ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

STAFF REPORT

TO: **EAST COUNTY BOARD OF ZONING ADJUSTMENTS**

HEARING DATE: **OCTOBER 22, 2020**

GENERAL INFORMATION

APPLICATION TYPE AND NUMBER:	CONDITIONAL USE PERMIT, PLN2016-00049
OWNER/ APPLICANT:	DUNN/ SUNWALKER/ WHITE
PROPOSAL:	To allow for the construction and operation of a 59-acre, six (6) megawatt solar electric facility
ADDRESS AND SIZE OF PARCEL:	4871 N. Livermore Avenue, Livermore, APN 902-0002-003-00; 71.66 acres
ZONING:	A (Agriculture)
GENERAL PLAN DESIGNATION:	Large Parcel Agriculture (East County Area Plan)
ENVIRONMENTAL REVIEW:	A Draft Environmental Impact Report (DEIR) was prepared and circulated for public review and comment between March 6 and April 21, 2020. The Board will consider certification of the Final EIR with this project.

RECOMMENDATION

Staff recommends the Board consider the project staff report and Final EIR, take public testimony, certify the FEIR and conditionally approve the proposed project.

PARCEL ZONING HISTORY

January 8, 1955, the 61st Zoning Unit established the zoning for the subject property and vicinity, classifying the area into the "A" (Agricultural) District.

July 24, 1984, the 1521st Zoning Unit, combined with a General Plan Amendment, set parameters for the subject property and vicinity to be annexed into a Las Positas Plan Area.

SITE AND CONTEXT DESCRIPTION

Physical Features: The rectangular parcel has frontages on North Livermore Avenue and May School Road of 2,640 and 1,186 feet, respectively. The terrain is mostly flat, with downslope grades of less than 1% from North to South and West to East. A homesite with a barn and several accessory structures is located near the property's southwest corner, about 400 feet north from May School. There is a perimeter fence around the entire property.

Adjacent Area: The surrounding area is characterized by rural homesites, with open grazing and dry farming lands. Immediately east of the subject property are about 16 parcels of around 5 acres each, located off Bel Roma Road. PG&E's Cayetano substation is located directly west, opposite North Livermore Avenue.

PROJECT DESCRIPTION

On the 71-acre parcel, the applicant, Sunwalker, proposes to construct a 59-acre, six (6) megawatt solar photovoltaic electric facility developed in two phases. Facility elements would include 23,316 solar modules, with separate tracking and mounting systems, connective wire, control center, inverters, video security, and a meteorological station. Lightweight metal frames with ground contact consisting of two small wheels and a simple ground screw would hold the solar modules about 5 feet above grade. Small electric motors would cause the panels to track the sun with the maximum height of the panels less than eight (8) feet above ground level. All equipment would be non-reflective and painted in neutral colors.

Facility buildout would take place over one year, with the first phase occupying 30.8 acres at the southern half of the parcel, and the second phase using 27.9 acres at the northern half. Each phase would feature 11,658 solar modules in 134 rows. The first phase would be operated by Livermore Community Solar Farm, LLC and would consist of 4 sections, two of which would be half the length of the other two. The second phase, operated by East Bay Community Solar Farm, LLC would be divided into 3 rectangular sections of equal area. Each individual section would feature a 48,480 sq. ft. self-retaining area at the eastern end, which would be set back 30 feet from the eastern property line. These depressions would allow standing water to a maximum depth of 3 – 4 inches, connecting to one of the two 20,250-gallon on-site cisterns to allow for the harvesting of rainwater for landscape irrigation and twice-yearly cleaning of the modules. These two cisterns, one for each phase, would be replenished as needed with potable water procured under a permit with the City of Livermore and trucked to the site. No water from on-site wells would be used for the project.

Access roads surrounding each section would connect to North Livermore Avenue via separate driveways, one for each development phase. While the existing perimeter fence would remain, the entire facility would be surrounded by a 1-foot deep swale situated one (1) foot inside the property line. Inside this perimeter would be a berm about 3 feet in height, topped with varied landscaping to

screen the facility from neighboring properties and the public right of way. The berms would be constructed with material cut from the self-retaining areas. No export or import of soil is proposed. A 6-foot fence topped by barbed wire would be located interior from the berm and would be covered with vines per the proposed landscape plan. The applicant proposes to connect the facility to the PG&E Cayetano substation located directly across North Livermore Avenue via an easement located near the southwest corner of the property. Staff recommends a condition of approval requiring that this connection be underground. Upon project decommissioning, all project equipment would be removed, including all installed cisterns and concrete pads, with only the berm and the landscape remaining. This process would require about two months to complete.

REFERRAL RESPONSES

Alameda County Fire Department, Fire Prevention Bureau: Responded on April 20, 2016 without objection to the project, which would be required to comply with Building and Fire codes current at the time of construction.

Building Inspection Department: Responded on April 27, 2016 without objection to the application, with 3 specific conditions required for building permit application.

City of Livermore: Responded to the referral request on April 22, 2016 that the subject property is located outside of the City's Urban Growth Boundary, with concern regarding conversion of rural, agricultural lands into commercial electrical utility uses, potential visual impacts, that the project should incorporate a landscape plan to screen the project from North Livermore Avenue and May School Road, that project mitigation measures should be consistent with the East Alameda County Conservation Strategy (EACCS), and with a request for updates on Draft Solar General Plan Policies within Alameda County. It is noted that the City also submitted comments in response to the environmental review process. The EIR discussion of impacts to biological resources considers the guidelines, protocols, and standard mitigation measures outlined in the conservation strategy.

Grading Division, Alameda County Public Works Agency: Responded to the referral request on April 25, 2016 with 4 specific conditions of approval required for a project grading permit.

Land Development, Alameda County Public Works Agency: Responded on February 9, 2018 without objection to the application.

STAFF ANALYSIS

This proposal was reviewed by the East County Board of Zoning Adjustments during a preliminary review on October 25, 2018. After taking input from staff and public testimony, the Board requested more information regarding biological habitat, the calculation of FAR under Measure D, the area covered by the proposed facility, and the discussion of the project with respect to the proposed location on property that is under Williamson Act contract. Discussion and analysis of these issues is included in this report.

Project Description

The proposed project would be completed under the auspices of two separate entities, namely the Livermore Community Solar Farm for Phase 1, and East Bay Community Solar Farm for Phase 2. Phase 2 would be constructed within 6 months of the completion of Phase 1, and the entire Solar Electric Facility (SEF) would be in operation within one year. The SEF would consist of 23,316 solar

modules mounted on lightweight metal frames, supported by earth screws around which tracking mechanisms would move in order to position the panels with optimal solar exposure. The facility proposes connecting to the Cayetano substation, located opposite N. Livermore Avenue, via an above ground easement at the southwest corner of the subject parcel. Staff recommends including a condition of approval requiring that the connection be installed underground. The project includes a landscaping plan and the construction of a new access road to the facility from North Livermore Avenue.

