K&L GATES

February 23, 2022

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Contra Costa County Board of Supervisors
1025 Escobar Street
Martinez, CA 94553

Re: PV Byron EG-1 Project (CDRZ21-03259 & CDLP21-02010)

Dear Honorable Supervisors:

This letter is submitted on behalf of our client, E-Group SF, LLC ("E-Group") in response to two appeals to the Planning Commission's decision concerning the above referenced project, submitted by the East Bay Regional Park District ("Park District") and Save Mt. Diablo (collectively "Appellants").

The question before you is *not* whether the County should approve E-Group's proposed project or the requested rezone. Indeed, any such request would be improper without environmental review under the California Environmental Quality Act ("CEQA") and other necessary permitting processes. Rather, the Planning Commission directed Planning staff to properly consider E-Group's proposal to expand the existing solar generation (-SG) overlay zone to include the areas proposed for solar development. In the Commission's discussion of the project, they noted that the site may be ideal for a commercial solar project and that the County should be open to expanding the zone in areas where it makes sense to do so. The only effect of the Commission's decision is to direct Planning staff to work with the applicant to prepare the appropriate reports and studies, including CEQA environmental review, to be brought back to the Commission, and ultimately the Board of Supervisors, for a final determination. Appellants do not allege any defect or issue with the Commission's decision they are appealing; therefore, their appeals should be rejected.

The Appellants' position is that there should be no consideration of any areas for proposed solar development outside of the existing -SG zone. Ignoring E-Group's site-specific studies, the Appellants argue that all commercial solar development should be banned in all areas outside of the existing -SG zone, even if there is compelling evidence that some areas are more suitable for solar than many of the areas within the existing zone. Their position will have a crippling impact on the development of solar facilities in Contra Costa County. The County's Renewable Resource Assessment ("Assessment") concluded that the -SG zone had the potential for between 760 and 970 MW of solar generation capacity. However, to date, the County has approved of a total of 6 MW of solar energy facilities within the -SG zone, none of which has been constructed. While it

certainly may take some time for applications to be developed and processed by the County, there appears to be a severe disconnect between the amount of solar energy anticipated by the County to be developed in the -SG zone and the amount that will be generated. Indeed, at this pace, it would take the County 161 years to meet its renewable energy goals and expectations.

E-Group's request is simply that they be given a fair opportunity for consideration to expand the solar generation zone based upon site-specific data and analysis. The appeals are largely based upon the County's prior analysis in establishing the solar generation zone which, given its scope, did not evaluate site-specific factors nor analyze the availability or economic feasibility of sites within the solar zone.

As further detailed below, site-specific information and analysis developed by E-Group establishes that the solar technology proposed by E-Group is uniquely suited for development of solar facilities on the project site. E-Group proposes to use a dual-axis tracker system, which is compatible with the existing agricultural uses on the property. Further, the project site and surrounding parcels are already developed with renewable energy facilities, where 38 utility-scale wind energy turbines have been installed and operational since 2006 as part of the Buena Vista Wind Energy Project. The County should encourage this type of development that (1) utilizes sites that are already developed with renewable energy, (2) utilizes technology that is compatible with agricultural uses, (3) will use local labor and promote job creation, (4) proposes the development of solar energy and battery storage to meet the County's energy needs, and (5) minimizes impacts to plants, wildlife and hydrological resources. Without reasonable expansion of the County's -SG zone, it appears impossible for the County to realize solar development anywhere close to that predicted in the County's solar analysis.

Therefore, E-Group respectfully requests that the County follow the advice of its Planning Commission and uphold its determination that E-Group work with Planning staff to consider reasonable expansion of the -SG overlay zone. There is no risk to the County in upholding the Planning Commission's decision, as the project would need to come back for further consideration by both the Planning Commission and Board of Supervisors after appropriate studies and mitigation have been prepared. On the other hand, agreeing with the Appellants sends a strong signal to renewable energy developers that the County is not serious about expansion of green energy and is not willing to consider site-specific information or any sites other than those previously considered by the County (with little input from solar developers themselves). At a time where other counties and municipalities are trying to encourage renewable energy for their residents and constituents, this will foreclose these opportunities in Contra Costa County and the associated jobs that it would create.

1. The Appeals are Procedurally Invalid and Meritless

County Code Section 26-2.2404 provides limited grounds for parties to appeal. Parties can appeal on the following grounds:

1. His property rights or the value of his property is adversely affected and the decision does not comply with the general plan; or

2. Required standards, identified by appellant, are not satisfied by the evidence presented at the hearing for rezoning, conditional use, variance, plan, or special permit; or

3. Specified findings of the planning division appealed from are not supported by the evidence before it; or

4. Specified limitations or conditions imposed on granting a conditional use, variance, plan, or special permit are unreasonable; or

5. Specified limitations or conditions recommended but not imposed should reasonably be imposed in granting a conditional use, variance, plan, or special permit.

