

ATTACHMENT B

**RESOLUTION NO. Z-20-YY OF
THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS
ADOPTED AT THE HEARING OF DECEMBER 10, 2020 CONCERNING
CONDITIONAL USE PERMIT, PLN2016-00049**

WHEREAS Dunn / Skywalker / White have filed for CONDITIONAL USE PERMIT, PLN2016-00049, application to allow the construction and operation of a 59-acre, six (6) megawatt, solar electric facility, in the A (Agricultural) District, located at 4871 North Livermore Avenue, northeast corner, intersection of North Livermore Avenue and May School Road, Livermore area of unincorporated Alameda County, designated Assessor's Parcel Number 902-003-02-00; and

WHEREAS a project Draft EIR was prepared and circulated for 45 days between March 6 and April 21, 2020; and

WHEREAS, in compliance with Section 15091(d) of the CEQA Guidelines, the Planning Department has prepared a Mitigation Monitoring and Reporting Program (MMRP) for the project, which is required to be implemented by the Permittee and by the County as a condition of approval of the Project and that are fully enforceable through permit conditions, agreements, or other measures; and

WHEREAS, the East County Board of Zoning Adjustments has determined that approval of the project as conditioned herein, including the implementation of the Mitigation Monitoring and Reporting Program, would provide for all of the significant effects on the environment to have been eliminated or substantially lessened; and

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

WHEREAS the East County Board of Zoning Adjustments did hold virtual meetings to consider certification of the Final EIR and approval of the Conditional Use Permit (CUP) for the proposed project at the hour of 1:30 p.m. on the 22nd day of October, and the 10th day of December 2020; and

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

WHEREAS a Pre-Hearing Analysis was submitted recommending certification of the Final EIR and approval of the CUP application; and

RESOLUTION NO. Z-20-YY

CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR

December 10, 2020

Page 2

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

WHEREAS the Board certified the Final EIR at said hearing, as reflected in the Resolution Z-20-XX; and

NOW THEREFORE

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

BE IT FURTHER RESOLVED that this Board does make the following required findings:

1. The use is required by the public need as the demand for renewable energy including from utility-scale solar electric facilities (SEFs) to reduce reliance on historically conventional sources of electrical energy that generate carbon monoxide (CO) and contribute to global climate change has increased the importance of SEFs located close to connections to the energy grid that will enable the State of California to make further progress towards meeting its Renewables Portfolio Standard (RPS) of 60% by 2030 and thus reduce generation of CO. The proposed project would qualify as a renewable energy source and therefore contribute to meeting this goal.
2. 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. Further, traffic generation associated with project construction and operation has been determined to be a less than significant impact under CEQA standards.
3. 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 City of Livermore municipal water source for which a permit has been obtained. As regulated during

RESOLUTION NO. Z-20-YY

CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR

December 10, 2020

Page 3

both construction and operation by the Occupational Safety and Health Administration (OSHA) and in compliance with county, state and federal safety standards, with the implementation of the project Worksite Safety Plan, Emergency Plan and Fire Safety Plan, the use will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

4. The site is located in the A (Agriculture) District, within which an SEF is a not conditionally permitted use. However, the SEF use may be allowed pursuant to Section 17.54.050 and 17.54.060 of the Zoning Ordinance where, as here, the use has been determined by the Planning Commission to be “of the same character” as other conditional uses in in the A District, such as “privately owned wind-electric generators.” 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.

FURTHER, this Board finds that

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 as grazing uses will continue during project operation.
3. The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use, because agricultural activities will continue on significant land area around the solar arrays. In addition, 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

NOW THEREFORE

BE IT FURTHER RESOLVED that this Board does hereby approve Conditional Use Permit PLN2016-00049 to permit the construction and operation of a solar electric facility, consistent with the project MMRP and plans marked Exhibit “A” and dated October 2, 2018, on file with the Alameda County Planning Department, subject to the following conditions of approval:

RESOLUTION NO. Z-20-YY

CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR

December 10, 2020

Page 4

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. 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 CAWELO, 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. Prior to operation, Applicant shall prepare a Decommissioning and Restoration Plan for approval by the Planning Director to decommission and restore the project site.
 - a. The Plan shall require that, 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 and the soil and ground surface restored to its original condition prior to project construction.
 - b. The Decommissioning and Restoration Plan shall include a detailed engineer’s estimate of the cost of decommissioning and restoration in current year dollars, to be revised by the Applicant and accepted by the Planning Director at no less than two-year intervals during the life of the project.
 - c. During the project life and until final project site restoration and decommissioning is completed, permittee or successor shall be required to maintain a bond, escrow account, irrevocable letter of credit or other financial surety (financial assurance) in the full amount of the value of the estimate of decommissioning and restoration to safeguard the decommission and restoration process from penury; the bond, escrow account, irrevocable letter of credit or other financial surety shall be payable solely to the County of Alameda for the explicit purpose of site decommissioning and restoration in the event of abandonment of the site or failure to fully restore the site at the termination of operations.

