standards and policies related to the siting of utility facilities, and to all codes required for construction. The Draft EIR found that the project would not cause substantial adverse effects on human beings, either directly or indirectly.

4. The use will not be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered in that the proposed project is located in the A (Agriculture) zoning district, which has as its stated intent: "to promote implementation of General Plan land use policies for agriculture and other nonurban uses; to conserve and protect existing agricultural uses; and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary for the general welfare." The Alameda County Planning Commission on June 16, 2008 in consideration of Determination D-165 associated with an earlier solar project, pursuant to Sections 17.54.050 and 17.54.060 of the Zoning Ordinance that establish a procedure for resolving "doubt as to the district classification of a use not listed in any part of this title", voted unanimously affirming that the construction of a privately-owned solar energy production facility is: 1) an allowable use on lands such as the subject site that are designated by the East County Area Plan as Large Parcel Agriculture; and 2) a conditionally permitted use in the A (Agriculture) zoning district. The subsequent approval County approvals of the Cool Earth and Aramis solar projects evidence an affirmation of the Planning Department's prior determination in 2008 that a solar energy facility is allowed as a "public and quasi-public use" consistent with the Large Parcel Agriculture designation in the East County Area Plan as well as with the A (Agricultural) District. Through the CUP process and action by the County to approve the project, along with conditions of approval, will ensure the use is appropriately located in a non-urban area and will serve the public need for increased energy for the foreseeable future.

BE IT FURTHER RESOLVED that this Board hereby finds that the project is consistent with the County's general plan. The County's analysis has concluded that in the ECAP Large Parcel Agriculture (LPA) designation, solar development is comparable to other uses specifically allowed, including public and quasi-public uses, windfarms, utility corridors, and similar uses compatible with agriculture. Although the solar field would not be used for agricultural production for the life of the project (estimated to be 40 years) the project would conserve soils in the long term without urban infrastructure such as streets or underground pipelines.

BE IT FURTHER RESOLVED that the Board of Supervisors rejects the assertions made in the Friends of Livermore appeal, and denies the appeal, finding as follows:

1. The project is in conformance with the East County Area Plan, as amended by Measure D. As discussed above, solar facilities like the project meet the general plan goals and policies and conform to the allowable uses for the Large Parcel Agriculture land use designation. Solar facilities like the project are similar in character to other uses explicitly allowed in this general plan designations, such as windfarms, quarries and public uses and the project is therefore in conformance with the ECAP.
2. The project is allowable pursuant to the Zoning Ordinance. The Planning Commission previously determined, pursuant to Sections 17.54.050 and 17.54.060, that solar facilities like the project are similar in character to other uses explicitly allowed by the Zoning Ordinance in the A District, such as windfarms and public utility uses.

3. The project does not need to be “replacement infrastructure” to be allowable under ECAP.
4. The biological resource mitigation measures will adequately reduce potential impacts to special status species to a less-than-significant level, as described in Exhibit A, written findings of significant effects. Furthermore, as explained in the FEIR, surveys for (i) the California red legged frog and the California tiger salamander and found that there is a low potential for either species to occur on the project site because it does not contain nor is it in close proximity to the necessary aquatic habitat for the breeding and survival of these species, and (ii) the San Joaquin kit fox, and found that there is no potential for that species to occur on the project site and numerous regional surveys over the past 2 years have not discovered that species anywhere in Alameda County.
5. The California Department of Fish and Wildlife (CDFW) had sufficient opportunity to comment on the Draft EIR during the 45-day public review period and the 81-day period between the end of the comment period and the EBZA hearing but declined to do so. Furthermore, as noted in Exhibit B, future coordination with the CDFW will be required pursuant to the FEIR mitigation measures.

BE IT FURTHER RESOLVED that the Board does hereby approve Conditional Use Permit PLN2021-00124 to permit the construction and operation of a maximum 2-megawatt solar energy facility subject to conditions of approval below, and as set forth in the project MMRP (Exhibit B), and plans marked Exhibit C dated July 16th, 2022, on file with the Alameda County Planning Department.

AUTHORIZATION AND CONDITIONS OF APPROVAL

1. Approval of this permit authorizes the construction and operation of a maximum 2-megawatt solar energy facility (SEF) subject to the project MMRP attached to this Resolution as Exhibit B. The project shall be constructed substantially in compliance with the approved plan set drawings labeled Exhibit C dated July 16th, 2022, on file with the Alameda County Planning Department.
2. Prior to operation, Applicant shall prepare a Decommissioning and Restoration Plan for approval by the Planning Director to decommission and restore the project site, in accordance with the following.
 - a. The Plan shall require that, upon facility decommissioning, all associated infrastructure, inclusive of concrete pads and equipment shall be removed and the soil and ground surface restored to its original condition prior to project construction.
 - b. The Decommissioning and Restoration Plan shall include a detailed engineer estimate of the cost of decommissioning and restoration in current year dollars, to be revised by the Applicant and accepted by the Planning Director at no less than two year intervals during the life of the project.
 - c. During the project life and until final project site restoration and decommissioning is completed, permittee or successor shall be required to maintain a bond, escrow account, irrevocable letter of credit or other financial surety (financial assurance) in the full amount of the value of the estimate of decommissioning and restoration to safeguard the decommission and restoration process from penury; the bond, escrow account, irrevocable letter of credit or other financial surety shall be payable solely to the County of Alameda for the explicit purpose of site decommissioning and restoration in the event of abandonment of the site or failure to fully restore the site at the termination of operations.
 - d. County shall release the financial assurance only when the requirements of the decommissioning and restoration plan have been fully completed and achieved.
3. Public Agency Approval. Applicant shall conform and maintain compliance with the requirements of the following agencies:

- Alameda County Public Works Agency, Land Development and Grading
 - Alameda County Public Works Agency, Building Inspection Department
 - Zone 7 Flood Control and Water Conservation District
 - Alameda County Fire Department
 - California State Public Utilities Commission
 - California Energy Commission
 - California Department of Fish and Wildlife
4. Grading. No grading activity may occur on the site until a grading plan and an erosion and sedimentation control plan have been reviewed and a grading permit issued in accordance with the County Grading Ordinance.

GENERAL REQUIREMENTS

5. Mitigation Monitoring and Reporting. Applicant shall be responsible for reporting annually to the Planning Department regarding the implementation of all project Mitigation Measures contained in the MMRP (Exhibit B) and/or included in these conditions of approval. Planning Department staff shall be authorized to inspect the facility with regard to the Mitigation Measures upon 48 hours' notice, or at any time under emergency conditions (e.g., where safety or health concerns appear imminent).

The Permittee shall implement all applicable mitigation measures identified in the Mitigation Monitoring and Reporting Program (MMRP) attached herein as Exhibit B, and as specified individually herein. These conditions of approval incorporate the individual mitigation measures and present them either in summarized form or by reference only, and in certain cases provide additional clarification and guidance on the manner, timing and responsibility for implementation of the mitigation measures. The incorporation of the mitigation measures into the conditions of approval (i.e., their replication and representation herein) is not intended to revise, modify or add to any mitigation measure, or add any new obligation to the Permittee under CEQA, but only to augment the understanding of how each mitigation measure shall be implemented.

These conditions of approval are intended to and shall be interpreted by reading Exhibit B and the enumerated conditions together, as a whole, in a manner that gives the maximum effect to both and, to the extent necessary, harmonizes them to avoid any inconsistencies or superfluous terms. If the Permittee, the County or other public agency responsible for implementation of a mitigation measure finds any discrepancy between Exhibit B and these conditions, Exhibit B shall be relied upon unless the conditions herein provide greater clarification of the time or performance or the manner of implementation of the MMRP, when determined to be necessary for the effective implementation of the MMRP. Any remaining questions of interpretation shall be resolved by the Planning Director.

6. Inspection Fees and Costs. The applicant or successors shall be responsible for payment of all reasonable costs associated with the necessary inspections of the conditions of approval contained in the authorization of the facility, including costs incurred by the Community Development Agency, the Alameda County Fire Department, the Building Inspection Division, the Public Works Agency or any other applicable Federal, State or County department or agency.
7. Hold Harmless. By exercise of this Conditional Use Permit, the Permittee and property owner, or their successors, shall defend, indemnify, and hold harmless the County of Alameda and its agents, officers, and employees from any claim, action, or proceeding against the County or its, agents, officers or

employees to attack, set aside, void, or annul Conditional Use Permit, PLN2021-00124, certification of the Environmental Impact Report, including the EIR addendum, the CEQA findings, or any combination thereof. Such indemnification shall include, but not be limited to, an award of costs and attorney's fees incurred by the County in its defense. The County shall promptly notify applicant of any such challenge.

8. Optional Review/Revocation/Revision. At any time during the term of this permit and after notice as provided for in the initial hearing, this matter may be set for rehearing by the Board of Zoning Adjustments for the purpose of making a determination whether the use of the site has ceased for a period of six months, and whether the permit should be therefore revoked, or whether conditions previously imposed should be modified or new conditions should be added to assure continued affirmative findings for this permit. Any condition modified or added shall have the same force and effect as if originally imposed.
9. Transfer of Operations. Any entity that has acquired the facilities as authorized under this permit may maintain the benefits of the existing use permit provided that a letter of notification is submitted to the Planning Department within six months after such transaction, and all conditions of approval for the subject facility are carried out by the new operator/permittee.
10. Site Restoration. Permittee or successor shall provide written notification to the Planning Department upon cessation of operations on the site. The permittee/property owner shall remove all improvements authorized under this permit from the site as prescribed in Condition No. 2 above, and the property shall be returned to its pre-application condition within three months of cessation.

MITIGATION MEASURES OF THE MITIGATION MONITORING AND REPORTING PROGRAM

11. **Mitigation Measure (MM) AQ-2 – AQ-2:** The Permittee shall require their construction contractor to comply with the following BAAQMD Best Management Practices for reducing construction emissions of PM10 and PM2.5:
 - a. Water all active construction areas at least twice daily or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
 - b. Apply water twice daily or as often as necessary to control dust or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
 - c. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
 - d. Sweep public streets daily (with water sweepers using reclaimed water if possible) in the vicinity of the project site, or as often as needed, to keep streets free of visible soil material.
 - e. Hydro-seed or apply non-toxic soil stabilizers to inactive construction areas.
 - f. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (e.g., dirt, sand).
 - g. Limit vehicle traffic speeds on unpaved roads to 15 mph.
 - h. Replant vegetation in disturbed areas as quickly as possible.
 - i. Install sandbags or other erosion control measures to prevent silt runoff from public roadways.
12. **MM BIO-1.1** – Permittee shall ensure a qualified biologist conducts an environmental education program for all persons employed or otherwise working on the project site before they perform any

work. The program shall consist of a presentation from the biologist that includes a discussion of the biology and general behavior of special-status species on or near the site; information about the distribution and habitat needs of the species; sensitivity of the species to human activities; the status of the species pursuant to the Federal Endangered Species Act, the California Endangered Species Act, and the California Fish and Game Code including legal protection; recovery efforts; penalties for violations; and any project-specific protective measures described in this document or any subsequent documents or permits. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers before their performing work on the site. The biologist shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry on the site. Upon completion of the program, employees shall sign a form stating they attended the program and understand all the protection measures.

13. **MM BIO-1.2** – Permittee shall ensure that a qualified biologist will be on the site daily to monitor initial grubbing/ vegetation clearing, grading, and ground disturbing activities. The biologist will have the authority to stop work that may impact special-status species.
14. **MM BIO-1.3** – The Permittee shall include in the development/construction contract specifications a requirement to use tightly woven fiber of natural materials (e.g., coir rolls or mats) or similar material for erosion control. Plastic mono-filament netting (erosion control matting) or similar material shall be prohibited, to prevent the entrapment of wildlife.
15. **MM BIO-1.4** – Permittee shall ensure that surveys for California Tiger Salamander, California red-legged frog, San Joaquin coachwhip, California glossy snake, and Coast horned lizard are conducted by a qualified biologist within 24 hours prior to the initiation of any vegetation clearing or ground disturbing activities. All suitable habitats including refuge such as burrows, under rocks, duff, debris, etc., shall be thoroughly inspected. Any listed wildlife that are encountered will be allowed to leave the work area of their own volition.
16. **MM BIO-1.5** – To avoid entrapment, injury, or mortality of listed species resulting from falling into steep-sided holes or trenches, all excavated holes or trenches deeper than 12 inches shall be covered at the end of each workday with plywood or similar materials. Larger excavation that cannot easily be covered shall be ramped at the end of the workday to allow trapped animals an escape method.
17. **MM BIO-1.6** – Prior to initiating construction activities, Permittee shall ensure that a California Department of Fish and Wildlife (CDFW)-approved biologist conducts surveys for burrowing owl within 500 feet of the project site, where safely accessible. This measure incorporates avoidance and minimization guidelines from the CDFW 2012 Staff Report on Burrowing Owl Mitigation. The surveys will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls. Surveys shall take place near sunrise or sunset in accordance with CDFW survey guidelines. All burrows or burrowing owls shall be identified and mapped. Surveys shall take place no more than 30 days prior to construction. During the breeding season (February 1–August 31), surveys shall document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1–January 31), surveys shall document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results shall be valid only for the season (breeding or nonbreeding) during which the survey is conducted.
18. **MM BIO-1.7** – If burrowing owls are found during the breeding season (February 1–August 31), the Permittee shall avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a no disturbance buffer zone (described below). Construction may occur during the

breeding season if a qualified biologist monitors the nest and determines that the nest is inactive. During the nonbreeding season (September 1–January 31), the project proponent shall avoid the owls and the burrows they are using. Avoidance shall include the establishment of a buffer zone.

19. **MM BIO-1.8** – If occupied burrows for nonbreeding burrowing owls are not avoided, Permittee shall implement passive relocation. Owls shall be excluded from burrows in the immediate impact zone and within an appropriate buffer zone as recommended by the biologist in coordination with the California Department of Fish and Wildlife (CDFW) by installing one-way doors in burrow entrances. These doors shall be in place for 48 hours prior to excavation. The project area shall be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation. Plastic tubing or a similar structure shall be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.
20. **MM BIO-1.9a** – To mitigate for the alteration of burrowing owl habitat, Permittee shall reserve approximately 11.6 acres on the southern, western, and northern edges of the site will in a natural state and protected under a conservation easement or deed restriction for the duration of the project. This land is contiguous with the levee and open space associated with the Mendota Canal. A mitigation and management plan (MMP) with success criteria to ensure the site is maintained as burrowing owl habitat, and to facilitate its continued use by burrowing owls, will be developed for this area and approved by the Alameda County Planning Director in coordination with California Department of Fish and Wildlife (CDFW). The MMP shall include measures to rehabilitate any habitat temporally disturbed by construction activities.
21. **MM BIO-1.9b** – No later than 6 months following the operational period of the project, Permittee shall restore the project site to as near as possible to its original condition. The MMP described in Mitigation Measure BIO-1.9a will include a post-project restoration plan to facilitate the future suitability of the site for burrowing owl.
22. **MM BIO-1.10** – The mitigation and management plan (MMP) described in Mitigation Measure BIO-1.9 for the approximately 11.6-acre conservation area shall include a prescription for managing the area as habitat for Swainson’s hawk. The MMP will include success criteria for Swainson’s hawk habitat.
23. **MM BIO-1.11** – Permittee shall ensure pre-construction surveys are conducted for the American badger no more than 14 days prior to the initiation of ground-disturbing activities. Surveys shall be conducted by a qualified wildlife biologist with experience and knowledge in identifying badger burrows and include walking parallel transects looking for badger burrows and sign. Any badger dens identified shall be flagged and mapped.
24. **MM BIO-1.12** – In the event active badger dens are identified, a no-work buffer of 200 feet shall be established around the den and associated occupied areas. If avoidance is not feasible, a biologist shall determine if the burrow is being used as an active maternity den through utilization of remote cameras. If young are determined to be present, the burrow shall be avoided until the young have vacated the burrow as determined by a qualified biologist. If the burrow is determined not to be an active maternity den and young are not present, in coordination with the California Department of Fish and Wildlife (CDFW), a one-way eviction door shall be installed between September 1 and January 1 to passively relocate the badger and to avoid impacts during the breeding season. If the badger digs back into the burrow, CDFW staff may allow the use of live traps to relocate badgers to suitable habitat from the area of project impact.

25. **MM BIO-1.13** – The mitigation and management plan (MMP) described in Measure BIO-1.9 for the 11.6-acre conservation area shall include prescription of an appropriate seed mix and planting plan targeted for the monarch butterfly, including milkweed and native flowering plant species known to be visited by monarch butterflies and containing a mix of flowering plant species with continual floral availability through the entire breeding season for monarch butterfly (early spring to fall). The MMP will include success criteria for monarch butterfly.
26. **MM BIO-1.14** – Permittee shall ensure that a qualified biologist conducts a minimum of two pre-construction surveys conducted within 30 days during appropriate activity periods (i.e., March through September) and conditions prior to the start of ground disturbing activities to look for milkweed host plants and signs of monarch breeding activity (larvae or chrysalides). Appropriate conditions for conducting the survey include surveying when temperatures are above 60 degrees Fahrenheit (15.5 degrees Celsius) and not during wet conditions (e.g., foggy, raining, or drizzling). The survey should be conducted at least 2 hours after sunrise and 3 hours before sunset and should occur at least 1 hour after rain subsides. Preferably, the survey should be conducted during sunny days with low wind speeds (less than 8 miles per hour) but surveying during partially cloudy days or overcast conditions are permissible if the surveyors can still see their own shadow.
27. **MM BIO-1.15** - If monarch butterflies are observed within the project site, Permittee shall ensure that a plan to protect monarch butterflies is developed and implemented in consultation with the United States Fish and Wildlife Service. The plan shall include, but not be limited to, the following measures:
 - a. Specifications for construction timing and sequencing requirements;
 - b. Establishment of appropriate no-disturbance buffers for milkweed and construction monitoring by a qualified biologist to ensure compliance if milkweed is identified;
 - c. Restrictions associated with construction practices, equipment, or materials that may harm monarch butterflies (e.g., avoidance of pesticides/herbicides, best management practices to minimize the spread of invasive plant species); and
 - d. Provisions to avoid monarch butterflies if observed away from a milkweed plant during project activity (e.g., ceasing of project activities until the animal has left the active work area on its own volition).
28. **MM BIO-1.16** Within 1 year prior to vegetation removal and/or the initiation of construction, a qualified biologist familiar with Crotch's and western bumble bee behavior and life history should conduct surveys to determine the presence/absence of the species. Surveys should be conducted during flying season when the species is most likely to be detected above ground, between approximately March 1 to September 1. A reference site should be visited to confirm bumble bee activity because flight periods likely vary geographically and with weather. Surveys should be conducted within the project site and accessible adjacent areas with suitable habitat. Survey results including negative findings should be submitted to the CDFW prior to project-related vegetation removal and/or ground-disturbing activities. At a minimum, a survey report should provide the following:
 - a. A description and map of the survey area, focusing on areas that could provide suitable habitat for the two bumble bee species;
 - b. Field survey conditions that should include the name(s) of qualified biologist(s) and their qualifications, date and time of the survey, survey duration, general weather conditions, survey goals, and species searched.
 - c. Map(s) showing the location of nests/colonies; and,
 - d. A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each nest/colony is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and

abundance) within the impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species).

29. **MM BIO-1.17** - If a qualified biologist determines Crotch's and/or western bumble bees are present, and if "take" or adverse impacts to the bumble bees cannot be avoided either during project activities or over the life of the project, the CDFW will be consulted to determine if a CESA Section 2080 Incidental Take Permit is required.
30. **MM BIO-1.18** - If a qualified biologist determines Crotch's and/or western bumble bees are present, information on the species shall be included in the environmental education program described in Mitigation Measure BIO-1.1 of the EIR.
31. **MM BIO-1.19** - If a qualified biologist determines Crotch's and/or western bumble bees are present, the mitigation and management plan (MMP) for the conservation area, described in Mitigation Measure BIO-1.9 of the EIR, shall include a prescription for managing the area as habitat for bumble bees. The MMP will include a prescription for an appropriate seed mix and planting plan that targets bumble bee nectar plants, including native flowering plant species known to be visited by bumble bees and containing a mix of flowering plant species with continual floral availability through the flight season (early spring through late fall). The MMP will include success criteria for bumble bee habitat.
32. **MM BIO-1.20** - Rodenticides and pesticides will not be used anywhere on the project site during the life of the project.
33. **MM CULT (b)**: If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, Permittee shall halt all work within 50 feet of the resources and a qualified archaeologist shall be consulted to assess the significance of the find according to CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives from the County and the archaeologist shall meet to determine the appropriate avoidance measures or other appropriate mitigation. All significant cultural materials recovered shall be, as necessary and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards. In considering any suggested mitigation proposed by the consulting archaeologist to mitigate impacts to historical resources or unique archaeological resources, the County shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) would be instituted. Work may proceed on other parts of the subject property outside the 50-foot area while mitigation for historical resources or unique archaeological resources is being carried out.
34. **MM CULT (c)**: Procedures of conduct following the discovery of human remains have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98 and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The Alameda County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours, who will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) of any human remains. Further actions shall be determined, in part, by the desires of the MLD. The MLD has 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within 48 hours, the owner shall, with

appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD's recommendations, the owner or the descendent may request mediation by the NAHC

35. **MM GEO (f):** The Permittee shall ensure that the construction contractor incorporates the following in all grading, demolition and construction plans:
- a. In the event that fossils or fossil-bearing deposits are discovered during grading, demolition, or building, excavations within 50 feet of the find shall be temporarily halted or diverted.
 - b. The contractor shall notify the Alameda County Building Department and a County-approved qualified paleontologist to examine the discovery.
 - c. The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5.
 - d. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find.
 - e. If the project applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the proposed project based on the qualities that make the resource important. The excavation plan shall be submitted to the County for review and approval prior to implementation.
36. **MM TCR-1.1:** Implement Mitigation Measure CULT (b): If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and a qualified archaeologist shall be consulted to assess the significance of the find according to CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives from the County and the archaeologist shall meet to determine the appropriate avoidance measures or other appropriate mitigation. All significant cultural materials recovered shall be, as necessary and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards. In considering any suggested mitigation proposed by the consulting archaeologist to mitigate impacts to historical resources or unique archaeological resources, the County shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) would be instituted. Work may proceed on other parts of the subject property outside the 50-foot area while mitigation for historical resources or unique archaeological resources is being carried out.
37. **MM TCR-1.2:** Implement Mitigation Measure CULT (c): Procedures of conduct following the discovery of human remains have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98 and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The Alameda County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours, who will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) of any human remains. Further actions shall be determined, in part, by the desires of the MLD. The MLD has 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make

recommendations within 48 hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD's recommendations, the owner or the descendent may request mediation by the NAHC.

PERMIT IMPLEMENTATION

- 38. Pursuant to Section 17.52.050 of the Alameda County Zoning Ordinance said Conditional Use Permit shall be implemented within a term of three (3) years of its issuance or it shall be of no force or effect.
- 39. If implemented, said Conditional Use Permit shall undergo a mandatory review to be conducted at the end of five years, September 8th, 2027, and shall remain revocable for cause in accordance with Section 17.54.030 of the Alameda County Zoning Ordinance.
- 40. The Permittee shall comply with all applicable federal, state, and local laws, ordinances, and regulations.

THE FOREGOING was PASSED and ADOPTED by a majority vote of the Board of Supervisors of the County of Alameda this 10th day of November 2022, pursuant to the following vote:

AYES:
NOES:
EXCUSED:
ABSTAINED:

KEITH CARSON
PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

Anika Campbell-Belton, Clerk
Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

By:  _____
Kathy Lee, Deputy County Counsel

**Alameda Grant Line Solar Project 1 Project
Written Findings of Significant Effects**

The California Environmental Quality Act (CEQA) Public Resources Code Sections 21000 et seq., state that if a project would result in significant environmental impacts it may be approved, if feasible mitigation measures or feasible alternatives can avoid or substantially lessen the impact or if there are specific economic, social, or other considerations which make it infeasible to substantially lessen or avoid the impacts. Therefore, when an environmental impact report ("EIR") has been completed which identifies one or more potentially significant environmental impacts, the approving agency must make one or more of the following findings for each identified significant impact:

- a) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- c) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

In accordance with CEQA Guidelines Section 15091, the following findings and supporting facts summarize each significant environmental impact and the mitigation measures adopted to avoid or substantially reduce the magnitude of the effect, as identified in the Alameda Grant Line Solar Project Final Environmental Impact Report and the EIR addendum (collectively "FEIR") prepared pursuant to CEQA Guidelines Section 15162. The findings described below are organized by resource issue, in the same order as the effects are discussed in the FEIR. The Lead Agency's findings regarding the Project follow the individual effect findings. The findings reference the FEIR (part of the record upon which the East County Board of Zoning Adjustments [EBZA] bases its decision on the project) and mitigation measures in support of the findings. For specific resource mitigation measures, the section number where the full text of the mitigation measure occurs is noted in the finding.

INTRODUCTION

Soltage, LLC is proposing to construct, install, operate, and maintain an approximately 2-megawatt (MW) alternating current (AC) solar photovoltaic (PV) facility known as the Alameda Grant Line Solar 1 (project). The project is located on a 23.07-acre site at West Grant Line Road and Great Valley Parkway in eastern unincorporated Alameda County, adjacent to the unincorporated community of Mountain House in San Joaquin County. The project would include a gravel access road, and a 500 square foot pad for the inverter. The solar panels would be a silicon model that does not use Teflon coating, and would use a non-toxic anti-reflective coating. Each panel consists of a module assembly (with frame) that is approximately 80 inches by 40 inches in size. The solar panels would be mounted on a steel racking frame that is positioned three to nine feet above ground to allow for vegetation control and periodic maintenance. The panels would include a single axis tracking system that is mounted on steel posts driven into the ground and would have a +/- 60-degree range of motion driven by electric motors. The solar arrays will be in three rows with the longest row in the rear.

RECORD OF PROCEEDINGS AND CUSTODIAN OF RECORD

The record upon which all findings and determinations related to the approval of the project are based comprises the items listed below.

- The FEIR and all documents referenced in or relied upon by the FEIR, including its addendum.
- All information (including written evidence and testimony) provided by County staff to the Board relating to the FEIR, the approvals, and the project.
- All information (including written evidence and testimony) presented to the Board of Supervisors by the environmental consultants who prepared the FEIR or incorporated into reports presented to the Board.
- All applications, letters, testimony, and presentations relating to the project.
- All information (including written evidence and testimony) presented at any County hearing related to the project and the FEIR.
- All County-adopted or County-prepared land use plans, ordinances, including without limitation general plans, specific plans, and ordinances, together with environmental review documents, findings, mitigation monitoring programs, and other documents relevant to land use within the area.
- The Mitigation Monitoring and Reporting Program for the project.
- All other documents composing the record pursuant to Public Resources Code Section 21167.6(e).

The custodian of the documents and other materials that constitute the record of the proceedings upon which the County's decisions are based is Albert Lopez, Planning Director, or his designee. Such documents and other material are located at 224 Winton Avenue, Room 111, Hayward, California 94544.

Findings and Recommendations Regarding Significant Impacts that are Mitigated to a Less-Than-Significant Level

AIR QUALITY

Impact AQ-2: Uncontrolled fugitive dust (PM₁₀ and PM_{2.5}) could expose the areas that are downwind of construction sites to air pollution from construction activities without the implementation of the Air District's best management practices.

Mitigation Measure AQ-1: The applicant shall require their construction contractor to comply with the following BAAQMD Best Management Practices for reducing construction emissions of PM₁₀ and PM_{2.5}:

- Water all active construction areas at least twice daily or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- Apply water twice daily or as often as necessary to control dust or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- Sweep public streets daily (with water sweepers using reclaimed water if possible) in the vicinity of the project site, or as often as needed, to keep streets free of visible soil material.
- Hydro-seed or apply non-toxic soil stabilizers to inactive construction areas.

- Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (e.g., dirt, sand).
- Limit vehicle traffic speeds on unpaved roads to 15 mph.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff from public roadways.

Findings: Based on the EIR and the entire record before the County, the County finds that:

Effects of Mitigation: Mitigation Measure AQ-1 would require implementation of the BAAQMD Best Management Practices for fugitive dust control. Therefore, with compliance with this mitigation measure, construction-related fugitive dust would be reduced to less-than-significant levels.

Remaining Impacts: Any remaining impacts related to air quality will be less than significant.

BIOLOGICAL RESOURCES

Impact BIO-1: Construction of the project could potentially kill, injure, or alter the behavior of special-status species on the site.

Mitigation Measure BIO-1.1: A qualified biologist will conduct an environmental education program for all persons employed or otherwise working on the project site before they perform any work. The program shall consist of a presentation from the biologist that includes a discussion of the biology and general behavior of special-status species on or near the site; information about the distribution and habitat needs of the species; sensitivity of the species to human activities; the status of the species pursuant to the Federal Endangered Species Act, the California Endangered Species Act, and the California Fish and Game Code including legal protection; recovery efforts; penalties for violations; and any project-specific protective measures described in this document or any subsequent documents or permits. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers before their performing work on the site. The biologist shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry on the site. Upon completion of the program, employees shall sign a form stating they attended the program and understand all the protection measures.

Mitigation Measure BIO-1.2: A qualified biologist will be on the site daily to monitor initial grubbing/vegetation clearing, grading, and ground disturbing activities. The biologist will have the authority to stop work that may impact special-status species.

California tiger salamander, California red-legged frog, San Joaquin coachwhip, California glossy snake, and coast horned lizard: Construction of the project has the potential to injure or kill California tiger salamander, California red-legged frog, San Joaquin coachwhip, California glossy snake, and coast horned lizard that may be in rodent burrows during grading or installation of the monopoles. These species could become entangled in the plastic netting wrapped around erosion-control devices. These species could become entrapped in steep-sided trenches or walls. The proposed project would not impact any potential breeding habitat for California tiger salamander or California red-legged frog. Because California tiger salamander and California red-legged frog generally migrate at night during rain events and construction activities would occur during daylight hours, no impact on migrating individuals is expected. Operation of the proposed solar facility is not anticipated to impact California tiger salamander

or glossy snake because the adults are only active on the surface at night. Potential impacts to these species would be reduced to *less than significant* with implementation of Mitigation Measures BIO-1.1, 1.2, 1.3, 1.4, and 1.5.

Mitigation Measure BIO-1.3: The Applicant shall include in the contract specifications a requirement to use tightly woven fiber of natural materials (e.g., coir rolls or mats) or similar material for erosion control. Plastic mono-filament netting (erosion control matting) or similar material shall be prohibited, to prevent the entrapment of wildlife.

Mitigation Measure BIO-1.4: Surveys for California tiger salamander, California red-legged frog, San Joaquin coachwhip, California glossy snake, and coast horned lizard shall be conducted by a qualified biologist within 24 hours prior to the initiation of any vegetation clearing or ground disturbing activities. All suitable habitat including refuge such as burrows, under rocks, duff, debris, etc., shall be thoroughly inspected. Any listed wildlife that are encountered will be allowed to leave the work area of their own volition.

Mitigation Measure BIO-1.5: To avoid entrapment, injury, or mortality of listed species resulting from falling into steep-sided holes or trenches, all excavated holes or trenches deeper than 12 inches shall be covered at the end of each workday with plywood or similar materials. Larger excavation that cannot easily be covered shall be ramped at the end of the workday to allow trapped animals an escape method.

Burrowing Owl: Construction of the project has the potential to crush or entomb burrowing owls in burrows. Construction work near an occupied burrow could impact breeding or wintering western burrowing owls through general disturbance. Installation of the solar panels will permanently impact 11 acres of burrowing owl habitat by lowering the habitat quality. Potential impacts to burrowing owl would be reduced to *less than significant* with implementation of Mitigation Measures BIO-1.1, 1.2, 1.6, 1.7, 1.8, and 1.9.

Mitigation Measure BIO-1.6: Prior to initiating construction activities, a California Department of Fish and Wildlife (CDFW)-approved biologist shall conduct surveys for burrowing owl within 500 feet of the project site, where safely accessible. This measure incorporates avoidance and minimization guidelines from the CDFW 2012 Staff Report on Burrowing Owl Mitigation. The surveys will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls. Surveys shall take place near sunrise or sunset in accordance with CDFW survey guidelines. All burrows or burrowing owls shall be identified and mapped. Surveys shall take place no more than 30 days prior to construction. During the breeding season (February 1–August 31), surveys shall document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1–January 31), surveys shall document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results shall be valid only for the season (breeding or nonbreeding) during which the survey is conducted.

Mitigation Measure BIO-1.7: If burrowing owls are found during the breeding season (February 1–August 31), the project proponent shall avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the nest is inactive. During the nonbreeding season (September 1–January 31), the project proponent shall avoid the owls and the burrows they are using. Avoidance shall include the establishment of a buffer zone.

Mitigation Measure BIO-1.8: If occupied burrows for nonbreeding burrowing owls are not avoided, passive relocation shall be implemented. Owls shall be excluded from burrows in the immediate impact zone and within an appropriate buffer zone as recommended by the biologist in coordination with the California Department of Fish and Wildlife (CDFW) by installing one-way doors in burrow entrances. These doors shall be in place for 48 hours prior to excavation. The project area shall be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation. Plastic tubing or a similar structure shall be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

Mitigation Measure BIO-1.9: To mitigate for the alteration of burrowing owl habitat, 10 acres on the western and northern edges of the site will be protected in perpetuity under a conservation easement or deed restriction. This land is contiguous with the levee and open space associated with the Mendota Canal. A mitigation and management plan (MMP) with success criteria will be developed for this area and approved by the California Department of Fish and Wildlife (CDFW).

Swainson's Hawk: Impacts on Swainson's hawk foraging habitat will include the permanent loss of approximately 11 acres of open grassland foraging habitat. The project will temporarily affect approximately 5 acres of mostly non-native annual grassland within the project site. Much of this area is characterized by ruderal, often sparse vegetation, trash accumulation, roadside gravel, and fill. The area next to the roadway is also subject to noise from passing vehicles and presents a strike risk to the birds and is thus a sub-optimal foraging area. There are no suitable nest trees on or adjacent to the project site. The project site is a relatively small, disjunct parcel of habitat adjacent to dense residential development; by itself it cannot support a breeding pair of Swainson's hawk. However, the incremental loss of foraging habitat could be a significant impact. Potential impacts to Swainson's hawk would be reduced to *less than significant* with implementation of Mitigation Measures BIO-1.1, 1.2, 1.9, and 1.10.

Mitigation Measure BIO-1.10: The mitigation and management plan (MMP) described in Mitigation Measure BIO-1.9 for the 10-acre conservation area shall include a prescription for managing the area as habitat for Swainson's hawk. The MMP will include success criteria for Swainson's hawk habitat.

San Joaquin Kit Fox: Kit fox are extirpated from the area and are not expected to use the site. In the event kit fox recolonize the northern part of their range and move into the project site area at some future time, they will be able to move through the wildlife-friendly fence and use the protected 10 acres described in Measure BIO-1.9. Therefore, impacts to San Joaquin kit fox will be *less than significant*.

American Badger: Initial grading and ground disturbance of the site could injure or kill American badgers in dens or burrows, in the event any are present on the site at the time of the disturbance. Potential impacts to these species would be reduced to *less than significant* with implementation of Mitigation Measures BIO-1.1, 1.2, 1.11, and 1.12.

Mitigation Measure BIO-1.11: Pre-construction surveys shall be conducted for the American badger no more than 14 days prior to the initiation of ground-disturbing activities. Surveys shall be conducted by a qualified wildlife biologist with experience and knowledge in identifying badger burrows and include walking parallel transects looking for badger burrows and sign. Any badger dens identified shall be flagged and mapped.

Mitigation Measure BIO-1.12: In the event active badger dens are identified, a no-work buffer of 200 feet shall be established around the den and associated occupied areas. If avoidance is not feasible, a biologist shall determine if the burrow is being used as an active maternity den through utilization of

remote cameras. If young are determined to be present, the burrow shall be avoided until the young have vacated the burrow as determined by a qualified biologist. If the burrow is determined not to be an active maternity den and young are not present, in coordination with the California Department of Fish and Wildlife (CDFW), a one-way eviction door shall be installed between September 1 and January 1 to passively relocate the badger and to avoid impacts during the breeding season. If the badger digs back into the burrow, CDFW staff may allow the use of live traps to relocate badgers to suitable habitat from the area of project impact.

Monarch Butterfly: Development of the project site would result in the loss of small numbers of narrow-leaved milkweed, the larval food plant for the monarch butterfly. If monarch eggs, larvae, or chrysalides are on the milkweed at the time they are removed it would result in mortality. After construction, the solar panels would lead to the loss of milkweed plants and therefore monarch breeding habitat. Potential impacts to monarch butterfly would be reduced to *less than significant* with implementation of Mitigation Measures BIO-1.1, 1.2, 1.9, 1.13, 1.14, and 1.15.