The proposed SEF would sell produced power under a Power Purchase Agreement to East Bay Community Energy Authority (EBCEA), a Joint Powers Authority formed by Alameda County and 11 of its cities. One of several County initiatives intended to support the development of solar energy within the unincorporated areas of Alameda County, the EBCEA has been serving residential, municipal and commercial accounts for several years. The EBCEA supports the goal of encouraging and investing in local renewable energy portfolios that include solar, through two energy mix options available to customers, consisting of a default product delivered at lower cost than PG&E, with an energy portfolio mix that is 5% higher in carbon-free energy than PG&E's standard mix, and a carbon-free product, at price parity with PG&E's Standard energy mix. Separate from EBCEA, the County is a member of multiple Joint Powers Authorities as it continues to support viable renewable energy and energy conservation programs.

Alameda County Community Climate Action Plan (CAP)

Adopted by the the Board of Supervisors in 2011, the Community Climate Action Plan (CAP), contains measures to promote solar development, including the creation of Solar Empowerment Zones where incentives would be provided to encourage solar. Future updates to the CAP will probably include additional strategies encouraging solar development.

Alameda County Draft Solar Policy Matrix

Over the past several years the County has been considering a policy matrix addressing impacts related to solar projects, and the Alameda County Board of Supervisors has chosen a moderate policy position to address issues related to the siting of utility-scale solar energy facilities (SEFs) in the rural East County, allowing evaluation of each utility-scale solar proposal on a case-by-case basis. The drafted policies would apply to commercial ground-mounted solar installations that generate power intended for off-site use. Since these facilities tend to be much more land intensive than roof-mounted or ground-mounted solar systems that generate power primarily for on-site use, they also tend to have the greatest impacts.

Below is a summary of the current draft Solar Policy Matrix:

1. Encourage Local Solar Energy: The policies in this category encourage appropriate solar development in both urban and rural areas, and support infrastructure and programs, such as energy storage and EBCE partnerships.

2. Solar Energy Facility (SEF) Siting: The policies here are intended to generally guide siting of SEFs in a manner consistent with County policy – to manage land use conflicts, ensure environmental protection, protect public health and safety, and support energy development.

3. Solar Energy Facilities and Measure D: This section describes a basic conformity of SEFs with the policies that stem from Measure D, as infrastructure and quasi-public uses, and states that the 2-acre building site limitation does not apply.

4. Solar Energy Facilities on Agricultural Land: Taken comprehensively, policies in this section are moderately conservative, designed to protect productive or viable Important Farmlands from conversion to SEFs, and to direct SEF development to lands of lower productivity. They do, however, establish that SEFs are an acceptable dual use with agriculture on appropriately zoned lands provided the agricultural use remains viable. Mitigation for SEF development on Important Farmlands in the form of a 1:1 conservation easement on or offsite is included. Williamson Act contracts are discussed, along with the allowance of SEFs with either cancellation or rescission and replacement with a Solar Use Easement Contract (SUEC). These draft policies could be altered to provide greater flexibility in siting and agricultural mitigation.

5. A modification to two previously adopted non-Measure D policies, Nos. 71 and 72, that state that SEFs are compatible with land and soil conservation on agricultural lands when they are approved with a Decommissioning and Restoration Plan as required by new Policy 31. In Policy 72, the word 'preserved' is replaced with 'conserved;'

6. Natural Resources and Environmental Review: The policies in this category are designed to ensure that natural resources such as water quality, wildlife habitat, special status species and other environmental values are analyzed and accounted for in project design and approval, including compliance with the East Alameda County Conservation Strategy (EACCS) and establishment of permanent easements to mitigate habitat intrusion. The Altamont Wind Resource Area is excluded from solar energy development until it can be demonstrated that bird populations would not be adversely affected.

7. Community Oriented Solar Energy Facilities: Local, community oriented, urban and distributed energy resources and infrastructure are emphasized in these policies, along with recognition of resiliency and community health, safety and welfare as desirable goals.

8. Decommissioning and Restoration Plan: These policies require restoration and reclamation of sites affected by SEFS to a condition at least as good as the original condition, and a substantive plan to achieve that end, prior to issuance of building permits. A financial assurance is required to guarantee the restoration can be implemented.

9. Monitoring and Inspection: This section simply requires that the costs of permitting, inspection and enforcement are born by the project applicant / operator. A monitoring program is also required.

10. Sensitive Viewsheds: Because visual sensitivity is an important consideration in rural areas, a policy is included to require a SEF project to take reasonable steps to minimize the effects on visual character. It does not preclude a SEF in any location.

    While the Solar Policy Matrix is still in draft form, it does not apply to the proposed project. However, staff is including the information in this report to provide background information about the community discussions around utility-scale solar uses. After careful review of the proposed project, staff believes that the project is consistent with these proposed policies and has drafted proposed conditions of approval that address some of these policies directly. The project would require the installation of drought-resistant, low water use landscaping to screen the facility, and a project Decommissioning and Restoration Plan, with financial assurance. Additional discussion regarding draft policies for agricultural lands is found under Williamson Act discussion below, with treatment of the Environmental Review within this report and the accompanying Draft EIR.

East Alameda County Conservation Strategy (EACCS)

Developed by multiple federal, State, and local entities, including Alameda County and jurisdictions within the County, the East Alameda County Conservation Strategy (EACCS) is, intended to address anticipated impacts to biological resources from projected future development in eastern Alameda County through implementation of standardized mitigation measures. The EACCS lays out an effective framework to protect, enhance, and restore natural resources in eastern Alameda County, while improving and streamlining the environmental permitting process for impacts resulting from infrastructure and development projects. This document provides standardized avoidance, minimization, and mitigation measures for species and natural communities, with more certainty for project proponents and local agencies. The nineteen "focal species" addressed in the EACCS include thirteen wildlife and six plant species that are either listed or proposed for listing under the Federal Endangered Species Act (ESA) as threatened or endangered, listed under the California ESA as threatened or endangered, listed as rare under the Native Plant Protection Act, or expected to be listed under the Federal or State ESA in the foreseeable future.

Focal species with a remote possibility of occurrence on the project site consist of the following:

1. Burrowing Owl
   Neither evidence of nor individual owls observed, however the appearance of nesting owls is a possibility. Implementation of mitigation measure BIO-1.2 of the EIR would minimize impacts to less than significant.

2. California Tiger Salamander (CTS)
   There is no suitable breeding habitat however there is possible dry-season habitat, therefore the species could occur on the subject property. Implementation of measure BIO-1.1 would minimize impacts to CTS to less than significant.

3. California red-legged frog (CRLF)
   The subject property's proximity to potential breeding habitats located in Cayetano Creek increases the likelihood that CRLF could occur on the subject property at certain times of the year. Implementation of measure BIO-1.1 would minimize impacts to CRLF to less than significant.

