

RESOLUTION NO. R-2021-91

**RESOLUTION CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT
AND APPROVING CONDITIONAL USE PERMIT PLN2018-00117, FOR
THE ARAMIS SOLAR ENERGY GENERATION AND STORAGE PROJECT,
ADOPTED AT THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA
HEARING OF MARCH 4, 2021**

WHEREAS, IP ARAMIS, LLC (a wholly-owned subsidiary of Intersect Power, LLC) (“Applicant” and “Permittee”) has filed an application for CONDITIONAL USE PERMIT, PLN2018-00117, to construct, operate and maintain the Aramis Solar Energy Generation and Storage Project, a solar photovoltaic energy generation facility with a maximum energy output capacity of 100 megawatts with associated battery storage using photovoltaic panels over a mostly contiguous 410-acre site, in the A (Agricultural) District, located partly at 1815 Manning Road and 4400 North Livermore Avenue, both south of Manning Road and west of North Livermore Avenue, and partly on two other parcels without street addresses north of Manning Road at its intersection with North Livermore Avenue, altogether bearing Assessor’s Parcel Numbers 903-0006-001-02, 903-0006-003-07, 903-0007-002-01, and 902-0001-005-00, representing a combined parcel area of approximately 747 acres; and

WHEREAS, the project application was initially submitted and proposed in May 2018 on two of the four subject parcels, excluding Parcel Numbers 902-0001-005-00 and 903-0006-003-07, also with a maximum output capacity of 100 megawatts and on a site estimated as 402 acres, for which Planning staff determined could have potentially significant impacts on the environment for which mitigation could not be assured to be sufficient to reduce those impacts to less than significant levels, and that preparation of an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (1970, as amended) was required, after which time the application process was paused while the applicant undertook site investigations including the addition of the other two parcels; and

WHEREAS, a revised project description was submitted in February 2020 which included Parcel Numbers 902-0001-005-00 and 903-0006-003-07, and the project application was deemed complete in May 2020 and a Notice of Preparation for the EIR was circulated for 30 days between May 6 and June 5, 2020; and

WHEREAS, the Draft EIR was prepared and circulated for 45 days between September 18 and November 2, 2020, and the East County Board of Zoning Adjustments did hold a virtual public hearing to take comments on the Draft EIR at the hour of 1:30 p.m. on the 22nd day of October 2020; and

WHEREAS, in compliance with Section 15091 of the CEQA Guidelines, the Planning Department prepared Written Findings of Significant Effects, attached herein as Exhibit A, to provide 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 some but not all identified significant environmental effects, and furthermore that certain

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mitigation measures or project alternatives identified in the Final EIR are infeasible due to specified economic, legal, social, technological, or other considerations; and

WHEREAS, further in compliance with Section 15091(d) of the CEQA Guidelines, the Planning Department has prepared a 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 are fully enforceable through permit conditions, agreements, or other measures; and

WHEREAS, the Final EIR indicates that activities associated with the subject Project, as originally proposed, would result in significant and unavoidable adverse impacts on a scenic vista, degrade the existing visual character or quality of public views of the site and its surroundings, contribute to a cumulatively considerable impact on aesthetic resources, conflict with land use policies adopted to protect sensitive viewsheds as an environmental quality and contribute to a cumulatively considerable impact on conflicts with the aforementioned land use planning policies; and

WHEREAS, further in compliance with Section 15093 of the CEQA Guidelines the Planning Department has prepared a Statement of Overriding Considerations, attached herein as Exhibit C, which states specific reasons, supported by substantial evidence in the record, why the County would approve the Project although certain significant adverse environmental effects of the Project would not be avoided or substantially lessened by the identified mitigation measures; and

WHEREAS, the East County Board of Zoning Adjustments (EBZA) determined that approval of the project as conditioned herein, including the implementation of the MMRP attached herein as Exhibit B, would provide for all of the significant effects on the environment to be eliminated or substantially lessened where feasible, as indicated in the Written Findings of Significant Effects, attached herein as Exhibit A, and that there are certain significant effects on the environment found to be unavoidable which are acceptable due to overriding concerns as indicated in the Statement of Overriding Considerations attached herein as Exhibit C; and

WHEREAS, the East County Board of Zoning Adjustments has determined that approval of the Resource Management Avoidance Alternative as described in the Final EIR would feasibly attain the majority of the project objectives and is the secondary environmentally superior alternative, after the No Project Alternative and first environmentally superior alternative, the Reduced Footprint Alternative(Section 15126.6(e)(2) of the CEQA Guidelines requires the EIR to identify another alternative if the No Project alternative is identified as the environmentally superior alternative); 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

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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 webinar 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 24th day of November 2020; 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, modified to conform to the Resource Management Avoidance Alternative as described in the Final EIR; 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 certified the Final EIR as reflected in the Resolution Z-20-22; and

WHEREAS, the project in the form of the "Resource Management Avoidance Alternative" as described in the Final EIR is the Project Alternative that best allows the project to achieve the main objectives of the Applicant while avoiding the greatest number and severity of adverse effects on the environment as described in the Final EIR; and

WHEREAS, based on facts in the record, including recommendations submitted in a letter from the United States Fish and Wildlife Service, incorporated herein as Exhibit E-1 and its attachment E-2, the East County Board of Zoning Adjustments determined additional conditions of approval are necessary and proper to require breeding season eagle surveys prior to construction, no-disturbance buffers, a post-construction bird and bat mortality study and oversight of post-construction monitoring by the County's wind repowering Technical Advisory Committee; and

WHEREAS, based on facts in the record regarding the significant effects of the project on scenic qualities and preservation of agriculture as a quality of open space, the East County Board of Zoning Adjustments determined than an additional condition of approval is necessary and proper providing for increased setbacks of 100 feet from the public rights-of-way of North Livermore Avenue and Manning and Hartman Roads, and 80 feet from the western project boundary, within which, instead of decorative trees and landscaping the project developer shall plant agricultural crops such as olive trees and/or grape vines to the extent that such species

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are native to California, drought-resistant, avoid excessive irrigation requirements and maintain the prevailing visual and agricultural character; and

WHEREAS, based on facts in the record, the East County Board of Zoning Adjustments did make four findings in the affirmative as required by the Alameda County Zoning Ordinance for approval of a Conditional Use Permit; and

WHEREAS, on November 24, 2020 the East County Board of Zoning Adjustments did approve Conditional Use Permit PLN2018-00117, Resolution No. Z-20-23, subject to eight-nine (89) conditions of approval; and

WHEREAS, in a letter of December 2, 2020, appellant and applicant IP Aramis, LLC, filed a timely appeal of the condition of approval approved by the East County Board of Zoning Adjustments to require a one-mile no-disturbance buffer from eagle nests identified by the United States Fish and Wildlife Service, on the basis that the noise associated with project construction does not merit an avoidance buffer of greater than one half-mile; and

WHEREAS, in a letter of December 4, 2020, appellant and applicant IP Aramis, LLC, submitted an addendum to their December 2, 2020 letter where they additionally appealed conditions of approval related to additional setbacks and an agricultural plantings, screening and buffer requirement; and,

WHEREAS, in a letter of December 4, 2020, appellant Save North Livermore Valley, represented by Selna Partners (a law firm) filed a timely appeal of both the certification of the Final EIR and the approval of the project on grounds that fall into several general categories including Measure D conformance, East County Area Plan conformance, zoning ordinance violations, alleged misrepresentation of facts pertaining to operation and function of the transmission infrastructure commonly known as the electrical grid and the quality of soils on the project site, concerns about comments by the California Department of Fish and Wildlife (CDFW), and the lack of established policy governing solar energy development in Alameda County; and

WHEREAS, in a letter of December 4, 2020, 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 County's finding that the utility-scale solar project as a compatible and allowed use under the land use designation of Large Parcel Agriculture was illegal and inconsistent with the purpose of voter initiative Measure D approved in November 2000, and further that the applicant misrepresented the energy beneficiaries of the project as Livermore residents to avoid power blackouts and the quality of the soil on the site and its suitability for continued agricultural use, that the EIR was not revised to adequately address comments on the draft EIR by the California Department of Fish and Wildlife (CDFW), and finally that the CUP should not have been approved before a countywide solar energy policy has been adopted by the County; and

WHEREAS, in a letter of December 4, 2020, appellant Friends of Open Space and Vineyards filed a timely appeal of both the certification of the Final EIR and the approval of the project on the grounds that procedures to circulate Resolution Z-20-23 in its final form violated

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due process rights regarding the required ten-day appeal period, that the intent of the East County Area Plan as amended by Measure D would be violated by the CUP and the findings of the Final EIR, that the approval violates scenic corridor and open space policies in the East County Area Plan, that the proposed solar energy facility is an industrial-scale commercial use not allowed under the East County Area Plan, that consideration of a countywide solar policy is necessary before approval of the CUP, that reliance on prior decisions as precedence for approval of the subject project is not warranted by the record, and that the Final EIR is flawed with respect to project description, mitigation of biological resources and aesthetic effects, estimation and mitigation of water use, fire hazards, cumulative impacts and alternatives to the project; and

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

NOW THEREFORE

BE IT 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 some but not all identified significant environmental effects, and furthermore that certain mitigation measures or project alternatives identified in the Final EIR are infeasible due to specified economic, legal, social, technological, or other considerations.