Mitigation Measure BIO-1.13: The mitigation and management plan (MMP) described in Measure BIO-1.9 for the 10-acre conservation area shall include prescription of an appropriate seed mix and planting plan targeted for the monarch butterfly, including milkweed and native flowering plant species known to be visited by monarch butterflies and containing a mix of flowering plant species with continual floral availability through the entire breeding season for monarch butterfly (early spring to fall). The MMP will include success criteria for monarch butterfly.

Mitigation Measure BIO-1.14: A qualified biologist will conduct a minimum of two pre-construction surveys conducted within 30 days during appropriate activity periods (i.e., March through September) and conditions prior to the start of ground disturbing activities to look for milkweed host plants and signs of monarch breeding activity (larvae or chrysalides). Appropriate conditions for conducting the survey include surveying when temperatures are above 60 degrees Fahrenheit (15.5 degrees Celsius) and not during wet conditions (e.g., foggy, raining, or drizzling). The survey should be conducted at least 2 hours after sunrise and 3 hours before sunset and should occur at least 1 hour after rain subsides. Preferably, the survey should be conducted during sunny days with low wind speeds (less than 8 miles per hour) but surveying during partially cloudy days or overcast conditions are permissible if the surveyors can still see their own shadow.

Mitigation Measure BIO-1.15: If monarch butterflies are observed within the project site, a plan to protect monarch butterflies shall be developed and implemented in consultation with the United States Fish and Wildlife Service. The plan shall include, but not be limited to, the following measures:

- Specifications for construction timing and sequencing requirements;
- Establishment of appropriate no-disturbance buffers for milkweed and construction monitoring by a qualified biologist to ensure compliance if milkweed is identified;
- Restrictions associated with construction practices, equipment, or materials that may harm monarch butterflies (e.g., avoidance of pesticides/herbicides, best management practices to minimize the spread of invasive plant species); and
- Provisions to avoid monarch butterflies if observed away from a milkweed plant during project activity (e.g., ceasing of project activities until the animal has left the active work area on its own volition).

Crotch's and Western Bumblebee: If Crotch's and/or Western Bumblebees are observed within the project site, a plan to protect the bees shall be developed and implemented in consultation with the California Department of Fish and Wildlife Service. The plan shall include, but not be limited to, the following measures:

Mitigation Measure BIO-1.16: Within 1 year prior to vegetation removal and/or the initiation of construction, a qualified biologist familiar with Crotch's and western bumble bee behavior and life history should conduct surveys to determine the presence/absence of the species. Surveys should be conducted during flying season when the species is most likely to be detected above ground, between approximately March 1 to September 1. A reference site should be visited to confirm bumble bee activity because flight periods likely vary geographically and with weather. Surveys should be conducted within the project site and accessible adjacent areas with suitable habitat. Survey results including negative findings should be submitted to the CDFW prior to project-related vegetation removal and/or ground-disturbing activities. At a minimum, a survey report should provide the following:

- a) A description and map of the survey area, focusing on areas that could provide suitable habitat for the two bumble bee species;
- b) Field survey conditions that should include the name(s) of qualified biologist(s) and their qualifications, date and time of the survey, survey duration, general weather conditions, survey goals, and species searched.
- c) Map(s) showing the location of nests/colonies; and,
- d) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each nest/colony is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within the impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species).

Mitigation Measure BIO-1.17: If a qualified biologist determines Crotch's and/or western bumble bees are present, and if "take" or adverse impacts to the bumble bees cannot be avoided either during project activities or over the life of the project, the CDFW will be consulted to determine if a CESA Section 2080 Incidental Take Permit is required.

Mitigation Measure BIO-1.18: If a qualified biologist determines Crotch's and/or western bumble bees are present, information on the species shall be included in the environmental education program described in Mitigation Measure BIO-1.1 of the EIR.

Mitigation Measure BIO-1.19: If a qualified biologist determines Crotch's and/or western bumble bees are present, the mitigation and management plan (MMP) for the conservation area, described in Mitigation Measure BIO-1.9 of the EIR, shall include a prescription for managing the area as habitat for bumble bees. The MMP will include a prescription for an appropriate seed mix and planting plan that targets bumble bee nectar plants, including native flowering plant species known to be visited by bumble bees and containing a mix of flowering plant species with continual floral availability through the flight season (early spring through late fall). The MMP will include success criteria for bumble bee habitat.

Mitigation Measure BIO-1.20: Rodenticides and pesticides will not be used anywhere on the project site during the life of the project.

Findings: Based on the EIR and the entire record before the County, the County finds that:

Implementation of Mitigation Measures BIO-1.1, BIO-1.2, BIO-1.3, BIO-1.4, BIO-1.5, BIO-1.6, BIO-1.7, BIO-1.8, BIO-1.9, BIO-1.10, BIO-1.11, BIO-1.12, BIO-1.13, BIO-1.14, BIO-1.15, BIO-1.16, BIO-1.17, BIO-1.18, BIO-1.19 and BIO-1.20 would result in monitoring and protection of special-status wildlife species that may occur on-site, and impacts would be reduced to a less than significant level. The project applicant will be required to implement general protection measures during construction, restore disturbed annual grasslands, conduct preconstruction surveys, install exclusionary fencing, and retain a qualified biological monitor during ground disturbing activities to avoid disturbance of wildlife species.

Remaining Impacts: Any remaining impacts related to special-status species, either directly or through habitat modification, will be less than significant.

TRIBAL CULTURAL RESOURCES

It remains possible that a currently unknown tribal cultural resource could be encountered during construction activities. Without mitigation measures, unearthing tribal cultural resources could result in a significant impact. In the unlikely event that tribal cultural resources are unearthed on the project site, however, Mitigation Measures CULT (b) and CULT (c) provided in the Initial Study included in Appendix A, *Notice of Preparation and Scoping Comments* of the Draft EIR, would apply, which include procedures to follow.

TCR-1 The proposed project would have potential to cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Sections, 21074, 5020.1(k), or 5024.1.

Mitigation Measure TCR-1.1: Implement Mitigation Measure CULT (b).

Mitigation Measure CULT (b): If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and a qualified archaeologist shall be consulted to assess the significance of the find according to CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives from the County and the archaeologist shall meet to determine the appropriate avoidance measures or other appropriate mitigation. All significant cultural materials recovered shall be, as necessary and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards. In considering any suggested mitigation proposed by the consulting archaeologist to mitigate impacts to historical resources or unique archaeological resources, the County shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) would be instituted. Work may proceed on other parts of the subject property outside the 50-foot area while mitigation for historical resources or unique archaeological resources is being carried out.

Impact TCR-1.2: Implementation of the proposed project could cause a substantial adverse change in the significance of a tribal cultural resource pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1.

Mitigation Measure TCR-1.2: Implement Mitigation Measure CULT (c).

Mitigation Measure CULT (c): Procedures of conduct following the discovery of human remains have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98 and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The Alameda County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours, who will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) of any human remains. Further actions shall be determined, in part, by the desires of the MLD. The MLD has 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within 48 hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD's recommendations, the owner or the descendent may request mediation by the NAHC.

TCR-2 The proposed project, in combination with past, present, and reasonably foreseeable projects, would result in less-than-significant cumulative impacts with respect to cultural resources.

Cumulative impacts to TCRs occur when a series of actions leads to adverse effects on local Native American tribes or tribal lands. No TCRs have been identified on the project site or within the immediate vicinity. Further, in association with CEQA review, future AB 52 consultations with Native American tribes in order to identify TCRs would be required for projects that have the potential to cause significant impacts to tribal cultural resources.

As discussed in the Cultural Resources section of the Initial Study that was included in the Notice of Preparation for the proposed project (see Appendix A, *Notice of Preparation and Scoping Comments* in the Draft EIR), development of the proposed project would comply with federal and State laws protecting cultural resources. Implementation of Mitigation Measures TCR-1.1 and TCR-1.2 identified above would ensure that archaeological, cultural resources, and TCRs if discovered on the project site, are protected, and that discovered human remains, including those associated with Native American, tribes are handled appropriately. Thus, given that the proposed project would have a *less than significant* impact on TCRs with mitigation, the proposed project's impacts to TCRs would not be considered cumulatively considerable. Therefore, cumulative impacts to TCRs would be *less than significant*.

Findings: Based on the EIR and the entire record before the County, the County finds that:

Effects of Mitigation: Implementation of the mitigation measures recommended by MMs TCR-1.1 and TCR-1.2 will ensure that in the event that previously unknown cultural or tribal cultural resources are exposed during ground-disturbing activities, proper protocols would be followed to evaluate the resource and appropriate parties contacted.

Remaining Impacts: Any remaining impacts to cultural or tribal cultural resources will be less than significant.

Findings and Recommendations Regarding Impacts that are Less Than Significant

AESTHETICS

AES-1 The proposed project would not have a substantial adverse effect on a scenic vista

Scenic vistas are generally interpreted as long-range views of a specific scenic feature (e.g., open space lands, mountain ridges, and bay or ocean views). The ECAP Polices 105 and 112 designate major visually sensitive ridgelines and prominent visual features within the county, some of which can be seen from the subject property. Long-range views of the scenic vistas would be impacted by the proposed project if the project were to block or obstruct these views. As described in Section 4.1.1.2, of the DEIR, Existing Conditions, the project site is in a relatively flat area, is undeveloped with little vegetation, and is not located in or near a scenic vista, ridgeline, or corridor.

The primary components of the proposed project that could affect long-range views are the solar arrays and the transformers. The midpoint of the mounted solar panels would be approximately 7 feet above ground, and at maximum tilt, the height of the solar arrays would be less than 14 feet above the finished grade elevation. Therefore, regardless of the project site's proximity to scenic vistas, ridgelines, or corridors, the low height of the PV facility would not substantially block any views.

Therefore, the proposed project would not result in a substantial adverse effect on a scenic vista and the impact would be *less than significant*.

AES-2 The proposed project would not substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway.

As discussed in Section 4.1.1.2, of the Draft EIR, Existing Conditions, Grant Line Road bordering the project site on the south is a Scenic Thoroughfare, Mountain House Road to the east of the project site is a Scenic Rural-Recreation Route, and I-580 1 mile south of the project site is a State-designated scenic highway. North Livermore Avenue adjacent to the proposed project is considered a County-designated scenic corridor. However, in compliance with the Countywide Scenic Route Element, the proposed project would not include structures of a greater height than 15 feet. As described under Impact Discussion AES-1, the maximum height of the PV facility would be less than this. Additionally, in accordance with Policy 115 of the East County Area Plan, a fence around the proposed project would provide screening to minimize the visual impact of development and blend with the surrounding area. Accordingly, no impact would occur in this respect.

Furthermore, there are no notable trees, rock outcroppings, or historical buildings on the subject property that would be affected, and the proposed project would not alter long-range views to ridgelines or other natural features. Therefore, the proposed project would not substantially damage scenic resources within State-designated Scenic Highway or County-designated Scenic Rural-Recreation Route and the impact would be *less than significant*.

AES-3 The proposed project would not substantially degrade the existing visual character or quality of the site and its surroundings. The proposed project would not conflict with applicable zoning and other regulations governing scenic quality.

Installation of the proposed PV facility would represent a change in the existing visual character of the subject property and its surrounding. However, as described in Section 4.1.1.2, Existing Conditions, the project site is in a relatively flat area, is undeveloped with little vegetation, and is not located in or near a scenic vista, ridgeline, or corridor. The maximum height would be less than 14 feet, and the project site would be surrounded by fencing which would help shield views of the PV facility, as shown in Figure 3-

5, *Project Figure Renderings*, in Chapter 3, *Project Description*. It would not substantially degrade the existing visual character or quality of the site and its surroundings.

The proposed project would also not conflict with applicable zoning and other regulations governing scenic quality. As described in Impact Discussion AES-2, it would not substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway, and therefore would not conflict with regulations pertaining to State-designated Scenic Highways. The project site is located adjacent to County-designated scenic routes, however pursuant to the development standards outlined in the Countywide Scenic Route Element, the proposed project would not include structures more than one story in height. As the project site is not included in or in the vicinity of visually sensitive ridgelines or prominent visual features as identified in the ECAP, it would not conflict with related policies governing scenic quality. In accordance with Policy 115, and as shown in Figure 3-5 in Chapter 3, *Project Description*, the proposed project would include fencing which would largely shield views of the PV facility.

Implementation of the proposed project would alter but not degrade the existing visual character or quality of the site and its surroundings. The project would be implemented in compliance with applicable zoning and other regulations governing scenic quality. Therefore, impacts in this regard would be *less than significant*.

AES-4 The project would not create a new source of substantial light or glare that would adversely affect day or nighttime views in the area.

A Glare Study was prepared for the proposed project, and is included in the Draft EIR as Appendix B. The Glare Study utilized software to provide a quantified assessment of when and where glare would be predicted to occur throughout the year for the solar installation, potential effects on the human eye, and estimated maximum annual energy production. As described in the Glare Study, PV panels typically produce some glare mostly during sunrise and sunset through the spring through fall months.

As described in Chapter 3, *Project Description*, of the Draft EIR, the proposed project would not include any on-site lighting, including security or emergency lighting as the project would be inactive during the nighttime. In addition, the iridescent blue panels of the PV arrays are textured with indentations in order to reduce the amount of sunlight reflect off of their surfaces and are also coated with anti-reflective materials to maximize light absorption and reduce glare as much as possible. PV panels are designed to maximize refracted light through the panels, and do not produce as much glare and reflectance as standard window glass, car windshields, white concrete, or snow.¹ As such, the proposed project would not create a new source of substantial light or glare and impacts in this regard would therefore be *less than significant*.

AES-5 The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in cumulative impacts with respect to aesthetics.

The method used for cumulative impact analysis is described in Chapter 4.0, *Environmental Analysis*, of the Draft EIR. This cumulative analysis considers the effects of the proposed project together with other cumulative development projects in the vicinity of the subject property.

¹ SunPower, PV Systems, Low Levels of Glare and Reflectance vs. Surrounding Environment, <https://us.sunpower.com/sites/sunpower/files/media-library/white-papers/wp-pv-systems-low-levels-glare-reflectance-vs-surrounding-environment.pdf>, accessed on April 9, 2018.

As described in Chapter 4.0, *Environmental Analysis* of the Draft EIR, the cumulative development project in the vicinity of the proposed project includes proposed subdivisions, a proposed apartment building, a telecommunications tower, and an office/warehouse development within two miles of the project site in San Joaquin County.

The project site is not located in a State- or County-designated scenic vista. As discussed above, the proposed project would not block views of the ridgelines from the public rights-of-way. The project site does not contain notable trees, rock outcroppings, or historical buildings and the proposed project would not alter long-range views to the ridgelines or other natural features. The proposed project, in addition to the cumulative projects, would be required to meet the development standards required by the Scenic Route Element of the Alameda General Plan. Therefore, the proposed project would not contribute to any cumulative impacts associated with scenic highways.

The installation of the proposed PV facility would represent a change in the existing visual character of the subject property and surroundings, however, based on project site location and existing conditions, it would not substantially degrade existing visual character. Therefore, it would not contribute to cumulative impacts in this regard.

The proposed project would not create a new source of substantial light or glare, and therefore would not contribute to any cumulative impacts associated with light and glare.

The proposed project, in addition to cumulative projects, would not significantly change the visual character of the subject property and the surrounding area. Therefore, cumulative impacts would be *less than significant*.

AGRICULTURE AND FORESTRY RESOURCES

AG-2 The proposed project would not conflict with existing zoning for agricultural use, or a Williamson Act contract.

The project site is zoned Agricultural (A) District, for which, according to APMC Section 17.06.030, permitted uses include one-family dwelling or one-family mobile home; one secondary dwelling unit; crop, vine or tree farm, truck garden, plant nursery, greenhouse, apiary, aviary, hatchery, horticulture; raising or keeping of poultry, fowl, rabbits, sheep or goats or similar animals; grazing, breeding or training of horses or cattle; winery or olive oil mill; fish hatcheries; and public or private hiking trails. Additionally, per APMC Section 17.06.040, conditional uses may also include privately owned wind-electric generators. While solar electric facilities are not specifically listed under the categories of permitted or conditional uses within the A District, other uses not specifically listed as a permitted or conditional use may be allowed if they are similar in nature to other allowed uses. Solar energy facilities were previously determined by the County to be similar to wind electric generators. As described in Section 3.1.3.2, Zoning, in Chapter 3, *Project Description*, the County Planning Commission made findings in 2008 pursuant to APMC Sections 17.54.050 and 17.54.060 regarding district classifications of uses not listed within the Ordinance, including that a solar electric facility would not be contrary to the specific intent clauses or performance standards established for the A District and could be permitted under a conditional use permit. The County reiterated these findings to reconfirm the conditional permissibility of similar solar uses within the A District in 2011 and 2012. Accordingly, the proposed project would not conflict with existing zoning. Therefore, impacts in this regard would be *less than significant*.

AG-4 The proposed project would not result in loss of forest land or conversion of forest land to non-forest use.

There is no forest land on the project site or in close proximity to the project site. The surrounding areas currently feature agricultural and residential land uses. Therefore, the proposed project would not result in the loss of forest land or conversion of forest land to non-forest use. Accordingly, there would be *no impact*.

AG-6 The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in less-than-significant cumulative impacts with respect to agricultural and forestry resources.

Cumulative impacts would occur when a series of actions leads to a loss of agricultural resources, which occurs when agricultural lands are converted to non-agricultural uses. This generally occurs in newly urbanized areas where development encroaches into agricultural areas through general plan and zoning amendments leading to the long-term conversion of agricultural lands.

As noted above, the proposed project would not involve conversion of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to non-agricultural use; would not conflict with existing agricultural zoning or a Williamson Act contract; would not involve changes to forest land, timberland, or timberland zoned for Timberland Production; would not result in the loss of forest land or the conversion of forest land to non-forest use; and would not involve other changes that would result in the conversion of farmland to non-agricultural use. In addition, the installation of solar panels as described under the proposed project involves minimal ground disturbance that would not permanently alter the viability of the project site to be used for agriculture, should the intent for the site change in the future.

The analysis of cumulative impacts to agricultural lands is based on impacts of the proposed project plus development in the vicinity of the project site. As described in Table 4-1, *Cumulative Projects within the Vicinity of the Proposed Project*, in Chapter 4.0, *Environmental Analysis* of the Draft EIR, development within approximately 2 miles of the proposed project include proposed major subdivisions, a proposed apartment building, a telecommunications tower, and an office/warehouse development. Similar projects to the proposed project within Alameda County include another solar facility, a battery energy storage facility, and a grow facility.

Because the proposed project would not result in impacts to agriculture or forestry resources, it would not contribute to cumulative impacts. Similarly, the Aramis Solar Energy Generation and Storage project in Alameda County (approximately 12 miles west of the project site) was determined not to have any agricultural and forestry resource impacts.² The office/warehouse development in nearby San Joaquin County also was determined not to have any agricultural and forestry resource impacts.³ While the telecommunications tower and the battery energy storage facility are within agricultural-designated lands, the other San Joaquin County projects within the vicinity of the project site are not.

Therefore, in combination with past, present, and reasonably foreseeable projects, the proposed project would result in a *less than significant* cumulative impact with respect to agricultural resources

² HELIX Environmental Planning, Inc., 2020. *Aramis Solar Energy Generation and Storage Final Environmental Impact Report*, SCH No. 2020059008.

³ San Joaquin County Community Development Department, 2020. *PA-2000063(MP), PA-2000064(SP), & PA-2000065(SA) – Initial Study/Mitigated Negative Declaration*, SCH No. 2020070583.

AIR QUALITY

AQ-1 The proposed project would not conflict with or obstruct implementation of the applicable air quality plan.

The proposed project would install solar PV facility on the project site. The project is not a regionally significant project that would affect regional vehicle miles traveled and warrant Intergovernmental Review by MTC pursuant to the CEQA Guidelines Section 15206(b)(2)(D). In addition, a solar PV facility would not result in the increase of population or housing foreseen in County or regional planning efforts. Therefore, the proposed project would not have the potential to substantially affect housing, employment, and population projections within the region, which is the basis of the Clean Air Plan projections.

Lastly, the net increase in regional emissions generated by the proposed project would not exceed BAAQMD's emissions thresholds (see impact discussion AQ-2 below). These thresholds are established to identify projects that have the potential to generate a substantial amount of criteria air pollutants. Because the proposed project would not exceed these thresholds, the proposed project would not be considered by the BAAQMD to be a substantial emitter of criteria air pollutants. Therefore, the project would not conflict with or obstruct implementation of the 2017 Clean Air Plan, and impacts would be *less than significant*.

AQ-2 The proposed project would not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or State ambient air quality standard.

Construction Emissions

Construction emissions are based on the preliminary construction schedule developed for the proposed project. The proposed project is estimated to take approximately 2-months to complete and is anticipated to be finished by fall 2022. To determine potential construction-related air quality impacts, criteria air pollutants generated by project-related construction activities are compared to the BAAQMD significance thresholds. Average daily emissions are based on the annual construction emissions divided by the total number of active construction days. As shown in Table 4.3-6, *Construction-related Criteria Air Pollutant Emissions Estimates* in the Draft EIR, criteria air pollutant emissions from construction equipment exhaust would not exceed the BAAQMD average daily thresholds. Therefore, construction-related criteria pollutant emissions from exhaust are *less than significant*.

Operational Emissions

Project operation would only generate occasional trips by project maintenance workers to perform routine maintenance and repairs, and a 500-gallon water truck that would make one trip delivery to wash the solar modules with an electronic cleaning system 1-2 times per year. Accordingly, long-term air pollutant emissions generated by a PV facility would be minimal. Therefore, operational phase criteria air pollutant emissions would be *less than significant*.

AQ-3 The proposed project would not expose sensitive receptors to substantial pollutant concentrations.

Off-Site Community Risk and Hazards During Construction

- Cancer risk for the maximum exposed off-site resident (MER), a single-family residence

southeast of the site along Grant Line Road, from unmitigated construction activities related to the project were calculated to be 0.1 in a million and would not exceed the 10 in a million significance threshold. The cancer risk for the maximum exposed preschool receptor was calculated to be 0.023 in a million, which also would not exceed the significance threshold. The calculated total cancer risk for the off-site residents incorporates the individual risk for infant and childhood exposures into one risk value.

- For non-carcinogenic effects, the hazard index identified for each toxicological endpoint totaled less than 1 for off-site sensitive receptors. Therefore, chronic non-carcinogenic hazards would not exceed acceptable limits.
- The highest construction exhaust PM_{2.5} annual concentration of 0.002 µg/m³ at the off-site MER and 0.0003 µg/m³ at the preschool were all calculated to be less than the 0.3 µg/m³ significance threshold. Therefore, impacts from PM_{2.5} concentrations are less than significant.

Consequently, prior to mitigation, cancer risk impacts to off-site residences would be *less than significant*.

Carbon Monoxide Hotspots

Areas of vehicle congestion have the potential to create pockets of carbon monoxide (CO) called hotspots. These pockets have the potential to exceed the State one-hour standard of 20 parts per million (ppm) or the 8-hour standard of 9.0 ppm. Because CO is produced in the greatest quantities from vehicle combustion and does not readily disperse into the atmosphere, adherence to ambient air quality standards is typically demonstrated through an analysis of localized CO concentrations. Hotspots are typically produced at intersections, where traffic congestion is highest because vehicles queue for longer periods and are subject to reduced speeds. The proposed project would construct a solar PV facility, and would only generate vehicle trips from employees and deliveries to the project site. The proposed project would not exceed BAAQMD screening criteria by increasing traffic volumes at affected intersections by more than 44,000 vehicles per hour or 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited. Thus, localized air quality impacts related to mobile-source emissions, including water delivery trucks would therefore be *less than significant*.

AQ-4 The proposed project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.

Construction and operation of solar PV facilities would not generate odors that would adversely affect a substantial number of people. The type of facilities that are considered to have objectionable odors include wastewater treatments plants, compost facilities, landfills, solid waste transfer stations, fiberglass manufacturing facilities, paint/coating operations (e.g., auto body shops), dairy farms, petroleum refineries, asphalt batch plants, chemical manufacturing, and food manufacturing facilities. PV facilities do not emit foul odors that constitute a public nuisance.

During project-related construction activities on the project site, construction equipment exhaust and application of asphalt and architectural coatings would temporarily generate odors. Any construction-related odor emissions would be temporary and intermittent. Additionally, noxious odors would be confined to the immediate vicinity of the construction equipment. By the time such emissions reach any sensitive receptor sites, they would be diluted to well below any level of air quality concern. Impacts would be *less than significant*.

AQ-5 The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in less-than-significant cumulative impacts with respect to air quality.

Criteria Air Pollutants

Impact AQ-2 analyzed potential cumulative impacts to air quality that could occur from construction and operation of the proposed project in combination with regional growth projections in the air basin. Mitigation Measure AQ-1 would reduce impacts from fugitive dust generated during construction activities. With this mitigation measure, regional and localized construction emissions would not exceed the Air District's significance thresholds. Consequently, the proposed project would not cumulatively contribute to the nonattainment designations of the Air Basin and impacts would be *less than significant* following mitigation measures.

Toxic Air Contaminants

There are no other stationary or mobile sources of TACs within 1,000 feet of the project site. As shown in Table 4.3-7, the health risks are well below BAAQMD's thresholds for individual projects. Therefore, the cumulative health risks from the project would also be less than the BAAQMD's cumulative thresholds of 100 in a million for a lifetime cancer risk, 10.0 for chronic hazards, and the PM_{2.5} concentration for all emission sources of 0.8 µg/m³. Consequently, cumulative health risk impacts from TACs would be *less than significant*.

BIOLOGICAL RESOURCES

BIO-2 The proposed project would not have a substantial adverse effect on any riparian habitat, but it could have a substantial adverse effect on other sensitive natural communities identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.

No riparian habitats or other sensitive natural communities are present on or immediately adjacent to the project site. Thus, the proposed project would have *no impact* on riparian habitats or other sensitive natural communities.

BIO-3 The proposed project would not have a substantial adverse effect on state or federally protected wetlands (marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

No wetlands or other federal or state waters occur on or immediately adjacent to the project site. Therefore, the proposed project would have *no impact* on jurisdictional wetlands.

BIO-4 The proposed project would not interfere with the movement of a native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

Environmental corridors are segments of land that provide a link between different habitat types while also provided cover. Development fragments natural habitats, breaking them into smaller disjunct pieces. As habitat patches become smaller, they are unable to support as many individuals. Additionally, the area between the habitat patches may become unsuitable for wildlife species to traverse.

The proposed project is surrounded by some existing development, including residential development and agricultural lands where the footprint is already disturbed. Removal of vegetation and solar input of the proposed project would further reduce the value of the project site for use by dispersing animals. Development of grassland on the project site would remove natural habitat that is used by resident and dispersing wildlife. The grassland would be mostly separated from similar nearby habitats by the

Mendota Canal, a busy road, an orchard, and residential development. Noise and human activity would increase during construction of the proposed project, potentially alerting animal behavior and discouraging species movement through the site. As a result, the project site does not provide high-quality areas for wildlife movement.

However, the project's impacts on wildlife movement are not anticipated to substantially impede the movement of any species within the project site vicinity. Many animals are still expected to move through the site, despite incremental increase of human activity or noise. Furthermore, the project site is not the only path where animals can move between the open space to the north and south. There is a vegetated strip similar to that of the project site to the west of the site along the Mendota Canal that would serve as an alternative route. Therefore, the proposed project would not result in fragmentation of natural habitats or substantial impediments to wildlife movement. As such there would be no interference with the movement of a native resident or migratory wildlife species or corridors and impacts would be *less than significant*.

BIO-5 The proposed project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

As described in Section 4.4.1.1, *Regulatory Framework* of the Draft EIR, ECAP Policies 123, 124, and 125 discuss the County's encouragement of mitigation of site-specific impacts to biological resources, maintenance of biological diversity, and preservation of areas known to support special-status species. The implementation of the proposed Mitigation Measures BIO-1.1 through 1.20 will ensure that the proposed project complies with these policies. Therefore, the proposed project would not conflict with any local policies or ordinance regarding biological resources and impacts would be *less than significant*.

BIO-6 The proposed project would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or State habitat conservation plan.

As described in Section 4.4.1.1, *Regulatory Framework* of the Draft EIR, the EACCS provides a framework to protect, enhance, and restore natural resources in eastern Alameda County; however, the EACCS does not directly result in permits from any regulatory agencies and is not a formally adopted Habitat Conservation Plan.⁴ Nevertheless, for the purposes of this analysis, the EACCS is considered a local habitat conservation plan.

The project site is within the EACCS Conservation Zone 7 (CZ7), which encompasses the extreme northeastern corner of the county. The CZ7 is comprised of annual grassland, alkali meadow and scald, and pond, which provide habitat for the San Joaquin spearscale, recurved larkspur, longhorn fairy shrimp, and vernal pool fairy shrimp. Conservation priorities within the CZ7 are based on the rarity of the feature and the risk of losing conservation opportunities in the future.⁵ Such priorities include the protection of recurved larkspur and San Joaquin spearscale, enhancement of and creation of additional linkages for the San Joaquin kit fox, protection of alkali meadows and scalds, which in turn would protect its inhabitants, and protection of critical habitat for California red-legged frog.

⁴ East Alameda County Conservation Strategy Steering Committee, October 2010. East Alameda County Conservation Strategy, Final Draft, Section 1.3, Scope of Conservation Strategy, pages 1-7 to 1-8.

⁵ East Alameda County Conservation Strategy Steering Committee, October 2010. East Alameda County Conservation Strategy, Final Draft, Section 4.7, Conservation Zone 7, pages 4-15 to 4-17.

As summarized in Table 4.4-2, *Special-Status Animal Species Evaluated* of the Draft EIR, there is no potential for any of these species to occur, with the exception of the California red-legged frog which has a low potential for occurrence. Mitigation Measures BIO-1.1 through BIO-1.20 discussed above would ensure that any occurrence(s) shall be avoided and adequately mitigated as part of the proposed project. Therefore, the proposed project would not conflict with the provisions of a habitat conservation plan or natural community conservation plan and impacts would be *less than significant*.

BIO-7 The proposed project, in combination with past, present, and reasonably foreseeable projects, would result in less-than-significant cumulative impacts with respect to biological resources.

The cumulative development projects in the vicinity of the proposed project are described in Chapter 4.0, *Environmental Analysis*, of this Draft EIR. The geographic scope of the cumulative analysis for biological resources is the area surrounding the project site. Therefore, projects included in this cumulative analysis are 19550 W Grant Line Road 0.3 miles away, 22261 South Mountain House Parkway 0.9 miles away, Arnaudo Boulevard at Mountain House II Apartments 1.4 miles away, Telecommunications Tower/21000 South Mountain House Park 1.6 miles away, and 17400 West Bethany Road 2 miles away.

Development of the surrounding projects would occur in areas largely surrounded by existing development where sensitive biological resources are generally considered to be absent. Projects would be required to comply with relevant federal, state, or local policies or ordinances. Further environmental review of specific development should serve to ensure that important biological resources are identified, protected, and properly managed to prevent any significant adverse impacts.

As discussed above, construction and operation of the proposed project would result in less than significant impacts on species identified as a candidate, sensitive, or special-status species through implementation of Mitigation Measures BIO-1.1 through BIO-1.20. There would be no impacts to riparian habitats, other sensitive natural communities, wetlands, or federal or state jurisdictional waters, as there are none located on the project site. The proposed project would not interfere with wildlife corridors or native wildlife nursery sites. The proposed project would also comply with local policies or ordinances protecting biological resources, and the local habitat conservation plan.

Therefore, in combination with past, present, and reasonably foreseeable projects, the proposed project would result in a *less than significant* cumulative impact with respect to biological resources.

GREENHOUSE GAS EMISSIONS

GHG-1 The proposed project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant effect on the environment.

Construction

BAAQMD does not have thresholds of significance for construction related GHG emissions. GHG emissions from construction activities are one-time, short-term emissions and therefore would not significantly contribute to long term cumulative GHG emissions impacts of the proposed project. Therefore, construction emissions would be *less than significant*.

Operational Phase

Due to the nature of the proposed PV facility, its development and operation would generate minimal emissions of GHG from transportation sources, water use, wastewater generation, and solid waste

generation. Project operation would only generate occasional trips by project maintenance workers to perform routine maintenance and repairs, and a water truck that would make deliveries to the project site approximately two times per year. In addition, the proposed project would generate renewable energy, and thus would provide a carbon neutral energy use that would be utilized to meet the State's Renewable Portfolio Standards. The proposed project would generate 5,819,172 kilowatt hours (Kwh) (5,819 megawatt hours [Mwh]) of carbon neutral electricity per year. Electricity produced by the proposed PV facility would help lower the overall GHG emissions in California by creating a cleaner energy portfolio. Based on PG&E's 2018 carbon intensity of 206 pounds of CO_{2e} per MWH⁶, the project would reduce GHG emission by 544 MTCO_{2e} annually.⁷ Overall, the proposed project would result in a beneficial environmental impact and would further State climate change goals. Thus, the impact is *less than significant*.

GHG-2 The proposed project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

Applicable plans adopted for the purpose of reducing GHG emissions include CARB's Scoping Plan, the MTC/ABAG Plan Bay Area, and the Alameda County General Plan Community CAP. A consistency analysis with these plans is presented below.

The proposed project would be constructed to achieve the standards in effect at the time of development and would not conflict with statewide programs adopted for the purpose of reducing GHG emissions. While measures in the CARB Scoping Plan apply to state agencies and not the proposed project, the project's construction GHG emissions would be reduced from compliance with statewide measures that have been adopted since AB 32 and SB 32 were adopted. Therefore, the impact would be *less than significant*.

The proposed project is not within a priority development area, but would be consistent with the GHG reduction goals of Plan Bay Area 2050. In addition, the project is not a suitable candidate for infill because of the nature of the proposed project as an energy generation facility requiring large amounts of land. Additionally, the proposed project is not a trip generating land use and would result in a net GHG benefit by providing a renewable source of energy. Therefore, the proposed project would not conflict with regional programs adopted for the purpose of reducing GHG emissions and impacts would be *less than significant*.

Development of the solar photovoltaic facility would further the goals of the Alameda County General Plan Community CAP's Building Energy Action Area, which aims to reduce the carbon intensity of energy provided to buildings within the County. Within the Building Energy Action Area, renewable energy is identified as a key strategy to reduce the use of fossil fuel-based energy and achieve the County's GHG reduction target. In addition to the GHG benefits provided by the project's solar electricity generation, the project itself will be water efficient by requiring up to two washing phases per year through an electronic cleaning system, in line with the CAP's Water Use Action Area. Overall, the proposed project would provide a net GHG benefit in line with the goals of the CAP. Therefore, the impact would be *less than significant*.

Overall, the proposed project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases, and the impact would be *less than significant*.

⁶ Pacific Gas & Electric (PG&E). 2022 (accessed). Fighting Climate Change. https://www.pge.com/en_US/about-pge/environment/what-we-are-doing/fighting-climate-change/fighting-climate-change.page

⁷ 206 pounds of CO_{2e}/MWH x 0.000453592MT/pound x 5,719 MWH = 543.7 MTCO_{2e}

HAZARDS AND HAZARDOUS MATERIALS

HAZ-1 The proposed project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.

As discussed in the Initial Study included in Appendix A, *Notice of Preparation and Scoping Comments* in the Draft EIR, the proposed project would not involve the routine transport of hazardous waste. Potential impacts during construction of the proposed project could include potential spills associated with the use of fuels and lubricants in construction equipment. These potential impacts would be short-term in nature and would be reduced to less-than-significant levels through compliance with applicable local, State, and federal regulations, as well as the use of standard equipment operating practices by experienced, trained personnel. Additionally, during the operation phase of the proposed project, common cleaning substances, PV facility maintenance products, and similar items could be used on the project site. These potentially hazardous materials, however, would not be of a type or occur in sufficient quantities to pose a significant hazard to public health and safety or the environment. Compliance with the applicable laws, regulations, and conditions of approval, would minimize hazards associated with the routine transport, use, or disposal of hazardous materials to the maximum extent practicable.

With respect to materials used for the solar panels, the proposed project would use silicon PV modules that have an anti-reflective coating.⁸ As described in product safety data sheets for silicon PV modules, these modules do not contain hazardous chemicals, and therefore would not result in leaching that would potentially contaminate groundwater.⁹ Additionally, anti-soiling coatings applied to the front and back of the PV modules, such as Teflon, would not be used on the silicon PV modules for the proposed project, nor would any other aftermarket coatings be used.¹⁰

The USEPA established a test protocol, Method 1311, known as “toxicity characteristic leaching procedure” (TCLP) to determine whether or not an item may contain components considered toxic above set limits established by RCRA. This test protocol can be applied to the PV modules to ensure that the module would not leach toxins into the environment when it is disposed of. Testing of similar silicon PV solar modules under the TCLP have shown that the modules do not exceed limits of any of the substances tested for under the TCLP. A copy of representative TCLP test results is included in Appendix H, *Hazardous Materials Information*. Additionally, the solar panels would undergo Method 1311 testing when disposed of at the end of the project’s lifetime.

Therefore, the proposed project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials, and impacts would be *less than significant*.