4. Tricolored blackbird
   There is no suitable nesting habitat on or adjacent to the subject property, however foraging flocks could occur on the site during the winter. Implementation of measure BIO-1.4 would minimize impacts to nesting birds to less than significant.

5. San Joaquin Kit Fox
   No den sites were observed on the subject property, and this species would be unlikely to occur. The impact to this species would be less than significant.

6. American Badger
   Species-specific diggings and dens are characteristic of American Badger and were not found on the subject property. This species would be unlikely to occur and the impact to this species would be less than significant.

The mitigations above will be tracked and documented in the Mitigation Monitoring and Reporting Program adopted with the permit.

Consistency with the East County Area Plan

The subject parcel is within the boundaries of the East County Area Plan (ECAP), adopted by the Alameda County Board of Supervisors in May of 1994, and amended by the Board in May 2002 to reflect the provisions of Alameda County voter-approved Measure "D" Initiative. This parcel is outside of the Urban Growth Boundary established by Measure D. The subject property is within the "Large Parcel Agriculture" (LPA) land use designation. Under this designation, development is limited in most cases to one two-acre building envelope, with a maximum Floor Area Ratio (FAR) of 12,000 square feet for residential structures, .01 FAR for nonresidential structures. The proposal is currently in compliance with these restrictions. Because ground-mounted solar installations are not considered structures for purposes of development intensity computation, the facility would not be restricted by placement within a building envelope or FAR. Regarding utility scale solar electric facilities, for lands within the LPA, the ECAP permits "…utility corridors, and similar uses compatible with agriculture." Consistent with other ECAP policies, the ECAP allows "…development and expansion of public facilities, including those of utility scale, in appropriate locations inside and outside the Urban Growth Boundary…"

The following ECAP policies address development of the type proposed:

Policy 218: The County shall allow development and expansion of public facilities (e.g., parks and … subregional facilities; utilities etc.) in appropriate locations inside and outside the Urban Growth Boundary consistent with the policies and Land Use Diagram of the East County Area Plan.

Located directly across North Livermore Avenue from the Cayetano PG&E substation, the proposed SEF would be consistent with ECAP Policy 218 as a project supportive of the provision of public facilities.

Policy 13: The County shall not provide nor authorize public facilities or other infrastructure in excess of that needed for permissible development consistent with the Initiative. This policy shall not bar 1) new, expanded or replacement infrastructure necessary to create adequate service for the East County, 2) maintenance, repair or improvements of public facilities which do not increase capacity, and 3)infrastructure such as pipelines, canals, and power transmission lines which have no excessive growth-inducing effect on the East County area and have permit conditions to ensure that no service can be provided beyond that consistent with development allowed by the Initiative. "Infrastructure" shall include public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities.

East County energy uses and the needs of other communities would be served by the proposed project, which would support initiatives aimed at providing sustainably-sourced energy without growth-inducing effects upon the vicinity nor upon other communities in the North Livermore area. The project would therefore be consistent with Policy 13.

Policy 73: The County shall require buffers between those areas designated for agricultural use and new non-agricultural uses within agricultural areas or abutting parcels. The size, configuration and design of buffers shall be determined based on the characteristics of the project

site and the intensity of the adjacent agricultural uses, and if applicable, the anticipated timing of future urbanization of adjacent agricultural land where such agricultural land is included in a phased growth plan. The buffer shall be located on the parcel for which a permit is sought and shall provide for the protection of the maximum amount of arable, pasture, and grazing land feasible.

Policy 74: The County shall require that, where conflicts between a new use and existing use are anticipated, the burden of mitigating the conflicts be the responsibility of the new use.

Policy 114: The County shall require the use of landscaping in both rural and urban areas to enhance the scenic quality of the area and to screen undesirable views. Choice of plants should be based on compatibility with surrounding vegetation, drought-tolerance, and suitability to site conditions; and in rural areas, habitat value and fire retardant.

Policy 116: To the maximum extent possible, development shall be located and designed to conform with rather than change natural landforms. The alteration of natural topography, vegetation, and other characteristics by grading, excavating, filling or other development activity shall be minimized. To the extent feasible, access roads shall be consolidated and located where they are least visible from public viewpoints.

Policy 120: The County shall require that utility lines be placed underground whenever feasible. When located above ground, utility lines and supporting structures shall be sited to minimize their visual impact.

The subject SEF is proposed for a flat parcel where minimal grading would be required, and the planned drought-resistant plantings of native vegetation would effectively screen the facility from neighboring properties and public roadways in the vicinity. An underground connection to the Cayetano substation will be required, therefore project siting, design and development would be consistent with the previous five ECAP policies.

Policy 86: The County shall not approve cancellation of Williamson Act contracts within or outside the County Urban Growth Boundary except where findings can be made in accordance with state law, and the cancellation is consistent with the Initiative. In no case shall contracts outside the Urban Growth Boundary be canceled for purposes inconsistent with agricultural or public facility uses…

The subject property is subject to a Williamson Act contract, and the property owner intends for the property to remain in agricultural production. No Williamson Act cancellation is proposed. While the SEF would be compatible as a use under the adopted Uniform Rules, Policy 86 limits the County's ability to approve the project through cancellation of the Williamson Act.

Alameda County Zoning Ordinance

The subject property is classified into the "A" (Agricultural) District. While Solar Electric Facilities (SEFs) are not expressly listed under the categories of permitted or conditional uses, the Planning Department has used the conditional use permit process for two SEFs in the past 10 years. This policy is based on a 2008 Planning Commission Determination and a 2012 Board of Supervisors affirmation of an earlier approval of an SEF by the East County Board of Zoning Adjustments.[1] The Planning Commission determined an SEF to be consistent with "windfarms and related uses, utility corridors and similar uses compatible with agriculture." The Board of Supervisors later approved Conditional Use Permit PLN2011-00009 for a utility scale SEF based on the consistency of the proposal with this definition. Therefore, it is appropriate to consider the operation of an SEF as a conditionally permitted in the "A" District.

Williamson Act Conservation Contract

As noted above, the subject property is under a Williamson Act conservation contract. It is not designated as farmland of statewide importance, nor is it considered prime agricultural land by the State of California Department of Conservation. Criteria used to determine prime agricultural land are based on the physical and chemical features of the soil, as well as a history of use for irrigated agricultural production.