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 the Board hereby adopts and makes the findings contained in the Statement of Overriding Considerations, attached herein as Exhibit C, in compliance with Section 15093 of the CEQA Guidelines, which states specific reasons, supported by substantial evidence in the record, why the County would approve the Project although certain significant adverse environmental effects of the Project would not be avoided or substantially lessened by the identified mitigation measures.

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

1. The use is required by the public need, as the demand for renewable energy including from utility-scale solar electric facilities (SEFs) such as the Project serve to reduce

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reliance on historically conventional sources of electrical energy that generate carbon dioxide (CO₂) and contribute to global climate change. This has increased the importance of SEFs located close to connections to the energy grid that will enable the State of California to make further progress towards meeting its Renewables Portfolio Standard (RPS) of 60% by 2030 and thus reduce generation of CO₂. The Project would qualify as a renewable energy source and therefore contribute to meeting this goal.

2. The use will be properly related to other land uses and transportation and service facilities in the vicinity in that the subject parcels are located adjacent to an existing PG&E substation to which the facility can efficiently connect. The site has direct frontage on and with easy access to North Livermore Avenue and Manning Road, and the proposed use would not interfere with adjacent or nearby agricultural or residential uses, and traffic generation associated with project construction has been determined to be a less than significant impact under CEQA standards.
3. The use, under all circumstances and conditions of this particular case, would 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, in that the SEF would 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. There would be a planted buffer around the facility of 50-100 feet to shield or ameliorate views of the SEF from adjacent properties and the North Livermore Avenue and Manning Road public rights of way. Appropriate fencing would be installed interior to the buffer to prevent the public or unauthorized members of the public from exposure to electrical hazards and equipment. Water for irrigation and periodic cleaning of solar modules would be sourced via on-site groundwater wells in the Livermore Valley Groundwater Basin and/or water purchased from an off-site water purveyor and trucked to the project site. As regulated during both construction and operation by the Occupational Safety and Health Administration (OSHA) and in compliance with County, State and federal safety standards, with the implementation of the project Worksite Safety Plan, Emergency Plan and Fire Safety Plan, the use 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.
4. The use will not be contrary to the specific intent clauses or performance standards established for the “A” (Agricultural) District in which it is proposed, in that the “A” District has as its intent: “to promote implementation of general plan land use proposals for agricultural and other non-urban 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.” The Alameda County Planning Commission on June 16, 2008 in consideration of Determination D-165 associated with the application by GreenVolts, Inc. for Conditional Use Permit C-8719, pursuant to

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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 to accept staff recommendations, thus 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) District of the Alameda County Zoning Ordinance. The subsequent approval in December 2011 of the Cool Earth SEF by the East County Board of Zoning Adjustments and the denial by the County Board of Supervisors in February 2012 of an appeal of the approval of the Cool Earth SEF 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. Furthermore, the planned 100-foot setback of project components from the top of the Cayetano Creek bank and avoidance of federally-defined floodways and 100-year flood inundation areas would provide for more constriction of the project and 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 in the East County Area Plan which applies to an estimated 21 acres of the project components and development footprint. The project does not constitute intensive development of the sort that would require a wide range of urban utilities, services, and support.

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. In the Large Parcel Agriculture (LPA) designation, the County’s analysis has concluded that solar development is comparable to other uses specifically allowed, including public and quasi-public uses, windfarms, utility corridors, and similar uses compatible with agriculture. The Project, which includes solar arrays, vegetation, compacted dirt and graveled access roads, as well as sheep grazing, honeybee foraging, and raising egg-producing chickens, would promote continued agricultural use of the project site, consistent with the LPA land use designation.
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.

BE IT FURTHER RESOLVED that the Board of Supervisors sustains, in part, the appeal of IP ARAMIS, LLC finding as follows:

1. The western edge of the project boundary is not visible from major county roads or

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residences and given the natural state of the nearby creek this area is not in need of additional setback, landscaping, ornamental or agricultural plantings.

BE IT FURTHER RESOLVED that the Board of Supervisors denies, in part, the appeal of IP ARAMIS, LLC finding as follows:

1. The property line shared with the project and the O'Brien property is one where visual impacts will be most observed, and the if the applicant and property owner jointly agree on a landscaping plan, either on the O'Brien property or at the property line, and combined with an 80-foot setback on the shared property line, visual impacts to the O'Brien property will be reduced.
2. Agricultural plantings such as grapevines and olive trees (or similar) provide additional visual relief considering the large size of the project, and can be combined with ornamental plantings to provide the screening and agricultural benefit required by the EBZA.
3. The additional setback from North Livermore Ave. and Manning Rd. of 100 feet is a reasonable condition of approval to provide additional buffer for residents, motorists and visitors to the area.
4. Eagle nesting seasons shall be observed. The applicant shall coordinate with the appropriate Eagle Nesting Coordinator and develop a mutually agreed upon construction schedule.

BE IT FURTHER RESOLVED that the Board of Supervisors rejects the assertions made in each of the appeals from Save North Livermore Valley, Friends of Livermore, and Friends of Open Space and Vineyards, and denies the appeals, finding as follows:

1. The project is in conformance with the East County Area Plan, as amended by Measure D. As discussed above, SEFs like the project meet the general plan goals and policies and conform to the allowable uses for the LPA and WM areas. SEFs like the project are similar in character to other uses explicitly allowed in the general plan designations, such as windfarms, quarries and public uses. The project does not increase capacity and provides expanded service of renewable energy needed by customers in Alameda County and is therefore in conformance with the ECAP. A General Plan Amendment is not required prior to permitting this project.
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 SEFs 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. A Zoning Ordinance amendment is not required prior to permitting this project.
3. Technical aspects of the project related to soil and project benefit have been adequately characterized and presented to the Board. Information presented to the Board includes soil characterization as required by CEQA Guidelines and technical information on the electrical grid provided by reliable sources on physics and grid operation.

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4. The County has adequately responded to comments from the State and Federal Fish and Wildlife Resource agencies, including analysis prepared with the assistance of biological experts in the Final EIR. Recent voluntary action of the applicant to work with the resource agencies to seek Incidental Take Permit (ITP) coverage will provide sufficient oversight prior to, during, and post-project construction.
5. Solar projects may be approved in the County prior to adoption of a County Solar Policy. Absent a development moratorium, the County processes all land use entitlement applications in conformance with the applicable laws at the time the project is considered for approval.