The appeals do not allege any of these grounds and are premature. Because the Planning Commission's decision did not approve E-Group's project, but rather only requested additional consideration, its decision does not affect any of the Appellants' property rights, nor do the appeals claim that the decision affects their property rights. There is no allegation that the standards, evidence, or findings made by the Planning Commission are insufficient or not supported by the evidence before it. While there are some claims (unsupported by any evidence or analysis) that the *project* does not comply with the County's General Plan, this does not apply to the *Planning Commission's decision* that they appeal, as the Planning Commission did not approve the project.

2. E-Group's Proposed Solar Technology Provides a Unique Opportunity for Contra Costa County

E-Group's technology represents an opportunity for the County to approve a pilot-scale project that seeks to resolve the most significant compatibility concerns raised in the County's Assessment; namely, compatibility with steeper slopes and agricultural uses. E-Group is proposing to install dual-axis tracker solar technology on the project site. Dual-axis tracking positions the solar modules towards the sun by revolving around both the vertical and horizontal axis. The trackers are placed on the top of a pole customized to geological and geographical conditions. Unlike the solar arrays previously considered by the County and Commission for unrelated solar projects within the County, which are attached together, are low to the ground, and operate on a single axis, dual-axis trackers are ground mounted and can be elevated 7 to 14 feet above the ground. This technology allows for compatibility with existing agricultural uses. In fact, E-Group has already committed to continuing the existing ranching lease on the property and the rancher is in support of the application. *See* Exhibit 1.

This technology has already been used in other areas of the country and in Europe and has been proven to be compatible with agricultural uses. The figure below shows an existing farm in Oregon that utilizes dual-tracker technology alongside cattle. Many academic institutions,

including Stanford University and Oregon State University, are looking at solar technology as a method to improve agricultural land, increase crop yields, and provide additional sources of revenue for farmers and ranchers. *See* Exhibit 2. This addresses a major concern raised by the County during enactment of its solar ordinance, which was compatibility with existing agricultural uses in east Contra Costa County.

The project will also create approximately 150 construction jobs, almost all of which will be provided by local labor through a Project Labor Agreement between E-Group and local trades. Once developed, the energy generated by the project will be enough to power 1,500 households.

Figure 1 - Ashland Community Solar Power Plant in Ashland, Oregon

3. The Project Would Not Impact Critical Habitat or Species

Appellants claim, without any supporting evidence, that the project will impact critical habitat and endangered species. The property is not within any critical habitat designated by the U.S. Fish & Wildlife Service ("USFWS") for listed wildlife or plant species. It is within three miles of critical habitat for Contra Costa goldfields, Longhorn fairy shrimp, Vernal pool fairy shrimp, California red-legged frog, and delta smelt. No evidence of fairy shrimp was identified on the property during site surveys; however, suitable aquatic habitat is proposed for inclusion in an area E-Group is proposing to permanently remove from potential development through a conservation easement. Suitable habitat for California red-legged frog was not identified during site surveys and has a low likelihood to occur on the project site. E-Group will be submitting a biological report detailing these findings within the next week. Despite the comparatively low biological diversity and sensitivity of the project site, E-Group is committed to implementing mitigation measures that include additional preconstruction surveys and relocation efforts, a specific construction schedule, biological monitors during construction, and worker training to minimize potential impacts to species with designated critical habitat.

Given the significant range of critical habitat for a number of species in east Contra Costa County, this should not be an element that excludes the property from consideration for inclusion within the -SG zone; rather it should be an issue that is properly considered and addressed by the County in the CEQA analysis and through discussion with USFWS and the California

Department of Fish and Wildlife ("CDFW"). For example, critical habitat was also identified near the a solar project approved by the County for Renewable Properties and the County still approved the project after incorporating appropriate mitigation.

Park District claims that the project is inconsistent with General Plan Policies 8-13 and 8-14, which provide as follows:

> *Policy 8-13: The crucial ecological and scenic characteristics of rangelands, woodlands, and wildlands shall be recognized and protected.*
>
> *Policy 8-14: Development on hillsides shall be limited to maintain valuable natural vegetation, especially forests and open grasslands, and to control erosion. Development on open hillsides and significant ridgelines throughout the County shall be restricted, and hillsides with a grade of 26 percent or greater shall be protected through implementing zoning measures and other appropriate actions.*

The property does not include any significant rangelands, woodlands, and wildlands. It is a developed site that already includes a wind energy generation facility and associated infrastructure. Further, E-Group intends to further this policy by leaving a significant amount of property acreage undeveloped and subject to a conservation easement.

The project only involves minimal (approximately 700 square feet) grading, thereby preserving existing natural vegetation on the property. A low-impact mow and roll technique will be used to remove surface vegetation, while keeping root systems in place. This practice minimizes dust generation and the associated water requirements related to dust suppression. In addition, this practice allows for faster regeneration of vegetation cover than re-seeding alone. The project is not located on hillsides with a grade of 26 percent or greater and is not located in the County's SD-1 district. The steepest slopes upon which development is proposed are less than 20%. The property is also not located near a significant ridgeline.[1]

Park District also claims, without supporting evidence, that the project is inconsistent with the East Contra Costa County Habitat Conservation Plan ("HCP"). This is not the case. The mere existence of a desire for land to be purchased for conservation purposes under the HCP cannot act as a prohibition on development. If that were the case, no new development could occur on undeveloped lands within East Contra Costa County, including within the County's existing -SG zone. Such a restriction would constitute an improper taking, where the County would be improperly limiting development for its own benefit without just compensation.