The subject parcel is under Williamson Act No. A71-70 (attached) which allows for a homesite, grazing, and other agricultural uses. In addition to these primary uses, the contract allows for certain uses that may be deemed from time to time by the Board of Supervisors compatible with agriculture. The property owner currently contracts with a third party to graze 15 to 30 cattle over 2 to 4 months per year. The property owner states that cattle grazing will cease if this project is approved but sheep grazing will remain. Compatible non-agricultural uses such as solar panels that do not qualify as buildings are allowed on contracted land, and may be located outside of the two-acre building envelope, provided they are "…cumulatively restricted to no more than 10% of the contracted property, or 10 acres, whichever is less" so that remaining land may be devoted to agriculture. In the case of the subject property, the cumulative restriction would amount to 7.16 acres. Taking into consideration the ground area occupied by the earth screw support poles, concrete pads and other permanent infrastructure, the project would cover an area of about 6.5 acres and be consistent with the area restrictions on compatible solar uses.

For land under Williamson Act, Government Code Section 51238.1(a) requires that uses approved on contracted lands be consistent with all of the following principles of compatibility:

(1) The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.

(2) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves. Uses that significantly displace agricultural operations on the subject contracted parcel or parcels may be deemed compatible if they relate directly to the production of commercial agricultural products on the subject contracted parcel or parcels or neighboring lands, including activities such as harvesting, processing, or shipping.

(3) The use will not result in the significant removal of adjacent contracted land from agricultural

[1] Alameda County Planning Commission, June 16, 2008

or open-space use.

Staff believes that the proposed project is consistent with the principles of compatibility. Because installation would be temporary, without extensive grading required outside or access roads, equipment pads and water detention basins, the project would be able to operate without compromising the parcel's long-term agricultural capability. To support a viable agricultural land preserve, non-prime land must be at least 40 acres in area. Non-prime land is considered to be devoted to commercial agricultural production when it yields "some" substantiated gross annual revenue, and at least 60% of the property must be used for commercial agriculture. With about 65 acres of the 71.6-acre parcel remaining available for grazing, more than the required 60% of the parcel area, the applicant's proposed project is consistent with the Williamson Act contract, under the adopted Uniform Rules.

While displacement of a specific agricultural use (cattle grazing) would occur, grazing as an agricultural activity would continue, with contracts between the landowner and a nearby sheep operation allowing for the grazing of 500-600 sheep on the property for 30-60 days per year, allowing the property to remain agriculturally productive.

There is no adjacent land under contract, and with unfettered access to North Livermore Avenue, the project would not adversely affect other contracted land or result in its removal from agricultural or open-space use.

In addition, legislation approved in 2011 (SB 618), enables the conversion of a Williamson Act contract to a solar-use easement. Such a conversion would allow for the mutual rescission of a contract in order to simultaneously enter into a solar-use easement that would require the land to be used for solar photovoltaic activities for a term of 20 years, or, if the landowner requests, for a term of not less than 10 years. This process would be appropriate for land that is marginally productive or physically impaired and would be based upon approval by the Department of Conservation, in consultation with the Department of Food and Agriculture. Qualifying land must consist "… predominately of soils with significantly reduced agricultural productivity for agricultural activities due to chemical or physical limitations, topography, drainage, flooding, adverse soil conditions, or other physical reasons." Absent these characteristics, there must be "… severely adverse soil conditions that are detrimental to continued agricultural activities and production. Severely adverse soil conditions may include, but are not limited to, contamination by salts or selenium, or other naturally occurring contaminants." In addition, the property may not be located on lands designated as prime farmland, unique farmland, or farmland of statewide importance, as shown on the maps prepared by the State Farmland Mapping and Monitoring Program unless the property owner can demonstrate that circumstances exist that limit the use of the parcel for agricultural activities. To date, this process has not been used in Alameda County, and staff are unaware of its use in other jurisdictions, and therefore would not recommend this option be explored.

Environmental Review

In order to inform the County's decision-makers, responsible and trustee agencies, and the public at-large of the nature of the proposed project, a Draft EIR was prepared pursuant to the requirements of CEQA and the State CEQA Guidelines to determine if project approval could have a significant effect on the environment. The Draft EIR addressed the environmental effects associated with the project, summarized the alternatives to the proposed project, and identified issues to be resolved, and areas of controversy. The Draft EIR was made available for public review on the County website[2] from March

[2]http://www.acgov.org/cda/planning/landuseprojects/documents/LivermoreCommunitySolarFarm_DEIR_PublicDra

6 to April 21, 2020. The Executive Summary lists the impacts and mitigation measures. The project Environmental Impact Report (EIR) identified no significant and unavoidable impacts that would result from the construction and operation of the proposed Project. The Mitigation Monitoring & Reporting Program (MMRP) attached to this report will document which department is responsible for the mitigation measures resulting from the environmental review.

Following preliminary review, the County, as Lead Agency, conducted an initial study in order to determine whether the project may have a significant effect on the environment. The following eight factors were found to have no impact: Geology and Soils; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Mineral Resources; Population and Housing; Public Services; and Recreation. Therefore, these topics were not evaluated further in the EIR.

The Draft EIR considered the impacts to Agriculture and Forestry Resources; Energy; Land Use and Planning, Noise, Transportation; Utilities and Service Systems; and Wildfire. The impacts to these factors were found to be less than significant without mitigation.

There were four areas which were determined to have potentially significant impacts that would be reduced to less than significant with mitigation. These are: Aesthetics (project impacts to existing visual character or quality of the parcel and surroundings); Air Quality (emissions of fine particulate matter from emissions during construction); Biological Resources (impacts to California tiger salamander, California Red-legged frog, special-status plant species, nesting birds, and wetlands); and Cultural and Tribal Cultural Resources (impacts to unknown subsurface cultural and tribal cultural resources).

Responses to comments were prepared as a result of the 45-day review period. The Final EIR contains the comments received, the responses to comments raising environmental issues, and any changes in the Draft EIR, if necessary. The East County Board of Zoning Adjustments will consider certifying the Final EIR and make findings regarding each significant environmental effect of the proposed project.

The discussion below summarizes the mitigations generated from the environmental review process and discusses the changes to the Draft EIR resulting from the comments received during the public review process.

Mitigations

Aesthetics:

The Final EIR includes one mitigation to reduce the impact from altering the visual character of the parcel and the surroundings. To address this potentially significant impact, measures to address the long-term viability of the landscape on the surrounding berm would be followed. Upon implementation of this measure the project impact would be LTS. AES-3 describes the applicant's responsibilities regarding the proposed berm and the long-term maintenance of the landscaping.

Air Quality:

ftEIR_WAppendinces_Reduced.pdf

Similarly, one mitigation is included to address the emissions of fine particulate matter produced during construction. AQ-2 includes eight elements related to BAAQMD's Best Management Practices for reducing construction emissions of PM10 and PM12 during ground-disturbing construction activities.