BE IT FURTHER RESOLVED that this Board does hereby approve Conditional Use Permit PLN2018-00117 to permit the construction and operation of a solar electric facility with battery storage, consistent with the "Resource Management Avoidance Alternative" as described in the Final EIR dated November 2020, the project MMRP and plans marked Exhibit "D" dated January 29, 2020, on file with the Alameda County Planning Department as amended herein by exclusion of solar panel installation within the northernmost 500-foot portions of Assessor Parcel Numbers 903-0007-002-01 and 902-0001-005-00 or as otherwise designated as Resource Management (RM) in the East County Area Plan, and the following ninety-two (92) conditions of approval:

AUTHORIZATION

1. Approval of this permit authorizes the construction and operation of a maximum 100-megawatt solar energy facility (SEF) subject to the project MMRP attached to this Resolution as Exhibit B, and plans marked Exhibit 'D' on file with the Planning Department dated January 29, 2020, consisting of solar energy collection array structures mounted on support poles that are pile-driven into the native soil, a project substation, battery energy storage system, and operations and maintenance (O&M) building, and as modified by the conditions herein. The project array shall be set back 100 feet from the public rights of way of North Livermore Avenue and Manning and Hartman Roads, and 80 feet from the western project boundary (at the O'Brien property), as an agricultural planting and screening buffer within these setbacks, and on which native drought-resistant agricultural crops shall be planted pursuant to an agricultural plan (landscape plan) in accord with Condition 3 below. The project shall conform to the Resource Management Avoidance Alternative as described in the Final EIR for the project, and as modified hereinabove and hereinbelow.
2. Connection of the SEF to energy distribution shall be underground where it traverses the public right of way. For this work, the permittee or successor shall obtain all necessary permits and agreements from the Alameda County Public Works Agency, and other relevant agencies as needed.
3. Prior to issuance of Building Permits, a project agriculture plan (landscape plan) for the outer perimeter of the site bordering public roads and within other setback areas specified hereinabove (Condition 1) shall be approved by the Planning Director. Plantings shall be

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completed prior to facility operation. Permittee shall be responsible for replanting and replacements of dead or moribund plants or other deficiencies identified by the Planning Director.

4. 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, with the exception of the agricultural planting and screening buffer, 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.
5. Public Agency Approval. Applicant shall conform and maintain compliance with the requirements of the following agencies:
 - a. Alameda County Public Works Agency, Land Development Department
 - b. Alameda County Public Works Agency, Building Inspection Department
 - c. Zone 7 Flood Control and Water Conservation District
 - d. Alameda County Fire Department
 - e. California State Public Utilities Commission
 - f. California Energy Commission
 - g. California Department of Fish and Wildlife
6. Resource Agency Approval. As documented in the letter received from the applicant dated February 22nd, 2021, the applicant shall seek Incidental Take Permit coverage from State and Federal resource agencies, and comply with the requirements therefrom, including any permits, conservation easement or compensatory mitigation. The County encourages the use of the Eastern Alameda County Conservation Strategy in determining appropriate mitigation.

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7. 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

8. 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).
9. 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.
10. 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, PLN2018-00117, certification of the Environmental Impact Report, 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.
11. 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. This reconsideration may include imposition of new agricultural planting or landscape requirements, changes to drainage systems, fire safety systems, etc. Any condition modified or added shall have the same force and effect as if originally imposed.
12. 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.

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13. 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. 4 above, except for the perimeter agricultural planting and screening buffer, and the property shall be returned to its pre-application condition within three months of cessation.
14. Lighting Plan. The Applicant shall prepare and implement a lighting plan. Proposed exterior lighting shall be shielded and directed downward, and shall be full cutoff shielded fixtures that cast low-angle illumination to minimize incidental spillover of light onto adjacent properties and open space. Fixtures that project light upward or horizontally shall not be used, and luminaries shall be directed away from properties adjacent to the project site. The lighting plan and appropriate fixtures shall be shown on the plans submitted to the County, for review and approval by the Planning Department prior to issuance of building permit(s) and operation activities.

GOLDEN EAGLE NESTING BUFFERING AND POST-CONSTRUCTION BIRD AND BAT MONITORING PROGRAM

15. Applicant shall complete a breeding season golden eagle survey prior to construction, following the guidelines provided by the U.S. Fish and Wildlife Service in its letter to the East County Board of Zoning Adjustments dated November 24, 2020 and attached hereto as Exhibit E-1 with its attachment E-2.
16. Applicant shall not construct any portion of the project within a one mile no-disturbance buffer around any in-use eagle nests to avoid disturbance or take. Applicant shall obtain the applicable permit from the U.S. Fish and Wildlife Service in the event take is unavoidable.
17. Following construction, the Applicant shall conduct bird and bat mortality monitoring surveys following an appropriately designed study.
18. The bird and bat mortality study design (Condition 16) and implementation shall be overseen by Alameda's County's Wind Repowering/Avian Protection Technical Advisory Committee (WRAP TAC) following the guidelines provided by the U.S. Fish and Wildlife Service in its letter to the East County Board of Zoning Adjustments dated November 24, 2020.

MITIGATION MEASURES OF THE MITIGATION MONITORING AND REPORTING PROGRAM

19. **AES-1: Long-term Agricultural Planting and Screening Buffer Maintenance**. To ensure the long-term effectiveness of the Agricultural Buffer, the project applicant shall ensure that the agricultural planting is adequately irrigated to establish the long-term viability of the buffer and maintained throughout the life of the project and shall contract with the Tri-Valley Conservancy to monitor the Project Applicant's compliance with the MMRP. Should any of the approved plantings not survive the initial planting or expire at any time during the life of

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the project, the applicant shall provide replacement plantings consistent with the initial planting to screen the solar facility and establish an agricultural buffer within one year of plant failure.

20. **AQ-1:** Prior to issuance of any Grading Permit, the Applicant shall obtain the County's confirmation that the Grading Plan, Building Plans, and specifications stipulate that, in compliance with the BAAQMD CEQA Air Quality Guidelines, the following basic construction mitigation measures shall be implemented for all project construction activity:

- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas and unpaved access roads) shall be watered two times per day.
- B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

21. **AQ-2:** Prior to issuance of any Grading Permit, the Applicant shall obtain the County's confirmation that the Grading Plan, Building Plans, and specifications stipulate that, all diesel-powered off-road equipment with 50 or more horsepower be certified to meet the USEPA Tier 4 Final emissions standards, or be retrofitted with CARB verified diesel exhaust emissions reduction devices that reduce emissions of both NOX and PM to USEPA Tier 4 Final emissions standards.

22. **BIO-1a:** Prior to the issuance of grading or building permits, and for the duration of construction activities, the project proponent/operator shall demonstrate that it has in place a Construction Worker Environmental Awareness Training and Education Program for all new construction workers at the project site. All construction workers shall attend the Program prior to participating in construction activities. Any employee responsible for the operations and maintenance or decommissioning of the proposed project facilities shall also attend the Environmental Awareness Training and Education Program prior to starting work on the project.

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The Program will be developed and presented by biologist meeting the qualifications of an authorized biologist as defined by USFWS or designee. The training may be presented in video form. The Program shall include:

- A. Information on the life history of the American badger, burrowing owl, Swainson’s hawk and other raptors, desert kit fox as well as other wildlife and plant species that may be encountered during construction activities, legal protection status of each species (including all nesting birds);
 - B. A description of CRLF, CTS and its habitat, the avoidance and minimization measures that are being implemented to conserve the CRLF and CTS as they relate to the project, and the boundaries within which work may occur;
 - C. A description of the San Joaquin kit fox and its habitat needs; a report of the occurrence of kit fox in the project area; an explanation of the status of the species and its protection under the Endangered Species Act; and a list of measures being taken to reduce impacts to the species during project construction and implementation. A fact sheet conveying this information shall be prepared for distribution to the previously referenced people and anyone else who may enter the project site;
 - D. The definition of “take” under the Federal Endangered Species Act and the California Endangered Species Act;
 - E. Measures the project proponent/operator is implementing to protect the species; and
 - F. Specific measures that each worker shall employ to avoid take of wildlife species, and penalties for violation of the Federal Endangered Species Act or California Endangered Species Act.
23. **BIO-1b:** Environmental tailboard trainings shall take place on an as-needed basis in the field. The environmental tailboard trainings will include a brief review of the biology of the covered species and guidelines that must be followed by all personnel to reduce or avoid negative effects to these species during construction activities. Directors, Managers, Superintendents, and the crew foremen and forewomen will be responsible for ensuring that crewmembers comply with the guidelines.
24. **BIO-1c:** Contracts with contractors, construction management firms, and subcontractors shall obligate all contractors to comply with all these (biological) mitigation measures.
25. **BIO1d:** Trash dumping, firearms, open fires (such as barbecues) not required by the activity, hunting, and pets shall not be allowed at or near work sites.
26. **BIO-1e:** Vehicles and equipment shall be parked on pavement, existing roads, and previously disturbed areas to the extent practicable.
27. **BIO-1f:** Off-road vehicle travel shall be prohibited outside of designated areas.