E-Group is aware that it cannot utilize the HCP for its project, but the HCP does not prohibit development. E-Group has already been in discussions with USFWS and CDFW and has committed to developing its own project-specific Habitat Conservation Plan. Any potential impacts to any special species identified on the property can be avoided and/or mitigated through a site-

[1] *See* Contra Costa County General Plan, Open Space Element, Figure 9-1.

specific HCP. This project would also go further than others approved by the County by proposing to preserve approximately 19 acres of the property as undeveloped land pursuant to a conservation easement and/or transfer ownership or control of portions of the property to Park District (in addition to another 18 acres in other areas of the property that will be left undeveloped).

4. The Existing -SG Zone is Insufficient to Meet the County's Renewable Energy Needs and is Not Working

The Appellants argue the project is "inconsistent" with the -SG zone and that the County's solar overlay zone is working. Certainly, E-Group recognizes that it would be easier to simply develop its project within the County's existing -SG zone. The Assessment concluded that the -SG zone had the potential for between 760 and 970 MW of solar generation capacity. However, to date, the County has approved of a total of 6 MW of solar energy facilities within the -SG zone.[2]

E-Group believes that it can meet all of the requirements of the -SG zone contained in Contra Costa Code Section 26-2.1806 (associated with rezoning) and 88-30.6 (associated with the development of commercial solar facilities) with no revision to the approved standards. The findings establishing compliance were submitted with E-Group's application and are attached as Exhibit 3. E-Group is not arguing that the County's solar ordinance should be "disregarded" or "ignored;" its only request is that its application be considered similar to other projects within the zone, subject to the County's rezoning and solar ordinance requirements, and not dismissed out of hand as the Appellants request. Given that E-Group proposes to comply with the existing County standards, this avoids the hypothetical concern raised by Save Mt. Diablo that the project would somehow void the County's solar ordinance. Similar to a County determination to rezone a parcel from residential to commercial, any such rezone would not void or somehow invalidate the County's general residential or commercial zoning requirements. Appellants provide no details regarding how the project is inconsistent with the County's solar ordinance, other than the fact that it is outside of the existing -SG zone (which is true of any request for any rezoning by definition).

The absolute lack of approved, developed, or even proposed solar facilities within the -SG zone shows such a need, particularly at a time when other counties and municipalities within the state are encouraging and quickly developing renewable energy facilities to meet their future energy needs. The primary reason for this disconnect is that the County's approach emphasized land use compatibility without properly taking into account the economic and operational feasibility of developing solar energy facilities within the zone. This limitation was acknowledged in the Assessment:

> Site-specific attributes are extremely important to any given project's economic viability, and accordingly, the technical potential estimates should not be viewed

[2] While Save Mt. Diablo claims that more solar applications are "in preparation," County staff was not able to identify any applications for solar development pending with the County other than the Applicant's.

> as predictions of how much resource would be developed, nor should the estimate be viewed as an endorsement that all of these resources should be developed.[3]

E-Group conducted an extensive search for feasible properties upon which to develop the project. This included evaluating approximately 10 sites located within the existing -SG zone. E-Group was not able to find any feasible sites.

There are at least three limiting factors for solar energy development within the existing -SG zone. First, and most importantly, solar energy facilities must be located near an existing substation or point of interconnection. This is noted in the Assessment, identifying interconnection costs as the highest factor affecting the economic viability of ground-mounted solar on agricultural lands.[4] However, the Assessment noted that the "vast majority of the resource is located more than two miles from a suitable substation."[5] As noted in the report, for each additional mile of interconnection line, the costs to develop the project can increase by more than one million dollars. The current project proposes a point of interconnection that is approximately 3.2 miles away from the project site, which is the closest feasible location that E-Group was able to find. The second limiting factor is availability. Within the last three years, E-Group has not located any properties within the existing -SG zone (including before the -SG zone was created) that would be suitable for commercial solar development. It appears that a significant portion of the property within the existing -SG zone that is not zoned commercial or industrial is owned by the Church of Jesus Christ of Latter-Day Saints, which has indicated that they are not interested in leasing or selling property for solar development. This impacts the third limiting factor - cost. For example, E-Group was able to locate one 10-acre property within the -SG zone but was quoted a price of $16 million. This cost is simply not economically feasible for smaller solar development. While such prices could be feasible for large-scale solar facilities like the Aramis Solar Project planned in Alameda County, we understand that there has been significant public opposition to such projects in favor of smaller systems like that proposed by E-Group.