Biological Resources:
Five mitigations were identified to address impacts to Biological Resources which would be significant without mitigation. For potential impacts to species identified as a candidate, sensitive, or special-status, four mitigations, BIO-1.1-1.4, are designed to either avoidance of individual California tiger salamander, and California red-legged frogs by requiring and installing exclusion fencing and following a consultation and approval of a relocation plan. The other three mitigations address burrowing owls, requirements for a rare plant surveys, and requirements for avoiding loss of active nests. BIO-2 addresses impacts to federally protected wetlands. The mitigation requires realigning the proposed perimeter swale to avoid the protection wetlands and provide a 25-foot buffer between the potential wetland and the swale.

Cultural and Tribal Cultural Resources:
Finally, three mitigations for significant impacts to Cultural and Tribal Resources were identified. CULT-2 describes the process to follow in the event archeological resources are encountered. CULT-3 outlines procedures to be followed in the event of human remains given the historical inhabitation of Alameda County by the Ohlone Tribe. This last mitigation relies on the implementation of the first two Cultural Resource mitigations to address potential impacts to a Tribal, Cultural Resource.

Finally, the Draft EIR analyzed two alternatives to the proposed project, the No Project Alternative and the Reduced Project Alternative. Neither of the two alternatives met the projects objectives and therefore were rejected.

Public Comment
Prior to a preliminary review of the subject application in the fall of 2018, staff received 7 letters from the public opposed to the project, with comments on the initial study as well as the project itself. This correspondence was received from neighbors of the project site, and from Friends of Livermore. In addition, staff received a petition with 54 signatures from 34 different addresses in the project vicinity in opposition to the project. Staff has also received two letters in support of the project, from the Building and Construction Trades Council of Alameda County, and Local Clean Energy Alliance.

Additional public feedback continues to be submitted to the Planning Department. Overall, the concerns are centered around the draft status of the County Solar Policy, which do not apply to this project, impacts to aesthetics, water and biological resources.

Summary:
Conditionally permitted in the "A" District, the proposed project would be consistent with the General Plan and compatible with the Williamson Act contract to the extent that the land at the project site will remain agriculturally productive. The draft EIR has provided an adequate analysis of the project impacts and provided a process by which these impacts will be mitigated. Staff recommends the Final EIR for certification and approval of the project.

TENTATIVE FINDINGS BASED ON INFORMATION AVAILABLE PRIOR TO THE PUBLIC HEARING:

1. Is the use required by the public need?

   Yes. Dramatic increases in demand for renewable/solar energy has increased the importance of SEFs located close to connections to the energy grid that will enable the State of California to meet its Renewables Portfolio Standard (RPS) of 60% by 2030. The proposed project would qualify as a renewable energy source and therefore contribute to meeting this goal.

2. Will the use be properly related to other land uses and transportation and service facilities in the vicinity?

   Yes. The subject parcel is level, classified in the "A" (Agricultural) District that conditionally permits SEFs, and is located directly across North Livermore Avenue from a 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 the proposed use would not interfere with adjacent or nearby agricultural or residential uses.

3. Will the use, if permitted, under all circumstances and conditions of this particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood?

   No. 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 3-foot high landscaped berm around the facility to shield views of the SEF from adjacent properties and the North Livermore Avenue and May School Road public rights of way. Appropriate fencing would be installed interior to the berm to prevent the public or unauthorized members of the public from exposure to electrical hazards and equipment. Water for landscape irrigation and periodic cleaning of solar modules would be sourced from rainwater captured on-site and stored in cisterns, as well as a nearby fire City of Livermore fire hydrant. 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. Will the use be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered?

   No. The site is located in the A (Agriculture) District, within which an SEF is a conditionally permitted use. The proposal would be consistent with the ECAP, the intent clause of which is "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 project does not constitute intensive development of the sort that would require a wide range of urban utilities, services and support.

REGARDING THE COMPATIBILITY OF THE USE ON WILLIAMSON ACT LAND:

1. The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves. Outside of infrastructure such as equipment pads and water detention basins, the project would be able to operate without compromising the parcel's long-term agricultural productivity. The acreage available for grazing would exceed the 40 acres required to support viable agricultural land preserves on non-prime land.

2. The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves. While displacement of a specific agricultural use (cattle grazing) would occur, grazing as an agricultural activity would continue, with the contracted land remaining agriculturally productive.

3. The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use, because there is no adjacent land under contract, and the project would not adversely affect other contracted land or result in its removal from agricultural or open-space use.

PRE-HEARING RECOMMENDATION

Staff recommends the Board certify the Final Environmental Impact Report (FEIR) and approve Conditional Use Permit PLN2016-00049 for the construction and operation of a 6-megawatt utility scale solar energy facility (SEF), consistent with the project MMRP and Exhibit "A" dated October 2, 2018 and the following conditions:

AUTHORIZATION

1. Approval of this permit authorizes the construction and operation of a two-phased, 6-megawatt solar energy facility consisting of solar energy collection array structures mounted on support poles that are pile-driven into the native soil. The project shall feature a 3-foot high berm around the SEF, on which shall be planted drought-tolerant landscaping pursuant to a CAWELO-compliant landscape plan. Project features shall be according to plans marked Exhibit "A" and dated October 2, 2018 on file with the Alameda County Planning Department, or as directed by the Alameda County Planning Director. Project Permittees shall be Livermore Community Solar Farm, LLC, and East Bay Community Solar Farm, LLC, or successors.

2. Connection of 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 landscape plan compliant with the CA-WELO, shall be approved by the Planning Director. Landscape installation shall be 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. Upon facility decommissioning, all associated infrastructure, inclusive of concrete pads and equipment, with the exception of the berm and the screening landscape, shall be removed. During

the project life, permittee or successor shall be required to maintain a bond or other financial surety to safeguard the decommission process from penury.

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. 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

7. Mitigation Monitoring and Reporting. Applicant shall be responsible for reporting annually to the Planning Department regarding the implementation of all project Mitigation Measures. 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).

8. **Mitigation Measure AES-3:** In order to ensure the long-term effectiveness of the proposed landscaped berm, the Project applicant shall ensure that the proposed landscape berm is adequately irrigated to establish the long-term viability of the buffer and maintained throughout the life of the Project. Should any of the proposed landscape plantings not survive the initial planting or expire at any time during the life of the Project, the applicant shall provide replacement plantings, ranging from 8 to 15 feet in height upon maturity, within 5 years of planting, to screen the proposed solar arrays.

9. **Mitigation Measure AQ-2:** The applicant shall require their construction contractor to comply with the following BAAQMD Best Management Practices for reducing construction emissions of PM10 and PM2.5 during ground-disturbing construction activities:
   A. Water all active construction areas at least twice daily or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour.
   B. Apply water twice daily or as often as necessary to control dust or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
   C. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
   D. Sweep driveway entrances and public street segments in the vicinity of the subject property (with water sweepers or similarly effective equipment) daily, or as often as needed, to keep streets free of visible soil material.

E. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (e.g., dirt, sand).
F. Limit vehicle traffic speeds on unpaved roads to 15 mph.
G. Replant vegetation in disturbed areas as quickly as possible after construction in area has been completed.
H. Install sandbags or other erosion control measures to prevent silt runoff from public roadways.
I. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations. (Bay Area Air Quality Management District 2010).

10. **Mitigation Measure BIO-1.1**: The following measures shall be implemented to ensure avoidance of individual California tiger salamanders (CTS) and California red-legged frogs (CRLF) as individuals of these species could disperse onto the site and occur in ground squirrel burrows in advance of or during construction. Because CTS/CRLF could occur on the subject property and could be impacted during initial ground disturbance, the Project will require consultation with the USFWS and CDFW and the development of a CTS/CRLF relocation plan. The plan shall include at a minimum:
    A. A detailed exclusion-fencing plan to enclose the subject property before the onset of fall/winter rains and to remain in place throughout one entire winter rainy season (October through April) with the purpose of 1) the fence will be designed to exclude CTS/CRLF from entering the site and 2) capturing CTS/CRLF within the subject property that are emerging from burrows and moving towards breeding ponds and/or creeks.
    B. The exclusion fence should be constructed of silt fence or other suitable barrier material. Exclusion fence material must be at least 36 inches in height (at least 30 inches above ground and buried at least 6 inches below the ground). The fence will be placed inside the subject property boundary to provide an outside buffer area of undisturbed habitat to relocate any CTS/CRLF captured inside the fence. Stakes must be placed on the inside of the project boundary (side on which work will take place).
    C. Cover boards shall be installed every 30 feet on the inside and outside of the exclusion fence for the purpose of capturing adult and juvenile CTS/CRLF and safely relocating them under cover boards or suitable rodent burrows outside of the exclusion fence. This will allow CTS/CRLF relocated outside of the exclusion fence to disperse to aquatic breeding areas or other off-site habitat, but not return to the subject property.
    D. Identification of qualified biologists (approved by the USFWS and/or the CDFW) to handle and relocate CTS/CRLF.
    E. Captured CTS/CRLF will be relocated outside the exclusion fence (approved by the USFWS and/or CDFW) outside the subject property exclusion fence.
    F. Implementation of measures to reduce the risk of spreading harmful pathogens.
    G. Development of reporting measures for all captured and relocated CTS/CRLF, including, but not limited to, capture site (i.e., cover board location), sex, age (i.e., adult, juvenile), size, and release site.
    H. Submittal of a final report to the USFWS and CDFW detailing all captures and relocations of CTS/CRLF.
    I. The listed amphibian relocation plan will be developed in consultation with the USFWS and CDFW and be subject to their approval. The plan will require obtaining an incidental take permit under the California Endangered Species Act (pursuant to Fish and Game Code Section 2081 et seq.) and the federal Endangered Species Act.
    J. In addition, the following measures will be implemented during construction:

K. A qualified biologist (approved by the USFWS and/or CDFW) will be on-site during initial ground disturbance.
L. All workers shall receive environmental awareness training from the qualified biologist to inform workers of the potential occurrence of listed species, the need to avoid any inadvertent take, and procedures to follow if a CTS or other listed species is encountered.
M. The qualified biologist will have authority to stop work until the qualified biologist can capture and relocate the animal to a safe place off the subject property.
N. To avoid entrapment of animals during construction, pipes or similar structures shall be capped if stored overnight. Construction personnel shall inspect open trenches at the beginning and end of each workday for trapped amphibian individuals. If individuals are found, the individuals shall be relocated by a qualified biologist.
O. Tightly woven fiber netting or similar material shall be used for erosion control or other purposes to ensure amphibians are not trapped. Plastic monofilament netting (erosion control matting), rolled erosion control products, or similar material shall not be used.

11. **Mitigation Measure BIO-1.2: Conduct Preconstruction Clearance Surveys for Western Burrowing Owls.** A minimum of four burrowing Owl survey visits shall be conducted within the subject property during the burrowing owl breeding season, typically between February 1 and August 31. A minimum of three survey visits, at least three weeks apart, will be conducted during the peak nesting period, between April 15 and July 15, with at least one visit after June 15. If burrowing owls are not found on the subject property during the surveys and there are no documented nest site occurrences within 0.5 miles of the subject property during the previous three years, no compensation for habitat loss will be required. If burrowing owls are found on the site during the surveys, mitigation will be required in accordance with EACCS guidelines. If the surveys identify breeding or wintering burrowing owls on or adjacent to the site, occupied burrows will not be disturbed and will be provided with protective buffers. Buffers shall be a minimum of 150-foot radius around an occupied wintering burrow and a minimum 250-foot radius around a breeding burrow. On-site occupied habitat will be mitigated at a minimum 3:1 ratio (preserved:impacted) consistent with the EACCS. Such mitigation may be conducted by acquiring parcels, through fee title purchase, or conservation easement, where known nesting sites occur or where nesting sites have occurred in the previous three nesting seasons according to EACCS Conservations Actions BUOW-1 and BUOW-2.4 Offsite preserved mitigation land under this MM BIO-1.2 may be "stacked" with other mitigation obligations identified in this chapter. Take avoidance surveys as described in the Biological Report will be conducted no more than 14 days prior to any ground-disturbing activities (regardless of time of year). A qualified biologist will conduct the survey for burrowing owls. If no owls are found during this first survey, a final survey will be conducted within 24 hours prior to ground disturbance to confirm that burrowing owls are still absent. If ground-disturbing activities are delayed or suspended for more than 14 days after the initial take avoidance survey, the site will be resurveyed (including the final survey within 24 hours of disturbance). All surveys will be conducted in accordance with Staff Report guidelines.

12. **Mitigation Measure BIO-1.3:** A qualified botanist shall conduct appropriately timed rare plant surveys during late April and early May to confirm the status of special-status plant species not detectable on the site during the October 2017 survey. The surveys shall focus on the special-status plant species for which suitable habitat occurs on the subject property. The surveys shall be completed, and a report of findings submitted to the County before the onset of initial ground-disturbing activity or construction associated with Project implementation. If special-status plant species are found on the subject property, the plant populations will be avoided by establishing a buffer around the plant populations that will be maintained throughout Project implementation.

If special-status plants are found during the rare plant surveys and avoidance is not feasible, a qualified botanist/biologist will prepare a detailed rare plant mitigation and monitoring plan. The plan shall only be required if a listed species or those with a ranking of 1A, 1B, or 2 of the California Native Plant Society (CNPS) Inventory are found during the rare plant surveys. The plan will include details on seed collection and propagation, techniques to avoid the introduction of plant pathogens to the preserved area, preparing the preserved area for planting, revegetation monitoring plan, success criteria, and reporting requirements. The planting area within the preserved area will be similar in size to the area occupied by the impacted plant on the subject property. After replanting, the preserved area will be monitored for a minimum of five years. Minimum success criteria would be presence and continued reproductive success of the plant within the preserved area and with less than 80 percent areal coverage of the impacted rare plant at the end of the five-year monitoring period. Annual reports, with interim success criteria to ensure the plan is on track to meet the mitigation goals, will be prepared. At the end of each monitoring year, a report shall be prepared evaluating the success of the mitigation program and recommending remedial measures as necessary. If the success criteria have not been met at the conclusion of the five-year monitoring period, continued monitoring will be conducted until the success criteria have been achieved.