HAZ-2 The proposed project would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

As discussed in impact discussion HAZ-1, the operation phase of the proposed project could involve the use of common cleaning substances and PV facility maintenance products; however, these potentially

⁸ Bilella, Lori. Vice President, Soltage, LLC. Personal communication with Allison Dagg, PlaceWorks, January 6, 2022.

⁹ VSUN. VSUN Solar PV Modules Product Safety Datasheet.

¹⁰ Bilella, Lori. Vice President, Soltage, LLC. Personal communication with Allison Dagg, PlaceWorks, January 6, 2022.

hazardous substances would not be of a type or occur in sufficient quantities on-site to pose a significant hazard to public health and safety or the environment. The use of these materials would be subject to existing federal and State regulations. Compliance with these regulations would ensure that the risk of accidents and spills are minimized to the maximum extent practicable.

Additionally, as discussed under impact discussion HAZ-1, the proposed project would use silicon PV modules that do not contain hazardous chemicals and would not use Teflon coatings. The panels would use anti-reflective coating, which is considered nontoxic. Disposal of the solar panels after the project's lifetime would be subject to Method 1311 testing to ensure they do not require hazardous materials waste disposal. Testing of similar solar panels as would be used for the proposed project have shown that the modules do not exceed levels of any of the substances analyzed in the TCLP.

Therefore, the proposed project would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment, and impacts would be *less than significant*.

HAZ-3 The proposed project would not, in combination with past, present, and reasonably foreseeable projects, result in cumulative impacts with respect to hazards and hazardous materials.

As discussed above under impact discussions HAZ-1 and HAZ-2, the proposed project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials, nor through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. As such, the proposed project would not contribute to cumulative impacts in this regard as well.

Because the proposed project would not result in impacts with respect to hazards and hazardous materials, and would not contribute to cumulative impacts, cumulative impacts with respect to hazards and hazardous materials would be *less than significant*.

LAND USE AND PLANNING

LU-1 The proposed project would not physically divide an established community.

The proposed project would develop the 23.07-acre site with a solar PV facility. The project site is currently undeveloped. The proposed project would retain the existing roadway patterns and would not introduce any new major roadways or other physical features through existing residential neighborhoods or other communities that would create new barriers. Therefore, the proposed project would not divide any established community and impacts would be *less than significant*.

LU-2 The proposed project would not conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

The ECAP and APMC Title 17, Zoning, are the primary planning documents for eastern Alameda County. As discussed above in Section 4.7.1.2, Existing Conditions, both the General Plan land use designation and zoning district would permit the development of a renewable energy facility on the subject property, such as a windfarm, and the development of a solar PV facility would be allowed as a conditional use. Similar to a windfarm, the proposed solar PV facility would generate renewable energy, reduce greenhouse gases emitted into the atmosphere, and further the State's climate change goals.

In 2008, the County approved a conditional use permit for the GreenVolts Utility-Scale Solar Field project (State Clearinghouse Number 2008052076) which would develop a 20.5-acre parcel designated Large Parcel Agriculture with solar PV facility.¹¹ Alameda County made findings in 2008 pursuant to Alameda CGOC Sections 17.54.050 / 17.54.060 (Determination of Use) regarding district classifications of uses not listed within the Ordinance.¹² The Alameda County Planning Commission made findings that a solar electric facility would not be contrary to the specific intent clauses or performance standards established for the A District and could be permitted under a conditional use permit. In addition, in 2012, the Alameda County Counsel determined that solar facilities are consistent with ECAP policies because they constitute quasi-public uses consistent with “windfarms and related facilities, utility corridors and similar uses compatible with agriculture” which are allowed on parcels designated Large Parcel Agriculture.¹³ In 2012, the County approved “Cool Earth”, a conditional use permit for the Altamont Solar Energy Center project (State Clearinghouse Number 2011082074) which would develop a 140-acre parcel designated Large Parcel Agriculture and zoned as an Agricultural District with solar PV facility, similar to the proposed Project. Accordingly, with approval of two solar PV facilities on parcels designated Large Parcel Agriculture and the County Counsel’s determination that solar facilities are consistent with ECAP policies, the County has set a precedent for approval of similar projects.

Furthermore, the County is currently developing solar policies to allow Large Commercial Solar.¹⁴ Although the County has started the process nearly a decade ago, the need to formalize the County’s regulations is timely, given the continued interest in developing Large Commercial Solar in rural portions of Alameda County, specifically the East County. As outlined in the draft Statement of Policy Components, the policies would allow for solar/battery projects in the Large Parcel Agriculture area only.¹⁵ The proposed project would comply, as the site is designated as Large Parcel Agriculture. Therefore, with approval of a conditional use permit pursuant to APMC Section 17.06.040, the proposed project would not conflict with the subject property’s land use designation and zoning district and would have a *less than significant* impact.

As discussed in Chapter 4.4, *Biological Resources*, and in Section 4.7.1.1 of the Draft EIR, Regulatory Framework, the EACCS was developed to address anticipated impacts to biological resources from projected future development in eastern Alameda County through implementation of standardized mitigation measures. With implementation of the mitigation measures discussed in Chapter 4.4, including safer erosion control materials (to prevent animal entrapment), buffer zones, and pre-construction work such as worker training and biological surveying, mitigation measures for the proposed project would be consistent with the goals of the EACCS, and impacts would be *less than significant*.

¹¹ East County Board of Zoning Adjustments, Greenvolts, Inc., Conditional Use Permit C-8179, Staff Report, June 26, 2008.

¹² County of Alameda Planning Commission, June 16, 2008, Meeting Minutes.

¹³ Alameda County Community Development Agency, Planning Department, September 13, 2012, Memorandum, <http://www.acgov.org/cda/planning/landuseprojects/documents/TP-solar-memo-9-13-12.pdf>, accessed December 27, 2021.

¹⁴ Alameda County Planning Department, March 2022, Large Commercial Solar in Rural Alameda County, <https://www.acgov.org/cda/planning/landuseprojects/solarpolicies.htm>, accessed April 4, 2022.

¹⁵ Alameda County Planning Department, March 28, 2022, Large Commercial Solar and Battery Storage Statement of Policy Components, <https://www.acgov.org/cda/planning/landuseprojects/documents/StatementofPolicyFINAL32822.pdf>, accessed April 4, 2022.

LU-3 The proposed project, in combination with past, present, and reasonably foreseeable projects, would result in less-than-significant cumulative impacts with respect to land use and planning.

The cumulative setting for land use and planning considers the effects of the proposed project when considered along with other projects in the vicinity of the subject property that are pending. Therefore, based on Table 4-1, *Cumulative Projects within the Vicinity of the Proposed Project*, in Chapter 4.0, *Environmental Analysis*, this analysis of cumulative impacts to land use and planning is based on the proposed project in combination with 19550 W Grant Line Road 0.3 miles away, 22261 South Mountain House Parkway 0.9 miles away, Arnaudo Boulevard at Mountain House II Apartments 1.4 miles away, Telecommunications Tower/21000 South Mountain House Park 1.6 miles away, and 17400 West Bethany Road 2 miles away.

Development of the surrounding projects would occur in urbanized areas and are not expected to physically divide an existing community. Projects would be required to comply with relevant land use plans, policies, or regulations.

As discussed above, the proposed project would not conflict with any applicable land use plans, policies, or regulations. In addition, the proposed project would not physically divide an existing community, nor would the proposed project conflict with a land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

Therefore, the proposed project would not result in a cumulatively considerable contribution to cumulative impacts related to land use changes, and cumulative impacts would be *less than significant*.

NOISE

NOI-1 The proposed project would not result in the generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or in other applicable local, state, or federal standards.

Construction

Construction activities would increase noise levels at and near the proposed area of improvements. Based on the provided construction equipment information, the loudest construction phases are expected to be the utility trenching and installation of solar equipment. Since proposed construction activities are expected to be at least 400 feet from the nearest sensitive receptors to the southeast, construction noise levels associated with the proposed project are expected to be up to 64 dBA L_{eq} , which would not exceed the threshold of 80 dBA L_{eq} . Therefore, this impact would be *less than significant*.

Operation

The proposed solar PV facility would include various equipment including panels, one inverter, and one transformer. The only equipment expected to generate notable levels of noise would be the inverter and, to a lesser extent, the transformer.¹⁶ The sound level of a PowerOne Aurora Trio 20.0, a commonly used

¹⁶ From previous project work on a similar PV project, representative transformer portions had measured noise levels that were from 5 to 10 dBA lower than the inverter (City of Industry 2 MW Carport Photovoltaic Solar and Electric Charging Project, PlaceWorks (formerly The Planning Center | DC&E), 2012).

commercial inverter, is approximately 71 dBA at 3.28 feet (1 meter).¹⁷ Though the specific equipment expected to be used for the proposed project is unknown at this time, the reference sound level of a PowerOne Aurora Trio 20.0 is used herein as being representative for this type and size of solar PV facility. The solar inverter would be placed on an equipment pad approximately 775 feet from the nearest sensitive receptors to the southeast. At this distance, the sound level of a single commonly used commercial inverter would be reduced to approximately 24 dBA, which is well below the ACOM noise limit of 50 dBA L₅₀ for residential receivers. Further, as the solar equipment would not be operating after sunset, the nearest sensitive receptors would not be exposed to project-related mechanical equipment noise at night. Thus, project-related, equipment-generated noise would be *less than significant*.

Project operation is anticipated to generate occasional trips by project maintenance workers to perform routine maintenance and repairs. The occasional and sporadic maintenance activities would not generate substantial noise levels at off-site receptors. While maintenance employees would travel to the site periodically, their total trips, combined with the existing traffic flows, would result in negligible increases in roadway noise. Thus, maintenance activity- and traffic-generated noise during project operations would be *less than significant*.

NOI-2 Implementation of the proposed project would not result in generation of excessive groundborne vibration or groundborne noise levels.

Table 4.8-4, *Vibration Levels for Typical Construction Equipment* in the Draft EIR, summarizes vibration levels for typical construction equipment at a reference distance of 25 feet. Typical construction equipment can generate vibration levels ranging up to 0.21 in/sec PPV at 25 feet. Vibration levels at a distance greater than 25 feet would attenuate to 0.2 in/sec PPV or less. The nearest structure to proposed construction activities is the residence approximately 525 feet or more southeast of the limit of work. At this distance, construction vibration would attenuate to well below the 0.2 in/sec PPV threshold. Therefore, construction vibration would be *less than significant*.

The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in less-than-significant cumulative impacts with respect to noise.

There are several cumulative projects near the project site (see Chapter 4.0, *Environmental Analysis*). The closest cumulative project is a residential subdivision project located at 19550 W. Grant Line Road approximately 0.3 miles from the project site. At this distance (i.e., greater than 1,000 feet), cumulative construction noise impacts would not be substantially greater than those described in Impact NOI-1, which were determined to be less than significant. Operational equipment from the residential project would not contribute substantially to the existing noise environment at the sensitive receptors closest to the project site. Therefore, the proposed project would not contribute to a significant cumulative noise impact, resulting in a *less than significant* impact.

¹⁷ Malén, J., 2013. Analysis of noise emissions of solar inverters (Master's Thesis, Aalto University School of Science and Technology).

REVISED MITIGATION
MONITORING AND REPORTING
PROGRAM



Alameda Grant Line Solar 1 Mitigation Monitoring and Reporting Program

This Mitigation Monitoring and Reporting Program (MMRP) has been prepared for the Alameda Grant Line Solar 1 project. The purpose of the MMRP is to ensure that the mitigation measures identified in the EIR for the proposed project are implemented. The MMRP includes the following information:

- The full text of the mitigation measures;
- The party responsible for implementing the mitigation measures;
- The timing for implementation of the mitigation measure;
- The agency responsible for monitoring the implementation; and
- The monitoring action and frequency.

Alameda County must adopt this MMRP, or an equally effective program, if it approves the proposed project with the mitigation measures that were adopted or made conditions of project approval.

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
AIR QUALITY					
<p>Mitigation Measure AQ-2: The applicant shall require their construction contractor to comply with the following BAAQMD Best Management Practices for reducing construction emissions of PM10 and PM2.5:</p> <ul style="list-style-type: none"> ▪ Water all active construction areas at least twice daily or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible. ▪ Apply water twice daily or as often as necessary to control dust or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites. ▪ Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer). ▪ Sweep public streets daily (with water sweepers using reclaimed water if possible) in the vicinity of the project site, or as often as needed, to keep streets free of visible soil material. ▪ Hydro-seed or apply non-toxic soil stabilizers to inactive construction areas. ▪ Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (e.g., dirt, sand). ▪ Limit vehicle traffic speeds on unpaved roads to 15 mph. ▪ Replant vegetation in disturbed areas as quickly as possible. ▪ Install sandbags or other erosion control measures to prevent silt runoff from public roadways. 	Project applicant/ construction contractor	Prior to issuance of building permits authorizing grading or other construction activities and during construction	County Building Department	Review construction plans and specifications. Conduct site inspections	During scheduled construction site inspections
BIOLOGICAL RESOURCES					
<p>Mitigation Measure BIO-1.1: A qualified biologist will conduct an environmental education program for all persons employed or otherwise working on the project site before they perform any work. The program shall consist of a presentation from the biologist that includes a discussion of the biology and general behavior of special-status species on or near the site; information about the distribution and habitat needs of the species; sensitivity of the species to human activities; the status of the species pursuant to the Federal Endangered Species Act, the California Endangered Species Act, and the California Fish and Game Code including legal protection; recovery efforts; penalties for violations; and any project-specific protective measures described in this document or any subsequent documents or permits. Interpretation shall be provided for non-English speaking workers, and the</p>	Project applicant/ qualified biologist	Prior to construction activities	County Planning Department	Review forms stating employees attended the program and understood all the protection measures	Once, prior to construction activities

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
same instruction shall be provided for any new workers before their performing work on the site. The biologist shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry on the site. Upon completion of the program, employees shall sign a form stating they attended the program and understand all the protection measures.					
Mitigation Measure BIO-1.2: A qualified biologist will be on the site daily to monitor initial grubbing/vegetation clearing, grading, and ground disturbing activities. The biologist will have the authority to stop work that may impact special-status species.	Project applicant/qualified biologist	During construction activities	County Planning Department	Conduct site inspections	During scheduled construction site inspections
Mitigation Measure BIO-1.3: The Applicant shall include in the contract specifications a requirement to use tightly woven fiber of natural materials (e.g., coir rolls or mats) or similar material for erosion control. Plastic mono-filament netting (erosion control matting) or similar material shall be prohibited, to prevent the entrapment of wildlife.	Project applicant/construction contractor	Prior to issuance of building permits authorizing grading or other construction activities and during construction	County Building Department	Review construction plans and specifications. Conduct site inspections	During scheduled construction site inspections
Mitigation Measure BIO-1.4: Surveys for California Tiger Salamander, California red-legged frog, San Joaquin coachwhip, California glossy snake, and Coast horned lizard shall be conducted by a qualified biologist within 24 hours prior to the initiation of any vegetation clearing or ground disturbing activities. All suitable habitat including refuge such as burrows, under rocks, duff, debris, etc., shall be thoroughly inspected. Any listed wildlife that are encountered will be allowed to leave the work area of their own volition.	Project applicant/qualified biologist	Within 24 hours prior to the initiation of vegetation clearing or ground disturbing activities	County Planning Department	Review survey reports	Once, prior to construction activities
Mitigation Measure BIO-1.5: To avoid entrapment, injury, or mortality of listed species resulting from falling into steep-sided holes or trenches, all excavated holes or trenches deeper than 12 inches shall be covered at the end of each workday with plywood or similar materials. Larger excavation that cannot easily be covered shall be ramped at the end of the workday to allow trapped animals an escape method.	Project applicant/construction contractor	During construction activities	County Planning Department	Conduct site inspections	During scheduled construction site inspections
Mitigation Measure BIO-1.6: Prior to initiating construction activities, a California Department of Fish and Wildlife (CDFW)-approved biologist shall conduct surveys for burrowing owl within 500 feet of the project site, where safely accessible. This measure incorporates avoidance and minimization guidelines from the CDFW 2012 Staff Report on Burrowing Owl Mitigation. The surveys will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls. Surveys shall take place near sunrise or sunset in accordance with CDFW	Project applicant/CDFW-approved biologist	No more than 30 days prior to construction activities	County Planning Department	Review survey reports	Once, prior to construction activities

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TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
survey guidelines. All burrows or burrowing owls shall be identified and mapped. Surveys shall take place no more than 30 days prior to construction. During the breeding season (February 1–August 31), surveys shall document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1–January 31), surveys shall document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results shall be valid only for the season (breeding or nonbreeding) during which the survey is conducted.					
Mitigation Measure BIO-1.7: If burrowing owls are found during the breeding season (February 1–August 31), the project proponent shall avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a no disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the nest is inactive. During the nonbreeding season (September 1–January 31), the project proponent shall avoid the owls and the burrows they are using. Avoidance shall include the establishment of a buffer zone.	Project applicant/ construction contractor, qualified biologist	During construction activities	County Planning Department	Conduct site inspections	During scheduled construction site inspections
Mitigation Measure BIO-1.8: If occupied burrows for nonbreeding burrowing owls are not avoided, passive relocation shall be implemented. Owls shall be excluded from burrows in the immediate impact zone and within an appropriate buffer zone as recommended by the biologist in coordination with the California Department of Fish and Wildlife (CDFW) by installing one-way doors in burrow entrances. These doors shall be in place for 48 hours prior to excavation. The project area shall be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation. Plastic tubing or a similar structure shall be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.	Project applicant/ construction contractor, CDFW-approved biologist	48 hours prior to excavation and 1 week of daily monitoring	County Planning Department	Review survey reports	As needed, if occupied burrows cannot be avoided
Mitigation Measure BIO-1.9a: To mitigate for the alteration of burrowing owl habitat, approximately 11.6 acres on the southern, western, and northern edges of the site will be protected under a conservation easement or deed restriction for the duration of the project. This land is contiguous with the levee and open space associated with the Mendota Canal. A mitigation and management plan (MMP) with success criteria to ensure the site is maintained as burrowing owl habitat, and to facilitate its continued use by burrowing owls, will be developed for this area and approved by the Alameda County Planning Director in coordination with California	Project applicant/ construction contractor	Prior to construction activities	County Planning Department, CDFW	MMP review and approval	Once, prior to construction activities

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
Department of Fish and Wildlife (CDFW). The MMP shall include measures to rehabilitate any habitat temporarily disturbed by construction activities.					
Mitigation Measure BIO-1.9b: No later than 6 months following the operational period of the project, the project site will be restored to as near as possible to its original condition. The MMP described in Mitigation Measure BIO-1.9a will include a post-project restoration plan to facilitate the future suitability of the site for burrowing owl.	Project applicant/ construction contractor	No later than 6 months following operation	County Planning Department	Conduct site inspection	Once, during first 6 months of operation
Mitigation Measure BIO-1.10: The mitigation and management plan (MMP) described in Mitigation Measure BIO-1.9 for the approximately 11.6-acre conservation area shall include a prescription for managing the area as habitat for Swainson’s hawk. The MMP will include success criteria for Swainson’s hawk habitat.	Project applicant/ construction contractor	Prior to construction activities	County Planning Department	MMP review and approval	Once, prior to construction activities
Mitigation Measure BIO-1.11: Pre-construction surveys shall be conducted for the American badger no more than 14 days prior to the initiation of ground-disturbing activities. Surveys shall be conducted by a qualified wildlife biologist with experience and knowledge in identifying badger burrows and include walking parallel transects looking for badger burrows and signs of badgers. Any badger dens identified shall be flagged and mapped.	Project applicant/ construction contractor, qualified biologist	No more than 14 days prior to ground-disturbing activities	County Planning Department	Review survey reports	Once, prior to construction activities
Mitigation Measure BIO-1.12: In the event active badger dens are identified, a no-work buffer of 200 feet shall be established around the den and associated occupied areas. If avoidance is not feasible, a biologist shall determine if the burrow is being used as an active maternity den through utilization of remote cameras. If young are determined to be present, the burrow shall be avoided until the young have vacated the burrow as determined by a qualified biologist. If the burrow is determined not to be an active maternity den and young are not present, in coordination with the California Department of Fish and Wildlife (CDFW), a one-way eviction door shall be installed between September 1 and January 1 to passively relocate the badger and to avoid impacts during the breeding season. If the badger digs back into the burrow, CDFW staff may allow the use of live traps to relocate badgers to suitable habitat from the area of project impact.	Project applicant/ construction contractor, qualified biologist	Prior to construction activities	County Planning Department, CDFW	Review survey reports	Once, prior to construction activities and as needed, if the badger digs back into the burrow
Mitigation Measure BIO-1.13: The mitigation and management plan (MMP) described in Measure BIO-1.9 for the 11.6-acre conservation area shall include prescription of an appropriate seed mix and planting plan targeted for the monarch butterfly, including milkweed and native flowering plant species known to be visited by monarch butterflies and containing a mix of flowering plant species with	Project applicant/ construction contractor	Prior to construction activities	County Planning Department	MMP review and approval	Once, prior to construction activities

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
continual floral availability through the entire breeding season for monarch butterfly (early spring to fall). The MMP will include success criteria for monarch butterfly.					
Mitigation Measure BIO-1.14: A qualified biologist will conduct a minimum of two pre-construction surveys conducted within 30 days during appropriate activity periods (i.e., March through September) and conditions prior to the start of ground disturbing activities to look for milkweed host plants and signs of monarch breeding activity (larvae or chrysalides). Appropriate conditions for conducting the survey include surveying when temperatures are above 60 degrees Fahrenheit (15.5 degrees Celsius) and not during wet conditions (e.g., foggy, raining, or drizzling). The survey should be conducted at least 2 hours after sunrise and 3 hours before sunset and should occur at least 1 hour after rain subsides. Preferably, the survey should be conducted during sunny days with low wind speeds (less than 8 miles per hour) but surveying during partially cloudy days or overcast conditions are permissible if the surveyors can still see their own shadow.	Project applicant/ construction contractor, qualified biologist	30 days prior to construction activities	County Planning Department	Review survey reports	Once, prior to construction activities
Mitigation Measure BIO-1.15: If monarch butterflies are observed within the project site, a plan to protect monarch butterflies shall be developed and implemented in consultation with the United States Fish and Wildlife Service. The plan shall include, but not be limited to, the following measures: <ul style="list-style-type: none"> ▪ Specifications for construction timing and sequencing requirements; ▪ Establishment of appropriate no-disturbance buffers for milkweed and construction monitoring by a qualified biologist to ensure compliance if milkweed is identified; ▪ Restrictions associated with construction practices, equipment, or materials that may harm monarch butterflies (e.g., avoidance of pesticides/herbicides, best management practices to minimize the spread of invasive plant species); and Provisions to avoid monarch butterflies if observed away from a milkweed plant during project activity (e.g., ceasing of project activities until the animal has left the active work area on its own volition).	Project applicant/ construction contractor, qualified biologist	Prior to and during construction activities	County Planning Department	Plan review and approval	Once, prior to construction activities
Mitigation Measure BIO-1.16: Within 1 year prior to vegetation removal and/or the initiation of construction, a qualified biologist familiar with Crotch's and western bumble bee behavior and life history should conduct surveys to determine the presence/absence of the species. Surveys should be conducted during flying season when the species is most likely to be detected above ground, between approximately March 1 to September 1. A reference site should be visited to confirm bumble bee activity because flight periods likely vary geographically and with weather. Surveys should be conducted within the project site and accessible	Project applicant/ qualified biologist	Within one year prior to the initiation of vegetation clearing or ground disturbing activities	County Planning Department	Review survey reports	Once, prior to construction activities

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TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
adjacent areas with suitable habitat. Survey results including negative findings should be submitted to the CDFW prior to project-related vegetation removal and/or ground-disturbing activities. At a minimum, a survey report should provide the following: a) A description and map of the survey area, focusing on areas that could provide suitable habitat for the two bumble bee species; b) Field survey conditions that should include the name(s) of qualified biologist(s) and their qualifications, date and time of the survey, survey duration, general weather conditions, survey goals, and species searched. c) Map(s) showing the location of nests/colonies; and, d) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each nest/colony is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within the impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species).					
Mitigation Measure BIO-1.17: If a qualified biologist determines Crotch’s and/or western bumble bees are present, and if “take” or adverse impacts to the bumble bees cannot be avoided either during project activities or over the life of the project, the CDFW will be consulted to determine if a CESA Section 2080 Incidental Take Permit is required.	Project applicant/ qualified biologist	Prior to construction activities	County Planning Department, CDFW	Consultation with CDFW	Once, prior to construction activities
Mitigation Measure BIO-1.18: If a qualified biologist determines Crotch’s and/or western bumble bees are present, information on the species shall be included in the environmental education program described in Mitigation Measure BIO-1.1 of the EIR.	Project applicant/ qualified biologist	Prior to construction activities	County Planning Department	Review forms stating employees attended the program and understood all the protection measures	Once, prior to construction activities
Mitigation Measure BIO-1.19: If a qualified biologist determines Crotch’s and/or western bumble bees are present, the mitigation and management plan (MMP) for the conservation area, described in Mitigation Measure BIO-1.9 of the EIR, shall include a prescription for managing the area as habitat for bumble bees. The MMP will include a prescription for an appropriate seed mix and planting plan that targets bumble bee nectar plants, including native flowering plant species known to be visited by bumble bees and containing a mix of flowering plant species with	Project applicant/ construction contractor	Prior to construction activities	County Planning Department	MMP review and approval	Once, prior to construction activities

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Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
continual floral availability through the flight season (early spring through late fall). The MMP will include success criteria for bumble bee habitat.					
Mitigation Measure BIO-1.20: Rodenticides and pesticides will not be used anywhere on the project site during the life of the project.	Project applicant	During both construction and operation activities	County Planning Department	Conduct site inspection	During both construction and operation activities
CULTURAL RESOURCES					
Mitigation Measure CULT (b): If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and a qualified archaeologist shall be consulted to assess the significance of the find according to CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives from the County and the archaeologist shall meet to determine the appropriate avoidance measures or other appropriate mitigation. All significant cultural materials recovered shall be, as necessary and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards. In considering any suggested mitigation proposed by the consulting archaeologist to mitigate impacts to historical resources or unique archaeological resources, the County shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) would be instituted. Work may proceed on other parts of the subject property outside the 50-foot area while mitigation for historical resources or unique archaeological resources is being carried out.	Project applicant/ construction contractor, qualified archaeologist	During construction activities	County Planning Department	Determine appropriate avoidance measures or mitigation	As needed, if resources are unearthed
Mitigation Measure CULT (c): Procedures of conduct following the discovery of human remains have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98 and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The Alameda County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours, who will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) of any human remains. Further actions shall be determined, in part, by the desires of the MLD. The MLD has 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not	Project applicant/ construction contractor	During construction activities	County Coroner	Verification of remains and appropriate reinterment on site	As needed, if remains are unearthed

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Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
make recommendations within 48 hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD’s recommendations, the owner or the descendent may request mediation by the NAHC.					
GEOLOGY AND SOILS					
<p>Mitigation Measure GEO (f): The construction contractor shall incorporate the following in all grading, demolition, and construction plans:</p> <ul style="list-style-type: none"> ▪ In the event that fossils or fossil-bearing deposits are discovered during grading, demolition, or building, excavations within 50 feet of the find shall be temporarily halted or diverted. ▪ The contractor shall notify the Alameda County Building Department and a County-approved qualified paleontologist to examine the discovery. ▪ The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5. ▪ The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. <p>If the project applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the proposed project based on the qualities that make the resource important. The excavation plan shall be submitted to the County for review and approval prior to implementation.</p>	Project applicant/ construction contractor, qualified paleontologist	Prior to issuance of building permits authorizing grading or other construction activities and during construction	County Building Department	Review construction plans and specifications. Excavation plan review and approval	As needed, if fossils are unearthed
TRIBAL CULTURAL RESOURCES					
<p>Mitigation Measure TCR-1.1: Implement Mitigation Measure CULT (b): If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and a qualified archaeologist shall be consulted to assess the significance of the find according to CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives from the County and the archaeologist shall meet to determine the appropriate avoidance measures or other appropriate mitigation. All significant cultural materials recovered shall be, as necessary and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards. In considering any suggested mitigation proposed by the consulting archaeologist to</p>	Project applicant/ construction contractor, qualified archaeologist	During construction activities	County Planning Department	Determine appropriate avoidance measures or mitigation	As needed, if resources are unearthed

MITIGATION MONITORING AND REPORTING PROGRAM

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Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
<p>mitigate impacts to historical resources or unique archaeological resources, the County shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) would be instituted. Work may proceed on other parts of the subject property outside the 50-foot area while mitigation for historical resources or unique archaeological resources is being carried out.</p>					
<p>Mitigation Measure TCR-1.2: Implement Mitigation Measure CULT (c): Procedures of conduct following the discovery of human remains have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98 and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The Alameda County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours, who will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) of any human remains. Further actions shall be determined, in part, by the desires of the MLD. The MLD has 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within 48 hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD’s recommendations, the owner or the descendent may request mediation by the NAHC.</p>	<p>Project applicant/ construction contractor</p>	<p>During construction activities</p>	<p>County Coroner</p>	<p>Verification of remains and appropriate reinterment on site</p>	<p>As needed, if remains are unearthed</p>

SYMBOL	NAME	DESCRIPTION
	TRACKER PV MOD.	ET SOLAR 4 OW
	UNDISTURBED AREA	

Undisturbed Area	Acres
Between West Side fence and property line	3.10
Between North Side fence and property line	2.50
Between East Side fence and property line	0.86
Between South Side fence and property line	1.54
Between Array Perimeter & Fence	1.04
Total Undisturbed Area	11.04

Disturbed (PV) Area	Acres
Total Area Between All Tracker Rows	7.43
PV Module Footprint	2.59
Pad Footprints	0.93
Space Between Array and Pads	1.44
Total Disturbed PV Area	11.46

NOTE:
 SITE DIMENSIONS DERIVED FROM TOPOGRAPHICAL GEOLOGICAL SURVEY
 TOTAL SITE AREA: 23.069 Acres
 TOTAL UNDISTURBED AREA / TOTAL SITE AREA: 50.32%, 11.605 Acres
 TOTAL DISTURBED AREA / TOTAL SITE AREA: 49.68%, 11.460 Acres

APPROVED BY THE PLANNING DIRECTOR
 ALBERT V. LOPEZ
 Alameda County Planning Director

EXHIBIT "C"; PLN2021-00124

Soltage
 RENEWABLE ENERGY PROVIDER
 333 WASHINGTON STREET
 SUITE 401
 JERSEY CITY, NJ, 07302
 PROPERTY OWNER:
 MAININDER S. SANDHU
 3972 DURHAM FERRY ROAD
 TRACY, CA, 95304

Project:
 ALAMEDA GRANT LINE SOLAR I
 WEST GRANT LINE ROAD
 ALAMEDA COUNTY
 (UNINCORPORATED) CA, 95391

Project Details:
 2067.13 kWdc, 2000.00 kW AC
 AHJ: ALAMEDA COUNTY OF
 APN: 009B-7650-007-01

Planning Approval:

DESCRIPTION	DATE	REV
PRELIMINARY LAYOUT	6/11/2021	1
PRELIM LAYOUT (II)	6/15/2021	2
PRELIM LAYOUT (III)	6/21/2022	3
PRELIM LAYOUT (IV)	7/15/2022	4
PERMIT SET		A

Sheet Title:
SITE PLAN

Sheet Number:
 A1.0

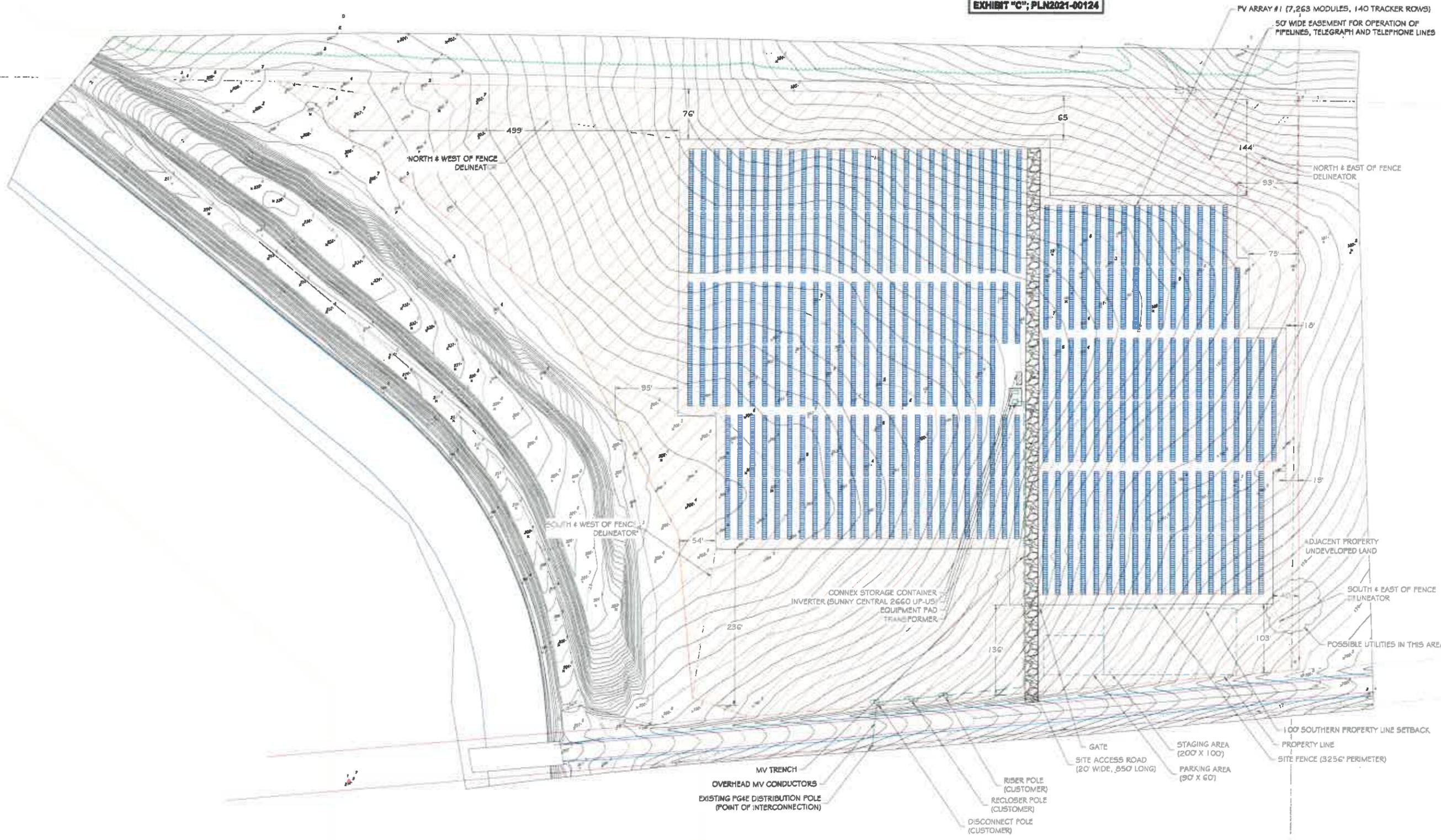
Sheet Size:
 ARCH D - 36" x 24"

Design & Drafting by:
 TAYLOR BOHLEN

"We are what we repeatedly do. Excellence, then, is not an act, but a habit."
 - Will Durant (acc. to Aristotle)

SepiSolar
 POWER BY DESIGN

Reviewed & Approved by:



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**



STAFF REPORT

TO EAST COUNTY BOARD OF ZONING ADJUSTMENTS
HEARING DATE September 8th, 2022

GENERAL INFORMATION

APPLICATION NUMBER & TYPE ALAMEDA GRANT LINE SOLAR 1 PROJECT, PLN2021-00124
OWNER & APPLICANT Soltage, LLC.
PROPOSAL NEW SOLAR FACILITY
ADDRESS & SIZE OF PARCEL Intersection of West Grant Line Road and Great Valley Parkway in unincorporated Alameda County; approximately 23 acres (APN 99B-7650-7-1)
ZONING DISTRICT A - Agriculture
GENERAL PLAN DESIGNATION Large Parcel Agriculture (LPA); East County Area Plan, adopted in 1994 and amended in November 2000 and May 2002
ENVIRONMENTAL REVIEW The Project is subject to the California Environmental Quality Act (CEQA, 1970, as amended) and is the subject of an Environmental Impact Report (EIR). The Draft EIR was made available for public comment between March 6 and June 19, 2022 Four comment letters were received.

Full record can be found at this link:
<http://www.acgov.org/cda/planning/landuseprojects/currentprojects.htm>

STAFF RECOMMENDATION

The East County Board of Zoning Adjustment should receive a staff presentation, take public comment on the Project (Alameda Grant Line Solar 1 Project) and the EIR, review the draft Resolution to certify the EIR and approve the Project, and lastly adopt the attached resolution approving the project. Approval of the Project would be subject to conditions of approval contained in the draft resolution.