The Assessment notes that "At present, most commercial-scale solar is land-intensive and does not allow for multiple uses of the same land, although technologies that enable the co-location of ground-mounted solar with agriculture hold future promise that should not be overlooked."[6] E-Group proposes the exact technology that the County's Assessment encourages the County to consider when it becomes available.

The County should uphold the determination of its Planning Commission. Rather than "disregarding all the time and effort County staff, stakeholders and decision-makers put into the Solar Ordinance process just one year ago," as alleged by Save Mt. Diablo, the Commission recognized that the solar ordinance was not perfect and should be subject to further consideration and modification when presented with evidence that sites suitable for solar may have been left

[3] Cadmus, *Contra Costa Renewable Resource Potential Study*, at 8 (2018).
[4] *Id.* at 60.
[5] *Id.* at 55.
[6] *Id.* at 11.

outside of the initial zoning. Given their extensive review of these issues during the enactment of the County's solar ordinance, and their ability to weigh both the planning and policy aspects of both the ordinance and the project, the Commission's decision should be given deference by the Board of Supervisors.

5. The Project Would Not Result in "Haphazard Zoning"

The project is located on property zoned as General Agricultural (A-2), which is permitted to be included in the County's solar overlay zone. Contra Costa Code § 84-88.202. The property is located in East Contra Costa County and is only 3 miles from other parcels already within the -SG zone. The project site is already developed with renewable energy facilities and the County has previously approved the property for such uses. The proposed use is also compatible with neighboring properties to the west and north, which are also developed with existing renewable energy facilities. Further, the Commission's decision would not result in *any* zone change - it would only facilitate more detailed consideration of E-Group's project.

6. Conclusion

For the reasons stated above, we respectfully request that the County Board of Supervisors reject the two appeals concerning E-Group's project and uphold its Planning Commission's decision to allow E-Group to work cooperatively with Planning staff to prepare appropriate studies, analysis, and associated permitting processes to bring the project back for full consideration by the Planning Commission and Board of Supervisors. We only ask that E-Group be given a chance to prove that the proposed site is ideal to develop the County's solar resources without being prejudged by spurious, general, and unsubstantiated claims.

Yours sincerely

Robert M. Smith
Partner

RMS
Enclosures

Exhibit 1

April 7, 2021

Supervisor Diane Burgis
Contra Costa County Supervisor
3361 Walnut Boulevard, Suite 140
Brentwood, CA 94513
Supervisor_Burgis@bos.cccounty.us

Dear Mrs. Burgis,

I manage the cattle that graze on the Martinez family property where I have worked for years. I have reviewed the E-Group plans for a solar installation and I will be able to continue my cattle grazing on the property.

The new potential owners of the Martinez property, E-Group, have ensured me they will continue to allow me and my grazing partners to utilize their land once the purchase is complete.

I hope you will be able to approve the E-Group solar project so I can continue to operate my grazing business. They have gone to great effort to ensure their project is environmentally sound and sensitive.

Please contact me if you have any questions at yerenaandres9@gmail.com.

Thank you,
Andy Yerena

Jacqueline Stewart
P.O. Box 19
Clayton, CA
94517
PHONE: (925) 672-7150
FAX: (925) 672-6441

FAX COVER SHEET

DATE 4 FEBRUARY 2021

FROM JACKIE J STEWART

TO Supervisor DIANE BURGIS VIA 925-240-728

PAGE 1 OF 2

SUBJECT E-GROUP PROJECT – SOLAR
MARTINEZ PROPERTY
BYRON, CALIF.

PLEASE CONTACT ME IF YOU
HAVE ANY QUESTIONS-

THANK YOU

January 31, 2021

VIA ELECTRONIC MAIL

Supervisor Diane Burgis
Contra Costa County
Board of Supervisors District III
3361 Walnut Boulevard, Suite 140
Brentwood, CA 94513

Re: Support of the E-Group solar project at the Martinez Property

Dear Supervisor Burgis,

My family has owned and operated the properties around the Martinez family property since my husband and I purchased our land in the 1970's. We appreciate the community in our area and the ability to graze and keep our land maintained for agriculture.

We have watched the wind energy project built on the Martinez property in the 1980's and we are big supporters of renewable energy development in the County. Especially those projects that maintain the ability to graze around the windmills and solar panels.

The E-Group has discussed with us the solar and battery storage project they plan to build on their future land. We have discussed potential concerns with their team and they have committed to being good long term neighbors. In particular, our concerns, as with any neighbor, are to mitigate any fire risks, keep the gates closed and secure, and ensure any major digging is covered appropriately when not attended to ensure cattle are not hurt while grazing. We are confident that the County and E-Group can appropriately make sure these issues are addressed during the permitting process.

We hope you will support the E-Group project that will maintain this land for agriculture and not risk these same lands becoming future housing developments.

Thank you,
Jackie Stewart

Exhibit 2

E&E NEWS

Bees, sheep, crops: Solar developers tout multiple benefits

By Associated Press

11/04/2021 01:31 PM EDT

Silflower was among the native plants that blanketed the vast North American prairie until settlers developed farms and cities. Nowadays confined largely to roadsides and ditches, the long-stemmed cousin of the sunflower may be poised for a comeback, thanks to solar energy.