If the success criteria have not been met at the conclusion of the five-year monitoring period, monitoring may be extended for an additional period or another population of the affected special-status plant species may be preserved. The preserved population shall provide for permanent protection of an existing population in Alameda County, which is equal or larger than that impacted on the site (minimum 1:1 replacement). Preservation may occur through land acquisition or use of a conservation easement. Off-site mitigation lands shall include establishment of a management endowment as necessary to provide for long-term management of the preserved population. Offsite preserved mitigation land under this MM BIO-1.3 may be "stacked" with other mitigation obligations identified in this chapter.

13. **Mitigation Measure BIO–1.4:** BIO-1.4: Ground-disturbing and/or vegetation-clearing activities shall be performed in compliance with the MBTA and relevant sections of the CDFG Code to avoid loss of active nests. This shall be accomplished by scheduling ground/vegetation-disturbing activities outside of the bird nesting season (February 1 to August 31) to avoid possible impacts on nesting birds. Alternatively, if ground/vegetation-disturbing activities cannot be scheduled during the non-nesting season (September 1 to January 31), a preconstruction nesting bird survey shall be conducted. The preconstruction nesting survey shall include the following:
    A. A qualified biologist shall conduct a preconstruction nesting bird (both passerine and raptor) survey within seven calendar days prior to ground-disturbing activities.
    B. If no nesting birds or active nests are observed, no further action is required. Ground-disturbing activities shall occur within seven calendar days of the survey.
    C. If any active nests are encountered, the qualified biologist shall determine an appropriate disturbance-free buffer zone to be established around the nest location(s) until the young have fledged (or the nest is determined to be inactive). Buffer zones vary depending on the species and the context of the nest location (i.e., typically 25 to 100 feet for passerines and up to 300 feet for raptors) and other factors such as ambient disturbance levels in the vicinity of the nest. If necessary, the dimensions of the buffer zone shall be determined in consultation with the CDFW.
    D. Orange construction fencing, flagging, or other marking methods shall be installed to delineate the buffer zone around the nest location(s) within which no construction-related equipment or operations shall be permitted. Continued use of existing facilities such as surface parking and site maintenance may continue within this buffer zone.

E. Construction activities shall be restricted from the buffer zone until the qualified biologist has determined that young birds have fledged (or the nest is inactive) and the buffer zone is no longer needed.

F. A survey report of findings verifying that any young have fledged (or the nest is inactive) shall be submitted by the qualified biologist for review and approval by the County prior to initiation of any construction activities within the buffer zone. Following written approval by the County construction within the nest-buffer zone may proceed.

14. **Mitigation Measure BIO-2:** The Project applicant shall realign the proposed perimeter swale to avoid the potential wetlands and provide a 25-foot buffer between the potential wetland and the proposed swale. Prior to the initiation of ground-disturbing activities, temporary orange construction fencing shall be installed around the potential wetland features to prohibit inadvertent damage to the potential wetland features during construction activities. No construction equipment including staging and/or parking or other construction activity shall occur in the buffer zone. After construction is complete the temporary fencing can be removed.

15. **Mitigation Measure CULT-2:** If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and a qualified archaeologist shall be consulted to assess the significance of the find according to CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives from the County and the archaeologist shall meet to determine the appropriate avoidance measures or other appropriate mitigation. All significant cultural materials recovered shall be, as necessary and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards. In considering any suggested mitigation proposed by the consulting archaeologist to mitigate impacts to historical resources or unique archaeological resources, the County shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, proposed Project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) would be instituted. Work may proceed on other parts of the subject property outside the 50-foot area while mitigation for historical resources or unique archaeological resources is being carried out.

16. **Mitigation Measure CULT-3:** Procedures of conduct following the discovery of human remains have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98 and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The Alameda County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours, who will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) of any human remains. Further actions shall be determined, in part, by the desires of the MLD. The MLD has 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within 48 hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD's recommendations, the owner or the descendent may request mediation by the NAHC.

17. Inspection Fees and Costs. The project sponsor 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 County Fire Department, the Building Inspection Division, the Public Works Agency or any other applicable Federal, State or County department or agency.

18. Hold Harmless. By exercise of this Conditional Use Permit, the property owner and applicant, shall defend, indemnify, and hold harmless Alameda County and its agents, officers, and employees from any claim, action, or proceeding against Alameda County or its, agents, officers or employees to attack, set aside, void, or annul Conditional Use Permit, PLN2016-00049, the findings of the CEQA determination, or any combination thereof. Such indemnification shall include, but not be limited to, an award of costs and attorney's fees incurred by Alameda County in its defense. The County shall promptly notify applicant of any such challenge.

19. 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 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.

20. 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 Board of Zoning Adjustments within six months after such transaction, and all conditions of approval for the subject facility are carried out by the new operator/permittee.

21. Site Restoration. Permittee or successor shall provide written notification to the Board of Zoning Adjustments upon cessation of operations on the site. The permittee/property owner shall remove all improvements authorized under this permit from the site, except for the perimeter berm and the landscape screen, and the property shall be returned to its pre-application condition within three months of cessation.

22. The Applicant shall prepare and implement a lighting plan. Proposed exterior lighting shall be shielded and directed downward and shall use 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.

23. Permittee and successor shall ensure that construction activities be limited to the hours between 7:00 a.m. and 7:00 p.m., Monday through Friday, between 8:00 a.m. and 5:00 p.m. on Saturdays and Sundays.

24. 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.

25. 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.

26. 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.

27. If implemented, said Conditional Use Permit shall undergo a mandatory review to be conducted at the end of five years, October 2025, and shall remain revocable for cause in accordance with Section 17-54.030 of the Alameda County Zoning Ordinance.

28. Permittee, and their successors, shall comply with all Federal, State, and Local Laws, Regulations and Alameda County Ordinances.