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28. **BIO-1g:** Vehicles shall not exceed a speed of 15 mph on unpaved roads within natural land cover types or during off-road travel.
29. **BIO-1h:** Vehicles or equipment shall not be refueled within 100 feet of a wetland, stream, or other waterway unless a bermed and lined refueling area is constructed.
30. **BIO-1i:** Vehicles shall be washed only at approved areas. No washing of vehicles shall occur at job sites.
31. **BIO-1j:** To discourage the introduction and establishment of invasive plant species, seed mixtures/straw used within natural vegetation shall be either rice straw or weed-free straw.
32. **BIO-1k:** Pipes, culverts, and similar materials greater than four inches in diameter shall be stored so as to prevent covered wildlife species from using these as temporary refuges, and these materials shall be inspected each morning for the presence of animals prior to being moved.
33. **BIO-1l:** Erosion control measures shall be implemented to reduce sedimentation in wetlands and drainages adjacent to the site that could be occupied by special-status animal species when activities are the source of potential erosion problems. Plastic mono-filament netting (erosion control matting) or similar material containing netting shall not be used at the project. Acceptable substitutes include coconut coir matting or tackified hydroseeding compounds.
34. **BIO-1m:** Stockpiling of material shall occur such that direct effects to special-status species are avoided.
35. **BIO-1n:** Grading shall be restricted to the minimum area necessary.
36. **BIO-1o:** Prior to ground disturbing activities adjacent to sensitive habitats, project construction boundaries and access areas shall be flagged and temporarily fenced during construction to reduce the potential for vehicles and equipment to stray into adjacent habitats.
37. **BIO-2a:** If construction commences during the wet season and active dispersal period for these species (between approximately October 16 and May 14, depending on the precipitation year), preconstruction surveys for CRLF and CTS shall be conducted in the project site approximately two weeks prior to the initiation of construction and decommissioning activities to ensure that CRLF and CTS are not actively using the project site or adjacent areas as a dispersal corridor. Pre-construction surveys shall be conducted by a qualified biologist familiar with all life stages of the amphibians and shall cover all aquatic habitats on and immediately adjacent to the project site (Cayetano Creek and its tributaries) that are suitable for CRLF and CTS dispersal.
38. **BIO-2b:** If any life stage of CRLF and/or CTS (e.g., egg, egg mass, larvae, tadpole, juvenile, or adult) is detected within the project site during any surveys or monitoring for the project

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during construction or decommissioning, USFWS and CDFW shall be notified within 48 hours. The biologist shall monitor the CRLF or CTS to make sure the amphibian is not harmed and that it leaves the site on its own. Construction activities will not be allowed within 100 feet of the animal. Handling of listed species without a take permit pursuant to the FESA and CESA is not allowed.

39. **BIO-2c:** Activities associated with construction and decommissioning conducted within 200 feet of on-site drainages shall be limited to a period outside of the active season for CRLF and CTS (approximately May 15 to October 15, depending on the precipitation year). This construction window is during the dry season in which creek levels are lower to dry, providing limited aquatic dispersal habitat for CRLF. The dry season is defined generally as that time between May 15th and the first qualifying rain event on or after October 15th defined as precipitation of more than one half of an inch for 24 hours. Any extension of the work window outside of the May 15 to October 15 timeframe due to abnormally dry conditions would require coordination with the USFWS and CDFW and compliance with MM BIO-2a and -2b.
40. **BIO-2d:** Construction and decommissioning activities within 200 feet of on-site drainages shall be restricted to daylight hours to avoid CRLF and CTS that may be present in the project site during the time they are most active – between dusk and dawn. Construction and decommissioning activities shall cease one half hour before sunset and shall not begin prior to one half hour after sunrise.
41. **BIO-2e:** Construction and decommissioning activities and clearing within the project site shall be confined to the minimal area necessary to facilitate construction activities. To ensure that construction equipment and personnel do not affect sensitive habitat outside of designated work areas, orange barrier fencing shall be erected to clearly define the habitat to be avoided. This will delineate the Environmentally Sensitive Area on the project. The integrity and effectiveness of Environmentally Sensitive Area fencing and erosion control measures shall be inspected daily. Corrective actions and repairs shall be carried out immediately for fence breaches and ineffective erosion control BMPs.
42. **BIO-2f:** To prevent CRLF and CTS from moving through the project site during construction and decommissioning, temporary exclusion fencing shall be placed along the boundary of the project site by October 15th of the year prior to commencement of construction and decommissioning. This will allow any CRLF or CTS potentially using the project site for upland refugia to leave the project site to access breeding habitat, but not return. The fence will be made of a material that does not allow amphibians to pass through, with one-way exit holes, and the bottom will be buried to a depth of two inches so that frogs cannot crawl under the fence. To avoid entanglement of amphibians and other wildlife, the use of plastic monofilament netting is prohibited. Exclusion fencing shall be removed within 72 hours of the completion of work.
43. **BIO-2g:** A biologist meeting the qualifications of an authorized biologist as defined by USFWS and CDFW shall survey the project site immediately prior to installation of temporary

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exclusion fencing to ensure that this species is not present within the site. Once the temporary exclusion fencing is installed, the work area within the exclusion fence shall be surveyed again immediately prior to the onset of construction activities. If listed species are found in the project site during preconstruction surveys, construction activities shall not start within a 100-foot radius until the species has left the area of its own volition. Handling of CRLF or CTS without a take permit pursuant to the FESA and CESA is not allowed.

44. **BIO-2h:** A qualified biological monitor shall be present daily during initial construction and decommissioning activities including but not limited to equipment mobilization, site clearing, vegetation removal, and grading/ground disturbance to verify that no CRLF or CTS enter the project site during construction or are harmed. Daily monitoring can be reduced to weekly inspections at the discretion of the biological monitor once site grading has been completed and no habitat/refugia is present for CRLF or CTS on the site.
 - A. Any mammal burrows providing potential refugia for CRLF or CTS shall be scoped to search for these animals. If CRLF or CTS are found, the burrow shall be flagged and avoided by a suitable buffer as determined by the biological monitor.
 - B. If CRLF or CTS are found during construction or decommissioning, work shall immediately stop within 100 feet and the listed amphibian will be allowed to move out of harm's way on its own accord. The biological monitor shall monitor the CRLF or CTS to make sure the amphibian is not harmed and that it leaves the site on its own. Handling of listed species without a take permit pursuant to the FESA and CESA is not allowed. Sightings of special-status species will be reported to CNDDDB.
 - C. Prior to the start of daily construction and decommissioning activities during initial ground disturbance, the biological monitor shall inspect the perimeter fence to ensure that it is neither ripped nor has holes and that the base is still buried. The fenced area shall also be inspected to ensure no amphibians are trapped. If listed amphibians are found inside or outside of the fence, work will immediately stop, and the animal will be allowed to leave the project site on its own accord. Any listed species shall be closely monitored until they move away from the construction area.
45. **BIO-2i:** To ensure that amphibian diseases are not conveyed between work sites by the USFWS- and CDFW- approved biologist or biological monitor, the fieldwork code of practice developed by the Declining Amphibian Population Task Force shall be followed at all times.
46. **BIO-2j:** Standard construction BMPs shall be implemented throughout construction and decommissioning, in order to avoid and minimize adverse effects to the water quality within the project site. Appropriate erosion control measures shall be used (e.g., straw bales, filter fences, vegetative buffer strips or other accepted equivalents) to reduce siltation and contaminated runoff from the project site. The integrity and effectiveness of the BMPs shall be inspected on a daily basis by the resident engineer or site foreman. Corrective actions and repairs shall be carried out immediately.