Researchers are growing silflower at nine solar installations in the Minneapolis area, testing its potential as an oilseed crop. The deep-rooted perennial also offers forage for livestock and desperately needed habitat for bees, butterflies and hummingbirds.

"We need a lot of plots spaced pretty far apart to measure silflower's effects on pollinators," said crop scientist Ebony Murrell of the Land Institute, a research nonprofit. "The solar industry is interested in restoring pollinator habitat. This seemed to be a good partnership."

As the solar industry grows, solar arrays will sprawl across millions of acres — wasting farmland, critics say. But advocates see opportunities to diversify crop production and boost landowner income, while repairing ecological damage to ground plowed under or paved over.

"There's lots of spaces where solar could be integrated with really innovative uses of land," said Brendan O'Neill, a University of Michigan environmental scientist who's monitoring how planting at a new 1,752-panel facility in Cadillac, Mich., stores carbon.

Elsewhere, solar installations host sheep that reduce need for mowing. And researchers are experimenting with crop growing beneath solar panels, while examining other potential upsides.

Labs study mixed uses

The Department of Energy is funding a quest for best uses of lands around solar farms. The project, called InSPIRE, involves the National Renewable Energy Laboratory, Argonne National Laboratory and other partners conducting research at 25 sites nationwide.

The U.S. has about 2,500 solar operations on the electric grid, most generating 1 to 5 megawatts, according to the U.S. Energy Information Administration. A 5 MW facility needs around 40 acres. While some occupy former industrial sites, larger installations often take space once used for row crops.

Depending on how quickly the nation switches to renewable electricity, up to 10 million acres could be needed for solar by 2050 — more than the combined area of Massachusetts and New Jersey, an analysis by Argonne found.

Solar developers and researchers hope projects with multiple land uses will ease pushback from rural residents who don't want farmland taken out of production or consider solar panels a blight.

"We need healthy agricultural communities, but we also need renewable energy," said Jordan Macknick, the renewable energy lab's lead analyst for InSPIRE.

Buzz and fuzz

At Cascadilla Community Solar Farm in upstate New York, sheep munch grasses among solar panels while bees and butterflies collect pollen from native flowers.

Cornell University researcher Niko Kochendoerfer says initial data from her three-year study shows light grazing — about eight sheep per acre — produces abundant bees and wildflowers, while keeping plants from shading panels. Some rare bee species are turning up.

Farmers get $300 to $550 per acre yearly to graze sheep at solar sites, increasing farm income while sparing them the cost of renting or buying pasture, said Kochendoerfer, who owns about 400 sheep with her fiance, Lewis Fox. Grazing is less expensive than traditional site management, she said.

Fox has sheep at solar sites from southern Pennsylvania to Vermont.

"Certain times of the year ... the sites will be like a butterfly house in a zoo — there's just butterflies everywhere," he said.

Sheep are feeding at solar installations in more than 20 states, said Lexie Hain, director of the American Solar Grazing Association and Fox's business partner. It's also happening in the United Kingdom, other parts of Europe, Uruguay and Australia.

Vegetables in solar shade

In Longmont, Colo., Jack's Solar Farm offers another example of solar meeting agriculture. Instead of wheat and hay as before, the farm's 24 acres host 3,276 panels, generating enough power for about 300 homes. Beneath them grow tomatoes, squash, kale and green beans.

Researchers are comparing vegetables grown under panels 6 or 8 feet off the ground with others in open sunlight. Results were mixed during the recently concluded initial season, but shaded plants appeared to have a longer growing season.

"We don't have to leave the soils underneath our solar panels across our country denuded or just left to weeds," owner Byron Kominek said. "Elevating the panels a little bit more provides agricultural jobs as well as an opportunity to do more with the land."

"Agrivoltaics," or growing produce beneath panels, is especially promising in hot, arid regions, say experts who have planted cherry tomatoes and peppers beneath them at the University of Arizona's Biosphere 2 laboratory.

Pollinator habitat

While commercial prospects for agrivoltaics are unknown, scientists say it's certain that solar grounds are ideal for native grasses and flowers that draw pollinators, many facing extinction.

A team led by Oregon State University researcher Maggie Graham reported this year that bees and other insects visit plants partly or totally shaded by panels. They also may pollinate crops in nearby fields, boosting yields.

Compared to farmland, solar sites planted with pollinator-friendly native vegetation would provide a threefold increase in habitat quality for pollinators, a recent Argonne study concluded. Pollinator-friendly sites would have two-thirds more carbon storage potential, nearly one-fifth less water runoff and 95 percent less soil erosion than traditionally cultivated land, it said.

Some solar developers are resisting because plants for pollinators are more expensive than lawn used at many sites. But over time that's offset by lower maintenance, said Reed Richerson, chief operating officer of U.S. Solar, a Minneapolis developer.

The popularity of saving bees and butterflies is attracting the likes of Walmart, which buys power from dozens of pollinator-friendly U.S. Solar installations.