Figure 1 – Project Location and Vicinity

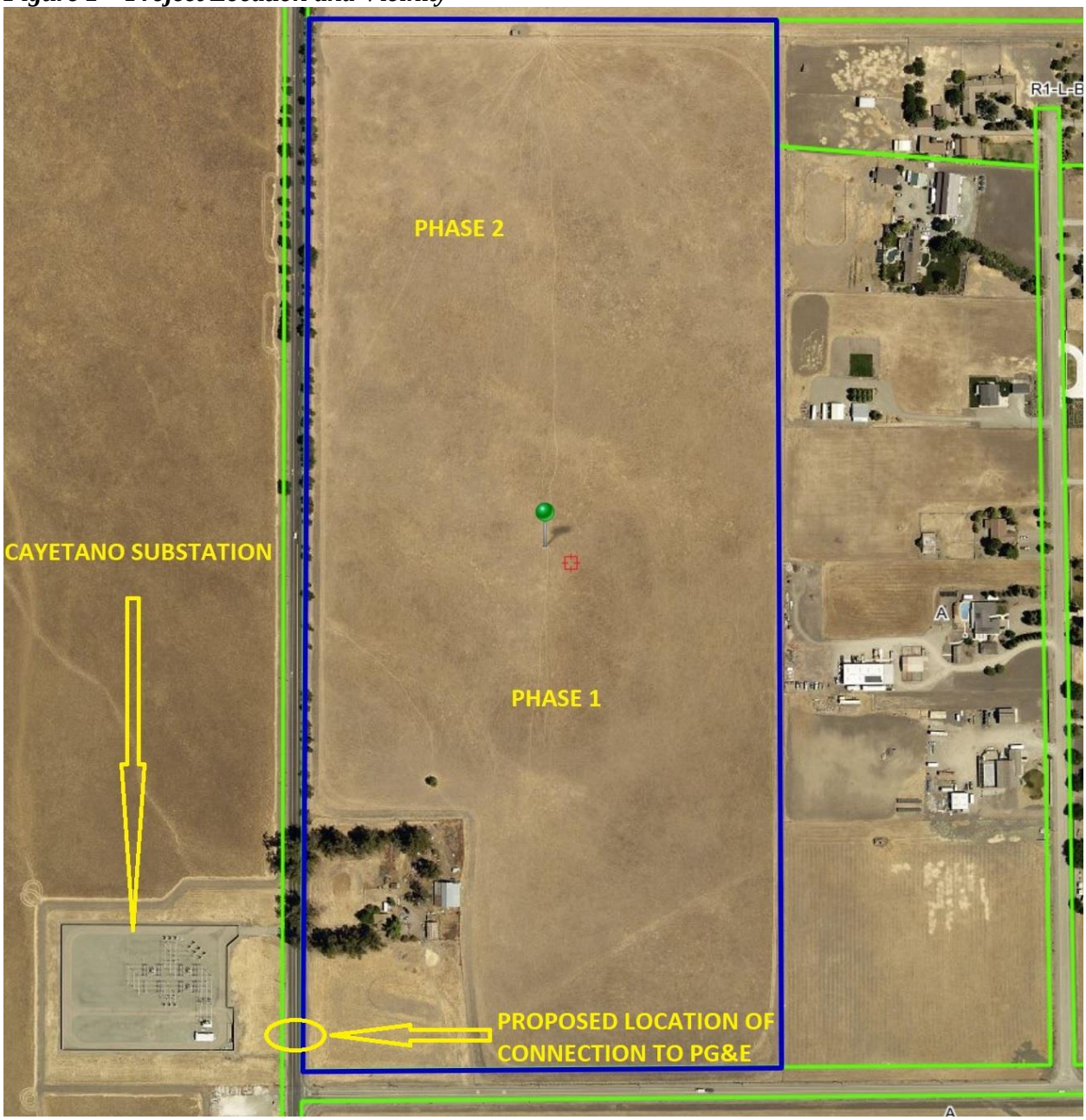
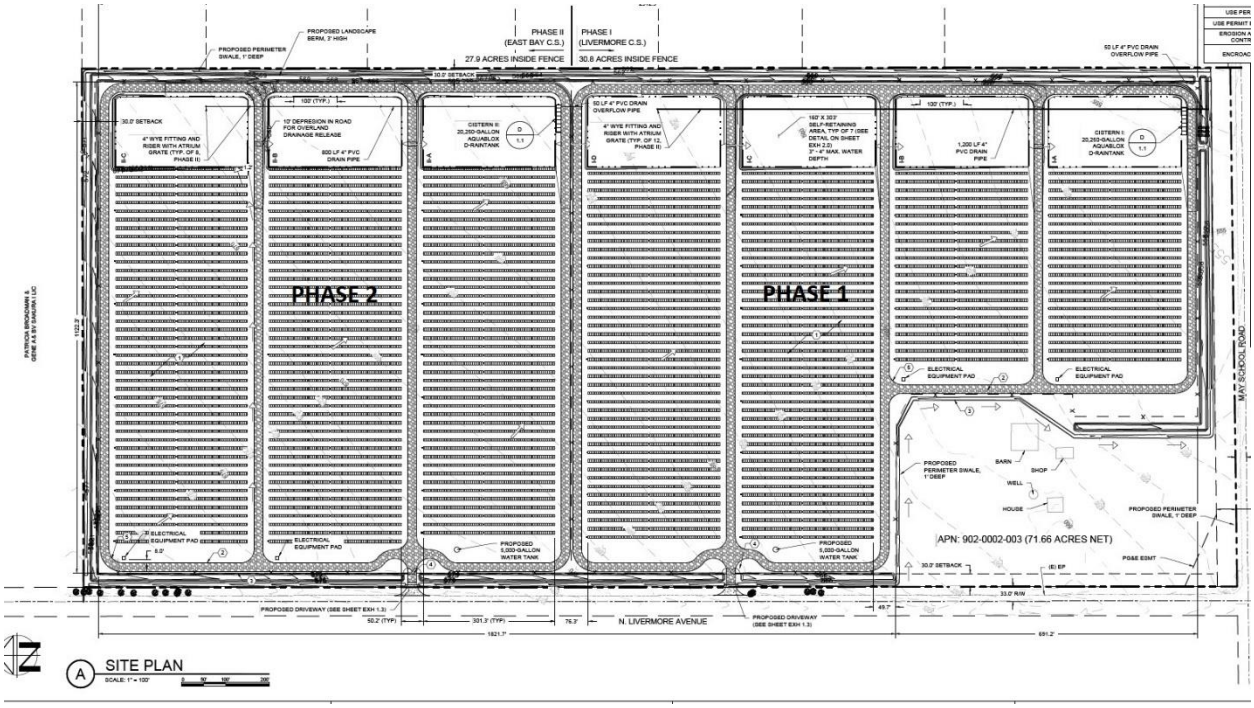


Figure 2 – Proposed Facility at Buildout



ATTACHMENTS

Referral Responses
Letters and communication from the public

EXHIBITS

Aerial Photo
Vicinity Map
Site Plan
June 16 2008 PC Minutes (Excerpt)
Draft EIR
Final EIR
Mitigation Monitoring and Reporting Program (MMRP)
Draft Resolution

PREPARED BY:	Damien Curry, Planner
REVIEWED BY:	Sonia Urzua, Senior Planner

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