SITE AND CONTEXT DESCRIPTION

The project site is located in eastern Alameda County, at the San Joaquin County boundary, west of the City of Tracy. Regional access to Alameda County is provided via Interstate-80 (I-80), I-880, I-680, I-580 and I-205. Direct access to the project site is provided via the I-205 interchange at Mountain House Parkway.

The project site is located in a rural agricultural area at the intersection of West Grant Line Road and Great Valley Parkway, adjacent to the unincorporated San Joaquin County community of Mountain House. The project site is bounded by orchard land to the north, vacant agricultural land and rural homesites to the south, and single-family housing to the east across Great Valley Parkway. The Delta

Mendota Canal is located west of the project site. Local vehicular access to the project site is provided via Mountain House Parkway and West Grant Line Road.

PROJECT DESCRIPTION

Soltage, LLC is proposing to construct, install, operate, and maintain an approximately 2-megawatt (MW) alternating current (AC) solar photovoltaic (PV) facility known as the Alameda Grant Line Solar 1 (project). The project is located on a 23.07-acre site, half of which would be covered with photovoltaic solar panels in rows approximately 650' feet in length in a north/south axis. The panels will be installed using the NextTracker system, with a maximum height of 9' in the most open position. Minor fencing (3,200 linear feet) would secure the perimeter of the site and an ample setback (100+ feet) from adjacent roadways serves to reduce visual impacts (i.e. how the project is viewed from public roadways - see attached photosims).

The proposed project was awarded a 15-year Power Purchase Agreement (PPA) with Pacific Gas and Electric (PG&E) under their Electrical Renewable Market Adjusting Tariff (REMAT) program, which is a program specifically designed for small utility-scale local renewable energy projects (<5MW) that benefit the local communities around it by delivering renewable energy via the distribution grid. The project would have a PPA with PG&E and is anticipated to commence delivery in early 2023.

The power generated by the proposed project would be transmitted through PG&E's distribution system at 12 kilovolts (kV) via the Herdlyn 1102 substation, located approximately 4.5 miles north of the project site, on Byron Highway near Clifton Court Forebay. The proposed project would interconnect to the local PG&E distribution grid immediately adjacent to the site, thereby providing clean, renewable energy to the electrical grid. The project would involve the construction of three new on-site utility poles along West Grant Line Road, which PG&E would connect its distribution grid to via an overhead distribution line extension from the existing 12kV pole on the south side of West Grant Line Road.

REFERRAL RESPONSES Referral responses from partner County agencies (September 2021) did not yield comments or concerns outside of ordinary permitting requirements. Acknowledgement of the project was received by County Fire, Building, Grading, Sheriff, Environmental Health as well as a letter from tribal leadership expressing no request for consultation or additional information.

STAFF ANALYSIS

As discussed above, the proposed project complies with both the zoning ordinance and East County Area Plan (ECAP). The intent of Agricultural zoning is for "agricultural and other nonurban uses, to conserve and protect existing agricultural uses, and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary for the general welfare." Like other land use types related to renewable energy (e.g., solar/battery) the use is relatively new to Alameda County and is not mentioned in the Zoning Ordinance as either a use permitted by right or a use conditionally permitted. The lack of ordinances regulating renewables has been a topic of discussion for many years in the East County community, and has recently been addressed at the Board of Supervisors level through approval of a non-binding Statement of Policy focusing on renewables, specifically solar and battery storage. The policies were approved by the Board in principle to provide direction to staff and applicants, while the work on developing ordinances is underway. Staff considers the Statement of Policy as an important document to consult in the land use analysis which follows below.

CONFORMANCE WITH GENERAL PLAN:

The East County Area Plan (ECAP) designates the Project site as Large Parcel Agriculture (LPA). Subject to the provisions, policies, and programs of the ECAP, the LPA designation permits one single-family residence per parcel, agricultural uses, agricultural processing facilities, public and quasi-public uses, quarries, landfills and related facilities, wind farms and related facilities, utility corridors, and similar uses compatible with agriculture. The project is located within an Agriculture (A) zone district. With approval of a conditional use permit pursuant to ACMC Section 17.06.040, the proposed project would not conflict with the subject property's land use designation or zoning district. According to the California Department of Conservation (DOC), there is no Prime Farmland, Unique Farmland, or Farmland of Statewide Importance on or adjacent to the site.

The ECAP policy 285 promotes the provision of adequate gas and electric service and facilities to serve existing and future needs while minimizing noise, electromagnetic, and visual impacts on existing and future residents. The proposed project would contribute to providing ECAPs stated goals of providing public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities. Specifically, the proposed project would increase the supply of power to the PG&E grid with a 2-megawatt solar facility. The County would consider this power "replacement" and not growth inducing.

CONFORMANCE WITH THE ZONING ORDINANCE:

The project site is zoned Agriculture which allows for public utility uses as a conditionally permitted use (CUP), subject to approval by the East County Board of Zoning Adjustments (EBZA). Additionally, as described in Chapter 3, *Project Description*, of the Draft EIR, the Alameda County Planning Commission made findings pursuant to §17.54.060 in 2008 that a solar electric facility would not be contrary to the specific intent clauses or performance standards established for the A District and could be permitted under a conditional use permit. The County has reiterated these findings for similar solar projects approved in 2011 and 2012, and most recently in 2020.

Pursuant to the Alameda County Zoning Ordinance (17.54.130), approval of conditional uses must make four findings: (a) required by public need, (b) will be properly related to other land uses and transportation and service facilities in the County, (c) if permitted, will under all the circumstances and conditions of the particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood; and (d) will be contrary to the specific intent clauses or performance standards established for the district, in which it is to be located.

The proposed project makes all listed findings as necessary for a conditional use as listed in the zoning ordinance. There is a public need for the proposed project; the population of Alameda County will likely naturally increase through the term of the proposed project, necessitating the need for increased capacity at the electrical grid. Additionally, the proposed project would increase power for the County obtained through renewable resources. Detailed findings are contained below.

DRAFT SOLAR POLICIES

In June of 2022 the County's Board of Supervisors approved a non-binding Statement of Policy specific to solar and battery storage, which will be adopted as ordinances at a later date, however, the draft policies were adopted "in principle" to provide direction on how to review these types of projects. The solar policies contained a 1000 acre cap on solar projects, which this project is well below. Furthermore, the Statement of Policy considered utility scaled solar installations to be electrical transmission

equipment, and due to its small size, would allow a project like this to be Photovoltaic alone, as is proposed. In addition, this project site also follows the policy language that discourages projects to be built on Williamson Act lands, or on parcels determined to be important farmlands.

CONFORMANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The Project is subject to the California Environmental Quality Act (CEQA, 1970, as amended). The impacts associated with the project would be localized at the project site and would not combine with other projects to cause cumulatively considerable environmental impacts. Given the limited impacts anticipated with project implementation, the project would not result in a considerable contribution to cumulative impacts.

As discussed in the EIR, implementation of the project would result in less-than-significant environmental impacts with implementation of applicable mitigation measures. These measures can be found in Table 1-1, *Summary of Impacts and Mitigation Measures*, of the Final EIR. With the implementation of these measures, the project would not cause substantial adverse effects on human beings, either directly or indirectly. Therefore, the project would comply with all applicable CEQA regulations, as the impacts would be less than significant. The project would not have significant and unavoidable impacts. Impacts related to Air Quality, Biology, Cultural, Geology, and Tribal Cultural Resources would be reduced to less than significant with mitigation.

The Draft EIR was made available for public comment between March 6 and June 19, 2022. Four comment letters were received. Comment letters were received from the Central Valley Regional Water Quality Control Board, Friends of Livermore, Friends of Open Space and Vineyards, and Donna Cabanne. Commenters raised questions about biological resources, agricultural resources, and land use, among other topics. The comments did not raise substantial issues with the information, analysis, or conclusions in the Draft EIR requiring significant revisions.

This packet contains a full hardcopy of the Draft EIR and Final EIR, the following link contains these documents and all the related attachments and appendices.

<http://www.acgov.org/cda/planning/landuseprojects/currentprojects.htm>

TENTATIVE FINDINGS IN SUPPORT OF THE CONDITIONAL USE PERMIT

- Finding 1: The use is required by the public need.*
The use is required by the public need in that energy demand will increase with projected population increase in the County inside the Urban Growth Boundary. The project will increase the County's supply of energy through renewable resources and supports the County's goal of developing renewable energy in rural Alameda County.
- Finding 2: The use will be properly related to other land uses, transportation, and service facilities in the area.*
No changes to allowed land uses, transportation, and service facilities are proposed. As the project is bounded on two sides by public roadways, and on a third side by a water canal, the impacts on other uses is minimal. Adjacent uses will be unaffected by the project, and transportation and services in the area will not be impacted in any significant or measurable way.
- Finding 3: The use, if permitted, under all the circumstances and conditions of the particular case will not materially affect adversely the health or safety of persons residing or working in*

the vicinity or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

The proposed project, as conditioned herein, will conform to all general plan and ECAP plan policies related to the siting of utility facilities. The Draft EIR found that the project would not cause substantial adverse effects on human beings, either directly or indirectly.

Finding 4: The use will not be contrary to the character or performance standards established for the District in which it is to be located.

The use will not be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered in that the proposed project is located in the A (Agriculture) zoning district, which has as its stated intent: "to promote implementation of General Plan land use policies for agriculture and other nonurban uses; to conserve and protect existing agricultural uses; and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary for the general welfare." The small footprint of the project supports the A zone, and the proposed project would be consistent with the district intent in that solar projects have been approved in the Large Parcel Agriculture designations with approval of a CUP. The use is appropriately located in a non-urban area and will serve the public need for increased energy for the foreseeable future.

CONCLUSION

- Consider the staff report and accept public testimony on the proposed Project, and in the absence of new substantive information to the contrary;
- Approve the attached Draft Resolution, which contains language certifying the Environmental Impact Report for this project, and
- Approve the proposed project subject to the Conditions of Approval, which are attached to the Draft Resolution.

ATTACHMENTS

1. Plan Set
2. Draft Resolution
3. Draft and Final Environmental Impact Report (Findings and MMRP)
4. Comments and Response to Comments

PREPARED BY: PlaceWorks
REVIEWED BY: Albert Lopez

PLANNING CONSULTANT
PLANNING DIRECTOR

**APPROVED MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
September 8, 2022**

REGULAR MEETING

CALL TO ORDER: Chair Eddy called the meeting to order at 1:30 p.m.

MEMBERS PRESENT: Chair Eddy and Member Imhof

MEMBER EXCUSED: Member Souza

OTHERS PRESENT: Planning Department staff Sonia Urzua, William Chin, Damien Curry, Albert Lopez, Ed Labayog, Mike Peters, Taiwan McCullough, Jazmin Sanchez and Rose Sicam, recording secretary.

PLEDGE OF ALLEGIANCE

OPEN FORUM:

Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. The Chair and Sonia Urzua instructed everyone on how to participate in open forum – There were no speakers.

Adopt Findings Authorizing Remote Teleconference Meetings for the East County Board of Zoning Adjustments – ACTION ITEM. Staff Recommendation: Adopt the findings that the board meetings will be held by teleconference in accordance with the Brown Act, due to state and local measures to promote social distancing. Chair Eddy inquired if there are any updates in terms of timeframe for resuming in-person meetings. Sonia Urzua stated she does not have any update at this time. County Counsel Heather Goodman asked the Chair to check on public comment. Sonia Urzua stated that there are no public speakers.

Sonia Urzua conducted the roll call.

Yeas: Chair Eddy and Member Imhof. Excused: Member Souza

Motion carried 2/0.

NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT

8777 Lupin Way Livermore CA 94550 APN# 099-1650-004-02 - Continuance from the July 14, 2022 meeting, appeal hearing regarding violations of Alameda County Zoning Ordinance 17.06, 17.52.210; Alameda County Preservation Ordinance Section 6.65.030 A (1,3) & E (2), B (6) and Junk Vehicle Ordinance 6.48 based upon, utilizing the property as an outdoor storage yard/facility and inoperative vehicles parked on unimproved surfaces. – ACTION ITEM

Michael Peters of Code Enforcement presented the staff report. Staff recommendation is to deny the appeal, declare the property in violation of the Alameda County Neighborhood Preservation Ordinance and Zoning Ordinance, a public nuisance, and require abatement of the violation at the property within 10 days and/or commence assessing fines and fees.

Chair Eddy asked about the condition of the property and were there any improvements from the last meeting. Mike Peters confirmed that it still in the same condition, same violation, there are no changes from the original report.

Public comment was open.

Jenna Winslow, resident at the location, said she had some gravel delivered and cleared out more cars. She explained that the extreme heat has caused some delays in their plans to rectify the violation but are still on track.

Kelly Abreu said the Planning Department and Code Enforcement staff is constantly asking board members to make decisions based on the photos that are taken and left with claims and statements of what happened years ago. People have to assume that for example that these cars were moved out and there is a rotating parade of cars. Code Enforcement staff should use google photos. The photos go back years. The cars have been there since 2018, just because they said they moved them, the photos will show that the same cars are still there. Mr. Peters probably has photos from google earth from years ago and not have to depend on who said what. This is close to the State aqueduct and where 80% of the water comes from for the cities of Livermore and Pleasanton. Also, adding gravel is okay, but expanding gravel is troublesome. If they cover everything with gravel it changes the permeability of the land and the County should be working with other agencies. If making a gravel parking lot, one needs to get a permit. Can't put in a lot of gravel without a permit. Of course, the Grading department is not here and there is no communication between the departments. There is no clean up that has been done in the last few years.

Frank Imhof said he does not know how many cars are at the site.

Albert Amavizca stated he has about 20-40 cars and that it will take 2 buildings (all metal), to keep the cars. He will follow the rules. The buildings will cost \$40k each and working on putting more gravel. Economy is bad. He said he can't get a permit until he gets the buildings. Frank Imhof asked if he has filed any permits. Mr. Amavizca said no.

The Chair said he has seen pictures from a few years back and wants to make sure that there is a plan. The plan is not going to be five years.

Public comment was closed.

Member Imhoff asked about permit process. Sonia Urzua stated that permits must be consistent with the general plan designation and zoning and if everything is consistent than Planning would approve it for a building permit. Member Imhoff asked if it would take six months. Sonia Urzua said she is not sure. Albert Lopez, Planning Director, briefly explained the permit process and how Planning only controls the zoning process. He said it does not sound like he will need an EIR. Sonia Urzua said they will have to look at the total square footage and make sure it is consistent with the general plan. Frank Imhof said if it was an ag building he would not need a permit, he could put hay or cars in it. Code Enforcement Ed Labayog noted the exception for Ag use for a building which does not allow storage of inoperable vehicles. This is not Ag use this is still personal property use.

Member Imhof moved to continue this item for 6 months to give appellant time to file permits, 2 buildings that will fit on the site. He asked that all fees and fines for the next 6 months be waived. Chair Eddy seconded the motion.

Sonia Urzua conducted the roll call.

Yeas: Chair Eddy and Member Imhof. Excused: Member Souza

Motion carried 2/0.

ALCOHOLIC BEVERAGE SALE REGULATION ADMINISTRATIVE HEARING - *None*

APPROVAL OF MINUTES FROM PREVIOUS MEETINGS: JULY 28, 2022

Member Imhof abstained and Chair Eddy moved to continue approval of July 28, 2022 minutes.

CONSENT CALENDAR: *No items*

REGULAR CALENDAR:

CONDITIONAL USE PERMIT, PLN2022-00080 – Application to allow the continued operation of an existing Wireless Telecommunications Facility for T-Mobile, located at 9464 Koopman Road, Sunol area of unincorporated Alameda County, approximately .5 miles North of cross street Pleasanton Sunol Rd, within the Agricultural Zoning District bearing the Assessor's Parcel Number: 096-0320-002-14. **Staff Planner: William Chin, Action Item**

William Chin presented the staff report. Staff recommends approval as proposed for continued operation of an existing telecommunication facility, no proposed changes or modifications to the existing permit. The project is Categorically Exempt from the requirements of the California Environmental Quality Act; Article 19, Section 15301, Class 1, "Existing Facilities". Staff asked for one correction on draft resolution first sentence to say, "Crown Castle, the applicant and owner has filed for the continued operation of an existing wireless telecommunications facility with T-Mobile as the Carrier".

There were no public speakers.

Member Imhof moved to approve PLN202200080 to allow continued operation of the wireless facility located at 9464 Koopman Road. Chair Eddy seconded the motion.

Sonia Urzua conducted the roll call.

*Yeas: Chair Eddy and Member Imhof. Excused: Member Souza
Motion carried 2/0.*

CONDITIONAL USE PERMIT, PLN2022-00067 – Application to allow continuing operation of a telecommunications facility with no changes, for property in the "A" (Agricultural) District, located at 9480 Koopman Rd, east side, 0.6 miles northeast of Pleasanton Sunol Road, APN: 96-0320-002-014. The project is Categorically Exempt from the requirements of the California Environmental Quality Act; Article 19, Section 15301, Class 1, "Existing Facilities." **Staff Planner: Damien Curry, Action Item**

Damien Curry presented the staff report. Staff recommends that the board approve the conditional use permit allowing the continued operation of a wireless telecommunication facility, based on drawings at the Planning Department. Member Imhof asked if this is the same application as Item 1. Staff explained these are two different and separate applications at the same location. Member Imhof said at the previous meeting on this application the board asked for a condition to remove the graffiti and water tank maintained.

There were no public speakers.

Member Imhof moved to approve PLN202200067 to allow continued operation of a telecommunication facility. He said he wants the maintenance done to keep it clean. All graffiti

to be removed every thirty days. Sonia said condition #20 has the language regarding the graffiti. Member Imhof said it is about enforcement. Sonia said staff will add "all graffiti to be removed every thirty days." Chair Eddy seconded the motion.

Sonia Urzua conducted the roll call.

Yeas: Chair Eddy and Member Imhof. Excused: Member Souza

Motion carried 2/0.

CONDITIONAL USE PERMIT, PLN2022-00134 – Application to allow the continued operation of an existing T-Mobile Wireless Telecommunications Facility, with minor modifications to both the monopole and ground equipment, located at 11701 North Flynn Road, Unincorporated Livermore area of Alameda County, west side, 600 feet south of I-580, within the Agricultural Zoning District, bearing Assessor's Parcel Number 099A-1785-001-14. The project is Categorical Exempt from the requirements of the California Environmental Quality Act; Article 19, Section 15301, Class 1, "Existing Facilities." **Staff Planner: William Chin, Action Item**

William Chin presented the staff report. Staff recommends approval of subject proposed application for continued operation of an existing telecommunications facility with minor modifications to both the antenna and ground equipment, with no changes to the resolution,

Public comment was open.

Kelly Abreu wanted to acknowledge the wonderful contribution of all the wind turbines to keep the lights on and the antennas that keep the cell phones working next to a major freeway and not killing raptors, hawks, and birds.

Public comment was closed.

Member Imhof moved to approve PLN202200134 for continued operation of T-Mobile wireless telecommunications facility. Chair Eddy seconded the motion.

Sonia Urzua conducted the roll call.

Yeas: Chair Eddy and Member Imhof. Excused: Member Souza

Motion carried 2/0.

CONDITIONAL USE PERMIT, PLN2022-00135 – Application to allow the continued operation of an existing Crown Castle owned Wireless Telecommunications Facility with T-Mobile as the carrier, with no modifications to the antennas or ground equipment, located at 10554 US HWY 50 E Livermore, CA, 94550, Unincorporated Livermore area of Alameda County, southside, intersection of Comstock Road, within the Agricultural Zoning District, bearing Assessor's Parcel Number: 099A-1780-1-4. The project is Categorical Exempt from the requirements of the California Environmental Quality Act; Article 19, Section 15301, Class 1, "Existing Facilities." **Staff Planner: William Chin, Action Item**

William Chin presented the staff report. Staff recommends board approval of subject continue operation of an existing facility with a minor modification including the installation of a permitted diesel generator, there are enough findings on record to make the motion for approval

of the subject site, this is a Crown Castle operated facility, also the applicant, T-Mobile as the carrier, this is also a correction to the previous resolution.

Member Imhof moved to approve PLN202200135 per staff's recommendation. Chair Eddy seconded the motion.

There were no public speakers.

Sonia Urzua conducted the roll call.

Yeas: Chair Eddy and Member Imhof. Excused: Member Souza

Motion carried 2/0.

CONDITIONAL USE PERMIT, PLN2021-00124 - Application to install and operate the "Alameda Grant Line Solar 1" project, a proposed 2.87MW Solar Photovoltaic facility on a 23.07-acre site in the "A" (Agricultural) District, located at the NW corner of Grant Line Road and Great Valley Parkway in the unincorporated Mountain House area. (APN 099B-7650-007-01). An Environmental Impact Report (EIR) has been prepared pursuant to CEQA, the action requested includes certification of the EIR and approval of a Mitigation and Monitoring Report. **Staff Planner: Albert Lopez, Action Item**

Planning Director Albert Lopez presented the staff report. He said the consultants are available for questions. Staff recommends that this board approve the draft resolution which contains language to certify the project's Draft EIR; proposed project and Conditions of Approval including its Mitigation and Monitoring Reporting Program.

Member Imhof asked who owns that land? Albert Lopez said it is not the applicant. Lori Bilella, Soltage, said land owner is Mani Sandhu who is also present. Chair Eddy asked about the power grid and sub-stations and also who will ultimately use the energy produced at this location. Albert Lopez said Lori would be able to answer the questions.

Public comment was open.

Lori Bilella, Soltage, thanked the Planning Director and staff for all the hard work. The work was very detailed, there was diligent environmental review of this project and this was over a year long process and four years of development effort. The project followed all local and state requirements. The project has less than significant impacts. This is a local project for Alameda County and will provide numerous benefits to the local community. The project is also in compliance with the Alameda County Solar Compliance Guidelines. The project is interconnected to the PG&E distribution grid. She gave background information on Soltage. She said the company worked on understanding the community and working with local companies. She said there is zero visual impact, it can't be seen from Grant Line Road. The energy will be sold to PG&E. The construction will take three months. The project has support from Wente Vineyards, Innovation Tri-Valley, Livermore Chamber of Commerce, community residents and leaders. Chair Eddy asked if the energy will be transported by above ground power poles. Lori said the project will be connecting to existing distribution system. The Chair asked why isn't being done underground. Lori said PG&E's requirement is that it needs to be above ground. The Chair asked if there are plans to beautify or plans for the remainder of the property. Lori said they were presented with an opportunity to donate the land to a nursery, but it would have

changed the project description, so currently it is not being considered. The Chair asked if there are plans for expansion. Lori said there is no possibility to make this project larger. The Chair asked what happens in 15 years. Lori said in the solar industry it is customary to get a contract shorter than the life expectancy of the project. It is possible that PG&E could offer an extension. The Chair said currently the San Joaquin County has homes right next door, is the energy being put back into Alameda County. Lori said this project is being connected to PG&E and Soltage has no control where the energy goes. Frank Imhof said from past discussions the electricity is put into the grid it is first in and first use.

Donna Cabanne, a Livermore resident, voiced her opposition to the project. She urged the board to deny Certification of the Final EIR, Resolution of Findings, and Conditional Use Permit for the following reasons: (1) the Final EIR failed to consider alternative renewable energy sources, (2) biological mitigations were not sufficient to make a finding of less than significant, (3) the need for industrial size power plant in the rural area has not been demonstrated, (4) project violates provisions of Measure D, and (5) health and safety of nearby residents has not been analyzed. There is no need for industrial size power plant in a rural area. Power will be used in the neighboring Mountain House, San Joaquin County area and why should Alameda County residents endure the negative impacts to benefit another county. Several endangered species and habitats are threatened. Final EIR failed to include a comprehensive list of toxins and analysis of toxins to show that there is no health risk during the duration of project. Given the complexity of issues related to this project, she asked that the item be continued. If not continued, she asked the board to deny the project.

Dick Schneider, a resident of Alameda County, said that contrary to the staff report, this proposed solar project does not satisfy finding number: (1) the use is required by the public need, there was just a vague statement that energy demand will grow with continued population increase inside the County and there is no analysis that this project will supply the energy to meet that need. The EIR makes it clear that the project will provide energy to the Mountain House development in San Joaquin County. It is just for this purpose. ECAP policy 13 allows public facilities and other infrastructure for the use of East County and not to serve needs in other counties. There is not an analysis for population growth in the area. California title 24 now requires that all new homes to have solar on their roofs. This project will not serve population growth in this area at all. The power will be going to San Joaquin County. ECAP policy 13 was part of Measure D, and section 20 of Measure D requires that the Board of Supervisors and employees of Alameda County shall carry out and enforce the provisions of this ordinance and generally the provisions of ECAP. They are mandated to use the most effective means available to abate violations. The findings can't be made and therefore this board must reject this application.

Kristan Kirsh, speaking on behalf of NEXTracker and a resident of Alameda County, supports this project. NEXTracker is a Fremont based global solar and hardware company and support for this project. Soltage has honored its commitment to work with local companies. Soltage will be working with NEXTracker on the solar tracker technology. It has minimal impact to the ground and no grading will be needed on property. Please follow Soltage's direction and approve CUP for this project.

Jean King, resident of Livermore, opposes the project and echoes the comments of Donna Cabanne and Dick Schneider. Please either deny or continue the project. The California Department of Fish and Wildlife did not have a chance to enter comments on this project as they were not given the materials prescribed ahead of time and they have asked for a continuation in order to provide comments. The mitigation is much inadequate. There needs to be more mitigation for the animals. This violates Measure D by putting power not for local use, outside of Alameda County into San Joaquin County. This project does not follow the rules that have been established. The Board of Supervisors have made some suggestions to what The California Solar Policy is going to be, but they have not been approved; the ordinances have not been approved and it's important that you do not establish this project without having the solar policy approved. I hope that you will deny this project or continue it so that other people can enter comments about the project, including The California Fish and Wildlife.

David Rounds, Livermore resident, said he opposes the project and wants to comment on the letter from Friends of Livermore. Measure D does not allow for portable intake solar utilities in the "A" agricultural areas of rural Alameda County. A prior project's approval should not be used as a precedent to approve this project. Furthermore, Alameda County does not have an adopted solar policy. Until such a time as the Board of Supervisors adopts a solar policy, past administrative decisions are not a substitute for a policy. County staff disagrees saying prior administrative decisions and the Board of Supervisors recent review of a solar policy qualifies for the approval of this project. In 2011 when the Cool Earth Solar Project approval was appealed, Supervisor Miley asked if the approval would create a precedent for future projects. Chris Bazar, the Planning Director at the time, stated flatly to Supervisor Miley and the rest of the board that it's decision in The Cool Earth Appeal would not set a precedent for future decisions. In response to our comments on this current draft EIR, staff used the 2008 ruling for a CUP by Green Volt Solar. That determination said that a solar facility would not contradict an established zoning for A district. The determination never went to the Board of Supervisors for a vote. Because The Green Volt Project never reached a vote by elected officials, the zoning rules for "A" agriculture areas did not change. The County then used the same 14 year old argument to rationalize The Aramis Project approval a couple of years ago and now it is on hold due to litigation. By using the 2004 administrative determination by Planning Commission as justification for approval of this Soltage Project, it is only inviting further litigation and delay. The County needs to do the work on creating a solar policy that specifies where solar utilities can be located. Instead of relying on a non-binding Board of Supervisors approval of a draft solar policy to approve this project. There is no solar policy until the Board of Supervisors sees the final language and holds 2 public meetings before approving. Using this non-binding action by the Board of Supervisors is a misplaced argument and it will not hold up under legal scrutiny. This board should not approve this project until the County gets its act together around a workable solar policy.

Mani Sandhu, property owner, said it has not been easy for property owners due to the lack of water for farming. The land goes unused due to the lack of water and it makes it unfeasible to farm. This little project is appropriate and good for the community at large. The lack of water is going to get worse. This is a great project and he encouraged the board to approve the project.

Tamara Reus, Chair of Friends of Open Space and Vineyards, said she wanted to focus on the mitigation process. She spoke on what is going to happen to the animals on this land. This will leave them less options for survival and food. The point is more mitigation is needed. It is critical to preserve more habitat. She suggested that mitigation conservation ratios be increased and time response increased to allow for additional comments.

Lynn Naylor, Innovation Tri-Valley Leadership Group, said this group advocates for inclusive growth and development of business and quality of life within the Tri-Valley region. They support the project. The key goal identified by the community in the 2040 Tri-Valley Vision Plan for economic future was carbon and water neutral. Solar projects help meet State goals by 2045. This project will provide Alameda County with clean renewable energy. Alameda County and the Tri-Valley have an opportunity to play a leadership role in delivering energy to the region. She asked that the project be approved.

Kelly Abreu said a lot of this electricity is going to San Joaquin Valley, what if the County lets San Joaquin take over. They built 1000 to 5000 units down the road and another 5000 will be built in the Tracy Hills. If they take over there will not be anyplace for the owls to live. San Joaquin County will kill them all. He said he is happy to see a lot of support for the project. He resides in Fremont and proud that contributing local jobs and high tech services and hardware to build this solar stuff. This is the kind of thing Fremont is supposed to be doing and it is doing. Alameda County needs to take responsibility. Alameda County's legacy is an industrial fossil fuel plant. This County shoved it in an underserved community and stuck them with a plant that blew up and spewed shrapnel all over the place, which threatens the health of the community and the whole planet. The sooner we can replace these with solar the better it will be for the health of the community. Thank God San Joaquin County is not taking this over.

Josh Weiner said he supports the project. He is the founder and owner the engineering project that is supporting the project. This will provide jobs and mitigation for climate change and helps endangered species. He said he will benefit directly from this project. The company provides design and because of the delays involved it has been challenging to run the business. Putting people to work and the project is a good thing for farmers. Appreciate the support of this board.

Amos White, resident of Alameda County and environmental executive of an urban reforestation non-profit in Alameda County, he also serves on the ag committee and serves on the Cal Fire Urban Forestry advisory committee, and in such combined capacities he said he has a sincere interest in urging the approval of this project as a local solar project. It is a good opportunity for the County to provide local clean energy and approving these projects is more important than ever with the western heat wave. The energy demand drains our energy grid. Approving this project will provide the additional clean energy sources that the County severely needs. This will also address the climate imperative as a local solar facility. Need to turn to clean renewable energy sources to reduce climate emissions and the impact on the climate. Furthermore, approving the project will offset peak demand due to increase cooling mid-day as a result of heat wave. This project will serve to effectively employ solar energy, heat and water resources and land use for production, it will increase the opportunity for ag production where farmers could combine trees, crops, etc and harvest the sun twice. Clean renewable energy is the future and

with the approval of this project the County will achieve the cleaner, greener future faster in Alameda County.

Larry Gosselin said he has been working on ag and conservation for 41 years. He supports this project and is aware of the effects of global climate change. East Bay Community Energy has set a goal of 100% clean energy by 2030 for the County. East Bay Community Energy is supported by the majority of the jurisdictions. There is a need to produce clean energy locally as fast as possible. Solar energy facilities are the least impactful energy source with the quickest carbon footprint pay-back time, and it is permissible and consistent with measure D. This project is supported by measure D as much as wind turbines, cell towers, road improvements and many other open space uses. It is permissible and consistent with measure D. California Department of Fish and Wildlife has had the ability to develop mitigation strategy for solar development using the formatted regional conservation investment strategy and he said he is sensitive to their lack of manpower and ability to respond within four years, but the County and the applicant have been patiently waiting for their input. He encouraged them to come back to the County and work on a regional plan to facilitate these projects. He congratulated staff on the good work.

Public comment was closed.

Frank Imhof asked if the Board of Supervisors finalized the solar policy. Albert Lopez said they approved a set of policies but they asked staff to bring it back to turn them into ordinances. The policies are to provide guidance to the projects that are on the pipeline. Frank Imhof asked about Measure D and allowed use. Albert Lopez said it is permissible under Measure D. One of the speakers spoke on a decision made by the Planning Commission in 2008. It is true we have used back then and now to be able to demonstrate that the County has looked at projects like this and found it as allowed uses. It is way below the 1000 acres. Frank Imhof said the electricity goes into the grid, the County can't control where it goes. Wherever the need that is where the electricity will go. Albert agreed. The County will still get credit even though it might not be used in the County. Frank Imhof said there are a lot of open space and collected data on burrowing owls. He would be surprised if there would be an impact on them, because it is such a small site. He said he thinks the owls will use the shade once the panels are placed. The State Fish and Game, not sure that they will show much of an interest since it is such a small project. The Chair said these issues are all in the mitigation. Anytime a burrowing owl is spotted on site, it has to be addressed or any species that is being impacted. Albert said for the record, he did get an e-mail from Ca Fish and Game, they did not ask for additional time, it seemed that they were asking for additional time for the speaker and not themselves.

Heather Littlejohn Goodman, County Counsel, wanted to draw attention of the board members to the four findings that are required for the conditional use permit approval starting on page 2 of the resolution. The second place is on the first page of the resolution, the second to the last finding paragraph which reads " the Planning Department prepared Written Findings of Significant Effects, attached herein as Exhibit A..." She said she did not have Exhibit A and she wanted to be clear on exhibit A and the findings. Albert Lopez said the findings in terms of the summary of CEQA impacts and mitigation, are in the final EIR document starting with page 1-2, it describes the mitigation. The final EIR also includes response to comments. County Counsel read what is needed to make the findings and exhibit A. She said if exhibit A is not available, she

said the resolution may be modified and the words “exhibit A” be removed. Albert Lopez said the page 2, findings, he read the questions regarding to findings. He said in terms of the CEQA findings, we need to change the word “Exhibit A” to “attached herein is the final EIR.”

County Counsel said on the conditional use permit findings, need make sure that this board is comfortable with the explanations that are in the report, in particular findings 2 and 3, they are yes or no questions and there are no yes or no answers. Need to make sure that this board is clear that the required findings are being made. County Counsel read the findings and she asked Albert if he wanted to make comments on population increase. He said the findings responses, for the second finding should be “yes”, for finding #3 the response is “yes”. Number 4, the answer should say no “the use is not contrary.” The Chair agreed with the responses. Member Imhof said there are no changes to number 4, the only changes are to numbers 2 and 3. County Counsel said need to make sure that the edits are incorporated. She said there is a standard condition related to conditional use permits, that they shall comply with all state, federal and local laws ordinances and regulations. She suggested that it be added to the conditions of approval.

The Chair moved to approve PLN2021-000124 per staff’s recommendation, approve draft resolution which contains language to certify the project’s Draft EIR; proposed project and Conditions of Approval including its Mitigation and Monitoring Reporting Program with added changes stated by County Counsel and also adding a condition related to state, federal and local laws. Member Imhof seconded the motion.

Sonia Urzua conducted the roll call.

Yeas: Chair Eddy and Member Imhof. Excused: Member Souza

Motion carried 2/0.

STAFF COMMENTS & CORRESPONDENCE: *None*

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: *None*

ADJOURNMENT: Meeting was adjourned at 3:46 p.m.

ALBERT LOPEZ, SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS

October 2022 | EIR Addendum

ADDENDUM TO ALAMEDA GRANT LINE SOLAR 1 EIR

SCH No. 2021100398

County of Alameda

Prepared for:

County of Alameda

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Appendices

Appendix A: *Assessment of Special-Status Bumblebees for the Alameda Grant Line Solar 1 Project*

Appendix B: *Revised Mitigation Monitoring and Reporting Program*

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1. Introduction

This document is an Addendum to the previously certified Environmental Impact Report (EIR), State Clearinghouse (SCH) No. 2021100398, for the Alameda Grant Line Solar 1 Project (Approved Project) in the County of Alameda (County). The Approved Project did not consider the potential for occurrence for two special-status species: Crotch's bumble bee and western bumble bee.

This addendum focuses on the addition of mitigation measures, designed to address impacts of the project on special-status species Crotch's bumble bee and western bumble bee. Specifically, this Addendum evaluates the potential impacts associated with the potential of the two special-status bumble bee occurrences.

A copy of this document and all supporting documentation may be reviewed or obtained at the County of Alameda's Community Development Department, 224 West Winton Avenue, Hayward, California 94544, Monday through Friday, 8:30 a.m. to 4:30 p.m., or electronically on the County's website: <http://www.acgov.org/cda/planning/landuseprojects/currentprojects.htm>.

INTRODUCTION

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2. Environmental Setting

2.1 PROJECT LOCATION

As shown on Figure 1, *Regional Location*, the project site is located in eastern Alameda County, at the San Joaquin County boundary, west of the City of Tracy. Alameda County is bordered by Contra Costa County to the north, San Joaquin County to the east, Santa Clara County to the south, and the City and County of San Francisco to the west. Regional access to Alameda County is provided via Interstate-80 (I-80), I-880, I-680, I-580 and I-205. Direct access to the project site is provided via the I-205 interchange at Mountain House Parkway.