Exhibit 3

DRAFT FINDINGS FOR PV BYRON EG-1 PROJECT

A. Rezoning Findings:

The Project complies with the findings required pursuant to Section 26.2-1806 of the County Ordinance Code associated with a request for a zone change:

1. The change proposed will substantially comply with the General Plan.

The subject property is within the Agricultural Land (AL) General Plan land use designation. The parcel directly north of the subject property includes a Parks and Recreation (PR) General Plan Land Use designation, and the parcels east and west of the subject property are also designated AL. The intent of the AL designation is to preserve and protect lands capable of and generally used for the production of food, fiber, and plant materials.

The Project does not propose to alter the underlying zoning of the subject property, which will continue to be zoned as General Agricultural District (A-2); however, the Project proposes to add the solar energy generation (-SG) combining district (A-2-SG). The Project was not fully formulated until after the County established the initial areas for the (-SG) combining district in 2020 (Ord. No. 2020-08); however, the Project avoids the concerns that initially disqualified the Project site from being included in the initial overlay zoning effort. It appears that the Project site was excluded due to the steep slopes on the property and the fact that it is subject to a Williamson Act contract. As further described below, the Project incorporates a unique dual-track solar array design that is designed to operate on steep slopes without the need for significant grading. Further, the arrays are designed to be compatible for existing agricultural uses in compliance with Williamson Act requirements. The Project site is located in East Contra Costa County, which was previously identified by the County as the area most suitable for development of commercial solar facilities.

Commercial solar energy facilities are conditionally allowed in AL designated areas following the issuance of a land use permit that mitigates the impacts of the use upon nearby agricultural operations through establishment of buffer areas and other techniques. The Applicant is seeking a land use permit to specifically permit its proposed operation. The Project is appropriately conditioned to mitigate any impacts on nearby agricultural operations. Furthermore, no agricultural operations will be impacted by this change. The existing cattle grazing will continue on the subject property and the Project design is compatible with grazing uses. The Project is balanced to meet the County's demand for renewable energy while preserving agricultural uses.

The change is also consistent with the following General Plan Policies:

- Renewable Energy Resources Policy 8-K: *To encourage the use of renewable resources where they are compatible with the maintenance of environmental quality*. The Project furthers this goal by providing a unique solar energy design, which would expand solar energy in the County sufficient to power 150,000 homes and provides battery storage,

which can assist the County with providing reliable energy with lower risks of fires and blackouts.

- Renewable Energy Resources Policy 8-52: *Solar energy generating facilities may be established in areas designated Commercial, Light Industry, Heavy Industry, Agricultural Lands, and Public and Semi-Public on the Land Use Element Map, in accordance with the Solar Energy Facilities Ordinance.* The policy allows solar energy facilities to be established on AL designated areas in accordance with the Solar Energy Facilities Ordinance.
- Land Use Policy 3-A: *To coordinate land use with circulation, development of other infrastructure facilities, and protection of agriculture and open space, and to allow growth and the maintenance of the county's quality of life. In such an environment all residential, commercial, industrial, recreational, and agricultural activities may take place in safety, harmony, and to mutual advantage.* The Project furthers this policy through developing renewable energy resources that maintain existing agricultural uses on the site and utilize existing renewable energy infrastructure already installed on the site.
- Land Use Policy 3-M: *Protect and promote the economic viability of agricultural land.* The Project complies with this land use policy by providing an additional revenue source on existing agricultural land while maintaining existing grazing uses.
- Land Use Policy 3-20: *Where new electrical transmission lines are proposed, they should be developed parallel to existing transmission lines to the extent feasible. Mitigation of the environmental impact of building these facilities should be in close proximity to the area of impact.* The Project furthers this policy by utilizing the existing infrastructure on the Project site that is part of the Buena Vista wind project. The Project will connect to an existing PG&E substation.
- Land Use Policy 3-68: *Many of the specific policy statements of this Plan support the concept of allowing for multiple uses, compatible with the predominantly agricultural watershed and public purposes of the area. The policies stress the need to preserve designated agricultural lands for agricultural use, and also to allow certain other uses in the area, such as wind energy farms, mineral extraction, and reservoirs.* Similar to the existing wind energy farm on the Project site, the Project maintains the existing agricultural uses and will continue the current grazing lease on the Project site.
- Land Use Policy 3-69*: The Southeast County area is almost exclusively planned for agricultural, watershed, or public purposes. New land uses within this area should be limited to those which are compatible to the primary agricultural and watershed purposes of the area (farming, ranching, poultry raising, animal breeding, aviaries, apiaries, horticulture, floriculture, and similar agricultural uses and structures) and consistent with the multiple use philosophy enumerated by this Plan. Subject to specific project review and the policies listed within this Plan, the following uses are generally consistent with the planned agricultural areas: (a) Public and private outdoor recreational facilities; (b) Dude ranches, riding academies, stables; (c) Wind energy conversion systems; (d) Single-family residences on larger lots; (e) Mineral resources quarrying; (f) Oil and gas wells; (g) Pipelines and transmission lines; (h) Veterinarian offices and kennels; and (i) Public*

purpose uses, including those uses described in Policy 3-73 below (airport, reservoir). While not specifically listed on the above list, the proposed solar facility use is similar to wind energy conversion systems that have been found to be consistent with planned agricultural uses, and is consistent with the wind facilities already located on the Project site.