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47. **BIO-2k:** Construction by-products and pollutants such as petroleum products, chemicals, or other deleterious materials should not be allowed to enter streams or other waters. A plan for the emergency clean-up of any spills of fuel or other materials should be available when construction equipment is in use.
48. **BIO-2l:** Equipment shall be re-fueled and serviced at designated construction staging areas. All construction material and fill shall be stored and contained in a designated area that is located away from channel areas to prevent transport of materials into adjacent streams. The preferred distance is 100 feet from the wetted width of a stream. In addition, a silt fence shall be installed to collect any discharge, and adequate materials should be available for spill clean-up and during storm events.
49. **BIO-2m:** Construction vehicles and equipment shall be monitored and maintained to prevent contamination of soil or water from external grease and oil or from leaking hydraulic fluid, fuel, oil, and grease. Leaking vehicles and equipment shall be removed from the site.
50. **BIO-2n:** Building materials storage areas containing hazardous or potentially toxic materials such as herbicides and petroleum products shall be located outside of the 100-year flood zone, have an impermeable membrane between the ground and the hazardous material, and shall be bermed to prevent the discharge of pollutants to ground water and runoff water. The bermed area shall at a minimum have the capacity to store the volume of material placed in it.
51. **BIO-2o:** All disturbed soils shall undergo erosion control treatment prior to October 15 and/or immediately after construction is terminated. Appropriate erosion control measures shall be used (e.g., straw bales, filter fences, vegetative buffer strips or other accepted equivalents) to reduce siltation and contaminated runoff from project sites. Erosion control blankets shall be installed on any disturbed soils steeper than a 2:1 slope or steeper.
52. **BIO-2p:** During project activities, all trash that may attract predators shall be properly contained, removed from the work site, and disposed of regularly. Following construction, all trash and construction debris shall be removed from work areas.
53. **BIO-2q:** To prevent inadvertent entrapment of animals during construction, all excavated, steep walled holes or trenches more than 8 inches deep shall be covered at the close of each working day with plywood or other suitable material or provided with one or more escape ramps constructed of earth fill or wooden planks. At the beginning of each working day and before such holes or trenches are filled, they will be thoroughly inspected for trapped animals. If at any time a trapped listed animal is discovered, the on-site biologist, or an on-site designee identified by the USFWS- and CDFW- approved biologist, will immediately place escape ramps or other appropriate structures to allow the animal to escape, or USFWS and CDFW will be contacted for guidance and notified of the incident. All holes and trenches more than 8 inches deep shall be filled or securely covered year-round.
54. **BIO-2r:** No monofilament plastic will be used for erosion control.

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55. **BIO-3a:** If feasible, construction-related ground disturbance activities shall begin outside of the burrowing owl nesting season (February 1 through August 31) and during construction the site shall be maintained in a manner that is inhospitable to burrowing owl such as keeping the site free of vegetation, ground squirrel control (the use of poison baits or other substances that could be potentially harmful to San Joaquin kit fox shall not be allowed), and maintaining regular site disturbance by construction equipment and personnel. This will discourage burrowing owl from occupying the project site. If feasible, decommissioning-related ground disturbing activities shall begin outside of the burrowing owl nesting season (February 1 through August 31).
56. **BIO-3b:** No more than 14 days prior to initiation of ground disturbing activities associated with project construction or decommissioning, a qualified biologist shall conduct a pre-construction survey of the project site and surrounding areas to a distance of 150 meters in accordance with the methods outlined in the CDFW Staff Report on Burrowing Owl Mitigation (2012) or most recently adopted guidance. The first pre-construction survey will cover all areas within 150 meters of the portion of the site in which construction/ decommissioning is scheduled to start. Surveys will be phased based on the construction/ decommissioning schedule such that the surveys are conducted no more than 14 days ahead of the start of ground disturbance in new areas. If construction/ decommissioning activities in portions of the site cease for a period of 14 days, those portions of the site will be resurveyed for burrowing owls prior to the resumption of construction/decommissioning activities. If no occupied breeding or wintering owl burrows are identified, no further mitigation will be required. If occupied burrows are identified on the site or within 150 meters, one of the following actions shall be taken: (1) permanent avoidance of the burrow or (2) establishment of a temporary avoidance buffer followed by passive relocation and compensatory mitigation for loss of habitat in conjunction with the measures below:
- A. If an occupied wintering burrow is discovered during pre-construction surveys, a 50-meter buffer area shall be established around the burrow until the owl leaves on its own (if the burrow is more than 50 meters offsite and/or more than 50 meters from the work area, no buffer is necessary). Ground-disturbing work conducted during the nonbreeding (winter) season (September 1 to January 31) can proceed near the occupied burrow so long as the work occurs no closer than 50 meters to the burrow, and the burrow is not directly affected by the project activity. A smaller buffer may be established in consultation with CDFW and monitored at the discretion of a qualified biologist. If the 50-meter buffer cannot be maintained for the duration of occupancy by the owl, owls may be excluded from an occupied wintering burrow in accordance with the conditions of the project's *Burrowing Owl Exclusion Plan*, which will be submitted for approval by CDFW prior to passive relocation of any burrowing owls.
 - B. If an occupied nesting burrow is discovered during pre-construction surveys, an avoidance buffer of 200 meters shall be established around the burrow location and maintained until a qualified biologist has determined that the nest has fledged or is no longer active (a 200-meter avoidance buffer is appropriate for low-intensity impacts near nesting burrows during breeding season [CDFW 2012]). No project activities

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shall take place within the 200-meter buffer during the time in which it is in place. A smaller buffer may be established in consultation with CDFW and monitored at the discretion of a qualified biologist.

- C. If an occupied burrow cannot be avoided, and the burrow is not actively in use as a nest, a 200-meter buffer shall be established until the burrowing owls can be excluded from burrows in accordance with the project's *Burrowing Owl Exclusion Plan*, which will be submitted for approval by CDFW prior to passive relocation of any burrowing owls. The *Burrowing Owl Exclusion Plan* is based on the recommendations made in the Staff Report on Burrowing Owl Mitigation (CDFW 2012) or most recently adopted guidance and shall include the following information for each proposed passive relocation:
- Confirmation by site surveillance that the burrow(s) is empty of burrowing owls and other species;
 - Type of scope to be used and appropriate timing of scoping;
 - Occupancy factors to look for and what shall guide determination of vacancy and excavation timing;
 - Methods for burrow excavation;
 - Removal of other potential owl burrow surrogates or refugia on-site;
 - Methods for photographic documentation of the excavation and closure of the burrow; and
 - Monitoring of the site to evaluate success and, if needed, to implement remedial measures to prevent subsequent owl use to avoid take. Methods for assuring the impacted site shall continually be made inhospitable to burrowing owls and fossorial mammals.

57. **BIO-3c:** If an occupied burrow is identified off-site within 150 meters and passive exclusion is deemed necessary to protect the owls, burrowing owls may be excluded from burrows if permission is granted by the landowner, and in accordance with the project's *Burrowing Owl Exclusion Plan*, which will be submitted for approval by CDFW prior to passive relocation of any burrowing owls. If burrowing owls cannot be excluded from an off-site burrow and it is not feasible to maintain an avoidance buffer as stated above, coordination will be conducted with CDFW to determine appropriate measures to minimize impacts to off-site burrowing owls. Such measures could include, but are not limited to: (1) installation of barriers between the construction or decommissioning area and the occupied burrows to block noise and views of construction or decommissioning equipment and personnel, and (2) regular monitoring by a qualified biologist to determine if construction or decommissioning activities are resulting in disturbance of the owls that could lead to nest abandonment or harm to adult owls or their young. If such disturbance were occurring, the biological monitor would have the authority to halt construction or decommissioning activities until further modifications could be made to avoid disturbance of the owls.