As shown on Figure 2, *Local Vicinity*, and Figure 3, *Aerial Photograph*, the project site is located in a rural agricultural area at the intersection of West Grant Line Road and Great Valley Parkway, adjacent to the unincorporated community of Mountain House in San Joaquin County. The project site is bounded by orchard land to the north, vacant agricultural land to the south, and single-family housing to the east across Great Valley Parkway. The Delta Mendota Canal is located west of the project site. Local vehicular access to the project site is provided via Mountain House Parkway and West Grant Line Road.

2.2 EXISTING LAND USE

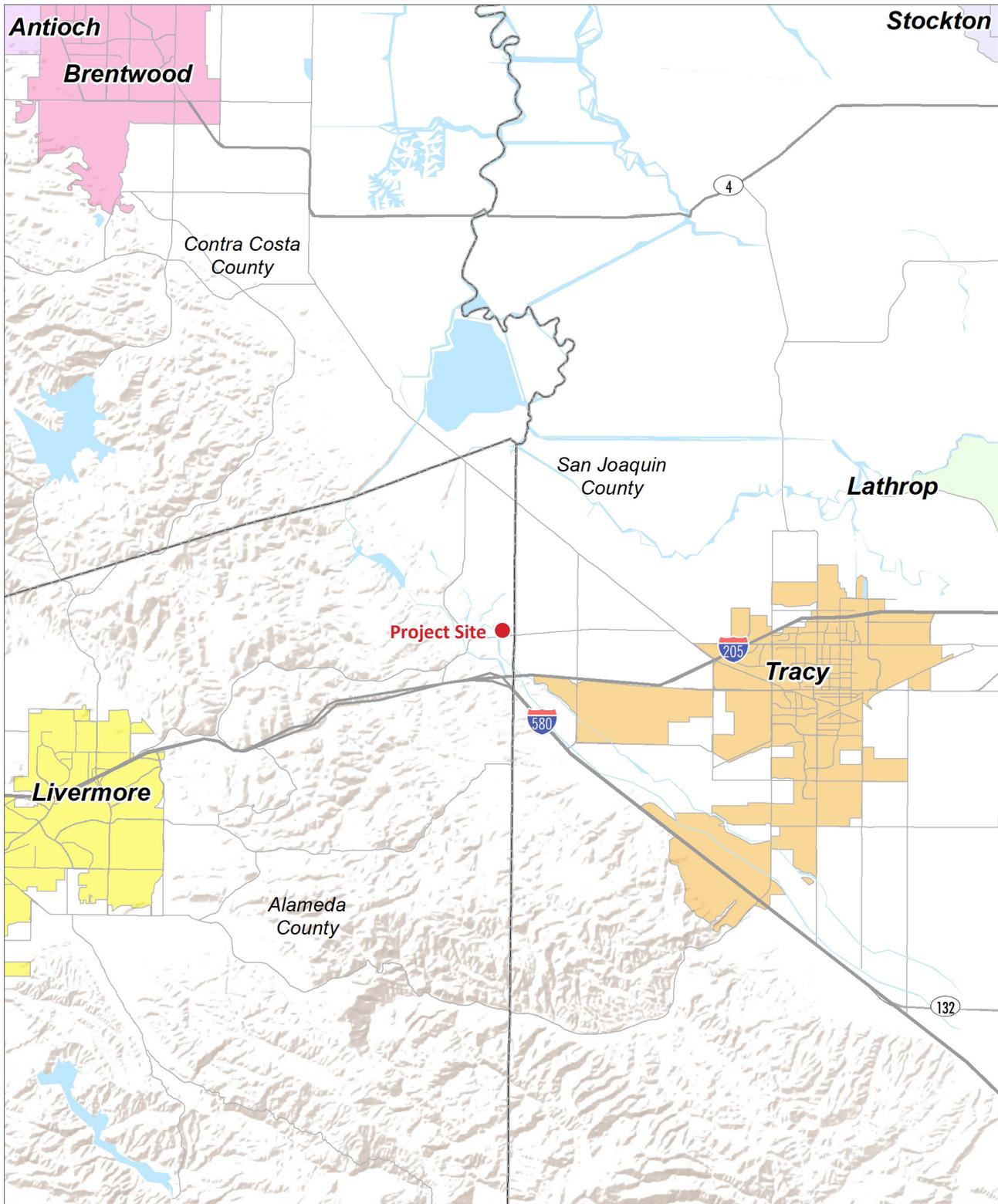
The 23.07-acre project site is assigned Assessor's Parcel Number (APN) 99B-7650-7-1. The project site is currently undeveloped.

2.2.1 GENERAL PLAN LAND USE DESIGNATION

The project site is located within the Alameda County East County Area Plan (ECAP), which was amended in 2000 by voter-approved Measure D. The ECAP Planning Area encompasses 418 square miles in eastern Alameda County. The ECAP includes policies that address physical development, in addition to social, environmental, and economic issues related to land use considerations, which are intended to preserve the rural, pastoral, character of the County lands, outside of the County's Urban Growth Boundary.

The ECAP land use designation on the project site is Large Parcel Agriculture. This designation permits, subject to the provisions of Measure D, agricultural uses, agricultural processing facilities (for example wineries, olive presses), limited agricultural support service uses (for example animal feed facilities, silos, stables, and feed stores), secondary residential units, visitor-serving commercial facilities (by way of illustration, tasting rooms, fruit stands, bed and breakfast inns), recreational uses, public and quasi-public uses, solid waste landfills and related waste management facilities, quarries, windfarms and related facilities, utility corridors, and similar uses compatible with agriculture.

ENVIRONMENTAL SETTING



Source: ESRI, 2021.

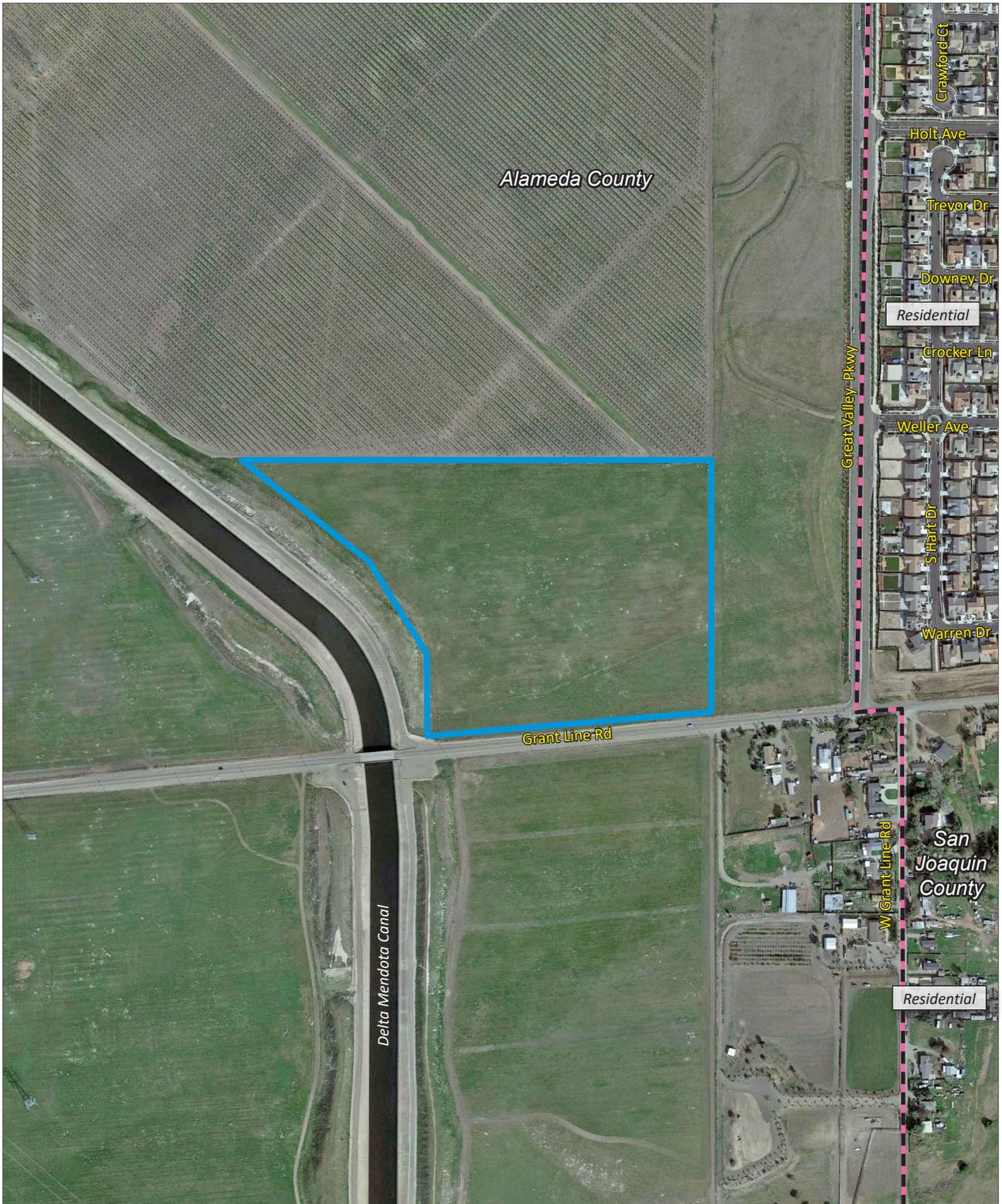
Note: Unincorporated county areas are shown in white.

● Project Site — County Boundaries



Figure 1
Regional Location

ENVIRONMENTAL SETTING



Source: Google Earth, 2021.

— Project Boundary - - - County Boundary



Figure 3
Aerial Photograph

ENVIRONMENTAL SETTING

2.2.2 ZONING DESIGNATION

The project site is zoned Agricultural (A) District. Per Alameda County Municipal Code (ACMC) Section 17.06.030, the uses permitted in the A zoning district include one-family dwelling or one-family mobile home; one secondary dwelling unit; crop, vine or tree farm, truck garden, plant nursery, greenhouse, apiary, aviary, hatchery, horticulture; raising or keeping of poultry, fowl, rabbits, sheep or goats or similar animals; grazing, breeding or training of horses or cattle; winery or olive oil mill; fish hatcheries; and public or private hiking trails. Per ACMC Section 17.06.040, conditional uses may also include privately owned wind-electric generators. The County Planning Commission made findings in 2008 pursuant to ACMC Sections 17.54.050 and 17.54.060 regarding district classifications of uses not listed within the Ordinance.¹ The Planning Commission made findings that a solar electric facility would not be contrary to the specific intent clauses or performance standards established for the A District and could be permitted under a conditional use permit (CUP). The County reiterated these findings to reconfirm the conditional permissibility of similar solar uses within the A District in 2011² and 2012.³

¹ County of Alameda Planning Commission, June 16, 2008, Meeting Minutes.

² County of Alameda East County Board of Zoning Adjustments, December 15, 2011, Resolution No. Z-11-72, PLN2011-00009.

³ County of Alameda Board of Supervisors, February 28, 2012, Planning Meeting, Summary Action Minutes.

ENVIRONMENTAL SETTING

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3. Project Description

3.1 PROJECT BACKGROUND

The Approved Project would construct install, operate, and maintain an approximately 2-megawatt alternating current solar photovoltaic facility known as the Alameda Grant Line Solar 1. The Approved Project was certified by the East County Board of Zoning Adjustments on September 8, 2022. On September 18, 2022, an appeal was filed by Friends of Livermore. The basis of the appeal was cited as the following:

- The project is not a permitted use under the applicable land use designation.
- The project is not a permitted use in the applicable zoning district.
- The project is not replacement infrastructure.
- The project is not new infrastructure needed to serve growth allowed by Measure D.
- The California Department of Fish and Wildlife (CDFW) requested a continuance of the CUP proceedings, but that continuance was not granted.
- Mitigation for impacts to special-status species is inadequate.

An appeal hearing before the Alameda County Board of Supervisors was held on October 13, 2022.

During the appeal hearing, the issue of the potential for occurrence of newly added special-status species was raised. In September 2022, the California Supreme Court had found that the California Fish and Game Commission can protect bumble bees under the California Endangered Species Act (CESA). Two species of bumble bee—Crotch’s bumble bee (*Bombus crotchii*) and western bumble bee (*Bombus occidentalis occidentalis*)—that historically occurred in the Alameda County area are now special-status species for the purposes of CEQA review. Consequently, this Addendum evaluates the impacts of the project on the two special-status bumble bees.

To address the concerns raised at the appeal hearing, the project biologist prepared a memorandum on the potential for occurrence of Crotch’s bumble bee and western bumble bee and the impacts of the project on these two special-status bumble bees (see Appendix A, *Assessment of Special-Status Bumblebees for the Alameda Grant Line Solar 1 Project*). The memorandum found that there is a low potential for occurrence of Crotch’s bumble bee on the project site. The western bumble bee has had no recent observations made within 10 miles of the project site in over 60 years; however, its potential for occurrence cannot be fully discounted, as there is some potentially suitable habitat on the site. Crotch’s

PROJECT DESCRIPTION

bumble bees and western bumble bees have the potential to be impacted by the project if they are present on the site at the time of construction.⁴

3.2 PROPOSED MITIGATION MEASURES

Impact BIO-1 of the certified EIR states that, “Construction of the project could potentially kill, injure, or alter the behavior of special-status species on the site.” Mitigation Measures BIO-1.1 through BIO-1.15 addressed this impact through construction worker training, biological monitoring, and species-specific protocols for the identified special-species.

Project construction could impact Crotch’s bumble bees and/or western bumble bees if they are present on the site at the time of construction, by causing the injury or mortality of adults, eggs, and larvae, burrow collapse, nest abandonment, and reduced nest success. Permanent loss of colonies and suitable nesting habitat may result. The installation and operation of the solar panels may reduce native vegetation that may support suitable foraging habitat for Crotch’s bumble bees and/or western bumble bees nesting on or near the project site. The following mitigation measures are proposed to reduce the project’s potentially significant impacts on the special-status bumble bees to a less-than-significant level.

Mitigation Measure BIO-1.16: Within 1 year prior to vegetation removal and/or the initiation of construction, a qualified biologist familiar with Crotch’s and western bumble bee behavior and life history should conduct surveys to determine the presence/absence of the species. Surveys should be conducted during flying season when the species is most likely to be detected above ground, between approximately March 1 to September 1. A reference site should be visited to confirm bumble bee activity because flight periods likely vary geographically and with weather. Surveys should be conducted within the project site and accessible adjacent areas with suitable habitat. Survey results including negative findings should be submitted to the CDFW prior to project-related vegetation removal and/or ground-disturbing activities. At a minimum, a survey report should provide the following:

- a) A description and map of the survey area, focusing on areas that could provide suitable habitat for the two bumble bee species;
- b) Field survey conditions that should include the name(s) of qualified biologist(s) and their qualifications, date and time of the survey, survey duration, general weather conditions, survey goals, and species searched.
- c) Map(s) showing the location of nests/colonies; and,
- d) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each nest/colony is found. A sufficient description of biological conditions,

⁴ LSA, October 28, 2022, *Assessment of Special-Status Bumblebees for the Alameda Grant Line Solar 1 Project*.

PROJECT DESCRIPTION

primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within the impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species).

Mitigation Measure BIO-1.17: If a qualified biologist determines Crotch's and/or western bumble bees are present, and if "take" or adverse impacts to the bumble bees cannot be avoided either during project activities or over the life of the project, the CDFW will be consulted to determine if a CESA Section 2080 Incidental Take Permit is required.

Mitigation Measure BIO-1.18: If a qualified biologist determines Crotch's and/or western bumble bees are present, information on the species shall be included in the environmental education program described in Mitigation Measure BIO-1.1 of the EIR.

Mitigation Measure BIO-1.19: If a qualified biologist determines Crotch's and/or western bumble bees are present, the mitigation and management plan (MMP) for the conservation area, described in Mitigation Measure BIO-1.9 of the EIR, shall include a prescription for managing the area as habitat for bumble bees. The MMP will include a prescription for an appropriate seed mix and planting plan that targets bumble bee nectar plants, including native flowering plant species known to be visited by bumble bees and containing a mix of flowering plant species with continual floral availability through the flight season (early spring through late fall). The MMP will include success criteria for bumble bee habitat.

Mitigation Measure BIO-1.20: Rodenticides and pesticides will not be used anywhere on the project site during the life of the project.

PROJECT DESCRIPTION

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4. Environmental Analysis

4.1 ANALYSIS

California Environmental Quality Act (CEQA) Guidelines Section 15162 describes when subsequent environmental review is required once a project has been studied and approved, but when further discretionary actions are required. Below, in bold, the regulations are set out and the analysis of this project under each criteria follows.

- (a) **When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:**
- 1. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.**

The design, construction and operation of the project would not change from what was approved under the certified EIR. The project would still be required to implement the mitigation measures listed in the EIR to ensure any potentially significant impacts remain less than significant.

The memorandum on the Crotch's bumble bee and western bumble bee (Appendix A), found that Crotch's bumble bees have a low potential for occurrence and that although Western bumble bees have not been observed near the project site in a long time, there is potentially suitable habitat on the project site and therefore, the potential for occurrence of western bumble bee cannot be discounted. If either of the special-status bumble bees are present on the project site at the time of project construction, construction may cause injury or mortality of adults, eggs, and larvae, burrow collapse, nest abandonment, and reduced nest success. They may also suffer from permanent loss of colonies and suitable nesting habitat. Furthermore, installation and operation of the project's solar panels may reduce native vegetation that may support suitable foraging habitat for the bumble bees nesting on or near the project site.

Implementation of the additional mitigation measures proposed above under Section 3.2, *Proposed Mitigation Measures*, would ensure that the potential for significant impacts related to the project construction's potential to kill, injure, or alter the behavior of special-status species on the project site remains less than significant. Mitigation Measure BIO-1.16 requires a qualified biologist familiar with Crotch's bumble bee and western bumble bee behavior and life history to conduct surveys to determine

ENVIRONMENTAL ANALYSIS

the presence/absence of the special-status bumble bees within one year prior to project-related vegetation removal or initiation of construction. The surveys should be conducted during flying season (between approximately March 1 to September 1), and results are to be submitted to CDFW prior to vegetation removal and/or ground disturbing activities. The survey report should include, at a minimum, a description and map of the survey area, focusing on areas that could provide suitable habitat for the bumble bees; field survey conditions; maps showing the location of nests/colonies; and a description of physical and biological conditions where nests/colonies are found.

If the qualified biologist concludes the presence of Crotch's bumble bees and/or western bumble bees on the project site, Mitigation Measures BIO-1.17, BIO-1.18, and BIO-1.19, would also apply. Mitigation Measure BIO-1.17 requires consultation with CDFW to determine if a CESA Section 2080 Incidental Take Permit is required if "take" or adverse impacts to Crotch's bumble bees and/or western bumble bees cannot be avoided. Mitigation Measures BIO-1.18 and BIO-1.19 requires implementation of Mitigation Measures BIO-1.1 and BIO-1.9 in the certified EIR. Information on Crotch's bumble bee and/or western bumble bee shall be included in the environmental education program required under Mitigation Measure BIO-1.1 and a prescription for managing the area as habitat for the special-status bumble bees shall be included in the mitigation and management plan required under Mitigation Measure BIO-1.9.

Mitigation Measure 1.20 would be required regardless of the presence of Crotch's bumble bee and/or western bumble bee. Rodenticides and pesticides are not to be used anywhere on the project site during the life of the project. Mitigation Measure 1.20 would also benefit the other special-status species discussed in the EIR.

Therefore, the proposed mitigation measures would not result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects evaluated in the certified EIR.

- 2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.**

As discussed above, the addition of Mitigation Measures BIO-1.16 through BIO-1.20 would ensure that project impacts to the two special-status species, Crotch's bumble bee and western bumble bee, would remain less than significant. The memorandum prepared by the project biologist demonstrates that the implementation of the proposed mitigation measures would reduce the potential of significant impacts to the special-status bumble bees and there would be no new significant effects not discussed in the previously certified EIR.

ENVIRONMENTAL ANALYSIS

3. **New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of the previous EIR was certified as complete shows any of the following:**

- (A) **The project will have one or more significant effects not discussed in the previous EIR.**

The certified EIR determined that the buildout of the Alameda Grant Line Solar 1 Project would not have any significant and unavoidable impacts. The design, construction and operation of the project would not change from what was approved under the EIR. Thus, the only new potential impacts relate to the potential occurrence of Crotch's bumble bee and western bumble bee. However, as noted above and in the memorandum prepared the project biologist, the implementation of Mitigation Measures BIO-1.16 through BIO-1.20 would reduce any potentially significant project impact on Crotch's bumble bees and/or western bumble bees to a less-than-significant level. Therefore, the addition of the proposed mitigation measures does not create substantially more severe significant effects than shown in the previously certified EIR.

- (B) **Significant effects previously examined will be substantially more severe than shown in the previously certified EIR.**

As noted above, there would be no revisions to the project. The design, construction and operation of the project would not change from what was approved under the certified EIR. No significant effects were found in the EIR, and mitigation measures included in the EIR will continue to apply to the project. And, as also discussed above, while there are potential impacts to the special-status bumble bees at the project site, such impacts would be alleviated with project site surveys conducted by a qualified biologist, and if necessary, consultation with CDFW and inclusion of the bumble bees in the environmental education program and the mitigation and management plan. As such, none of the significant effects previously examined will be substantially more severe than shown in the previously certified EIR.

- (C) **Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.**

There are no mitigation measures or alternatives that were previously found to be infeasible and that are now feasible. All mitigation measures included in the certified EIR will continue to apply to the project.

ENVIRONMENTAL ANALYSIS

- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The additional mitigation measures proposed would continue to address Impact BIO-1, which states that construction of the project could potentially kill, injure, or alter the behavior of special-status species on the project site. The proposed mitigation measures are consistent with the analysis in the certified EIR that implementation of mitigation measures would result in monitoring and protection of special-status wildlife species that may occur on-site, and impacts would be reduced to a less-than-significant level. The project will include the additional Mitigation Measures BIO-1.16 through BIO-1.20. There are no new significant impacts, and the applicant has agreed to the additional mitigation measures.

ENVIRONMENTAL ANALYSIS

5. Findings

As indicated in this Addendum, the impacts of the project do not represent a substantial change to the certified EIR, nor have any substantial changes occurred with respect to the circumstances under which the project is undertaken, that would require major revisions to the EIR. Analysis of the project shows that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

The addition of Mitigation Measure 1.16 through 1.20 discussed above would ensure that the project's impact on special-status Crotch's bumble bee and western bumble bee is reduced to a less-than-significant level. The additional mitigation measures are added to the project's Mitigation Monitoring and Reporting Program (see Appendix B, *Revised Mitigation Monitoring and Reporting Program*). The project would remain subject to all applicable previously required mitigation measures from the EIR.

Based on the record as a whole, there is no substantial evidence that the project would result in significant environmental impacts not previously studied in the EIR and, accordingly, the project changes would not result in any conditions identified in CEQA Guidelines, Section 15162. Thus, a subsequent EIR or Mitigated Negative Declaration is not required for the changes to the project and the County adopts this Addendum to the Alameda Grant Line Solar 1 EIR (SCH No. 2021100398) in accordance with CEQA Guidelines, Section 15164.

A P P E N D I X A

ASSESSMENT OF SPECIAL-STATUS
SPECIES BUMBLEBEES FOR THE
ALAMEDA GRANT LINE SOLAR 1
PROJECT

.....

MEMORANDUM

DATE: October 28, 2022

TO: Steve Noack, PlaceWorks

FROM: John Kunna, LSA

SUBJECT: Assessment of Special-Status Bumblebees for the Alameda Grant Line Solar 1 Project

BACKGROUND AND PURPOSE

LSA prepared a Biological Resources Assessment (BRA) for the Grant Line Solar 1 Project in unincorporated Alameda County in January 2022. The BRA assessed the potential for 15 special-status plant species and 27 special-status animal species to be impacted by the project and recommended measures that would reduce potential impacts to biological resources to a less than significant level.

In September 2022, the California Supreme Court found that the California Fish and Game Commission can protect bumblebees under the California Endangered Species Act (CESA). Two species of bumblebee—Crotch's bumble bee (*Bombus crotchii*) and western bumble bee (*Bombus occidentalis occidentalis*)—that historically occurred in the Alameda County area are now special-status species for the purposes of CEQA review. This memorandum assesses the potential for these two species to occur on the project site and be impacted by the proposed project and forms the basis of an addendum to the Environmental Impact Report (EIR) (PlaceWorks 2022).

METHODS

LSA biologists referred to the results of reconnaissance-level field surveys conducted on May 13, May 18, and May 21, 2021. LSA reviewed available background information and literature, including the petition to list the species (The Xerces Society et al. 2018) and the California Department of Fish and Wildlife's (CDFW) response (CDFW 2019) to the petition.

LSA queried the California Natural Diversity Data Base (CNDDDB) (CDFW 2022) for nearby occurrences of special-status bumblebees and also searched iNaturalist (2022) for recent nearby observations of bumble bees. In addition, LSA searched Bumble Bee Watch (2022) for observations of special-status bumble bee species observations made since 2002 in Alameda, Contra Costa, and San Joaquin Counties.

ASSESSMENT

Crotch's Bumble Bee (*Bombus crotchii*)

Life History and Habitat Requirements

The queens begin foraging for pollen and nectar after emerging from hibernation in the spring. They also search for nest sites. The flight period for Crotch's bumble bee queens in California is from late February to late October, peaking in late March to early April. There is a second, smaller peak in July. The flight period for workers and males in California is from March through October, peaking in July.

Like most bumble bees, the Crotch's bumble bee primarily nests underground. The size of Crotch's bumble bee colonies has not been well documented. Little is known about the overwintering sites of the Crotch's bumble bee, but queens likely overwinter in soft soil or under debris or thatch and leaf litter.

Queens most often visit the flowers of plants in the Leguminosae (Fabaceae) family, followed by plants in the Labiatae family. Workers most commonly visited the flowers of plants in the Leguminosae family, followed by plants in the Asdepiadaceae (milkweed) family, which is now treated as a subfamily in the family Apocynaceae. The males' most commonly visited plant family was the Asdepiadaceae family, followed by plants in the Leguminosae family. In total, Crotch's bumble bees have been observed visiting the flowers of at least 186 plant species in 15 plant families.

Generally, for all bumble bee species, high-quality habitat has three major components: a diverse supply of flowers for nectar and pollen, nesting locations, and subterranean spaces for overwintering queens (Hatfield et al. 2012). In California, Crotch's bumble bee is found in grassland and scrub habitats.

Threats

The primary threats to the species are present or threatened modification or destruction of its habitat, overexploitation, competition from European honeybees, disease, and other natural events and human-related activities, including pesticide use, population dynamics and structure, and global climate change (The Xerces Society et al. 2018). Any disturbance of the ground (e.g., tilling, mowing, or grazing) can destroy bumble bee colonies or hibernating queens.

Occurrences in the Project Area

Prior to 1983, Crotch's bumble bee had been collected from several areas around the proposed project site, including Pleasanton in Alameda County, Tracy in San Joaquin County, and Mt. Diablo in Contra Costa County (Thorp et al. 1983).

The nearest CNDDDB occurrence (#19) is located approximately 7 miles east of the site in Tracy and is based on a collection made in May of 1959. The next-closest CNDDDB occurrence (#17) is located approximately 20 miles west of the site in Pleasanton and is based on a collection made in

September of 1932. Another occurrence (#15) is based on a collection made in May of 1951 in the Mt. Diablo State Park, approximately 21 miles northwest of the site.

The closest observation posted to iNaturalist was made on April 2, 2022, approximately 14 miles northwest of the site. The next-closest observation posted to iNaturalist was made on May 4, 2022, approximately 15 miles northwest of the site.

Bumble Bee Watch has two observations of Crotch's bumble bee: the first in Berkeley in 2015 and the second in Willard Park in 2021.

Potential to Occur

Crotch's bumble bee has been observed recently in the region. The project site contains ground squirrel burrows that could be used as nest sites or by overwintering queens. Several narrow leaf milkweed (*Asclepias fascicularis*) plants were also observed growing on the site. Milkweeds are a favored plant for Crotch's bumble bees.

The recently planted orchard to the north of the site likely reduced the availability of nearby nectar and pollen-producing plants used by bumblebees. The project site itself is dominated by nonnative annual grasses, which largely outcompete the native nectar and pollen-producing plants that Crotch's bumble bee could use. Therefore, the species has a low potential to occur on the project site.

Potential to be Impacted by the Project

Project construction could impact Crotch's bumble bee if they are present on site at the time of construction by causing the injury or mortality of adults, eggs, and larvae, burrow collapse, nest abandonment, and reduced nest success. Permanent loss of colonies and suitable nesting habitat may result. The installation and operation of the solar panels may reduce native vegetation that may support suitable foraging habitat for Crotch's bumble bee nesting on or near the project site. The project could lead to a decrease in the abundance of burrowing rodents on the site, which would reduce the number of nesting sites available for use by bumble bees.

Western Bumble Bee (*Bombus occidentalis*)

Life History and Habitat Requirements

The flight period for western bumble bee queens in California is from February to late November, peaking in June. There is a second, smaller peak in late September. The flight period for workers in California is from April through November, peaking in late July. The flight period for males is also from April through November, peaking in early August.

The species almost always nests underground, but Thorp et. al. (1983) report collecting one nest from within the cotton stuffing of an old comforter in the basement of a house in San Francisco.

Western bumble bee queens most often visited the flowers of plants in the Rhamnaceae family, followed by plants in the Leguminosae (Fabaceae) family, followed by plants in the Labiatae family.

Workers most commonly visited the flowers of plants in the Leguminosae family, followed by plants in the Compositae family. The males' most-commonly visited plant family was the Compositae family.

Threats

The primary threats to the species are present or threatened modification or destruction of its habitat, overexploitation, competition, disease, and other natural events and human-related activities, including pesticide use, population dynamics and structure, and global climate change (The Xerces Society et al. 2018).

Occurrences in the Project Area

Prior to 1983, the western bumble bee had been collected from several areas around the proposed project site, including Pleasanton in Alameda County, Corral Hollow in San Joaquin County, and Brentwood in Contra Costa County.

The nearest CNDDDB occurrence (#232) is located approximately 9 miles south of the site near Corral Hollow. Occurrence #232 is based on collections made in 1946 and 1951. The next-closest CNDDDB occurrence (#231) is located approximately 10 miles west of the site, outside of Livermore, and is based on a collection made in August of 1957.

The nearest observation of *Bombus occidentalis* that has been posted to iNaturalist is approximately 140 miles northwest of the site, near Sierraville, California.

A search of the Bumble Bee Watch database (Bumble Bee Watch 2022) for any observations of western bumble bee since 2002 in Alameda, Contra Costa, and San Joaquin Counties returned no observations. In California, western bumble bee populations are now largely restricted to high elevation sites in the Sierra Nevada (The Xerces Society 2012) and scattered observations along the California coast.

Potential to Occur

The western bumble bee appears to have been extirpated from the project area, with no recent observations made within 10 miles of the site in over 60 years. However, its potential presence cannot be fully discounted as there is some potentially suitable habitat on the site.

Potential Project Impacts

While the western bumble bee is not expected to occur on or near the site, similar to the Crotch's bumble project construction could impact western bumble bee if they are present on site at the time of construction by causing the injury or mortality of adults, eggs, and larvae, burrow collapse, nest abandonment, and reduced nest success.

CONCLUSION AND RECOMMENDATIONS

Implementation of the following measures would reduce potential impacts to the Crotch's bumble bee to a less than significant level:

1. Within 1 year prior to vegetation removal and/or the initiation of construction, a qualified biologist familiar with Crotch's and western bumble bee behavior and life history should conduct surveys to determine the presence/absence of the species. Surveys should be conducted during flying season when the species is most likely to be detected above ground, between approximately March 1 to September 1. A reference site should be visited to confirm bumble bee activity because flight periods likely vary geographically and with weather. Surveys should be conducted within the project site and accessible adjacent areas with suitable habitat. Survey results including negative findings should be submitted to the CDFW prior to project-related vegetation removal and/or ground-disturbing activities. At a minimum, a survey report should provide the following:
 - a. A description and map of the survey area, focusing on areas that could provide suitable habitat for the two bumble bee species.
 - b. Field survey conditions that should include the name(s) of qualified biologist(s) and their qualifications, date and time of the survey, survey duration, general weather conditions, survey goals, and species searched.
 - c. Map(s) showing the locations of nests/colonies.
 - d. A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each nest/colony is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within the impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species).
2. If a qualified biologist determines western and/or Crotch's bumble bees are present, and if "take" or adverse impacts to the bumble bees cannot be avoided either during project activities or over the life of the project, the CDFW will be consulted to determine if a CESA Section 2080 Incidental Take Permit is required.
3. If a qualified biologist determines western and/or Crotch's bumble bees are present, information on the species shall be included in the environmental education program described in Mitigation Measure BIO-1.1 of the EIR (PlaceWorks 2022).
4. If a qualified biologist determines western and/or Crotch's bumble bees are present, the mitigation and management plan (MMP) for the conservation area, described in Mitigation Measure BIO-1.9 of the EIR (PlaceWorks 2022), shall include a prescription for managing the area as habitat for bumble bees. The MMP will include a prescription for an appropriate seed mix and planting plan that targets bumble bee nectar plants, including native flowering plant

species known to be visited by bumblebees and containing a mix of flowering plant species with continual floral availability through the flight season (early spring through late fall). The MMP will include success criteria for bumble bee habitat.

5. Rodenticides and pesticides will not be used anywhere on the project site during the life of the project.

REFERENCES

- Bumble Bee Watch. 2022. A collaborative website to track and conserve North America's bumble bees (Xerces Society, Wildlife Preservation Canada, York University, The Montreal Insectarium, The London Natural History Museum, and BeeSpotter). Website: <http://www.bumblebeewatch.org/app/#/bees/lists>, accessed October 24, 2022.
- California Department of Fish and Wildlife (CDFW). 2019. Evaluation of the Petition from The Xerces Society, Defenders of Wildlife, and The Center for Food Safety to List Four Species of Bumble Bees as Endangered Under the California Endangered Species Act. Report to the Fish and Game Commission. April 4, 2019.
- _____. 2022. California Natural Diversity Data Base. <https://wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>, accessed October 20, 2022.
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- PlaceWorks. 2022. Alameda Grant Line Solar 1 Final EIR for Alameda County. September.
- The Xerces Society for Invertebrate Conservation (The Xerces Society). 2012. Database of records from Bumble Bee Citizen Monitoring Project (2008-2012). Maintained by Rich Hatfield, Xerces Society. Unpublished, cited in CDFW 2019.
- The Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A Petition to the State of California Fish and Game Commission to List the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act. October.
- Thorp, Robbin W., Donald S. Horning, Jr., and Lorry L. Dunning. 1983. Bumble Bees and Cuckoo Bumble Bees of California. *Bulletin of the California Insect Survey*, Volume 23. February.

FINDINGS

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A P P E N D I X B

REVISED MITIGATION
MONITORING AND REPORTING
PROGRAM



Alameda Grant Line Solar 1 Mitigation Monitoring and Reporting Program

This Mitigation Monitoring and Reporting Program (MMRP) has been prepared for the Alameda Grant Line Solar 1 project. The purpose of the MMRP is to ensure that the mitigation measures identified in the EIR for the proposed project are implemented. The MMRP includes the following information:

- The full text of the mitigation measures;
- The party responsible for implementing the mitigation measures;
- The timing for implementation of the mitigation measure;
- The agency responsible for monitoring the implementation; and
- The monitoring action and frequency.

Alameda County must adopt this MMRP, or an equally effective program, if it approves the proposed project with the mitigation measures that were adopted or made conditions of project approval.