2. The uses authorized or proposed in the land use district are compatible within the district and the uses authorized in adjacent districts.

The subject property is located within the General Agricultural District (A-2). The subject property borders the Alameda County line to the south, and is surrounded by agricultural land (A-2, A-3, and A-4 zoning districts) to the north, east, and west. The existing solar energy generation combining districts (-SG) are located in East Contra Costa County, including agricultural land located approximately 3 miles north and northeast of the Project site. The County Code allows the establishment of commercial solar energy facilities on agricultural land (including A-2) that is combined with the (-SG) combining district. Consistency with agricultural land uses is confirmed through review and issuance of a land use permit.

The Project is compatible within the Project site and adjacent districts. The subject property is already utilized for renewable energy generation: Buena Vista Energy, LLC operates two 1 MW wind turbines, producing 5,000 MWh's, of electricity on the site. Additional wind turbines operated by Buena Vista Energy are located on parcels immediately west and northwest of the Project site. Co-locating the Project with this existing wind farm will minimize the need for additional transmission lines or infrastructure. The subject property is also currently used for cattle grazing. The Project is compatible with the current grazing on-site, as cattle and other livestock can migrate between the proposed solar arrays. Moreover, the Applicant will maintain the existing lease on the parcel with the current cattleman. The Project would also create negligible traffic and will reserve 43 acres of undeveloped land on the Project site that is available for conservation. The Project is supported by both the current cattleman and surrounding neighbors.

Overall, the proposed rezone balances the County's interest in encouraging local, renewable energy with its long-term planning considerations. The Project is in harmony with the surrounding area and established uses.

3. Community need has been demonstrated for the use proposed.

The Project aligns with the findings from the 2018 Contra Costa County Renewable Resource Potential Study (the "Study") and Section 8.8 of the General Plan, which encourages the use of renewable resources where they are compatible with the maintenance of environmental quality and reducing energy use in the County to avoid risks of air pollution and energy shortages which could prevent orderly development.

The Study estimated that 4,674,000 to 7,990,000 megawatt hours (MWh) of renewable energy could be generated within the County, and that non-urban, ground-mounted solar, on agricultural land had the second-highest potential, in terms of capacity and annual generation. The Study estimated that solar from agricultural land with relatively low constraints could potentially provide 760 to 970 MW in Contra Costa County. The Study also found that solar on agricultural land was significantly cheaper than solar on rooftops or in parking lots. The Project furthers this goal by providing 6.5 MW of renewable solar energy. Further, the Project includes 8 MWh of battery storage, which will increase County energy reliability and reduce potential blackouts.

In particular, the Study noted that siting solar in agricultural areas may not always result in loss of farmland value, and that solar technologies can include grazing-compatible solar. Here, the Project is compatible with the current grazing on-site and the Project incorporates a unique solar array design that allows cattle and other livestock to migrate between the solar arrays.

B. Land Use Permit Findings

1. The Project shall not be detrimental to the health, safety and general welfare of the County.

The Project will provide 6.5 MW of renewable energy to the electricity grid, and will be interconnected at the nearby PG&E Herdlyn substation, providing locally sourced renewable energy for approximately 1,500 households. This will reduce the County's reliance on fossil fuels, thereby reducing the impacts of climate change on the community. Additionally, by providing additional renewable electricity for the gird, the availability of clean electricity for zero-emission vehicles would increase. A study commissioned by the Applicant consistent with Federal Aviation Administration (FAA) standards establishes that the proposed solar arrays will not create glare or other hazardous impacts for aircraft taking off and landing at Byron Airport. The Project site will be secured by a security fence and will be properly monitored and maintained to reduce any potential fire risks. Therefore, the Project is not expected to be detrimental to the health, safety, and general welfare of the County.

2. The Project shall not adversely affect the orderly development within the County or the community.

Developing solar energy is a County priority. While the subject property is not currently within the areas identified by the County for commercial solar development via the County's solar ordinance, a rezone (as discussed above) to allow for the establishment of a commercial solar energy facility will not adversely affect orderly development within the County or community. The subject property already generates wind energy, and the subject property's current agricultural use—cattle grazing—will continue. The Project will also utilize unique technology and design to accommodate the steeper slopes found on the subject property. This allows for greater renewable energy in the County without reducing available agricultural acreage. The Project balances the County's priorities of preserving agricultural land while encouraging the development of solar

energy. Furthermore, as required by the County's solar ordinance, the site is required to be restored to its pre-project agricultural state, following the solar generation use.

3. The Project shall not adversely affect the preservation of property values and the protection of the tax base within the County.