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58. **BIO-3d:** If burrowing owl pairs are passively relocated, compensatory mitigation for lost wintering/breeding habitat shall be provided either through dedication of 6 acres of suitable habitat (per pair of relocated owls) at an off-site location in accordance with the conditions of the project's *Burrowing Owl Exclusion Plan* or through purchase of credits at a CDFW-approved mitigation bank in the region. No compensatory mitigation is required for passive relocation or eviction of transient, unpaired owls.
59. **BIO-3e:** If permanent avoidance buffers are established, such areas shall be managed for the duration of the project to preserve current values as foraging habitat for burrowing owl. Management shall include: (1) exclusion of all project activities throughout the construction, operation, and decommissioning phases, including staging, parking, driving, or dumping; (2) vegetation management by grazing or mowing to preserve open, low-growing vegetation; (3) fencing to discourage human incursion; (4) signage identifying the area as a biologically sensitive area managed for burrowing owl, and; (5) a worker education and awareness program for all personnel working on the site including contractors and sub-contractors.
60. **BIO-4:** A qualified biologist shall conduct a preconstruction survey for American badger no more than 14 days prior to the beginning of ground disturbance related to construction and decommissioning activities, or any other project activity likely to impact American Badger (such as staging, mowing, vegetation clearing), to determine if there are any American badger dens on the project site. If there are no American badger dens on the project site, no further mitigation is necessary. If American badger dens are located within the work area and cannot be avoided, a qualified biologist will determine if the dens are occupied. If unoccupied, the dens will be collapsed under the supervision of the biologist. If occupied, the biologist will determine if it is a natal/pupping den or a solitary badger den. Dens of solitary badger may be collapsed under the supervision of the biologist once the animal has vacated the den. Natal/pupping dens will be avoided by establishment of an exclusion zone around the den determined by the qualified biologist until the young are old enough to leave the den and survive on their own.
61. **BIO-5a:** A qualified biologist shall conduct a preconstruction survey no more than 14 days prior to the beginning of ground disturbance and/or construction/decommissioning activities, or any other project activity likely to impact San Joaquin kit fox, to determine if potential San Joaquin kit fox dens are present in or within 500 feet of the project site (inaccessible areas outside of the project site can be surveyed using binoculars or spotting scopes from public roads). The surveys shall be conducted in all areas of suitable habitat for San Joaquin kit fox. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur within 14 days prior to disturbance of any particular portion of the site. If potential dens are observed and avoidance of the dens is determined to be feasible, the following minimum buffer distances shall be established prior to construction/decommissioning activities (consistent with USFWS 2011):
- A. Potential den: 50 feet
 - B. Atypical den: 50 feet

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C. Known den: 100 feet

D. Natal/pupping den: at least 500 feet – **USFWS and CDFW must be contacted.**

Buffer establishment shall follow the *USFWS Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance* (USFWS 2011) under “Exclusion Zones.”

62. **BIO-5b:** If avoidance of the potential dens is not feasible, the following measures are required to avoid potential adverse effects to the San Joaquin kit fox:

A. If the qualified biologist determines that potential dens are inactive, the biologist shall excavate these dens by hand with a shovel to prevent foxes from re-using them during construction.

B. If the qualified biologist determines that a potential non-natal den may be active, an on-site passive relocation program may be implemented with prior concurrence from the USFWS and CDFW. This program shall consist of excluding San Joaquin kit foxes from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for one week to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. After the qualified biologist determines that the San Joaquin kit foxes have stopped using active dens within the project boundary, the dens shall be hand-excavated with a shovel to prevent re-use during construction with prior concurrence from USFWS and CDFW.

63. **BIO-5c:** In addition, the following avoidance and minimization measures for San Joaquin kit fox shall be implemented during construction/decommissioning of the project (USFWS 2011):

A. Project-related vehicles shall observe a daytime speed limit of 20 mph and a nighttime speed limit of 10 mph throughout the project site, except on County roads, state and federal highways. Additionally, vehicles shall not exceed a speed limit of 15 mph on unpaved roads within natural land cover types or during off-road travel. Off-road traffic shall be prohibited outside of designated project areas.

B. To prevent inadvertent entrapment of kit foxes or other animals during the construction or decommissioning phases of the project, all excavated, steep-walled holes or trenches more than 8 inches deep should be covered at the close of each working day by plywood or similar materials. If the trenches cannot be closed, one or more escape ramps constructed of earthen-fill or wooden planks should be installed. Before such holes or trenches are filled, they should be thoroughly inspected for trapped animals. If at any time a trapped or injured kit fox is discovered, the USFWS and the CDFW should be contacted as noted under measure J.). referenced below.

C. Kit foxes are attracted to den-like structures such as pipes and may enter stored pipes and become trapped or injured. All construction pipes, culverts, or similar structures with a diameter of 4-inches or greater that are stored at a construction site for one or more overnight periods should be thoroughly inspected for kit foxes before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a kit fox is

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discovered inside a pipe, that section of pipe should not be moved until the USFWS and CDFW have been consulted. If necessary, and under the direct supervision of the biologist, the pipe may be moved only once to remove it from the path of construction activity, until the fox has escaped.

- D. All food-related and plastic trash items such as wrappers, cans, bottles, and food scraps shall be disposed of in securely closed containers daily and removed at least once a week from a construction or project site.
- E. No firearms shall be allowed on the project site.
- F. No pets, such as dogs or cats, shall be permitted on the project site to prevent harassment, mortality of kit foxes, or destruction of dens.
- G. Use of herbicides or other substances potentially harmful to San Joaquin kit fox shall be restricted. Use of such compounds shall observe label and other restrictions mandated by the EPA, CDFA, and other State and federal legislation and regulation, as well as additional project-related restrictions deemed necessary by the USFWS. Use of rodenticides or poison baits intended for mammals shall be prohibited. This is necessary to prevent primary or secondary poisoning of kit foxes and the depletion of prey populations on which they depend.
- H. A representative shall be appointed by the project proponent who will be the contact source for any employee or contractor who might inadvertently kill or injure a kit fox or who finds a dead, injured or entrapped kit fox. The representative will be identified during the employee education program required by BIO-1a and their name and telephone number shall be provided to the Service.
- I. Upon completion of the project, all areas subject to temporary ground disturbances, including storage and staging areas, temporary roads, pipeline corridors, etc. shall be re-contoured if necessary, and revegetated to promote restoration of the area to pre-project conditions. An area subject to "temporary" disturbance means any area that is disturbed during the project, but after project completion will not be subject to further disturbance and has the potential to be revegetated. Appropriate methods and plant species used to revegetate such areas shall be determined on a site-specific basis in consultation with the USFWS, CDFW, and revegetation experts.
- J. Any contractor, employee, or military or agency personnel who are responsible for inadvertently killing or injuring a San Joaquin kit fox should immediately report the incident to their representative. This representative should contact the CDFW and USFWS immediately in the case of a dead, injured or entrapped kit fox. The Bay Delta Region of CDFW should be contacted at 2825 Cordelia Road, Suite 100, Fairfield, CA 94534, (707) 428-2002. They will contact the local warden or the wildlife biologist at (530) 934-9309. The USFWS should be contacted at Endangered Species Division, 2800 Cottage Way, Suite W2605, Sacramento, CA 95825, (916) 414-6620 or (916) 414-6600.

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- K. The Sacramento Fish and Wildlife Office and CDFW shall be contacted immediately and also notified in writing within three working days of the accidental death or injury to a San Joaquin kit fox during project related activities if immediate notification was not provided in writing. Notification must include the date, time, and location of the incident or of the finding of a dead or injured animal and any other pertinent information.
 - L. New sightings of kit fox shall be reported to the CNDDDB. A copy of the reporting form and a topographic map clearly marked with the location of where the kit fox was observed should also be provided to the USFWS at the address listed under measure J.
 - M. Fencing of the project site, with the exception of the project substation and energy storage areas, shall incorporate wildlife-friendly fencing design. Fencing plans may use one of several potential designs that would allow kit foxes to pass through the fence while still providing for project security and exclusion of other unwanted species (i.e., domestic dogs and coyotes). Raised fences or fences with entry/exit points of at least 6 inches in diameter spaced along the bottom of the fence to allow species such as San Joaquin kit fox access into and through the project site would be appropriate designs.
64. **BIO-6a:** If project (construction/decommissioning) ground-disturbing or vegetation clearing, and grubbing activities commence during the avian breeding season (February 1 through August 31), a qualified biologist shall conduct a pre-construction nesting bird survey no more than 7 days prior to initiation of project activities. The survey area shall include suitable raptor nesting habitat within 300 feet of the project boundary (inaccessible areas outside of the project site can be surveyed from the site or from public roads using binoculars or spotting scopes). Pre-construction surveys are not required in areas where project activities have been continuous since prior to February 1, as determined by a qualified biologist. Areas that have been inactive for more than 14 days during the avian breeding season must be re-surveyed prior to resumption of project activities. If no active nests are identified, no further mitigation is required. If active nests are identified, the following measure is required:
- A. A suitable buffer (e.g., 660 feet for golden eagle, 300 feet for common raptors; 100 feet for passerines) shall be established by a qualified biologist around active nests and no construction/decommissioning activities within the buffer shall be allowed until a qualified biologist has determined that the nest is no longer active (i.e., the nestlings have fledged and are no longer reliant on the nest, or the nest has failed). Encroachment into the buffer may occur at the discretion of a qualified biologist. Any encroachment into the buffer shall be monitored by a qualified biologist to determine whether nesting birds are being impacted.
65. **BIO-6b:** Should any vertical tubes, such as solar mount poles, chain link fencing poles, or any other hollow tubes or poles be used on the project site, the poles shall be capped immediately after installation to avoid entrapment of birds.
66. **BIO-7a:** Project facility lighting shall be designed to provide the minimum illumination needed to achieve safety and security objectives. All lighting shall be directed downward and