RESOLUTION NO. Z-20-YY

CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR

December 10, 2020

Page 5

- d. County shall release the financial assurance only when the requirements of the decommissioning and restoration plan have been fully completed and achieved.
5. Public Agency Approval. Applicant shall conform and maintain compliance with the requirements of the following agencies:
 - a. Alameda County Public Works Agency, Land Development Department
 - b. Alameda County Public Works Agency, Building Inspection Department
 - c. Zone 7 Flood Control and Water Conservation District
 - d. Alameda County Fire Department
 - e. California State Public Utilities Commission
 - f. California Energy Commission
 - g. California Department of Fish and Wildlife
6. 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.
7. 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.
8. 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

9. Mitigation Monitoring and Reporting. Applicant shall be responsible for reporting annually to the Planning Department regarding the implementation of all project Mitigation Measures contained in the MMRP (Exhibit B) and/or included in these conditions of approval. Planning Department staff shall be authorized to inspect the facility with regard to the Mitigation Measures upon 48 hours' notice, or at any time under emergency conditions (e.g., where safety or health concerns appear imminent).
10. 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.
11. 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

RESOLUTION NO. Z-20-YY

CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR

December 10, 2020

Page 6

its, agents, officers or employees to attack, set aside, void, or annul Conditional Use Permit, PLN2016-00049, the certification of the Environmental Impact Report, the CEQA findings, or any combination thereof. Such indemnification shall include, but not be limited to, an award of costs and attorney's fees incurred by Alameda County in its defense. The County shall promptly notify applicant of any such challenge.

12. 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.
13. Transfer of Operations. Any entity that has acquired the facilities as authorized under this permit may maintain the benefits of the existing use permit provided that a letter of notification is submitted to the Planning Department within six months after such transaction, and all conditions of approval for the subject facility are carried out by the new operator/permittee.
14. Site Restoration. Permittee or successor shall provide written notification to the Planning Department upon cessation of operations on the site. The permittee/property owner shall remove all improvements authorized under this permit from the site as prescribed in Condition No. 4 above, except for the perimeter berm and the landscape screen, and the property shall be returned to its pre-application condition within three months of cessation.
15. The Applicant shall prepare and implement a lighting plan. Proposed exterior lighting shall be shielded and directed downward, and shall be full cutoff shielded fixtures that cast low-angle illumination to minimize incidental spillover of light onto adjacent properties and open space. Fixtures that project light upward or horizontally shall not be used, and luminaries shall be directed away from properties adjacent to the project site. The lighting plan and appropriate fixtures shall be shown on the plans submitted to the County, for review and approval by the Planning Department prior to issuance of building permit(s) and operation activities.

MITIGATION MEASURES

16. **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

RESOLUTION NO. Z-20-YY

CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR

December 10, 2020

Page 7

years of planting, to screen the proposed solar arrays.

17. **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).
18. **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.

RESOLUTION NO. Z-20-YY

CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR

December 10, 2020

Page 8

- 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.

19. Mitigation Measure BIO-1.2: Conduct Preconstruction Clearance Surveys for Western Burrowing Owls. A minimum of four burrowing Owl survey visits shall be conducted

RESOLUTION NO. Z-20-YY

CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR

December 10, 2020

Page 9

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.

20. 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

RESOLUTION NO. Z-20-YY

CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR

December 10, 2020

Page 10

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.

21. **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

RESOLUTION NO. Z-20-YY

CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR

December 10, 2020

Page 11

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.

22. 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.

23. Mitigation Measure BIO-3: San Joaquin Kit Fox: Although not observed onsite, the site provides suitable habitat for this species and the following measures will be implemented. A qualified biologist shall conduct a preconstruction survey no more than 14 days prior to the beginning of ground disturbance and/or construction/ decommissioning activities, or any other project activity likely to impact San Joaquin kit fox, to determine if potential San Joaquin kit fox dens are present in or within 500 feet of the project site (inaccessible areas outside of the project site can be surveyed using binoculars or spotting scopes from public roads). The surveys shall be conducted in all areas of suitable habitat for San Joaquin kit fox. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur within 14 days prior to disturbance of any particular portion of the site. If potential dens are observed and avoidance of the dens is determined to be feasible, the following minimum buffer distances shall be established prior to construction/decommissioning activities (consistent with USFWS 2011): •

Potential den: 50 feet

Atypical den: 50 feet

Known den: 100 feet

Natal/pupping den: at least 500 feet – USFWS must be contacted.

Buffer establishment shall follow the USFWS Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance (USFWS 2011) under “Exclusion Zones.” If San Joaquin kit fox or occupied San Joaquin kit fox dens are observed on the site, USFWS must be contacted.

RESOLUTION NO. Z-20-YY

CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR

December 10, 2020

Page 12

24. **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.
25. **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.
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, November 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.

RESOLUTION NO. Z-20-YY
CONDITIONAL USE PERMIT PLN2016-00049 – LIVERMORE COMMUNITY SOLAR
December 10, 2020
Page 13

EAST COUNTY BOARD OF ZONING ADJUSTMENTS
ALAMEDA COUNTY PLANNING DEPARTMENT