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
AIR QUALITY					
<p>Mitigation Measure AQ-2: The applicant shall require their construction contractor to comply with the following BAAQMD Best Management Practices for reducing construction emissions of PM10 and PM2.5:</p> <ul style="list-style-type: none"> ▪ Water all active construction areas at least twice daily or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible. ▪ Apply water twice daily or as often as necessary to control dust or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites. ▪ Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer). ▪ Sweep public streets daily (with water sweepers using reclaimed water if possible) in the vicinity of the project site, or as often as needed, to keep streets free of visible soil material. ▪ Hydro-seed or apply non-toxic soil stabilizers to inactive construction areas. ▪ Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (e.g., dirt, sand). ▪ Limit vehicle traffic speeds on unpaved roads to 15 mph. ▪ Replant vegetation in disturbed areas as quickly as possible. ▪ Install sandbags or other erosion control measures to prevent silt runoff from public roadways. 	Project applicant/ construction contractor	Prior to issuance of building permits authorizing grading or other construction activities and during construction	County Building Department	Review construction plans and specifications. Conduct site inspections	During scheduled construction site inspections
BIOLOGICAL RESOURCES					
<p>Mitigation Measure BIO-1.1: A qualified biologist will conduct an environmental education program for all persons employed or otherwise working on the project site before they perform any work. The program shall consist of a presentation from the biologist that includes a discussion of the biology and general behavior of special-status species on or near the site; information about the distribution and habitat needs of the species; sensitivity of the species to human activities; the status of the species pursuant to the Federal Endangered Species Act, the California Endangered Species Act, and the California Fish and Game Code including legal protection; recovery efforts; penalties for violations; and any project-specific protective measures described in this document or any subsequent documents or permits. Interpretation shall be provided for non-English speaking workers, and the</p>	Project applicant/ qualified biologist	Prior to construction activities	County Planning Department	Review forms stating employees attended the program and understood all the protection measures	Once, prior to construction activities

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
<p>same instruction shall be provided for any new workers before their performing work on the site. The biologist shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry on the site. Upon completion of the program, employees shall sign a form stating they attended the program and understand all the protection measures.</p>					
<p>Mitigation Measure BIO-1.2: A qualified biologist will be on the site daily to monitor initial grubbing/vegetation clearing, grading, and ground disturbing activities. The biologist will have the authority to stop work that may impact special-status species.</p>	Project applicant/qualified biologist	During construction activities	County Planning Department	Conduct site inspections	During scheduled construction site inspections
<p>Mitigation Measure BIO-1.3: The Applicant shall include in the contract specifications a requirement to use tightly woven fiber of natural materials (e.g., coir rolls or mats) or similar material for erosion control. Plastic mono-filament netting (erosion control matting) or similar material shall be prohibited, to prevent the entrapment of wildlife.</p>	Project applicant/construction contractor	Prior to issuance of building permits authorizing grading or other construction activities and during construction	County Building Department	Review construction plans and specifications. Conduct site inspections	During scheduled construction site inspections
<p>Mitigation Measure BIO-1.4: Surveys for California Tiger Salamander, California red-legged frog, San Joaquin coachwhip, California glossy snake, and Coast horned lizard shall be conducted by a qualified biologist within 24 hours prior to the initiation of any vegetation clearing or ground disturbing activities. All suitable habitat including refuge such as burrows, under rocks, duff, debris, etc., shall be thoroughly inspected. Any listed wildlife that are encountered will be allowed to leave the work area of their own volition.</p>	Project applicant/qualified biologist	Within 24 hours prior to the initiation of vegetation clearing or ground disturbing activities	County Planning Department	Review survey reports	Once, prior to construction activities
<p>Mitigation Measure BIO-1.5: To avoid entrapment, injury, or mortality of listed species resulting from falling into steep-sided holes or trenches, all excavated holes or trenches deeper than 12 inches shall be covered at the end of each workday with plywood or similar materials. Larger excavation that cannot easily be covered shall be ramped at the end of the workday to allow trapped animals an escape method.</p>	Project applicant/construction contractor	During construction activities	County Planning Department	Conduct site inspections	During scheduled construction site inspections
<p>Mitigation Measure BIO-1.6: Prior to initiating construction activities, a California Department of Fish and Wildlife (CDFW)-approved biologist shall conduct surveys for burrowing owl within 500 feet of the project site, where safely accessible. This measure incorporates avoidance and minimization guidelines from the CDFW 2012 Staff Report on Burrowing Owl Mitigation. The surveys will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls. Surveys shall take place near sunrise or sunset in accordance with CDFW</p>	Project applicant/CDFW-approved biologist	No more than 30 days prior to construction activities	County Planning Department	Review survey reports	Once, prior to construction activities

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
<p>survey guidelines. All burrows or burrowing owls shall be identified and mapped. Surveys shall take place no more than 30 days prior to construction. During the breeding season (February 1–August 31), surveys shall document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1–January 31), surveys shall document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results shall be valid only for the season (breeding or nonbreeding) during which the survey is conducted.</p>					
<p>Mitigation Measure BIO-1.7: If burrowing owls are found during the breeding season (February 1–August 31), the project proponent shall avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a no disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the nest is inactive. During the nonbreeding season (September 1–January 31), the project proponent shall avoid the owls and the burrows they are using. Avoidance shall include the establishment of a buffer zone.</p>	Project applicant/ construction contractor, qualified biologist	During construction activities	County Planning Department	Conduct site inspections	During scheduled construction site inspections
<p>Mitigation Measure BIO-1.8: If occupied burrows for nonbreeding burrowing owls are not avoided, passive relocation shall be implemented. Owls shall be excluded from burrows in the immediate impact zone and within an appropriate buffer zone as recommended by the biologist in coordination with the California Department of Fish and Wildlife (CDFW) by installing one-way doors in burrow entrances. These doors shall be in place for 48 hours prior to excavation. The project area shall be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation. Plastic tubing or a similar structure shall be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.</p>	Project applicant/ construction contractor, CDFW-approved biologist	48 hours prior to excavation and 1 week of daily monitoring	County Planning Department	Review survey reports	As needed, if occupied burrows cannot be avoided
<p>Mitigation Measure BIO-1.9a: To mitigate for the alteration of burrowing owl habitat, approximately 11.6 acres on the southern, western, and northern edges of the site will be protected under a conservation easement or deed restriction for the duration of the project. This land is contiguous with the levee and open space associated with the Mendota Canal. A mitigation and management plan (MMP) with success criteria to ensure the site is maintained as burrowing owl habitat, and to facilitate its continued use by burrowing owls, will be developed for this area and approved by the Alameda County Planning Director in coordination with California</p>	Project applicant/ construction contractor	Prior to construction activities	County Planning Department, CDFW	MMP review and approval	Once, prior to construction activities

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
Department of Fish and Wildlife (CDFW). The MMP shall include measures to rehabilitate any habitat temporarily disturbed by construction activities.					
Mitigation Measure BIO-1.9b: No later than 6 months following the operational period of the project, the project site will be restored to as near as possible to its original condition. The MMP described in Mitigation Measure BIO-1.9a will include a post-project restoration plan to facilitate the future suitability of the site for burrowing owl.	Project applicant/ construction contractor	No later than 6 months following operation	County Planning Department	Conduct site inspection	Once, during first 6 months of operation
Mitigation Measure BIO-1.10: The mitigation and management plan (MMP) described in Mitigation Measure BIO-1.9 for the approximately 11.6-acre conservation area shall include a prescription for managing the area as habitat for Swainson’s hawk. The MMP will include success criteria for Swainson’s hawk habitat.	Project applicant/ construction contractor	Prior to construction activities	County Planning Department	MMP review and approval	Once, prior to construction activities
Mitigation Measure BIO-1.11: Pre-construction surveys shall be conducted for the American badger no more than 14 days prior to the initiation of ground-disturbing activities. Surveys shall be conducted by a qualified wildlife biologist with experience and knowledge in identifying badger burrows and include walking parallel transects looking for badger burrows and signs of badgers. Any badger dens identified shall be flagged and mapped.	Project applicant/ construction contractor, qualified biologist	No more than 14 days prior to ground-disturbing activities	County Planning Department	Review survey reports	Once, prior to construction activities
Mitigation Measure BIO-1.12: In the event active badger dens are identified, a no-work buffer of 200 feet shall be established around the den and associated occupied areas. If avoidance is not feasible, a biologist shall determine if the burrow is being used as an active maternity den through utilization of remote cameras. If young are determined to be present, the burrow shall be avoided until the young have vacated the burrow as determined by a qualified biologist. If the burrow is determined not to be an active maternity den and young are not present, in coordination with the California Department of Fish and Wildlife (CDFW), a one-way eviction door shall be installed between September 1 and January 1 to passively relocate the badger and to avoid impacts during the breeding season. If the badger digs back into the burrow, CDFW staff may allow the use of live traps to relocate badgers to suitable habitat from the area of project impact.	Project applicant/ construction contractor, qualified biologist	Prior to construction activities	County Planning Department, CDFW	Review survey reports	Once, prior to construction activities and as needed, if the badger digs back into the burrow
Mitigation Measure BIO-1.13: The mitigation and management plan (MMP) described in Measure BIO-1.9 for the 11.6-acre conservation area shall include prescription of an appropriate seed mix and planting plan targeted for the monarch butterfly, including milkweed and native flowering plant species known to be visited by monarch butterflies and containing a mix of flowering plant species with	Project applicant/ construction contractor	Prior to construction activities	County Planning Department	MMP review and approval	Once, prior to construction activities

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
continual floral availability through the entire breeding season for monarch butterfly (early spring to fall). The MMP will include success criteria for monarch butterfly.					
Mitigation Measure BIO-1.14: A qualified biologist will conduct a minimum of two pre-construction surveys conducted within 30 days during appropriate activity periods (i.e., March through September) and conditions prior to the start of ground disturbing activities to look for milkweed host plants and signs of monarch breeding activity (larvae or chrysalides). Appropriate conditions for conducting the survey include surveying when temperatures are above 60 degrees Fahrenheit (15.5 degrees Celsius) and not during wet conditions (e.g., foggy, raining, or drizzling). The survey should be conducted at least 2 hours after sunrise and 3 hours before sunset and should occur at least 1 hour after rain subsides. Preferably, the survey should be conducted during sunny days with low wind speeds (less than 8 miles per hour) but surveying during partially cloudy days or overcast conditions are permissible if the surveyors can still see their own shadow.	Project applicant/ construction contractor, qualified biologist	30 days prior to construction activities	County Planning Department	Review survey reports	Once, prior to construction activities
Mitigation Measure BIO-1.15: If monarch butterflies are observed within the project site, a plan to protect monarch butterflies shall be developed and implemented in consultation with the United States Fish and Wildlife Service. The plan shall include, but not be limited to, the following measures: <ul style="list-style-type: none"> ▪ Specifications for construction timing and sequencing requirements; ▪ Establishment of appropriate no-disturbance buffers for milkweed and construction monitoring by a qualified biologist to ensure compliance if milkweed is identified; ▪ Restrictions associated with construction practices, equipment, or materials that may harm monarch butterflies (e.g., avoidance of pesticides/herbicides, best management practices to minimize the spread of invasive plant species); and Provisions to avoid monarch butterflies if observed away from a milkweed plant during project activity (e.g., ceasing of project activities until the animal has left the active work area on its own volition).	Project applicant/ construction contractor, qualified biologist	Prior to and during construction activities	County Planning Department	Plan review and approval	Once, prior to construction activities
Mitigation Measure BIO-1.16: Within 1 year prior to vegetation removal and/or the initiation of construction, a qualified biologist familiar with Crotch's and western bumble bee behavior and life history should conduct surveys to determine the presence/absence of the species. Surveys should be conducted during flying season when the species is most likely to be detected above ground, between approximately March 1 to September 1. A reference site should be visited to confirm bumble bee activity because flight periods likely vary geographically and with weather. Surveys should be conducted within the project site and accessible	Project applicant/ qualified biologist	Within one year prior to the initiation of vegetation clearing or ground disturbing activities	County Planning Department	Review survey reports	Once, prior to construction activities

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
<p>adjacent areas with suitable habitat. Survey results including negative findings should be submitted to the CDFW prior to project-related vegetation removal and/or ground-disturbing activities. At a minimum, a survey report should provide the following:</p> <p>a) A description and map of the survey area, focusing on areas that could provide suitable habitat for the two bumble bee species;</p> <p>b) Field survey conditions that should include the name(s) of qualified biologist(s) and their qualifications, date and time of the survey, survey duration, general weather conditions, survey goals, and species searched.</p> <p>c) Map(s) showing the location of nests/colonies; and,</p> <p>d) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each nest/colony is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within the impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species).</p>					
<p>Mitigation Measure BIO-1.17: If a qualified biologist determines Crotch’s and/or western bumble bees are present, and if “take” or adverse impacts to the bumble bees cannot be avoided either during project activities or over the life of the project, the CDFW will be consulted to determine if a CESA Section 2080 Incidental Take Permit is required.</p>	Project applicant/ qualified biologist	Prior to construction activities	County Planning Department, CDFW	Consultation with CDFW	Once, prior to construction activities
<p>Mitigation Measure BIO-1.18: If a qualified biologist determines Crotch’s and/or western bumble bees are present, information on the species shall be included in the environmental education program described in Mitigation Measure BIO-1.1 of the EIR.</p>	Project applicant/ qualified biologist	Prior to construction activities	County Planning Department	Review forms stating employees attended the program and understood all the protection measures	Once, prior to construction activities
<p>Mitigation Measure BIO-1.19: If a qualified biologist determines Crotch’s and/or western bumble bees are present, the mitigation and management plan (MMP) for the conservation area, described in Mitigation Measure BIO-1.9 of the EIR, shall include a prescription for managing the area as habitat for bumble bees. The MMP will include a prescription for an appropriate seed mix and planting plan that targets bumble bee nectar plants, including native flowering plant species known to be visited by bumble bees and containing a mix of flowering plant species with</p>	Project applicant/ construction contractor	Prior to construction activities	County Planning Department	MMP review and approval	Once, prior to construction activities

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
continual floral availability through the flight season (early spring through late fall). The MMP will include success criteria for bumble bee habitat.					
Mitigation Measure BIO-1.20: Rodenticides and pesticides will not be used anywhere on the project site during the life of the project.	Project applicant	During both construction and operation activities	County Planning Department	Conduct site inspection	During both construction and operation activities
CULTURAL RESOURCES					
Mitigation Measure CULT (b): If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and a qualified archaeologist shall be consulted to assess the significance of the find according to CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives from the County and the archaeologist shall meet to determine the appropriate avoidance measures or other appropriate mitigation. All significant cultural materials recovered shall be, as necessary and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards. In considering any suggested mitigation proposed by the consulting archaeologist to mitigate impacts to historical resources or unique archaeological resources, the County shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) would be instituted. Work may proceed on other parts of the subject property outside the 50-foot area while mitigation for historical resources or unique archaeological resources is being carried out.	Project applicant/ construction contractor, qualified archaeologist	During construction activities	County Planning Department	Determine appropriate avoidance measures or mitigation	As needed, if resources are unearthed
Mitigation Measure CULT (c): Procedures of conduct following the discovery of human remains have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98 and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The Alameda County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours, who will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) of any human remains. Further actions shall be determined, in part, by the desires of the MLD. The MLD has 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not	Project applicant/ construction contractor	During construction activities	County Coroner	Verification of remains and appropriate reinterment on site	As needed, if remains are unearthed

MITIGATION MONITORING AND REPORTING PROGRAM

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Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
make recommendations within 48 hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD’s recommendations, the owner or the descendent may request mediation by the NAHC.					
GEOLOGY AND SOILS					
<p>Mitigation Measure GEO (f): The construction contractor shall incorporate the following in all grading, demolition, and construction plans:</p> <ul style="list-style-type: none"> In the event that fossils or fossil-bearing deposits are discovered during grading, demolition, or building, excavations within 50 feet of the find shall be temporarily halted or diverted. The contractor shall notify the Alameda County Building Department and a County-approved qualified paleontologist to examine the discovery. The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. <p>If the project applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the proposed project based on the qualities that make the resource important. The excavation plan shall be submitted to the County for review and approval prior to implementation.</p>	Project applicant/ construction contractor, qualified paleontologist	Prior to issuance of building permits authorizing grading or other construction activities and during construction	County Building Department	Review construction plans and specifications. Excavation plan review and approval	As needed, if fossils are unearthed
TRIBAL CULTURAL RESOURCES					
<p>Mitigation Measure TCR-1.1: Implement Mitigation Measure CULT (b): If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and a qualified archaeologist shall be consulted to assess the significance of the find according to CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives from the County and the archaeologist shall meet to determine the appropriate avoidance measures or other appropriate mitigation. All significant cultural materials recovered shall be, as necessary and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards. In considering any suggested mitigation proposed by the consulting archaeologist to</p>	Project applicant/ construction contractor, qualified archaeologist	During construction activities	County Planning Department	Determine appropriate avoidance measures or mitigation	As needed, if resources are unearthed

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
<p>mitigate impacts to historical resources or unique archaeological resources, the County shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) would be instituted. Work may proceed on other parts of the subject property outside the 50-foot area while mitigation for historical resources or unique archaeological resources is being carried out.</p>					
<p>Mitigation Measure TCR-1.2: Implement Mitigation Measure CULT (c): Procedures of conduct following the discovery of human remains have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98 and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The Alameda County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours, who will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) of any human remains. Further actions shall be determined, in part, by the desires of the MLD. The MLD has 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within 48 hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD’s recommendations, the owner or the descendent may request mediation by the NAHC.</p>	<p>Project applicant/ construction contractor</p>	<p>During construction activities</p>	<p>County Coroner</p>	<p>Verification of remains and appropriate reinterment on site</p>	<p>As needed, if remains are unearthed</p>

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Via Electronic Mail (cbs@acgov.org)

September 29, 2022

Alameda County Board of Supervisors
1221 Oak Street, Suite 536
Oakland, CA 94612

**Re: Appeal of East County Board of Zoning Adjustments Approval
Alameda Grant Line Solar 1 Project; Application No. PLN2021-00124**

Alameda County Board of Supervisors:

This firm represents Alameda Grant Line Solar 1, LLC (a.k.a Soltage), the developer of the above-referenced solar project ("Project"), and submits this correspondence to provide this Board of Supervisors ("Board") and the public with guidance regarding the regulatory landscape that applies to the above-referenced appeal.

As you are aware, the East County Board of Zoning Adjustments ("EBZA") approved the Conditional Use Permit ("CUP") and certified the Final Environmental Impact Report ("FEIR") for the Project on September 8, 2022 pursuant to EBZA Resolution No. 2022-24 ("Project Approvals") after receiving public comment, including from David Rounds on behalf of Friends of Livermore ("Appellant"). The EBZA rejected the arguments made by the Appellant and we respectfully urge this Board to deny the appeal and uphold the Project Approvals for that and the following reasons.

I. DEFERENCE SHOULD BE GIVEN TO THE EBZA

Alameda County ("County") Zoning Code section 17.06.040 delegates CUP authority to the EBZA for conditionally permitted uses in the County, including the Project. The Project Approvals include the required CUP findings under Zoning Code section 17.54.130 and there is no valid basis for overturning the Project Approvals.

Pursuant to Zoning Code section 17.54.710, the Board may hear additional evidence and may sustain, modify, or overrule the Project Approvals upon a valid appeal. Even so, we respectfully urge that this Board should grant deference to the EBZA. Short of that, we respectfully request that this

Board consider the additional evidence provided herein as a basis for denying the appeal and upholding the Project Approvals.

II. THE PROJECT IS A CONDITIONALLY PERMITTED USE

The Appellant is flatly wrong in claiming that the Project is not a permitted use under the applicable General Plan land use designation or in the applicable zoning district and provides no supporting evidence for those claims.

A. General Plan

As explained in the County Planning Department Staff Report to the EBZA dated September 8, 2022 (“Staff Report”) the East County Area Plan (“ECAP”), which is part of the adopted County General Plan, designates the Project site as Large Parcel Agriculture (“LPA”), which permits, among other uses, wind farms and related facilities, utility corridors, and similar uses compatible with agriculture and the Project would not conflict with the LPA land use designation. Accordingly, the Project Approvals explain that the Project can be approved with a CUP under the LPA land use designation.

The conclusions in the Staff Report and Project Approvals are consistent with the findings in a recent order issued by the Superior Court of the State of California in and for the County of Alameda (“Superior Court”). As you are aware, the Aramis Solar Energy Generation and Storage Project (“Aramis Project”) was previously appealed to and upheld by this Board and was subsequently the subject of litigation filed by Save North Livermore Valley (“Petitioner”). The Superior Court issued Order No. RG21-095386 on May 10, 2022 denying the Petitioner’s writ of mandate to compel the County to rescind the certification of the FEIR and CUP approval for the Aramis Project (“Order”). One of the key findings in the Order is that the County may rely on County Planning Commission (“Commission”) Determination D-165 (2008) in determining that it is appropriate for a solar facility to be located on County land designated as LPA. (*See Order, p. 2.*)

As explained by the Superior Court:

- Determination D-165 concluded that a privately owned solar energy facility is both (i) an allowable use under the LPA land use designation and (ii) a conditionally permitted used under the Zoning Code. (*See Order, p. 10.*)
- Determination D-165 was made pursuant to Zoning Code sections 17.54.050 and 17.54.060, which set out the procedure for uses not listed in the Zoning Code and states that a prior finding about a “use” has future effect. (*See Order, pp. 6, 29.*)
- Determination D-165 contained the following reasoned analysis: Planning Staff deem the proposed solar energy land use to be allowable by reference because it would be

similar to many other conditionally permitted uses that already exists in the County, including a “wind farm” of privately owned generators, public utility buildings, and uses, oil or gas drilling facilities, wineries and olive mills, barns, coops, apiaries, and accessory uses which do not “alter the essential characteristics of ..” the principal use of the lot. ... Although the solar field would not be used for agricultural production of the life of the project (estimated to be 20 years), the project would conserve the soils in the long term without urban infrastructure such as streets or underground pipelines. (See Order, pp. 10, 13.)

- A formal determination is a quasi-legislative act that has general application (*Landi v. County of Monterey* (1983) 139 Cal. App. 3d 934, 936-937). (See Order, p. 13.)

Furthermore, the Superior Court found that independent of Determination D-165, there was substantial evidence to support a finding that under the General Plan and the ECAP it was appropriate for a solar facility to be located on land designated as LPA. (See Order, p. 3.) Based on the foregoing, the County is clearly justified in finding that the Project is a permitted use under the LPA land use designation.

B. Zoning Code

As explained in the Staff Report, the Project site is zoned Agriculture (“A”), which allows for public utility uses with CUP approval from the EBZA. (Zoning Code § 17.06.040(J).) As also explained in the Staff Report, (i) the Commission made findings pursuant to the aforementioned Determination D-165 that a solar electric facility would not be contrary to the specific intent clauses or performance standards established for the A zoning district and could be permitted with a CUP. Accordingly, the Project Approvals explain that the Project can be approved with a CUP in the A zoning district.

The conclusions in the Staff Report and Project Approvals are supported by the Superior Court’s findings in the Order. To wit: one of the key findings in the Order was that the County may rely on Determination D-165 for future solar projects, which concluded that a solar facility is a use consistent with the A zoning district. (See Order, pp. 2, 4.) See the explanation provided by the Superior Court in the Order, above. Based on the foregoing, the County is clearly justified in finding that the Project is a conditionally permitted use in the A zoning district.

The EBZA made the required CUP findings under Zoning Code section 17.54.130 for the Project Approvals and the Appellant provides nothing to support a claim that the CUP findings made by the EBZA were in any way deficient.

III. THE PROJECT IS CONSISTENT WITH MEASURE D

The Appellant is flatly wrong in claiming that the Project is inconsistent with Measure D and provides no supporting evidence for that claim. As explained below, the Project falls under at least one of the enumerated exceptions under Measure D, which was incorporated in the ECAP as Policy No. 13.

Policy No. 13 provides:

The County shall not provide nor authorize public facilities or other infrastructure in excess of that needed for permissible development consistent with the Initiative. This policy shall not bar 1) new, expanded or replacement infrastructure necessary to create adequate service for the East County, 2) maintenance, repair or improvements of public facilities which do not increase capacity, and 3) infrastructure such as pipelines, canals, and power transmission lines which have no excessive growth-inducing effect on the East County area and have permit conditions to ensure that no service can be provided beyond that consistent with development allowed by the Initiative. "Infrastructure" shall include public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities.

Policy No. 13 was specifically addressed by the Superior Court in the Order. One of the key findings in the Order was that independent of Determination D-165, there was substantial evidence to support a finding that under the General Plan and the ECAP it was appropriate for a solar facility to be classified as "infrastructure" not having a growth inducing effect and therefore under ECAP Policy 13 permissibly located on land designated as LPA. (*See Order, p. 3.*)

As explained by the Superior Court:

- Policy 13 imposes limits on the development of infrastructure, stating "The County shall not provide nor authorize public facilities or other infrastructure in excess of that needed for permissible development consistent with the Initiative." (*See Order, pp. 18-19.*) Policy 13 is in a section on "Urban and Rural Development" that concerns the phased and orderly development of East County to encourage compact development (Policy 10) and prevent urban sprawl (Policy 11). (*Ibid.*) Policy 13 is designed to prohibit the County from approving infrastructure in East County such as roads, water, and sewer "in excess of that needed for permissible development" in East County. (*Ibid.*) Infrastructure such as roads, water, and sewer is local and supports local development in East County, but infrastructure such as a solar facility is different because the electrons are fungible and can be used in East County or transmitted elsewhere. (*Ibid.*)

- The project is a facility to generate electricity on a commercial scale, and electricity provided to the electrical grid is generally understood to be a public utility that is “infrastructure.” (See Order p. 18.) Policy 13 defines infrastructure, stating: “Infrastructure” shall include public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities.” (*Ibid.*) The last word of that phrase is “utilities,” and as a matter of textual construction “utilities” includes services such as gas, electric, water, and sewer. (*Ibid.*, citing the California Public Utilities Code definition of “public utility”). It was not arbitrary for the County to consider a solar facility to be infrastructure. (*Ibid.*) There is substantial evidence that the project, which is designed to produce electricity, is “infrastructure” necessary to the provision of “utilities.” (See Order p. 18.)
- Policy 13 also identifies infrastructure that is expressly allowed, stating: “This policy shall not bar [three exceptions]” and there is substantial evidence that the project fits in the exception that it is “(3) infrastructure such as ... power transmission lines which have no excessive growth-inducing effect on the East County area and have permit conditions to ensure that no service can be provided beyond that consistent with development allowed by the Initiative.” (See Order p. 20.) There is substantial evidence the project would not permit or induce growth in East County, which supports a determination that the project would have “no excessive growth-inducing effect on the East County.” (*Ibid.*) The applicability of one of the three exceptions is sufficient. (*Ibid.*)

Based on the foregoing, the County is clearly justified in concluding that the Project is consistent with Measure D because it falls under at least one of the enumerated exceptions. The FEIR for the Project specifically addresses Policy 13 and its enumerated exceptions and explains that the Project qualifies as permitted infrastructure that would generate power from a renewable resource for the PG&E grid. (See FEIR pp. 5-16, 5-26.)

IV. THE FEIR MITIGATION MEASURES ARE ADEQUATE

The Appellant is flatly wrong in claiming that the FEIR mitigation measures related to potential impacts to special status species are inadequate and provides no supporting evidence for that claim.

The qualified biological consultants for the FEIR determined that the FEIR mitigation measures will adequately reduce potential impacts to special status species to a less-than-significant level. To summarize, the extensive mitigation measures in the FEIR require the following:

- A qualified biologist must conduct an environmental education program, as specified, for all persons employed or otherwise working on the Project site before any work is performed.

- A qualified biologist must be on the Project site daily to monitor initial grubbing/vegetation clearing, grading, and ground disturbing activities and will have the authority to stop work that may impact special status species.
- A qualified biologist must conduct pre-construction surveys, as specified, to determine whether there are any special status species or milkweed host plants for monarch butterflies on the Project site.
- Special status species must be protected during Project construction as specified, including but not limited to (i) the establishment of no-work buffer zones; (ii) covering or ramping of all excavated holes or trenches deeper than 12 inches; (iii) during the breeding season, avoidance of any occupied nesting or den burrows; and (iv) during the non-breeding season, avoidance of any occupied burrows and where necessary, passive relocation in coordination with the California Department of Fish and Wildlife (“CDFW”).
- The 11.6 acres on the southern, western, and northern edges of the Project site must be protected under a deed restriction for the life of the Project (“Protected Habitat”). That location was recommended by the qualified biological consultants for the FEIR because it is contiguous with the levee and open space associated with the Mendota Canal. There will also be approximately 7.41 acres of open space between the rows of solar panels.
- A mitigation and management plan (“MMP”) must be prepared to ensure that the Protected Habitat is maintained as suitable habitat for the burrowing owl and monarch butterfly. The Protected Habitat must also be maintained to provide foraging habitat for the golden eagle and swainson’s hawk, which are not expected to nest on the Project site due to the absence of suitable nesting habitat. The MMP must include required management actions, performance criteria, and adaptive management to ensure that the Preserved Habitat has high value for special status species, as well as a restoration plan for the Project site following the operational period. The MMP must be approved by the County Planning Director in coordination with CDFW.
- If monarch butterflies are observed on the Project site, a plan to protect monarch butterflies must be developed and implemented in consultation with the United States Fish and Wildlife Service, as specified.

Although not raised by the Appellant, we note that as explained in the FEIR, a qualified biologist conducted surveys and assessments for (i) the California red-legged frog and the California tiger salamander, and found that there is a low potential for either species to occur on the Project site because it does not contain (and is not within close proximity to) the necessary aquatic habitat for the breeding and survival of those species and (ii) the San Joaquin kit fox, and found that there is no

potential for that species to occur on the Project site and numerous regional surveys over the past 20 years have not discovered that species anywhere in the County.

Again, the Appellant provides no evidence to support its claim that the FEIR mitigation measures are inadequate and we respectfully urge this Board to defer to the expertise of the qualified biological consultants for the FEIR.

The Appellant notes that the EBZA meeting was not delayed at the request of CDFW. That decision was made at the discretion of the EBZA. With all due respect, CDFW had sufficient opportunity to comment on the Draft EIR for the Project during the 45-day comment review period and the 81-day period between the end of the comment review period and the EBZA meeting, but declined to do so. As of the date of this letter, we understand that the County Planning Department has not received any comments on the FEIR from CDFW. Furthermore, as noted above, future coordination with CDFW will be required pursuant to the FEIR mitigation measures.

V. OTHER CONSIDERATIONS

This matter is adjudicatory in nature, and subject to the requirements of Code of Civil Procedure section 1094.5(b), which requires a local agency decision to be set aside upon a showing of a prejudicial abuse of discretion. (*Bell v. City of Mountain View* (1977) 66 Cal. App. 3d 332, 342.) An abuse of discretion is only established if the local agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. (Code Civ. Proc., § 1094.5(b).) In this case, the developer, the County Planning Department, the EBZA, and qualified biological consultants for the FEIR have provided substantial evidence supporting the required findings for the Project Approvals.

In addition, any disapproval of the Project would be arbitrary, capricious, and unreasonable, and would thus violate the developer's substantive due process and property rights guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution. Moreover, any disapproval of the Project would be arbitrary, irrational and intended to discriminate and deprive the developer of its rights without any rational relation to a legitimate government interest, thereby violating the equal protection clause. Furthermore, any disapproval of the Project would violate the developer's civil rights under 42 U.S. Code section 1983, and would expose the County to monetary damages for said violations.

The Project complies with state and local law and would assist the County and the State of California as a whole in meeting Greenhouse Gas reduction goals. The record is clear that the Project Approvals should be upheld by this Board and we respectfully urge that the appeal must be denied.

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

Alameda County Board of Supervisors
September 29, 2022

Page 8

Regards,



Caroline Chase, Esq.

cc: Anika Campbell-Belton, Clerk of the Board of Supervisors
EBZA Members
Albert Lopez, County Planning Director

Enclosure: Superior Court Order

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

06/06/2022 at 06:03:28 PM

By: Gina Fu, Deputy Clerk

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17 Real Parties in Interest INTERSECT POWER, LLC; IP ARAMIS, LLC

18
19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF ALAMEDA**

21 SAVE NORTH LIVERMORE VALLEY, *et al.*,

22 Petitioners,

23 v.

24 COUNTY OF ALAMEDA, *et al.*,

25 Respondents.

26 INTERSECT POWER, LLC; IP ARAMIS, LLC,

27 Real Parties in Interest.
28

Case No. RG21-095386

**NOTICE OF ENTRY OF ORDER
DENYING PETITION FOR WRIT OF
MANDATE**

*Assigned for All Purposes to:
Judge Evelio Grillo*

DEPT: 21

Date Action Filed: April 9, 2021

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 31, 2022, the Court entered the following: Order Denying Petition for Writ of Mandate. A true and correct copy of the Order is attached hereto as Exhibit A, which is incorporated by reference into this Notice.

DATED: June 6, 2022

COX, CASTLE & NICHOLSON LLP

By: 

Andrew B. Sabey
Anne E. Mudge
Lisa M. Patricio
Robert C. Hull
Attorneys for Respondents and
Real Parties in Interest

EXHIBIT A

EXHIBIT A

FILED
ALAMEDA COUNTY

MAY 9 1 2022

CLERK OF THE SUPERIOR COURT
By  Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

SAVE NORTH LIVERMORE VALLEY, et al,

No. RG21-095386

Petitioners,

**ORDER DENYING PETITION FOR WRIT
OF MANDATE**

v.

Date: 5/10/22

Time: 1:30 pm.

Dept.: 21

COUNTY OF ALAMEDA, et al,

Respondents.

The petition of the Save North Livermore Valley for a writ of mandate for came on for hearing on 4/21/22, and 4/25/22, and 5/10/22, in Department 21 of this Court, the Honorable Evelio Grillo presiding. Counsel appeared on behalf of Petitioner and on behalf of Respondent. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The petition of the Save North Livermore Valley for a writ of mandate compelling the County of Alameda to rescind Resolution No. R-2021-91 Certifying the Final Environmental Impact Report and Approving Conditional Use Permit PLN2018-00117, for the Aramis Solar Energy Generation and Storage Project is DENIED.

1 STATEMENT OF DECISION IS NOT REQUIRED

2 Petitioner requested a statement of decision. (CCP 632.) The court is not required to
3 prepare a statement of decision. In a petition under CCP 1094.5, the court reviews the validity of
4 an administrative decision and determines whether the administrative record supports the
5 decision. The court does not reweigh evidence. This is a legal question and therefore not subject
6 to CCP 632. (*Consolidated Irrig. Dist. v City of Selma* (2012) 204 Cal.App.4th 187, 196 n.5 [“A
7 superior court sitting as a court of review in a CEQA proceeding is not required to issue a
8 ‘statement of decision’”].)

9
10 The court’s order serves the purpose of a statement of decision, as it sets out the court’s
11 reasoning on the legal issues in the case and directs the parties to the relevant portions of the
12 administrative record.

13
14 SUMMARY OF ORDER

15 The order is lengthy because petitioner raised many issues. Some of petitioner’s
16 arguments have more merit than others, but petitioner apparently wanted to present as many
17 issues as possible. The court had three hearings: 4/21/22, 4/25/22, and 5/4/22. The court
18 identifies the following issues as the ones most central to the order:
19

- 20 1. Could the County rely on Determination D-165 and its prior approvals of the Green Volts
21 (2008) and Cool Earth (2011) applications when determining that under the General Plan
22 and the East County Action Plan (“ECAP”) it was appropriate for a solar facility to be
23 located in land designated as “Large Parcel Agriculture.” Yes for Determination D-165
24 and no for the prior approvals of the Green Volts and Clean Earth projects.
25
26

1 2. Independent of Determination D-165 and the prior approvals, is there substantial
2 evidence in this case to support a finding specific to this case that under the General Plan
3 and the ECAP it was appropriate for a solar facility to be located in land designated as
4 "Large Parcel Agriculture." Yes.

5 3. Independent of Determination D-165 and the prior approvals, is there substantial
6 evidence in this case to support a finding specific to this case that under the General Plan
7 and the ECAP it was appropriate for a solar facility to be classified as "infrastructure" not
8 having a growth inducing effect and therefore under ECAP Policy 13 permissibly located
9 in land designated as "Large Parcel Agriculture." Yes.
10

11 The court addresses the many other issues, but these are the heart of the case.
12

13 SUMMARY OF PROJECT

14 The project is the Aramis Solar Energy Generation and Storage Project (the "Project"),
15 which is a utility-scale solar energy facility. Project components include solar panels, a
16 substation, , operation and maintenance buildings, a battery energy storage system, and
17 agricultural uses including sheep grazing, honeybee forage, and egg production. (AR 997-1002.)
18

19 In the draft EIR, the project as proposed was on 410 acres of land. The Project as finally
20 approved was 347 acres. Following public comment, the County reduced the footprint to
21 increase setbacks and to eliminate development within the portion of the Project site designated
22 as Resource Management ("RM") by the General Plan because the County determined
23 development in these areas was inconsistent with the General Plan. (AR 16, 140.) The Project
24 footprint was further reduced when one of the property owners, Stanley Ranch, decided to
25 withdraw its 63-acre property from the Project. (AR 4015, 34250.)
26

1 At the County Board hearing on 3/4/21, the County planning staff explained and
2 addressed the objections of petitioners to the Project. (AR 5175-5185.)
3

4 **SUMMARY OF SUBSTANTIVE LAND USE PLANS (GENERAL PLAN AND ZONING)**

5 For General Plan purposes, the Project site is in a location subject to the East County
6 Area Plan ("ECAP"), which is part of the County General Plan, which was amended to
7 incorporate Measure D. The ECAP divides the East County by an urban growth boundary. AR
8 5855. The ECAP defines the Large Parcel Agriculture ("LPA"), Water Management ("WM"), or
9 Resource Management ("RM") land use categories and permits different development in those
10 areas. (AR 5806-5807.) The LPA and WM areas do not expressly allow Solar Electric Facilities
11 or Battery storage complexes.
12

13 For zoning purposes, the Project site is in a location designated for Agriculture ("A").
14 (Alameda County Ordinance "ACCO) 17.060010 et seq) The Agricultural zoning permits
15 certain non-agricultural development and associated uses. (ACCO 17.06.030, 17.06.040,
16 17.06.050) The Agricultural zoning does not expressly allow Solar Electric Facilities or Battery
17 storage complexes.
18

19 The County previously considered and approved Solar Electric Facilities in areas
20 designated in the ECAP as Large Parcel Agriculture and in the zoning ordinance as Agriculture.
21 In 2008, the County made Determination D-165, which concluded that a solar facility was a use
22 consistent with the Agricultural District. (25487-89 [D-165 Determination].) The County in
23 2008 approved the Green Volts solar project. (AR 5737 [2008 Zoning Board approval].) Three
24 years later, in 2011, the County approved the Cool Earth solar project. (AR 5745 [2012 EBZA
25 Approval], 25713-25729 [2011 EBZA Staff report].)
26

1 **SUMMARY OF PROCEDURE**

2 On 9/18/20, the County circulated the draft EIR. According to the draft EIR, the Project
3 would be constructed on 410 acres (AR 1097) and generate 100 MW of electricity. (AR 997.)
4 The draft EIR stated that, in order to generate 100 MW of electricity, the Project would include
5 approximately 267,000 solar panels but admitted this number was "subject to change," based on
6 24 final site design and panel selection. (AR 998.)
7

8 The draft EIR identified significant Project impacts in two categories: aesthetics and land
9 use. The draft EIR stated that the Project would cause a significant and unavoidable impact to
10 aesthetic resources because the Project site is located next to County-designated scenic corridors
11 of Livermore Avenue and Manning Road. (AR 1058, 1059.) The draft EIR further stated that the
12 Project would also have land use impacts related to the Project's inconsistency with the General
13 Plan as amended by Measure D. (AR 235.)