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shielded to focus illumination on the desired areas only and avoid light trespass into adjacent areas. Lenses and bulbs shall not extend below the shields. This will prevent impacts to bird species nesting and foraging in riparian areas in Cayetano Creek and other sensitive habitats adjacent to the site.

67. **BIO-7b:** Rodenticides shall not be used at the project site. Rodents will be controlled by encouraging raptor foraging. If additional rodent control is required to minimize impacts on adjacent agricultural operations, non-chemical methods will be employed.
68. **BIO-7c:** During operations, trash – including plastic trash and microtrash that can be harmful to birds and other wildlife – shall be disposed of in securely closed containers daily and removed at least once a week from the project site to avoid impacts to birds using the project site. The area of trash cleanup will include both the project site within the fence lines, in addition to focused trash pickup along the fence on the interior and exterior sides of the fence.
69. **BIO-7d:** The project shall be designed to underground electrical wiring to the maximum extent feasible. In particular, guy wires will be avoided to the maximum extent feasible without compromising public safety.
70. **BIO-7e:** In compliance with the Avian Power Line Interaction Committee’s (APLIC) guidance, Reducing Avian Collisions with Power Lines: State of the Art in 2012 (APLIC, 2012), transmission lines and all electrical components shall be designed, installed, and maintained in accordance with APLIC (2012) guidance to reduce the likelihood of large bird electrocutions and collisions.
71. **BIO-7f:** The Applicant shall implement the following measures to reduce the risk of bird collisions with PV panels and proposed fencing.
 - A. A qualified biologist shall prepare an Avian Monitoring Plan to assess and monitor the potential for avian collisions with solar panels and fencing on the site. The Plan will include monitoring for levels of avian activity as well as avian mortality in treated and untreated (control) portions of the solar facility to determine if avian mortality is occurring and if there is any apparent difference in avian mortality between treated and untreated panels and fencing. The Plan shall also include methods to install visual deterrents or cues to encourage bird avoidance of the Project site. Implementation of the Plan will provide quantitative data on the effectiveness of the avian deterrent in terms of overall bird use and large-bird mortality in treated portions of the project versus an untreated control.
 - B. Within 30 days after project commissioning, avian deterrent materials shall be installed on a portion of the fence and in a total of four 50-acre blocks to achieve coverage of a total of 200 acres within the Solar Facility on a 3-month trial basis to evaluate potential avian collision issues. These deterrents shall be made of a material that is both reflective and highly visible, such that the material reflects ambient light and is stimulated by air movement. The effect of installation will create the visual impression of continuous and varied movement, which has been shown as an avian deterrent in agricultural applications.

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Examples of the types of material that could be used include plastic compact discs and reflective tape.

- C. Upon installation of deterrent measures, avian monitoring shall occur year-round to account for seasonal variation in potential bird fatalities; this will be repeated for the first three consecutive years of operation. During each monitoring event, bird abundance in each block (4 treatment blocks and one untreated control block) will be quantified using a point count method and the number, species, and behavior of birds observed within each block will be recorded. Behaviors will be recorded for each species and will reflect the modal (or typical) behavior observed for all individuals of the species, not for each individual bird. The observer will also record temperature, average wind speed, and percent cloud cover at the start of each observation period.
 - D. Mortality of large birds in each block will be assessed by surveying the block for carcasses of large birds (crow-sized and larger). During the surveys, the location and species of each carcass will be recorded using a handheld GPS receiver, a photograph will be taken of the carcass, and the cause of mortality will be noted if apparent. Carcasses will not be collected or preserved.
 - E. Overall bird abundance, species diversity, and large-bird mortality will be compared among all blocks, and between the control block and the treatment blocks combined. Analysis may include t-Test comparisons of means for overall abundance and large-bird mortality; however, statistical power may be low depending on the overall level of bird activity at the site.
 - F. Facility operator or agent will provide a brief analysis of the effects of the deterrent measures on panel performance and the feasibility of maintaining avian deterrents for inclusion in the analysis.
 - G. Following the initial 3-month period and based on the results of the Plan, visual deterrents will either be discontinued if there is no significant difference between avian mortality between the treatment and control blocks, adjusted to reduce performance issues and reexamined on a continuing 3-month basis, or if adjustments are not deemed necessary to improve panel performance, deployed on the remainder of the site and maintained for the life of the project or until determined infeasible (based on the definition of “feasible” in CEQA Guidelines §15364) or ineffective by the Project owner in consultation with CDFW and the County.
72. **BIO-7g:** Panels shall include, if feasible, a light-colored, UV-reflective, or otherwise non-polarizing outline, frame, grid, or border, which has been shown to substantially reduce panel attractiveness to aquatic insects (Horvath, 2010) and may reduce avian mortality by avoiding collisions with panel faces (NFL, 2014).
73. **BIO-7h:** Dryland pasture will be established on the site and used for grazing livestock (sheep) between and under the solar panels for a two-month period each year, pursuant to an Agricultural Management Plan. Portions of the site in and around the solar panels would be

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maintained as dryland pasture containing a combination of grassland species and non-invasive forbs and would be maintained for grazing for the duration of the life of the solar facility. The mixture of grassland and native forbs, managed by targeted sheep grazing, is expected to provide high value and consistently available habitat conditions for small mammal prey species (voles, pocket gophers, deer mice, and house mice) preferred by raptors in the region.

74. **BIO-7i:** The Agricultural Management Plan shall include grazing management methods to ensure that the vegetation composition and structure provides a combination of areas with lower vegetation heights and density to provide accessibility to raptors, and areas with denser, taller vegetation to attract and maintain prey on the site. Management conditions will include ensuring that the vegetation cover is not reduced to the extent that vegetation would not naturally regenerate; there are openings in the vegetation to allow foraging access for raptors; and there are areas where the vegetation would be allowed to grow taller. In general, vegetation heights below the panels should be allowed to be higher to provide cover for prey species (12-18 inches), and the vegetation heights between the panels should be maintained at a suitable height to provide foraging accessibility (<12 inches).
75. **BIO-8a:** The project shall be designed to avoid impacts to jurisdictional waters on and adjacent to the site. If jurisdictional waters cannot be avoided prior to the start of construction, the project applicant shall secure any required aquatic resources permits for impacts to jurisdictional waters of the State from the San Francisco Bay RWQCB and CDFW, and shall comply with all conditions of such permits including providing compensatory mitigation as required, to achieve no net loss of wetlands or other waters.
76. **BIO-8b:** For those waters of the State and CDFW jurisdictional areas that are not avoided by project construction, compensatory mitigation shall be provided. As approved by the San Francisco Bay RWQCB and CDFW, the project applicant may purchase mitigation credits from an approved mitigation bank at a minimum 1:1 ratio or implement another method of mitigation satisfactory to the San Francisco Bay RWQCB and CDFW.
77. **BIO-8c:** Impacts shall also be minimized by the use of Best Management Practices (BMPs) to protect preserved waters of the U.S./State adjacent to the site and to ensure that water quality standards are not compromised in preserved wetlands and other waters within the watershed. These practices can include installing orange construction fencing buffers, straw waddles to keep fill from entering preserved/avoided wetlands and other waters, and other protective measures.
78. **CUL-1:** Prior to project construction, the project applicant shall retain an Architectural Historian who meets the Secretary of Interior's Professional Qualification Standards to complete photographic documentation of the historical resources located at 4400 North Livermore Avenue. The photographic documentation shall adhere to the standards and guidelines for Historical American Buildings Survey (HABS) documentation, as outlined in the updated June 2015 HABS Guidelines set by the Heritage Documentation Program instituted by the National Parks Service.