The Project will not require significant on-site staffing and will not affect development in the area or cause an adverse impact on property values within the area. This determination stems from the fact that the subject property is currently used for cattle grazing and a wind farm (both of which are to continue), and that the Project is consistent with the agricultural and renewable energy uses within the surrounding area. The Project is anticipated to increase the value of the Project site. The Project site is also located in an area characterized by steep slopes and hills that limit views of the site from other areas. Further, there are no existing residential or commercial uses nearby. Thus, there is no indication that the Project will adversely affect the preservation of property values and the protection of the tax base within the County.

4. The Project as conditioned shall not adversely affect the policy and goals as set by the General Plan.

See Finding A-1 above.

5. The Project shall not create a nuisance and/or enforcement problem within the neighborhood or community.

The Project, as conditioned, will not create a nuisance or enforcement problem within the neighborhood or community. The conditions of approval require that the Project be maintained in an orderly manner and that Project equipment be removed and the subject property restored to its pre-Project agricultural condition on cessation of the use. Further, as noted above, the Applicant has commissioned a glare analysis that the Project will not create a hazard for the Byron Airport.

6. The Project as conditioned shall not encourage marginal development within the neighborhood.

The Project, as conditioned, will not encourage marginal development within the neighborhood because development is controlled by the County's Zoning Code and General Plan. The Project will not facilitate any development beyond the Project site. The Project will help the County meet its goals of providing locally-generated renewable energy. Additionally, because the Project will feed into the existing electrical grid, the Project will offset electricity provided by non-renewable sources. Thus, the Project will not encourage marginal development in the area.

7. The special conditions or unique characteristics of the subject property and its location or surroundings are established.

The project as designed and conditioned complies with applicable zoning and general plan regulations and policies. The physical conditions of the subject property were analyzed and documented during the environmental review of the Project. Thus, given the physical conditions of the subject property and local area, and the nature of the Project as a solar facility with minimal on-site staffing requirements, the special conditions and unique characteristics of the subject property and its location and surroundings are established.

C. Growth Management Element Performance Findings

1. Traffic

The Project will not require significant on-site staffing and will be monitored remotely. On-site operational staffing will be limited to routine maintenance, cleaning, repair, and security (as-needed), with negligible vehicle trips associated with those activities. The Project will not create 100 or more peak hour trips, and the preparation of a traffic report pursuant to Measure C 1998 requirements is not required.

2. Water

The Project will not require significant on-site staffing and will not significantly increase water demand at the site. The Project is in an agricultural area that is not served by any municipal water system; therefore, the Project will not affect any water service provider. The proposed water use associated with the Project will be significantly less than if the site was used for additional agricultural uses. The Project will not require the construction of new or expanded water infrastructure.

3. Sanitary Sewer

The Project will not require significant on-site staffing and is not expected to produce waste or other by-products as a result of daily operation or use. The Project also is in an agricultural area that is not served by any sanitary sewer district. Therefore, the Project will not create an increased demand for sanitary sewer services.

4. Fire Protection

The Project is located within the East Contra Costa Fire Protection District. The PV modules and ancillary equipment represent a negligible fire risk, as the Project will utilize low-medium voltage local energy sources to reduce the risk of sparks from lines. The Project will not create a need for new or expanded fire protection services.

5. Public Protection

The Project will not add to the County's population, create new housing, or create new business opportunities. As a result, the Project will not impact the Sheriff facility standard of 155 square feet of station area and support facilities per 1,000 population within the unincorporated area of the County.

6. Parks and Recreation

The Project will not add to the County's population, and as a result, will not impact the Growth Element Performance Standard of three acres of neighborhood parks per 1,000 members of the population.

7. Flood Control and Drainage

The Project is not located in a 100-year flood plain or flood prone area designated by FEMA. The Project site is in an area identified by FEMA as a low flood risk area. The Project includes very small sections of impervious surfaces associated with installation of inverters, transformers, and a substation; however, these structures are not anticipated to affect drainage on the site.

D. Solar Energy Facilities Findings

1. Location

Pursuant to the proposed and recommended rezone, the Project will be established in a solar energy generation (-SG) combining district.

2. Setbacks

The Project complies with the setback requirements in the underlying zoning district.

3. Height

The Project's ground-mounted solar arrays are a maximum of 4 feet in height and no array will exceed twenty-five feet in height.

4. Visibility

The Project is visible from a public right-of-way, and has been designed and installed to minimize visual and aesthetic impacts to the greatest extent feasible. The use is comparable with existing uses on the Project site, which include wind facilities.

5. Illumination

The only lighting proposed by the Project is for emergency services and security.

6. Septic System Avoidance

The Project will not be located above a septic system or leach field.

7. Habitat Avoidance

The Applicant has commissioned a wetland delineation that identified all creeks, wetlands, and aquatic habitat on the Project site. The Project incorporates a 75-foot buffer from existing creeks on the Project site. There is no other aquatic habitat on the property.

8. Site Restoration

The zoning administrator has approved a site restoration plan to return the Site to the condition existing before the Project was established.