14 Between 9/18/20 and 11/2/20, the County circulated a Draft EIR for public review and
15 comment. (AR 3824.) Members of the public made comments on the draft EIR.
16

17 On 10/22/20, the East County Board of Zoning Adjustment ("EBZA") conducted a
18 hearing to receive comments on the Draft EIR. (AR 3793-95.)

19 On 11/24/20, the EBZA conducted a hearing on the Project. (AR 3798-3823 [agenda],
20 AR 5070-78 [transcript].) The EBZA then approved the proposed project in Resolution R-2021-
21 91. (AR 3907-3933.) The EBZA approved a reduced version of the Project (the RM Avoidance
22 Alternative) that avoided development in the RM designated portion of the Project site. The
23 EBZA also increased setbacks from roadways to further reduce view impacts, required
24 agricultural plantings within buffer areas, and imposed additional measures to protect biological
25 resources.
26

1 Several persons filed appeals of the EBZA's approval. (AR 4014-4081.) On 3/4/21, the
2 Board heard the appeals of the EBZA's approval. (AR 4010-13.) The Board denied the appeals.

3 On 3/4/21, the Board approved the Resolution issuing the Project CUP and certifying the
4 EIR and a statement of overriding considerations, concluding that the Project's benefits
5 outweighed its significant and unavoidable environmental impacts. (AR8 - 112.) The project as
6 finally approved was the RM Avoidance Alternative with additional setbacks along public
7 roadways and from neighboring property to the west. (AR 8-38.) The Final EIR as adopted
8 included Findings of Significant Effects (39-58), a Mitigation Monitoring and Reporting
9 Program (AR 69-108) and a Statement of Overriding Considerations (109-112).
10

11 12 PETITIONER'S ARGUMENTS

13 Petitioner's challenges to the City's Resolution fall into three categories: (1) the Project is
14 inconsistent with the substantive requirements of the General Plan, which includes the East
15 County Area Plan ("ECAP") (AR 5754-5883), the Scenic Route Element (AR 5884-5923), and
16 the Open Space Element (AR 5824-5954); (2) the Resolution improperly relied on Determination
17 D-165 under ACCO 17.54.050 and 17.54.050 and the prior approvals of the Green Volts and
18 Cool Earth projects; and (3) the County failed to comply with the procedural requirements of
19 CEQA in adopting the Resolution.
20

21 Separation of the issues is important. The court reviews the County's approvals
22 regarding substantive land use for substantial evidence and abuse of discretion (*San Francisco*
23 *Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 513-514).

24 In contrast, the court reviews the County's CEQA analysis under the CEQA standards.
25 (Pub Res Code 21168, 21168.5.)
26

1 **CONSISTENCY WITH THE GENERAL PLAN**

2 **“The general plan is the fundamental source of local land use policy and law, and heads**
3 **up the hierarchy of government review as the constitution for all future developments.”** (*Ideal*
4 *Boat & Camper Storage v. County of Alameda* (2012) 208 Cal.App.4th 301, 311.)

5 *San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th
6 498, 513-514, sets out the relevant law:

7
8 **An action, program, or project is consistent with the general plan if, considering all**
9 **its aspects, it will further the objectives and policies of the general plan and not**
10 **obstruct their attainment. ... State law does not require perfect conformity between**
11 **a proposed project and the applicable general plan ... In other words, ‘it is nearly,**
12 **if not absolutely, impossible for a project to be in perfect conformity with each and**
13 **every policy set forth in the applicable plan.... It is enough that the proposed project**
14 **will be compatible with the objectives, policies, general land uses and programs**
15 **specified in the applicable plan. ...**

16
17 **The city council's determination that the ... project is consistent with the [city's**
18 **general plan] comes to this court with a strong presumption of regularity. ... To**
19 **overcome that presumption, an abuse of discretion must be shown. ... An abuse of**
20 **discretion is established only if the city council has not proceeded in a manner**
21 **required by law, its decision is not supported by findings, or the findings are not**
22 **supported by substantial evidence. ...**

23
24 **“Determining whether a project is consistent with general plan policies is left to the lead agency;**
25 **“[i]t is, emphatically, not the role of the courts to micromanage” such decisions.”** (*North Coast*
26 *Rivers Alliance v. Marin Municipal Water District Board of Directors* (2013) 216 Cal.App.4th
614, 632.)

 Petitioner argues that the Project is inconsistent with the General Plan. The relevant
portion of the General Plan is the ECAP, and the ECAP is a series of Goals, Policies and
Programs. (AR 5763.) The Resolution states:

BE IT FURTHER RESOLVED that this Board hereby makes the following
 findings in support of finding the project consistent with the County's general plan:

- 1 1. In the Large Parcel Agriculture (LPA) designation, the County's analysis has
2 concluded that solar development is comparable to other uses specifically
3 allowed, including public and quasi-public uses, windfarms, utility corridors,
4 and similar uses compatible with agriculture. The Project, which includes solar
5 arrays, vegetation, compacted dirt and graveled access roads, as well as sheep
6 grazing, honeybee foraging, and raising egg producing chickens, would
7 promote continued agricultural use of the project site, consistent with the LPA
8 land use designation.
9
2. In the Water Management (WM) designation, the County's analysis has
concluded that the findings of a site-specific hydrological engineering study
(Appendix G of the DEIR) demonstrates that the project is consistent with the
water quality and floodplain maintenance policies of the WM designation, and
comparable to other uses allowed in WM such as residential, agricultural, sand
and gravel quarries, reclamation pits, and public use areas.

10 (AR 14)

11 The court finds that the County did not act arbitrarily, capriciously, or without
12 evidentiary basis in concluding that the Project is consistent with the General Plan generally and
13 with the ECAP specifically.

14
15 Petitioner's General Plan argument relies in large part on *Ideal Boat & Camper Storage*
16 *v. County of Alameda* (2012) 208 Cal.App.4th 301, 311. Petitioner argues that because in *Ideal*
17 *Boat* the County denied an application for a use and the Court of Appeal affirmed that the
18 County must deny the application for the use in this case. Petitioner is correct to the extent it
19 argues that the County should have a consistent interpretation of the ECAP and the ACCO. The
20 County makes the same argument when it makes the point that it is following its prior analysis
21 regarding land use in Determination D-165, Green Volts, and Cool Earth.

22
23 Petitioner is incorrect to the extent that it argues that the facts of *Ideal Boat* compel denial
24 of the Project in this case. The Court reviews the County's decision to determine whether the
25 County "has acted arbitrarily, capriciously, or without evidentiary basis." The County could
26 evaluate the facts and weigh the policy concerns in *Ideal Boat* and reach one conclusion and

1 evaluate the facts and weigh the policy concerns in this case and reach a different conclusion.

2 (*Southern Cal. Jockey Club v. California Horse Racing Bd.* (1950) 36 Cal.2d 167, 175.)

3
4 **FACTUAL FINDINGS ABOUT CONSISTENCY WITH THE GENERAL PLAN**

5 At the hearing on 4/25/22, petitioners argued that the Resolution was required to include
6 specific findings and that staff reports were not “substantial evidence.” This is not the law.

7
8 In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214
9 Cal.App.3d 1348 (*Topanga II*), the appellate court rejected the notion that the Supreme Court’s
10 decision in *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d
11 506 (*Topanga I*) required detailed findings to support a county’s decision to approve
12 development of a tract of land. The *Topanga II* court observed, “Findings are required to state
13 only ultimate rather than evidentiary facts.” (214 Cal.App.4th at 1362.) The County was not
14 required to state detailed facts in support of its express and implied findings. (*Young v. City of*
15 *Coronado* (2017) 10 Cal.App.5th 408, 421–422 [when zoning ordinance authorizes agency to
16 approve a conditional use only upon making specified factual findings, *Topanga I* does not
17 prevent the agency from making findings in the language of the ordinance or require the agency
18 support those findings with subfindings].) (See also *Levi Family Partnership, L.P. v. City of Los*
19 *Angeles* (2015) 241 Cal.App.4th 123, 132.)

20
21 Regarding staff reports, “an agency may rely on staff opinion in reaching decisions, and
22 staff opinions may constitute substantial evidence.” (*City of Rancho Cucamonga v. Regional*
23 *Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1387.) (See also *Harrington v. City of*
24 *Davis* (2017) 16 Cal.App.5th 420, 440.)

1 GENERAL PLAN ISSUE #1. WHETHER THE COUNTY COULD RELY ON
2 DETERMINATION D-165 (2008) AND ITS PRIOR APPROVALS OF GREEN VOLTS (2008)
3 AND COOL EARTH (2011).

4 BACKGROUND

5 The Resolution expressly relies on the County's prior determination in Determination D-
6 165 and its prior approvals in Green Volts (2008) and Cool Earth (2011). These previously
7 determined that a solar facility was appropriately placed on a "large Parcel Agriculture." (AR
8 13-14.) Petitioner argues that this was improper.

9
10 The County on 6/16/08 made Determination D-165 under ACCO 17.54.050 and
11 17.54.060 that solar facilities are a use consistent with the Agricultural District. (AR 25487-89
12 [Determination D-165].) Determination D-165 determined that a privately owned solar energy
13 facility is both (1) an allowable use under the General Plan on Large Parcel Agriculture land and
14 (2) a conditionally permitted use under the Zoning Ordinance. (AR 25487.) Determination D-
15 165 contained the following analysis:

16
17 Planning staff deem the proposed solar energy land use to be allowable by reference
18 because it would be similar to many other conditionally permitted uses that already
19 exists in the County, including a "wind farm" of privately owned generators, public
20 utility buildings, and uses, oil or gas drilling facilities, wineries and olive mills,
21 barns, coops, apiaries, and accessory uses which do not "alter the essential
characteristics of .." the principal use of the lot. ... Although the solar field would
not be used for agricultural production of the life of the project (estimated to be 20
years), the project would conserve the soils in the long term without urban
infrastructure such as streets or underground pipelines.

22 (AR 25488-25489.)

23 The County on 6/16/08 also approved the Green Volts project and made a finding that a
24 specific solar facility was a use consistent with the Agricultural District. (AR 5737 [2008
25 Zoning Board approval].)

1
2 In 2011, County staff prepared a report on the Cool Earth project. (AR 25719 [Staff
3 report].) The staff report states regarding the zoning ordinance that a solar facility was proper in
4 an Agricultural district because “the proposed solar array appears to be incorporated by
5 reference.” (AR 25718.) The staff report states regarding the General Plan that a solar facility
6 was proper in Large Parcel Agriculture area. The Cool Earth staff report discusses the ECAP
7 policies and states:

8
9 ECAP Policy 13 [infrastructure]: “The intent of Policy 13 is to ensure that
10 infrastructure is not created in such a way that induces growth in the ECAP beyond
11 that intended by the plan as a whole. In specific, this policy is intended to avoid
12 inducement of residential and commercial growth beyond that allowed for by the
13 ECAP. It was not the intent of this policy to prohibit all infrastructure that might
14 serve regional or statewide purposes. ... the provision of additional electricity from
the project would be consistent with Policy 13 because it would not induce
unplanned growth in the ECAP area and it would not result in the introduction of
new infrastructure (such as transmission lines) that might otherwise induce
unplanned growth.”

15 (AR 25719.)

16 On 12/15/11, the EBZA approved the Cool Earth solar facility project. (AR 5745-5746
17 [2012 Zoning Board Approval].) The EBZA 2011 approval of the Cool Earth project did not
18 expressly rely on either Determination D-165 or the prior Green Volts approval, but implicitly
19 did so in its reliance on the staff report.

20 The County’s Draft EIR dated September 2020 had a section on whether the Project
21 conformed to the General Plan. The Draft EIR references both the determination under the
22 Zoning Ordinance and the prior approvals of the Green Volts and Clean Earth projects. The
23 Draft EIR disclosed:
24

25 Alameda County made findings in 2008 pursuant to Sections 17.54.050 and
26 17.54.060 (Determination of Use) of the Zoning Ordinance regarding district
classifications of uses not listed within the ordinance. The Alameda County

1 Planning Commission made findings that a solar electric facility would not be
2 contrary to the specific intent clauses or performance standards established for the
3 "A" district and could be permitted under a CUP. The County reiterated these
4 findings to confirm the conditional permissibility of similar solar uses under the
5 "A" district for the Green Volts project, approved in 2008, and the Altamont Solar
6 Energy Project (Cool Earth), approved in 2011 (ECBZA 2008 and 2011). As
7 discussed in a September 13, 2012 memorandum regarding draft solar policies for
8 the ECAP, County Counsel determined that "solar facilities are consistent with
9 ECAP policies. Solar facilities constitute quasi-public uses consistent with
10 'windfarms and related facilities, utility corridors and similar uses compatible with
11 agriculture' which are allowed on parcels designated Large Parcel Agriculture
12 (LPA)" (Alameda County Community Development Agency 2012). In summary,
13 the proposed project as designed would be consistent with the "A" district and lands
14 designated for LPA and WM in the ECAP.

9 (AR 2747)

10 The public submitted comments on the Draft EIR and the EBZA held a hearing on
11 10/22/20. A public comment addressed the land use issues and the County's decision to rely on
12 the Green Volts and Cool Earth approvals. (AR 243.) The County's response to comments
13 addresses those concerns, refers repeatedly to the Zoning Code 17.54.050 and 17.54.060
14 procedure, and refers to the County's prior decisions in the context of the Green Volts and Cool
15 Earth approvals that solar facilities are consistent with agriculture. (AR 234, 242, 265-266, 382,
16 394, 870.) At the County Board hearing on 3/4/21, the Board asked questions about reliance on
17 Determination D-165 and the Green Volts and Cool Earth approvals, and County staff explained
18 "we consider [Determination D-165] to be a policy direction from the Planning Commission. We
19 don't view that as something that needs to happen on a, on, for every single project. For example,
20 they already determined, and this is again in the zoning code, that this kind of uh, determination
21 is, is, is final unless it's appealed. We view that as a one-time thing that we don't have to go back
22 to them for every single project to ask the same question. (AR 5188-5189.)
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LAW AND ANALYSIS

Petitioner is correct that prior fact specific administrative approvals of other projects does not have the effect of amending the General Plan. The County could not incorporate and rely on the prior project specific findings in the Green Volts and the Cool Earth approvals. A project specific finding is a quasi-judicial act that does not have general application. (*Landi v. County of Monterey* (1983) 139 CalApp.3d 934, 936-937.)

The County is correct that in considering and approving the project it could rely on the Determination D-165 that it made under Zoning Code 17.54.050 and 17.54.060 in the context of the Green Volts approval. As discussed below, the 17.54.050 and 17.54.060 procedure is a valid procedure. Determination D-165 is distinct from the approvals of Green Volts and Cool Earth as specific projects.

The court finds that the County appropriately incorporated and relied on Determination D-165, which it made under Zoning Code 17.54.050 and 17.54.060. (AR 25488-25489.) A formal determination is a quasi-legislative act that has general application. (*Landi v. County of Monterey* (1983) 139 CalApp.3d 934, 936-937.) Determination D-165 contained reasoned analysis. The County disclosed in the Draft EIR that it intended to rely on a Determination of Use made under Zoning Code 17.54.050 and 17.54.060. The Draft EIR disclosed that in the Determination "The Alameda County Planning Commission made findings that a solar electric facility would not be contrary to the specific intent clauses or performance standards established for the "A" district and could be permitted under a CUP." (AR 2737.) At least one member of the public commented on the use of the use determination. The County responded and explained its use of the use determination under Zoning Code 17.54.050 and 17.54.060.

1 At the hearing on 4/25/22, petitioner argued that the County is not entitled to any *Yamaha*
2 deference in this case based on the Green Volts and Clean Earth approvals because it has
3 considered the siting of a solar facility on Agriculture or Large Parcel Agriculture land on only
4 two prior occasions and that two prior occasions is not a "longstanding practice." (*Yamaha*
5 *Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 14-15.) The County argued
6 that it is entitled to substantial deference when weighing and balancing the interests in its own
7 general plan (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229
8 Cal.App.4th 498, 513-514), and that any *Yamaha* deference would be an additional layer of
9 deference on top of the regular substantial deference.
10

11 The court does not give the County any *Yamaha* deference because *Yamaha* deference
12 applies to policies and the County's prior approvals in Green Volts and Clean Earth are quasi-
13 judicial decisions and not quasi-legislative policies. That noted, the County's reference to the
14 prior project specific approvals in Green Volts and Cool Earth does not detract from the
15 County's proper reliance on Determination D-165 and the substantial evidence in the record.
16 The County's consideration of the prior project specific approvals was reasonable in light of the
17 goal of a consistent interpretation of the General Plan. (Govt Code 65852.)
18

19
20 GENERAL PLAN ISSUE #2, WHETHER THE COUNTY HAD A BASIS FOR
21 CONCLUDING THAT THE PROJECT IS SIMILAR TO AND CONSISTENT WITH "LARGE
22 PARCEL AGRICULTURE."

23 The Project is located in an Agricultural District and the Resolution states that the
24 Project's use was similar to and consistent with "Large Parcel Agriculture." (AR 14, 15.) The
25 ECAP definition of "Large Parcel Agriculture" (AR 5806) states:
26

1 Apart from infrastructure under Policy 13, all buildings shall be located on a
2 contiguous development envelope not to exceed 2 acres ... Subject to the
3 provisions of the Initiative, this designation permits ... public and quasi-public
4 uses, solid waste landfills and related waste management facilities, quarries,
windfarms and related facilities, utility corridors, and similar uses compatible with
agriculture.

5 Petitioner argues that the County did not consider whether the Project's use was similar
6 to and compatible with agriculture because the Resolution had no express finding on that issue.
7 The County did consider the issue because the Resolution expressly referenced Determination D-
8 165 (AR 13-14.) Determination D-165 in turn contained a reasoned analysis and concluded that
9 a privately owned solar energy facility is an allowable use under the General Plan on Large
10 Parcel Agriculture land. (AR 25488-25489.)

11
12 In the event that the County erred in relying on Determination D-165, the court separately
13 reviews whether the County's decision was arbitrary and whether it was supported by substantial
14 evidence.

15 The court's analysis starts with the text of the ECAP and the phrase "similar uses
16 compatible with agriculture." The court independently interprets the law, but the County's
17 interpretation of its own General Plan "is entitled to deference." (*City of Monterey v.*
18 *Carrnshimba* (2013) 215 Cal.App.4th 1068, 1091; *Craik v. County of Santa Cruz* (2000) 81
19 Cal.App.4th 880, 890.) ,

20
21 The County determined as a matter of interpreting the ECAP that a solar installment is a
22 "similar use" to the expressly permitted non-agricultural uses. The Resolution states: "[Solar
23 Electric Facilities] like the project are similar in character to other uses explicitly allowed in the
24 general plan designations, such as windfarms, quarries and public uses." (AR 14) This is a
25 reasonable interpretation regarding what is a "similar" use.
26

1 The County reasonably interpreted its own general plan to mean that a permitted use
2 includes both the primary feature of the permitted use as well as other uses that are directly
3 related to the permitted use. For example, ECAP Policies 77, 78, and 81 state that agriculture
4 includes not only the farmland but also the “accessory farm structures” (Policy 77), the
5 processing agricultural facilities (Policy 78), and visitor serving commercial uses that “promote
6 agriculture and are subordinate to and directly related to the area’s agricultural production”
7 (Policy 81). (AR 5781-5782.)
8

9 The County factually determined that a solar installment includes both the solar energy
10 generation and the associated battery storage. The Resolution repeatedly refers to the project as
11 including both. (AR 8, 16.) There is substantial evidence for this finding in the evidence that
12 “The project’s four-hour battery storage system would help to stabilize energy supplies and
13 would provide energy generated from solar well into the peak-demand evening hours.” (AR
14 110.) This finding is supported by substantial evidence.
15

16 The County determined that the solar installment and battery storage in the Project is
17 compatible with agriculture. The Resolution states: “The Project, which includes solar arrays,
18 vegetation, compacted dirt and graveled access roads, as well as sheep grazing, honeybee
19 foraging, and raising egg producing chickens, would promote continued agricultural use of the
20 project site, consistent with the LPA land use designation.” (AR 14) This finding is supported
21 by substantial evidence.
22

23 At the hearing on 4/25/22, petitioners argued that solar facilities are inconsistent with
24 Large Parcel Agriculture because the County had at various times considered developing and
25 implementing a Solar policy (AR 5028-29, 6234, 25720), which in turn arguably might suggest
26 that the County thought it needed to amend the ECAP to add a solar policy. At the hearing, the

1 County acknowledged that it had from time to time considered a solar policy, but pointed to
2 evidence in the record that the County had decided to address the placement of solar projects on
3 a case by case basis. (AR 20437.) More significantly, the Resolution itself states: "Solar
4 projects may be approved in the County prior to adoption of a County Solar Policy. Absent a
5 development moratorium, the County processes all land use entitlement applications in
6 conformance with the applicable laws at the time the project is considered for approval." (AR
7 16)

8
9 The court finds the County's consideration of a solar policy that might in the future be
10 adopted to be immaterial. Regarding this case specifically, the Resolution expressly addresses
11 the issue and considers the Project under the currently applicable laws. (AR 16.) Regarding the
12 issue generally, a public entity's discussion that it might take an action is not evidence that the
13 public entity has decided that it must take that action.

14
15 **GENERAL PLAN ISSUE #3. WHETHER THE COUNTY HAD A BASIS FOR**
16 **CONCLUDING THAT THE PROJECT IS INFRASTRUCTURE.**

17
18 The County argues that under ECAP Policy 13 the Project is exempt from the Large
19 Parcel Agriculture restrictions because it is permissible "infrastructure." (Oppo at 14, 16-17.)

20
21 Petitioner argues that the County cannot rely on Policy 13 because the Resolution had
22 no express finding that the Project was "infrastructure" or discussion of Policy 13.

23
24 The County was not required to make findings of evidentiary facts. "Findings are
25 required to state only ultimate rather than evidentiary facts." (*Topanga II*, 214 Cal.App.4th at
26 1362.)

1 Petitioner is correct that the Resolution did not make express findings that the Project
2 was infrastructure or mention Policy 13. The County did make implied findings regarding
3 Policy 13. The Final EIR has a section on Land Use and Planning and identifies Policy 13 as one
4 of several "relevant open space land use policies." (AR 1310). The Project is a facility to
5 generate electricity on a commercial scale, and electricity provided to the electrical grid is
6 generally understood to be a public utility that is "infrastructure." Finally, the Resolution
7 expressly incorporates the analysis in the 2011 Cool Earth approval. (AR 14) The Cool Earth
8 approval has a thorough analysis of how Policy 13 applies to a solar electric facility in a Large
9 Parcel Agriculture district. (AR 25719)

11 Even without reliance on the Cool Earth approval, the County's argument that the Project
12 was infrastructure and therefore exempt from certain land use regulations has legal merit and is
13 supported by substantial evidence.

14 Policy 13 defines infrastructure, stating: "Infrastructure" shall include public facilities,
15 community facilities, and all structures and development necessary to the provision of public
16 services and utilities." (AR 5769) The last word of that phrase is "utilities," and the court finds
17 as a matter of textual construction that "utilities" includes services such as gas, electric, water,
18 and sewer. (PUC 216(a) [definition of "public utility"].) It was not arbitrary for the County to
19 consider a solar facility to be infrastructure. There is substantial evidence that the Project, which
20 is designed to produce electricity, is a "infrastructure" necessary to the provision of "utilities."

22 Policy 13 imposes limits on the development of infrastructure, stating "The County shall
23 not provide nor authorize public facilities or other infrastructure in excess of that needed for
24 permissible development consistent with the Initiative." (AR 5769.) Policy 13 is in a section on
25 "Urban and Rural Development" (AR 5769) that concerns the phased and orderly development
26

1 of East County to encourage compact development (Policy 10) and prevent urban sprawl (Policy
2 11). Policy 13 is designed to prohibit the County from approving infrastructure in East County
3 such as roads, water, and sewer “in excess of that needed for permissible development” in East
4 County. Infrastructure such as roads, water, and sewer is local and supports local development
5 in East County, but infrastructure such as a solar facility is different because the electrons are
6 fungible and can be used in East County or transmitted elsewhere. (AR 25719 [Cool Earth
7 discussion of Policy 13].)

8
9 At the hearing on 4/25/22, petitioner argued that the statement in Policy 13 that “This
10 policy shall not bar 1) ..., 2), and 3) ...” should be interpreted to mean that a project is
11 permissible only if it meets all of 1, 2, and 3. This is not a reasonable reading. The plain
12 meaning of the sentence is that the policy does not bar a project that meets criteria 1, a project
13 that meets criteria 2, and a project that meets criteria 3.

14 There is substantial evidence that the County’s determination that then Project was
15 consistent with Policy 13. The Resolution at Exhibit A states:

16
17 [T]he proposed project would not induce substantial unplanned population growth
18 in the area, either directly or indirectly. Additionally, the proposed project would
19 not include the extension of utility infrastructure or construction of new roadways
20 that could induce development in the area. The proposed project would assist
21 California in meeting its air quality and GHG emissions reduction goals. As such,
22 the proposed project would not directly induce growth related to provision of
23 additional electric power. Rather, energy demand, as determined by the California
24 Public Utilities Commission with input from the California Energy Commission,
25 drives generation procurement; procurement does not drive an increase in either
26 utility customers or energy consumption. ... As such, construction and operation of
the proposed project is not expected to have substantial adverse growth inducing
impacts.

24 (AR 67.) (See also AR 898-899.) Even without reliance on the Green Volts or Clean Earth
25 approvals, there is substantial evidence that the Policy 13 restrictions on infrastructure
26

1 development did not apply to the Project because the Project would not permit or induce growth
2 in East County.

3 Policy 13 also identifies infrastructure that is expressly allowed, stating: "This policy
4 shall not bar [three exceptions]." (AR 5769) There is substantial evidence that the Project fits in
5 the exception that it is "(3) infrastructure such as ... power transmission lines which have no
6 excessive growth-inducing effect on the East County area and have permit conditions to ensure
7 that no service can be provided beyond that consistent with development allowed by the
8 Initiative." As stated above, there is substantial evidence the Project would not permit or induce
9 growth in East County, which supports a determination that the Project would have "no
10 excessive growth-inducing effect on the East County." The applicability of one of the three
11 exceptions is sufficient.
12

13
14 **GENERAL PLAN ISSUE #4. WHETHER THE COUNTY HAD A BASIS FOR**
15 **CONCLUDING THAT THE PROJECT IS COMPATABLE WITH WATER MANAGEMENT.**
16

17 The Project is located in part in Water Management Lands area. The WM use, like that
18 LPA use, "provides for sand and gravel quarries, reclaimed quarry lakes, watershed lands,
19 arroyos, and similar and compatible uses." (AR 5806-5807.) The WM use also permits uses
20 consistent with Policy 13. (AR 5769, 5806-5807.)

21 The Resolution states that the Project's use was consistent with Water Management. (AR

22 14.) Regarding the issuance of the Conditional Use Permit, the Resolution states:

23 Furthermore, the planned 100-foot setback of project components from the top of
24 the Cayetano Creek bank and avoidance of federally-defined floodways and 100-
25 year flood inundation areas would provide for more constriction of the project and
26 protection of water quality than the uniform or non-site specific 200-foot setback
from the Cayetano Creek centerline defined by the Water Management designation

1 in the East County Area Plan which applies to an estimated 21 acres of the project
2 components and development footprint. (AR 14.)

3 Regarding consistency with the General Plan, the Resolution states:

4 In the Water Management (WM) designation, the County's analysis has concluded
5 that the findings of a site-specific hydrological engineering study (Appendix G of
6 the DEIR) demonstrates that the project is consistent with the water quality and
7 floodplain maintenance policies of the WM designation, and comparable to other
8 uses allowed in WM such as residential, agricultural, sand and gravel quarries,
9 reclamation pits, and public use areas. (AR 14.)

10 At the hearing on 4/21/22, petitioners argued that the Project was inconsistent with the
11 ECAP because the Project did not leave a 400 foot corridor around Cayetano Creek. (AR 2437.)

12 The Resolution expressly states that the Project is consistent with the WM designation in the
13 ECAP. The Resolution references a hydrological engineering study. (AR 2108-2184.) (See also
14 AR 15469-15497.) The study is focused on SB 610 water supply and CEQA issues rather than
15 on WM land use issues. That noted, ECAP policy 336 states that development and structures
16 should not be within 100 feet of riparian corridors [or] in Federal Emergency Management
17 designated floodplains (AR 5839 [Policy 336]) and the hydrological study found "The current
18 site layout avoids all areas of high flow and FEMA floodplains." (AR 2159.) (See also AR
19 2182.)

20 In addition to the Resolution, the EBZA Staff report dated 11/24/20 also addresses the
21 issue of WM designation:

22 On applicable parcels or portions thereof the WM designation is appropriate to
23 protect water quality and ensure floodplain management in the vicinity of Cayetano
24 Creek. The ECAP takes a generalized approach to ensuring WM lands are protected
25 through a loosely mapped 400-foot wide corridor along Cayetano Creek. Although
26 project components consisting of solar panels mounted on steel I-beams, gravel and
compact dirt access roads, fencing, and managed native and naturalized
vegetation associated with a quasi-public energy use would fall within the WM
designated area, a project-specific hydrological engineering study was performed
to confirm the extent of the 100-year (extreme) flood conditions to ascertain the

1 actual limits of the portion of Cayetano Creek that is in the vicinity of the project
2 site and its true flood inundation area. ... Correspondingly, the project has been
3 designed (consistent with ECAP policy 336) to be set back at least 100 feet from
4 the top of the banks of Cayetano Creek, and to avoid both the FEMA designated
5 floodways and the modeled 100-year flood inundation areas as determined by the
6 site-specific hydrological engineering study. In addition, the project would
7 incorporate stormwater best management practices to ensure no sedimentation
8 would occur to Cayetano Creek or its tributaries during project construction,
9 operation, or decommissioning. Therefore, the water quality and floodplain
10 maintenance attributes of the WM designation would be maintained, and the project
11 would not conflict with the WM designation. (AR 3832.)

12 The County's WM finding was supported by substantial evidence and is not arbitrary.

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GENERAL PLAN ISSUE #5 - WHETHER THE COUNTY HAD A BASIS FOR
CONCLUDING THAT THE PROJECT WAS CONSISTENT WITH ECAP POLICIES

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Petitioner and the County identify issues certain goals and policies in the ECAP. The court considers all of the identified policies, consistent with the law that "[b]ecause policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes." (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 515.)

GOAL. To clearly delineate areas suitable for urban development and open space areas for long-term protection of natural resources, agriculture, and public safety. Policy 1 (AR 5766) states: "The County shall identify and maintain a County Urban Growth Boundary that divides areas inside the Boundary, next to existing cities, generally suitable for urban development from areas outside suitable for long-term protection of natural resources, agriculture, public health and safety, and buffers between communities." The Project is outside the boundary. This is undisputed.

1 **GOAL. To protect regionally significant open space and agricultural land from**
2 **development. Policy 54 (AR 5777) states “The County shall approve only open space, park,**
3 **recreational, agricultural, limited infrastructure, public facilities (e.g., limited infrastructure,**
4 **hospitals, research facilities, landfill sites, jails, etc.) and other similar and compatible uses**
5 **outside the Urban Growth Boundary.” Petitioner makes no express argument about Policy 54.**
6 **The County argues that the Project is consistent with Policy 54. The Policy 54 issue is the same**
7 **as the issue of whether a solar facility is consistent with Large Parcel Agriculture.**

9 **GOAL. To preserve unique visual resources and protect sensitive viewsheds. (AR 5789)**
10 **Policy 115: “In all cases ... landscaping and screening shall be required to minimize the visual**
11 **impact... Development shall blend with and be subordinate to the environment and character of**
12 **the area where located, so as to be as unobtrusive as possible and not detract from the natural,**
13 **visual qualities” AR0005791. Petitioner argues that the Project will detract from the natural,**
14 **visual qualities. The County’s determination that a solar facility with landscaping and screening**
15 **will preserve the natural visual qualities is supported by substantial evidence and is not arbitrary.**

16 **GOAL. To provide efficient and cost-effective utilities. (AR 5827) Policy 285 states:**
17 **“The County shall facilitate the provision of adequate gas and electric service and facilities to**
18 **serve existing and future needs while minimizing noise, electromagnetic, and visual impacts on**
19 **existing and future residents.” (AR 5827) Policy 286 states: “The County shall work with PG&E**
20 **to design and locate appropriate expansion of gas and electric systems.” (AR 5827.) Petitioner**
21 **makes no argument about Policy 285 or 286. The County argues that the Project is consistent**
22 **with Policy 285 and 286. The County’s identification of these policies is relevant because the**
23 **County’s approval had to consider all the ECAP policies and not just the ones that petitioner**
24 **identifies. There is substantial evidence that the Project is consistent with Policy 285 and 286.**
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1 GOAL. To maximize the production of wind generated energy. (AR 5802.) Policy 168
2 states "The County shall recognize the importance of windpower as a clean, renewable source of
3 energy." Policy 169 states: "The County shall allow for continued operation, new development,
4 ... of existing and planned windfarm facilities within the limits of environmental constraints."
5 (AR 5802.) The County argues that the Project is consistent with the Policy 168 goal of clean
6 energy, suggesting that approval is consistent with the Policy 169 goal of allowing for
7 development of "[clean energy] facilities within the limits of environmental constraints." (Oppo
8 at 14:15-21.) Policies 168 and 169 are relevant "[b]ecause policies in a general plan reflect a
9 range of competing interests, the governmental agency must be allowed to weigh and balance the
10 plan's policies when applying them, and it has broad discretion to construe its policies in light of
11 the plan's purposes." (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229
12 Cal.App.4th 498, 515.) Petitioner accurately argues that windfarms and solar facilities have
13 different environmental impacts. That noted, the County could and did consider the ECAP's
14 clean energy policy when it weighed and balanced the plan's policies in light of the plan's
15 purposes.
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18 GOAL. To permit and encourage cultivated agriculture and to preclude urbanization in
19 the North Livermore area without unduly impairing the open and natural qualities of the area.
20 Policies 326-338 concern the creation of 20-acre minimum parcels in the Agricultural District
21 and requirements that those parcels be used for cultivated agriculture and have adequate water
22 for cultivated agriculture. Petitioner's focus on the need for cultivated agriculture in the 20 acre
23 lots appears immaterial to the Project.
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1 GENERAL PLAN ISSUE #6 - WHETHER MEASURE D REQUIRED THE COUNTY TO
2 SEEK VOTER APPROVAL OF PERMITTING SOLAR FACILITIES ON "LARGE PARCEL
3 AGRICULTURE"

4 Petitioner argues that Measure D did not expressly permit solar fields in Large Parcel
5 Agricultural areas, that Measure D requires voter approval for any changes in to the terms of
6 Measure D, and that therefore the County was required to submit to the voters the issue of
7 whether to allow solar fields in Large Parcel Agricultural areas. Measure D section 23 states:
8

9 The provisions of this ordinance may be changed only by vote of the people of
10 Alameda County, except the Board of Supervisors may impose further restrictions
11 on development and use of land. The Board may also make technical or
12 nonsubstantive modifications to the terms of this ordinance, to the extent the terms
13 are incorporated into the East County Area Plan, Any modifications must be
14 consistent with the purposes and substantive content of this ordinance. (AR 5758)

15 The County made a non-arbitrary decision supported by substantial evidence that the
16 solar development was appropriate on "Large Parcel Agriculture" because it is comparable to the
17 other uses specifically allowed and is compatible with agriculture" (AR 5806) and because it is
18 consistent with Policy 13 as infrastructure with no growth inducing effects (AR 5769). As a
19 result, the County's decision and the Resolution are a "technical or nonsubstantive modification"
20 and "consistent with the purposes and substantive content of this ordinance." (AR 5758.) A
21 vote of the People of Alameda County is not required. If the County's decision on consistency
22 with the ECAP had been arbitrary or not supported by substantial evidence, and if the County
23 still wanted to proceed with the Project, then the County would need to change the ECAP "by
24 vote of the people of Alameda County," (AR 5758.)
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1 ISSUE #6 – COMPLIANCE WITH SCENIC ROUTE ELEMENT

2 The General Plan has a "Scenic Route Element." (AR 5884-5923.) The Scenic Route
3 Element states that "normally permitted uses of land should be allowed in scenic corridors,
4 except that panoramic views and vistas should be preserved and enhanced through
5 supplementing normal zoning regulations with special ... height, area, and sideyard regulations.
6 (AR 5909) It also states: "Landscaping should be designed and maintained in scenic route
7 corridors to provide added visual interest, to frame scenic views, and to screen unsightly views."
8

9 Petitioner argued at the 4/27/22 hearing that the Resolution make no express finding that
10 the Project was consistent with the Scenic Route Element of the General Plan. The Resolution
11 addresses the scenic concerns in two places. First, in the whereas clauses (AR 10-11) it states:

12 WHEREAS, based on facts in the record regarding the significant effects of the
13 project on scenic qualities and preservation of agriculture as a quality of open space,
14 the East County Board of Zoning Adjustments determined that an additional
15 condition of approval is necessary and proper providing for increased setbacks of
16 100 feet from the public rights-of-way of North Livermore Avenue and Manning
17 and Hartman Roads, and 80 feet from the western project boundary, within which,
18 instead of decorative trees and landscaping the project developer shall plant
19 agricultural crops such as olive trees and/or grape vines to the extent that such
20 species are native to California, drought-resistant, avoid excessive irrigation
21 requirements and maintain the prevailing visual and agricultural character."