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79. **CUL-2:** Prior to the initiation of construction or ground-disturbing activities, all construction personnel shall be trained in the protection of cultural resources, the recognition of buried cultural remains, and the notification procedures to be followed upon the discovery of archaeological materials, including Native American burials. The training should be presented by an archaeologist who meets the Secretary of Interior’s Standards for Prehistoric and Historic Archaeology and should include recognition of both prehistoric and historic resources. Personnel should be instructed that unauthorized collection or disturbance of artifacts or other cultural materials is illegal, and that violators will be subject to prosecution under the appropriate state and federal laws. Supervisors should also be briefed on the consequences of intentional or inadvertent damage to cultural resources.
80. **CUL-3:** In the event that cultural or tribal cultural resources are exposed during ground-disturbing activities, construction activities (e.g., grading, grubbing, or vegetation clearing) shall be halted in the immediate vicinity of the discovery. An archaeologist who meets the Secretary of the Interior’s Professional Qualifications Standards shall then be retained to evaluate the resource’s significance under CEQA. If the discovery proves to be significant, additional work, such as data recovery excavation, may be warranted and shall be discussed in consultation with the County.
81. **CUL-4:** If discovery of human remains occurs during ground-disturbing activities or construction activities (e.g., grading, grubbing, or vegetation clearing), the specific procedures outlined by the NAHC, in accordance with Section 7050.5 of the California Health and Safety Code and Section 5097.98 of the Public Resources Code, must be followed:
- A. All excavation activities within 60 feet of the remains will immediately stop, and the area will be protected with flagging or by posting a monitor or construction worker to ensure that no additional disturbance occurs.
 - B. The project owner or their authorized representative will contact the County Coroner.
 - C. The coroner will have two working days to examine the remains after being notified in accordance with HSC 7050.5. If the coroner determines that the remains are Native American and are not subject to the coroner’s authority, the coroner will notify NAHC of the discovery within 24 hours.
 - D. NAHC will immediately notify the Most Likely Descendant (MLD), who will have 48 hours after being granted access to the location of the remains to inspect them and make recommendations for their treatment. Work will be suspended in the area of the find until the County approves the proposed treatment of human remains.
82. **GEO-1:** Prior to issuance of a grading permit, the project applicant shall retain a geotechnical firm with local expertise in geotechnical investigation and prepare a final site-specific geotechnical report. The report shall be prepared by a licensed geotechnical engineer or engineering geologist and be submitted to the County building department for approval prior to the issuance of a grading permit. This report shall be based on data collected from subsurface exploration, laboratory testing of samples and surface mapping, and address the potential for

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surface fault rupture, ground shaking, slope failure, expansive soils, and unstable cut or fill slopes, and make recommendations based on those findings. The project applicant shall implement the recommendations identified in the final site-specific geotechnical report.

83. **GEO-2:** In the event a paleontological or other geologically sensitive resources (such as fossils or fossil formations) are identified during any phase of project construction, all excavations within 100 feet of the find shall be temporarily halted until the find is examined by a qualified paleontologist, in accordance with Society of Vertebrate Paleontology standards. The paleontologist shall notify the appropriate representative at the County of Alameda who shall coordinate with the paleontologist as to any necessary investigation of the find. If the find is determined to be significant under CEQA, the Applicant shall implement those measures, as required by County, which may include avoidance, preservation in place, or other appropriate measures, as outlined in Public Resources Code Section 21083.2.
84. **HYD-1:** The project applicant shall file an NOI to comply with the Construction General Permit with the San Francisco Bay RWQCB prior to each phase of construction and project decommissioning. Individual SWPPPs shall be prepared for each NOI (project construction and project decommissioning) and shall detail the treatment measures and BMPs to control pollutants that shall be implemented and complied with during the construction and post-construction phases of the project. The SWPPP(s) required for decommissioning will specify BMPs to be implemented during that final project phase. The SWPPPs are subject to approval by the San Francisco Bay RWQCB, which makes the final determination on which BMPs are required for the project. The construction contracts for each project phase and for the decommissioning phase will include the requirement to implement the BMPs in accordance with the SWPPPs, and proper implementation of the specified BMPs is subject to inspection by the San Francisco Bay RWQCB staff. Example BMPs may include practices such as: designation of restricted-entry zones, sediment tracking control measures (e.g., crushed stone or riffle metal plate at construction entrance), truck washdown areas, diversion of runoff away from disturbed areas, protective measures for sensitive areas, outlet protection, provision mulching for soil stabilization during construction, and provision for revegetation upon completion of construction within a given area. The SWPPPs will also prescribe treatment measures to trap sediment once it has been mobilized, such as straw bale barriers, straw mulching, fiber rolls and wattles, silt fencing, and siltation or sediment ponds.
85. **NOI-1:** Prior to issuance of any project Grading Permit or Building Permit, the Applicant shall obtain County's confirmation that the Grading Plan, Building Plans, and construction specifications stipulate that the following construction noise mitigation measures shall be implemented for all project construction activity:
 - A. Restrict noise-generating activities at the construction site or in areas adjacent to the construction site to the hours between 7:00 a.m. to 7:00 p.m., Monday through Friday, and between 8:00 a.m. to 5:00 p.m. on Saturdays, Sundays, and County recognized public holidays; and

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- B. Post a publicly visible sign at the primary project construction entrance listing the permitted construction days and hours, complaint procedures, and who to notify in the event of a problem. The sign shall also include a listing of telephone numbers to be used during regular construction hours and off-hours to contact both the County and the construction contractor regarding noise complaints.
86. Signage. Permittee shall provide signage as required by the permitting authority (e.g. Fire Department, Planning Department) including phone numbers of the utility provider for use in case of an emergency. Signs shall be posted on the entrance to the building closest to the equipment. The antennae, cabinets, fencing, or mountings shall not be used for advertising.
87. Maintenance. All equipment shall be maintained in good condition throughout the term of the permit. This shall include keeping the equipment cabinets, fencing, and other structures graffiti free and in good condition.
88. 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.
89. If implemented, said Conditional Use Permit shall undergo a mandatory review to be conducted at the end of five years, March 4th, 2026, and shall remain revocable for cause in accordance with Section 17.54.030 of the Alameda County Zoning Ordinance.
90. Permittee, and their successors, shall comply with all Federal, State, and Local Laws, Regulations and Alameda County Ordinances.
91. Consistent with the Applicant's voluntary offer, the Applicant shall record an easement of land for a public hiking trail as depicted on the drawings in Exhibit D, and offer to dedicate the easement first to the Livermore Area Parks and Recreation District (LARPD) and, if not accepted by LARPD, then to the East Bay Regional Parks District (EBRPD).
92. Permittee agrees that, at least six months prior to the expiration, renewal or extension of any Power Purchase Agreement (PPA) made by Permittee for energy generated by this Project, Permittee shall inform the Planning Director of such changes and provide the East Bay Community Energy Authority (EBCE) a right of first refusal to establish a PPA with Permittee for that energy.

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THE FOREGOING was PASSED and ADOPTED by a majority vote of the Board of Supervisors of the County of Alameda this 4th day of March, 2021, pursuant to the following vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:

PRESIDENT, BOARD OF SUPERVISORS

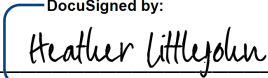
ATTEST:

Anika Campbell-Belton, Clerk
Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By:  _____
Heather Littlejohn, Deputy County Counsel