18 The Resolution then adopted the additional conditions of approval.

19 Second, in addressing two separate appeals regarding scenic route issues (AR 14-15) the
20 Resolution states:

21 The western edge of the project boundary is not visible from major county roads or
22 residences and given the natural state of the nearby creek this area is not in need of
23 additional setback, landscaping, ornamental or agricultural plantings. ...

24 2. Agricultural plantings such as grapevines and olive trees (or similar) provide
25 additional visual relief considering the large size of the project, and can be
26 combined with ornamental plantings to provide the screening and agricultural
benefit required by the EBZA.

1 3. The additional setback from North Livermore Ave. and Manning Rd. of 100 feet
2 is a reasonable condition of approval to provide additional buffer for residents,
3 motorists and visitors to the area.

4 These considerations of scenic issues in the Resolution are substantial evidence that the County
5 considered the Scenic Route Element.

6 Petitioner argues that the Project's landscape buffer is inadequate to block short distance
7 views of the Project and will when mature will block rather than preserve long distance views.

8 The court gives substantial deference to the County in how it balances the goals of its general
9 plan, including the Scenic Route Element. There is a presumption of regularity. (*San Francisco*
10 *Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 513-514.) The
11 court reviews the County's factual findings that the Project met the Scenic Route Element
12 substantial evidence and the court indulges all presumptions and resolves all evidentiary conflicts
13 in favor of the County's findings and decision. (*Horwitz v. City of Los Angeles* (2004) 124
14 Cal.App.4th 1344, 1354.)

15 The County considered the effect of the Project on scenic views. The Draft EIR
16 expressly addressed that Scenic Route Element. (AR 2465-2468.) The Draft EIR expressly
17 acknowledged that the Project would have a substantial adverse effect on a scenic vista. (AR
18 2484.) The Draft EIR concluded that the Project would be consistent with the Scenic Route
19 Element. (AR 2486-2488.) The Draft EIR examined whether the Project would be consistent
20 with the scenic aspects of the ECAP. (AR 2492-2495.) The Draft EIR states, "The proposed
21 project has been designed to minimize aesthetic impacts to the County-designated scenic
22 corridors that border the project site to the maximum extent feasible and is consistent with the
23 Alameda County Open Space Element and ECAP principles and policies." (AR 2495.) In
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1 addition, at the Council Meeting on 11/24/20, the County considered the impact on scenic views,
2 the mitigation, and the offsetting "overwhelming social economic benefits." (AR 5031.)

3 The County's conclusion that the Project is consistent with the Scenic Route Element is
4 supported by substantial evidence and is not arbitrary.

5
6 **ISSUE #7 – COMPLIANCE WITH OPEN SPACE ELEMENT**

7 The General Plan has an "Open Space Element." (AR 5824-5954.) The Project is in
8 "Agricultural Open Space." (AR 5926) The Open Space Element states "Development within
9 open space areas should be permitted in selected areas and should be limited to facilities allowed
10 by the applicable land use designation." (AR 5929.)

11 The Resolution addresses the Open Space Element. The Resolution states that Friends of
12 Open Space and Vineyards filed an appeal from the EBZA arguing that the approval "violates
13 the scenic corridor and open space policies in the [ECAP]." (AR 12) The Resolution then
14 addresses those concerns and rejects the appeal. (AR 15-16.)

15 The Open Space Element analysis is the same as the analysis of whether the Project is
16 properly permitted in Large Parcel Agriculture. The existence of conflicting evidence or
17 evidence that might support different conclusions does not mean that the County failed to
18 consider the issue or that its conclusions lacked factual support. The County's determination that
19 the Project was consistent with the Open Space Element is supported by substantial evidence and
20 not arbitrary.
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1 **COMPLIANCE WITH COUNTY ZONING (ACCO)**

2 The Project is in an Agriculture ("A") District. "A" Districts "are established to promote
3 implementation of general plan land use proposals for agricultural and other nonurban uses, to
4 conserve and protect existing agricultural uses, and to provide space for and encourage such
5 uses in places where more intensive development is not desirable or necessary for the general
6 welfare." (17.060.010)

7 The Resolution approved a Conditional Use Permit for the Property in the A District and
8 made a finding that the use for the solar energy facility was not contrary to the "A" District
9 because (1) solar facility was not identified as a use in zoning code, (2) ordinance 17.54.050 and
10 17.54.060 set out the procedure for uses not listed in the zoning code and state that a prior
11 finding about a "use" has future effect, and (3) the County in approving the Green Volts and
12 Cool Earth projects had previously determined that a solar facility was consistent with the "A"
13 use. (AR 13-14)

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16 **ACCO ISSUE #1 – THE 17.54.060 PROCEDURE**

17 Petitioner argues the County's reliance on the Determination D-165 was improper
18 because Govt Code 65853 required the County to amend its zoning ordinance (17.54.72) and that
19 the use of the ACCO 17.54.050 and 17.54.060 procedure for adopting the D-165 Determination
20 was improper.

21
22 The relevant portions of the ACCO state:

23
24 17.54.050 - Uses not listed—Procedure.

25 Whenever there is doubt as to the district classification of a use not listed in any part of
26 this title, the planning department may refer the matter to the planning commission for

1 action pursuant to Section 17.54.060. The referral shall include a detailed description of
2 the proposed use.

3 17.54.060 - Uses not listed—Action.

4 Upon referral as provided in Section 17.54.050, the planning commission shall consider
5 the district classification of a use not listed in any part of this title, and shall make such
6 investigations as are necessary to compare the nature and characteristics of the use in
7 question with those of the listed uses in the various districts. If the use is found to be, in
8 all essentials pertinent to the intent of this title of the same character as a permitted use
9 in any district or districts, or of the same character as a conditional use in any district or
districts, the commission shall so determine and the order shall be final, unless a notice
of appeal is filed pursuant to Section 17.54.670 within ten days after the date of such an
order. The person requesting the determination shall be notified forthwith and the final
determination shall become a permanent public record.

10 The court follows the analysis of *Conejo Wellness Center, Inc. v. City of Agoura Hills*
11 (2013) 214 Cal.App.4th 1534 and tracks Govt Code 65853 regarding when a County must amend
12 its zoning ordinance.

13 Govt Code 65853 requires an amendment when a change in a zoning ordinance “changes
14 any property from one zone to another.” The 17.54.60 procedure generally concerns uses not
15 listed, so it would not change a property from one zone to another. The D-165 Determination
16 did not change any property from one zone to another.

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18 Code 65853 requires an amendment when a change in a zoning ordinance “imposes a
19 regulation not theretofore imposed.” The 17.54.60 procedure concerns uses not listed, so a
20 determination would not impose a new regulation on a property. The D-165 Determination did
21 not impose any new regulations on any property. Rather, it formalized the County’s
22 interpretation of its existing zoning ordinance where a use was not listed.

23 Govt Code 65853 requires an amendment when a change in a zoning ordinance “removes
24 or modifies a regulation theretofore imposed.” The 17.54.60 procedure generally concerns uses
25 not listed, so a determination would not impose a new regulation on a property. The D-165
26

1 Determination did not remove or modify any regulation on any property. Rather, it formalized
2 the County's interpretation of its existing zoning ordinance where a use was not listed.

3 The court finds that the 17.54.60 procedure is a valid procedure. The procedure applies
4 only to the situation where a use is "not listed in any part of this title," so the procedure cannot
5 be used to change or amend any existing part of the zoning ordinance. The procedure furthers
6 the goal of consistency regarding what unlisted uses are permissible in any given area. This
7 procedure is consistent with Govt Code 65852, which requires that zoning ordinances be
8 consistent for each kind of building or use. The procedure is a codification of the law that where
9 a government entity has considered the interpretation of a statute or ordinance at a high level and
10 made a formal decision and then consistently applied that interpretation, that the agency should
11 continue to apply that interpretation. (*Yamaha Corp. of America v. State Bd. of Equalization*
12 (1998) 19 Cal.4th 1, 14-15; *Allende v. Department of Cal. Highway Patrol* (2011) 201
13 Cal.App.4th 1006, 1018.)

14
15 The alternative to the 17.54.60 procedure would be to permit and require the County to
16 revisit whether an unlisted use is a permissible use every time the issue was raised. This would
17 permit the County to reach inconsistent decisions about whether an unlisted use is a permitted
18 use every time the issue was raised. The 17.54.60 procedure furthers consistency.
19

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21 **ACCO ISSUE #2 – RELIANCE ON THE D-165 DETERMINATION AND ON THE GREEN**
22 **VOLTS AND COOL EARTH APPROVALS**

23 Petitioner argues that the County improperly relied on the D-165 Determination and on
24 the Green Volts and the Cool Earth approvals. The court has above found that the County
25 appropriately relied on the Green Volts D-165 Determination adopted under the 17.54.060.
26

1 procedure because it was a quasi-legislative act. The court has above found that the County
2 could not rely on the Green Volts and the Cool Earth approvals because they were fact specific
3 quasi-judicial acts. That noted, the County's reference to the Green Volts and the Cool Earth
4 approvals was sensible, did no harm, and was consistent with the principle that a public agency
5 should have consistent interpretations of its codes, ordinances, or regulations.
6

7 ACCO ISSUE #3 – BATTERY STORAGE AS ACCESSORY USE AND STRUCTURE 8

9 Petitioner argues that the battery storage component was not part of the D-165
10 Determination and is not a proper use in the Agricultural District. This presents the same issues
11 as the General Plan analysis, but in the context of the zoning ordinance.

12 The County implicitly determined that solar installment includes both the solar energy
13 generation and the associated battery storage. The Resolution repeatedly refers to the project as
14 including both. (AR 8, 16.) The County reasonably interpreted its own zoning ordinance to
15 mean that a permitted use includes both the primary feature of the permitted use as well as
16 accessory uses that are directly related to the permitted use.

17 Regarding Agricultural Districts, 17.04.011 defines "accessory structure" and "accessory
18 use." The same phrase is in both: "appropriate, subordinate, incidental and customarily or
19 necessarily related to..." The County reasonably determined that a battery storage facility was
20 an accessory structure for the accessory use of storing the electricity generated on site.
21

22 Regarding Agricultural Districts, ACCO 17.060.040 identifies permitted conditional uses
23 and they include drilling for and removal of oil, gas or other hydrocarbon substances, public
24 utility building or uses, and privately owned wind-electric generators. ACCO 17.060.050
25 identifies accessory uses and allows farm buildings and buildings for packing products raised on
26

1 the premises. The County reasonably considered a battery storage facility to be a "public utility
2 building or use." (17.060.040(J).) The County plausibly considered a battery storage facility to
3 be an accessory use for the packing or handling of the electricity generated on site. (17.060.050.)
4 Although the application of these zoning ordinance sections to battery storage can be debated,
5 the court reviews the County's interpretation and application for abuse of discretion and
6 substantial evidence. The County's interpretation and application meet that standard.
7

8 9 THE CEQA ARGUMENTS

10 CEQA - STABLE AND FINITE PROJECT DESCRIPTION

11 In the CEQA process, an agency first determines whether an action is a "project" under
12 CEQA and defines the scope of the "project." (Pub. Res. Code. § 21065; 14 CCR § 15378.)

13 The court reviews an agency's definition of the project as a matter of law.

14 Petitioner argues the description was not stable and finite both because it changed from
15 the draft EIR to the final EIR and because the final EIR was not stable and finite.

16 Regarding the change from the draft EIR to the final EIR, the scope of the project
17 changed from 410 acres in the draft EIR to 347 acres in the final EIR. The Final EIR also added
18 an Agricultural Management Plan. (AR 966-967, 3773, 38533 et seq.) The Final EIR also added
19 additional environmental safeguards in the form of setbacks, landscape screening, and other
20 matters. The changes to the Project increased the environmental protection.

21
22 The CEQA regulations 14 CCR 15088.5 state "A lead agency is required to recirculate an
23 EIR when significant new information is added to the EIR after public notice is given of the
24 availability of the draft EIR for public review under Section 15087 but before certification." An
25 agency's determination not to recirculate is given "substantial deference" and is presumed "to be
26

1 correct.” (*Western Placer Citizens for an Agricultural & Rural Environment v. County of Placer*
2 (2006) 144 Cal.App.4th 890, 903.) “An express finding is not required on whether new
3 information is significant; it is implied from the agency’s decision to certify the EIR without
4 recirculating it.” (*South County Citizens for Smart Growth v. County of Nevada* (2013) 221
5 Cal.App.4th 316, 328.) “CEQA [does] not require the County to delay the project further in
6 order to evaluate the new project’s reduced impacts on the environment.” (*Western Placer*
7 *Citizens for an Agricultural & Rural Environment v. County of Placer* (2006) 144 Cal.App.4th
8 890, 906.)
9

10 The court finds that the County’s decision to not recirculate the EIR was reasonable and
11 supported by substantial evidence. The changes in the Project had the overall effect of
12 decreasing the local environmental impact of the Project. The County did not need to recirculate
13 the EIR to address whether the decrease in Project acres, which meant the solar field covered 63
14 fewer acres, might lead to a denser solar field in the smaller area, which might in turn decrease
15 the MW hours (AR 5315 [discussion at 3/4/21 Board hearing] and potentially make it harder for
16 raptors to hunt rodents in the solar fields. The County did not need to recirculate the EIR to
17 address whether the Agricultural Management Plan might also lead to the Project using more
18 water. The Draft EIR addressed agricultural management and states that the agricultural
19 operations would “minimize water use.” (AR 2450.) The actual Agricultural Management Plan
20 states that after the three year irrigation period there will be minimal water use. (AR 38533-
21 38558.) The changes to decrease the environmental impact of the Project in some particulars
22 might increase the environmental impact of the Project in other particulars. The County did not
23 need to recirculate the EIR to evaluate every potential adverse effect of every otherwise
24 environmentally beneficial change to the Project.
25
26

1 Regarding whether the final EIR was stable and finite, the CEQA regulations 14 CCR
2 15124 state: "The description of the project shall contain the following information but should
3 not supply extensive detail beyond that needed for evaluation and review of the environmental
4 impact. ... (o) A general description of the project's technical, economic, and environmental
5 characteristics, considering the principal engineering proposals if any and supporting public
6 service facilities." (*Washoe Meadows Community v. Department of Parks & Recreation* (2017)
7 17 Cal.App.5th 277, 287.)

9 The Final EIR states that "The proposed project could support approximately 267,000
10 solar PV panels but this number is subject to change based on final site design and panel
11 selection." (AR 998.) The description of the location, number of acres, use, and other material
12 factors were stable and finite even though the specific number of PV panels was subject to
13 change. The requirement for a "general description" does not require the level of detail of
14 identifying the exact number of PV panels. The exact number of PV panels could reasonably be
15 adjusted based on whether the panels were 5x6 or 6x6 or 6x7 as that would affect the number of
16 panels that would fit in the stable and defined location for the stable and defined use. (*Dry*
17 *Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 36.)

19 At the hearing on 5/10/22, petitioner argued that the plan was not stable because the
20 Agricultural Management Plan was added shortly before the Board hearing on 3/4/21. The
21 Agricultural Management Plan was outlined in the project description in the Draft EIR. (AR
22 2454.) The actual Agricultural Management Plan is consistent with the objectives in the outline
23 in the Draft EIR. (Compare AR 2454 with AR 38533-38558.)
24
25
26

1 CEQA – CONSISTENCY WITH GENERAL PLAN

2 Petitioner argues that the EIR failed to consider inconsistencies with the General Plan.
3 The County determined that the Project was consistent with the General Plan. The court has
4 found that the County's determination was supported by substantial evidence and not arbitrary.
5 Therefore, there is no CEQA issue regarding any inconsistency between the Project and the
6 General Plan. (*Stop Syar Expansion v. County of Napa* (2021) 63 Cal.App.5th 444, 460-461.)
7

8
9 CEQA – EFFECT ON BIOLOGICAL RESOURCES AND MITIGATION MEASURES

10 If the agency then conducts an EIR, then in the EIR the agency determines whether the
11 proposed project is likely to have a significant effect on the environment and mitigation
12 measures. The court reviews an agency's factual findings under the substantial evidence
13 standard. Petitioner argues that the Project will have a significant effect on biological resources.

14 California Red-Legged Frog. (AR 1128-1131.) The Draft EIR shows the County
15 conducted adequate investigation about the Frog – two seasons of protocol surveys. (AR 1115-
16 1116.) The Draft EIR discussed the Frog habitat as it related to the Project site. (AR 1131-
17 1133.) The Draft EIR concluded that the Project site was not high quality Frog habitat and
18 discussed the impact on the Frog. (AR 1133-1134, 1153-1154.) There is substantial evidence to
19 support these findings and the disclosures were adequate. "While there were differing opinions
20 ... , the board was entitled to choose to believe one side more than the other. ... "CEQA simply
21 requires that the public and public agencies be presented with adequate information to ensure
22 that 'decisions be informed, and therefore balanced.'" (*Association of Irrigated Residents v.*
23 *County of Madera* (2003) 107 Cal.App.4th 1383, 1398.)
24
25
26

1 California Tiger Salamander. The Draft EIR shows the County conducted adequate
2 investigation about the Salamander – two years of surveys. (AR 1117-1118.) The Draft EIR
3 discussed the Salamander habitat as it related to the Project site. (AR 1131.) The Draft EIR
4 concluded that the Project site was not high quality salamander habitat and discussed the impact
5 on the salamander. (AR 1153-1154.) There is substantial evidence to support these findings and
6 the disclosures were adequate. The Final EIR shows modifications to protect Salamander
7 habitat.

8
9 Other biological resources. Petitioner notes concern with resources such as grassland,
10 golden eagle, burrowing own, and raptors. The Draft EIR shows the County conducted adequate
11 investigation about a wide range of biological resources. (AR 2539-2615.) The Final EIR
12 shows modifications to protect these biological resources.

13
14 **CEQA – EFFECT ON SCENIC RESOURCES AND MITIGATION MEASURES**

15 CEQA requires that a public agency consider the aesthetic impacts of a project on the
16 public. “A project that interferes with scenic views has an adverse aesthetic effect on the
17 environment.” (*Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 587 [finding MND
18 adequate.]
19

20 The Draft EIR shows the County conducted adequate investigation about and discussion
21 of about scenic resources. (AR 2464-2500) The Final EIR shows modifications to protect the
22 scenic resources.

1 CEQA – ALTERNATIVES

2 CONSIDERATION OF ADEQUATE ALTERNATIVES

3 CEQA requires that the agency consider “a reasonable range of potentially feasible
4 alternatives,” to “foster informed decisionmaking and public participation.” (Pub Res. Code §
5 21002; 14 CCR § 15126.6(a) and (f).) “Since the purpose of an alternatives analysis is to allow
6 the decisionmaker to determine whether there is an environmentally superior alternative that will
7 meet most of the project’s objectives, the key to the selection of the range of alternatives is to
8 identify alternatives that meet most of the project’s objectives but have a reduced level of
9 environmental impacts.” (*Watsonville Pilots Ass’n v. City of Watsonville* (2010) 183 Cal.App.4th
10 1059, 1086-1089 .)

12 The purpose of identifying and evaluating “a reasonable range of potentially feasible
13 alternatives” is to “foster informed decisionmaking and public participation.” (Pub Res. Code §
14 21002; 14 CCR § 15126.6(a) and (f); *Cherry Valley Pass Acres and Neighbors v. City of*
15 *Beaumont* (2010) 190 Cal.App.4th 316, 348.) An EIR is not required to separately evaluate
16 each facet of the Project and each facet of each plausible alternative. (*California Native Plant*
17 *Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 994.) “CEQA does not require a lead
18 agency to conduct every test or perform all research, study, and experimentation recommended
19 or demanded by commentors.” (14 CCR § 15204(a).)

21 An EIR must evaluate the proposed project and *potentially* feasible alternatives. (14
22 CCR § 15126.6(a).) Potentially feasible alternatives must meet most of the basic objectives of
23 the project but need not satisfy *every key objective* of the project. (*California Native Plant Soc.*
24 *v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981, 991 (“*CNPS*”).) The public agency’s
25 decision-making body evaluates whether the alternatives are *actually* feasible. (*CNPS*, 177
26

1 Cal.App.4th at 999; 14 CCR § 15091(a)(3).) The court reviews an agency's selection of
2 potentially feasible alternatives under the fair argument standard.

3 Petitioner argues that project objectives in the Draft EIR were illusory and unduly
4 constrained the consideration of alternatives. (AR 2441) The court finds that the project
5 objectives are reasonable and not unduly specific. Petitioner's argument that the Project as
6 finally approved might not meet all the objectives is not a criticism of the objectives themselves.
7 Rather, Petitioner's argument indicates that the CEQA process worked because the public
8 agency considered whether the project's objectives were outweighed by environmental
9 considerations and decided to modify the project.
10

11 Petitioner argues that the EIR did not consider a reasonable range of alternatives. (14
12 CCR 15126.6.) The Draft EIR set out the project objective, then describes alternatives
13 considered but rejected as infeasible, then considers (1) no project, (2) the Resource
14 Management Avoidance Alternative, (3) and the Reduced Footprint Alternative. (AR 2831-
15 2858) The range of alternatives is adequate.
16

17 Petitioner argues that the EIR improperly found that the alternative project sites were not
18 feasible. (AR 2832-2833) The Draft EIR explained that they were not feasible because "The
19 alternative project sites, neither individually or combined, would allow for a 100 MW solar
20 energy generation and storage facility. Additionally, the project applicant does not currently own
21 or control these other potential sites for the proposed project in Alameda County nor can the
22 project applicant reasonably acquire or otherwise have access to such alternate sites" (AR 2833)
23 The decision that these were not feasible is supported by substantial evidence.
24

25 Petitioner argues that EIR improperly found that distributed generation (rooftop and
26 parking lot solar) was not feasible. (AR 2833-2834) The Draft EIR relied in large part on

1 economic considerations. (*Center for Biological Diversity v. County of San Bernardino* (2010)
2 185 Cal.App.4th 866, 883 [“when the cost of an alternative exceeds the cost of the proposed
3 project, “it is the magnitude of the difference that will determine the feasibility of this
4 alternative.”].) (See also *Uphold our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587,
5 598-601.) The Draft EIR explained that distributed generation (rooftop and parking lot solar)
6 was not feasible because “leveled costs for commercial and industrial rooftop solar PV range
7 from \$81 to \$170 per MWh and residential rooftop solar PV range from \$160 to \$267 per MWh.
8 In comparison, leveled costs for utility-scale solar PV’s range from \$36 to \$44 per MWh
9 generated (Solar Power World 2018). On a per MW basis, commercial and industrial rooftop
10 solar is substantially more expensive than utility-scale solar. The cost of generating the
11 electricity would go up substantially, deeming the EBCE rooftop sites infeasible. (AR 2834.)
12 (See also 5315-5317 [discussion of economics at 3/4/21 Board meeting].) The decision that
13 these were not economically feasible is supported by substantial evidence.
14

15 Petitioner argues that Final EIR improperly rejected the Reduced Footprint Alternative.
16 The Draft EIR explained that the Reduced Footprint Alternative would result in “an impaired
17 performance level as the density and close proximity of modules would reduce production from
18 panel shading. Lower sun angles in the early morning and late afternoon would result in modules
19 casting shadows on one another, and energy generation during these time periods would be
20 impaired. Therefore, generation 100 MW of energy within the reduced footprint with the same
21 number of solar PV panels but at a higher ground cover ratio would not be as efficient or
22 effective as the proposed project.” (AR 2845) The decision that the Reduced Footprint
23 Alternative was not appropriate because it could not generate sufficient electricity is supported
24 by substantial evidence.
25
26

1 Regarding the Reduced Footprint Alternative, it is also noteworthy that the Project as
2 finally approved covered fewer acres and had additional setbacks. Thus, although the County
3 did not approve the Reduced Footprint Alternative, the County approved the RM Avoidance
4 Alternative with its reduced footprint and required additional setbacks, resulting in a reduced
5 footprint.

6
7
8 **CEQA – WATER SUPPLY**

9 Petition argues that the EIR failed to adequately consider the water supply. The Draft
10 EIR considered water used during construction (AR 2446), stormwater management during
11 construction (AR 2448), and the use of water during operation and management (AR 2451). The
12 draft EIR has as Appendix G a Water Supply Assessment and Hydrology Study. (AR 3529-
13 3601.) The Final EIR in text discusses and explains water use for the Project's expected
14 demands. (AR 1385-1386.) The Final EIR in responses to comments further analyzes and
15 explains water use. (AR 259-260.) The Final EIR also has as Appendix G a Water Supply
16 Assessment and Hydrology Study. (AR 2108-2184.)

17
18 At the hearing on 5/10/22, petitioner argued that the EIR did not consider water use for
19 the full 50 year life of the project. The Water Supply Assessment and Hydrology Study in the
20 Final EIR states “These Water Supply Assessments (WSAs) identify water supply for an
21 identified project over a 20-year projection under varying climactic (drought) conditions.” (AR
22 2116) The Water Supply Assessment distinguished between the three year water demands of
23 temporary irrigation and the long term demands of Operation & Maintenance over the life of the
24 Project. (AR 2129-2130.) (See also AR 2132-2135.) The Water Supply Assessment
25 considered the demands of Operation & Maintenance separately for both years 1-3 and years 4-
26

1 50. (AR 2130.) The plantings were selected so that there would be no need for irrigation after
2 the first three years. (AR 2127, 4023.) This is consistent with the Water Code and with the
3 CEQA requirement that an EIR consider reasonable forecasting. (14 CCR 15144.) This was
4 adequate disclosure and discussion.

5 At the hearing on 5/10/22, petitioner argued that the EIR did not consider the water that
6 would be used under the Agricultural Management Plan. The project description in May 2018
7 anticipates an Agricultural Management Plan. (AR 22764.) The Draft EIR states in the project
8 description that "Project operations will adhere to a County-approved Agricultural Management
9 Plan (AMP) to ensure consistency of the facility with adjacent agricultural land uses. (AR 2454.)
10 Both state that the Agricultural Management Plan will "minimize agricultural water use." (AR
11 2454, 22764.) The applicant delivered the Agricultural Management Plan shortly before the
12 Board approved the Resolution. (AR 1011, 38533-38558.) The Agricultural Management Plan
13 itself discloses and discusses the water demand of the anticipated agricultural uses. (AR 38543
14 [dryland pasture], 38545-46 [livestock grazing], 38547-48 [apiary and honey production],
15 38449-50 [garlic production].) The Agricultural Management Plan was discussed at the Board
16 meeting. (AR 5243-5244.) This was adequate disclosure and discussion.
17
18

19 20 CEQA – OIL AND GAS WELLS

21 Petitioner argues that the EIR failed to adequately consider the oil and gas wells. The
22 Draft EIR did not identify any oil or gas wells. The California Geologic Energy Management
23 Division (CalGEM) identified a single well and made a public comment informing the real party
24 in interest of the existence of the well and the real party in interest's responsibilities. (AR 633-
25 638.)
26

1 The Final EIR added information about the well stating: "The well is located in an area
2 that would be covered with solar panels as part of the proposed project. The project applicant
3 would obtain any necessary rights to the well and would remedy any issues with well
4 abandonment in accordance with Division requirements and recommendations prior to
5 construction. Wells abandoned in accordance with current requirements have a low probability
6 of leaking, bringing the risk of any potential impacts to a less than significant level." (AR
7 1278.) This was adequate.

9 At the hearing on 5/10/22, petitioner argued that the EIR did not have an enforceable
10 mitigation plan for the identified abandoned well. (PRC 21081.6) The abandoned well was on
11 the property before the Project and is part of the environmental baseline, so there is no need to
12 mitigate anything if the abandoned well is not disturbed. To the extent that the Project will
13 disturb existing well, the Final EIR states: "The project applicant would obtain any necessary
14 rights to the well and would remedy any issues with well abandonment in accordance with
15 Division requirements and recommendations prior to construction." (AR 1278.) This is an
16 adequate commitment that the County or the CalGEM could enforce.

18 19 CEQA – CUMULATIVE IMPACT ANALYSIS

20 Petitioner argues that the EIR failed to adequately consider cumulative impacts. (14 CCR
21 15130, 15355.) Petitioner argues that the County must consider the possibility of additional
22 similar projects. There is no indication that there are any plans for additional similar projects.

23 Petitioner also argues that the Draft EIR failed to adequately consider the Project as part
24 of a multiple or phased project. (14 CCR 15065.) Petitioner argues that the County must
25
26

1 consider the project as the first of additional similar projects. There is no indication that there
2 are any plans for additional similar projects.

3 Petitioner argues that if the County can approve the Project at the project site that it can
4 then approve solar facilities on "the vast majority of the East County's 418 square miles."

5 (Reply at 3:5-5) Petitioner's concern that permitting a solar facility as a "use" in an Agricultural
6 District is not a CEQA concern – it is a concern based on the ECAP, the General Plan, and the
7 zoning ordinance. If there are subsequent proposals for subsequent solar facilities, then there
8 will be fact specific CEQA environmental review for those hypothetical future projects and
9 those hypothetical future reviews will consider cumulative impacts.
10

11 12 CEQA – DEFERRED MITIGATION

13 CEQA requires public agencies to identify significant mitigation measures which avoid
14 or substantially lessen such significant effects, or will mitigate or avoid the significant effects on
15 the environment of projects they decide to approve, whenever it is feasible to do so. (PRC 21002,
16 21002.1.). That said, "Mitigation measures are suggestions, the adoption of which depends on
17 economic and technical feasibility and practicality." (*A Local & Regional Monitor v. City of Los*
18 *Angeles* (1993) 312 Cal.App.4th 1773, 1790.)
19

20 Petitioner argues that the EIR improperly relied on deferred mitigation. (14 CCR
21 15126.4) Mitigation must be effective. The EIR includes a variety of mitigation plans. The
22 mitigation plans have performance standards and requirements. These are adequate.

23 Petitioner argues that the mitigation plans were not in the Draft EIR and were added in
24 the Final EIR. This is not an argument that the mitigation is ineffective. This is an argument
25 that the County should have recirculated the EIR. As discussed above, An agency's
26

1 determination not to recirculate is given “substantial deference” and is presumed “to be correct,”
2 (*Western Placer*, 144 Cal.App.4th at 903.) The court finds no abuse of discretion is failing to
3 circulate plans that would have increased environmental protection.
4

5 CEQA – STATEMENT OF OVERRIDING CONCERNS

6 The Resolution has a Statement of Overriding Considerations attached as Exhibit C. (AR
7 12, 109-111.) This states that the significant effects regarding aesthetics (scenic views) and land
8 use would be outweighed by the other environmental, economic, social and other benefits of the
9 Project. The Statement of Overriding Considerations identifies offsetting “Environmental
10 Benefits” and states: “The Project would assist California in meeting the legislated RPS for the
11 generation of renewable electric energy in the State by increasing renewable energy output by
12 100 MW.” (AR 109) Elsewhere, the EIR’s discussion of the “no project” alternative states: “the
13 proposed project serves to directly advance State and local plans for renewable energy by
14 increasing renewable energy generation in the region. ... the No Project Alternative would not
15 generate renewable energy or advance State and local plans relating to renewable energy and
16 efficiency. Therefore, the No Project Alternative would not result in beneficial energy impacts.”
17 (AR 1413.)
18
19

20 CEQA requires the consideration of greenhouse gasses because of their effect on the
21 environment. (14 CCR 15064.4, 15126.4(e); 15185.5.) California has various legislative and
22 executive branch policies designed to reduce greenhouse gasses by encouraging the use of
23 renewable energy and replacing fossil fuels with renewable energy. (Final EIR at AR 1247-1252
24 [collecting legislation]; Draft EIR at AR 2681-2685 [same].)
25
26

1 The Project would permit the use of renewable electric energy to replace fossil fuels and
2 thus limit the generation of greenhouse gasses. The Resolution states:

3 The use is required by the public need, as the demand for renewable energy
4 including from utility-scale solar electric facilities (SEIB) such as the Project serve
5 to reduce reliance on historically conventional sources of electrical energy that
6 generate carbon dioxide (CO2) and contribute to global climate change. This has
7 increased the importance of SEFs located close to connections to the energy grid
8 that will enable the State of California to make further progress towards meeting its
9 Renewables Portfolio Standard (RPS) of 60% by 2030 and thus reduce generation
10 of CO2. The Project would qualify as a renewable energy source and therefore
11 contribute to meeting this goal. (AR 12-13.)

12 The Board on 3/4/21 considered comments, pro and con, about the Project's potential to
13 reduce fossil fuel use and "buffer us from the worst effects of climate change." (AR 5362.) (See
14 also AR 5206-5207, 5223, 5224-5225, 5228, 5276, 5325, 5329-30, 5332, 5339, 5344-5345,
15 5362, 5365, 5366-67, 5369, 5373.) The Statement of Overriding Considerations and the
16 consideration of the no-project alternative is substantial evidence that the County decided that
17 the potential impact on the environment of not approving the Project and failing to address
18 global climate change (AR 109-111) outweighed the potential impact on the local environment
19 of approving the Project (Final EIR at 1245-1258).

20 APPLICATION FOR STAY OF ADMINISTRATIVE DECISION

21 The application of petitioners for a stay of the Resolution is DENIED. (CCP 1094.5(g).)
22 The County has approved the Project and the Resolution is supported by law and substantial
23 evidence. Petitioners have not demonstrated that a stay of the Resolution would be in the public
24 interest.
25
26

1 CONCLUSION

2 The petition of the Save North Livermore Valley for a writ of mandate compelling the
3 County of Alameda to rescind Resolution No. R-2021-91 Certifying the Final Environmental
4 Impact Report and Approving Conditional Use Permit PLN2018-00117, for the Aramis Solar
5 Energy Generation and Storage Project is DENIED.

6
7
8 Dated: May 26, 2022


9 Evelio Grillo
10 Judge of the Superior Court

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1 **PROOF OF SERVICE AND CERTIFICATION**

2 **CASE NAME:** *Save North Livermore Valley, et al. v. County of Alameda*
3 **CASE NUMBER:** *Superior Court – Alameda County Case No. RG21-095386*

4 I am employed in the County of San Francisco, State of California. I am over the age of 18 and not
5 a party to the within action; my business address is 50 California Street, Suite 3200, California.

6 On June 6, 2022, I served the foregoing documents described as:

- 7 1) **NOTICE OF ENTRY OF ORDER DENYING PETITION FOR WRIT OF
8 MANDATE**

9 in this action to be sent to the persons at the electronic addresses listed below.

10 **Attorneys for Petitioner**
11 **Save North Livermore Valley, et al.**
12 Steven M. Selna
13 Robert W. Selna
14 Selna Partners, LLP
15 70 Washington Street, Suite 303
16 Oakland, California 94607
17 Telephone: (510) 336-8974
18 Email: robert@selpartners.com
19 steven@selpartners.com

20 On the above date:

<input checked="" type="checkbox"/>	BY E-MAIL OR ELECTRONIC TRANSMISSION: I served the above-referenced document by electronic mail to the e-mail address of the addressees pursuant to Rule 2.251 of the California Rules of Court. The transmission was complete and without error and I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
<input checked="" type="checkbox"/>	BY U.S. MAIL: The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Cox, Castle & Nicholson LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed on June 6, 2022, at San Francisco, California.

23 

24 _____
25 **Michell Ho**