

## MEMORANDUM

To: San Bernardino County Board of Supervisors  
From: Davis Wright Tremaine  
Date: June 12, 2026  
Subject: Applicant's Statement in Support of Appeal of San Bernardino County Planning Commission Denial, PROJ-2025-00036

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### I. INTRODUCTION

This matter comes before the San Bernardino County Board of Supervisors (“**Board**”) following the San Bernardino County Planning Commission’s (“**Commission**”) general and unsupported denial of the Bear Valley Solar Project, PROJ-2025-00036 (the “**Project**”). The Board should overturn the Commission’s denial and approve the Project in its entirety, consistent with the broad scope of the Board’s authority under San Bernardino County Code (“**Code**”) section 86.08.050.<sup>1</sup> Bear Valley Electric Service, Inc. (“**BVES**”) and EDF Power Solutions Distribution-Scale Power (“**EDF**,” and together with BVES, “**Applicant**”) seek to construct essential renewable infrastructure to secure reliable, affordable, and locally produced power for Bear Valley. The Project will provide reliability and economic benefits, including outage reductions and reduced procurement costs, to nearly 25,000 residential and commercial customers.

The Project is a small-scale (5 MW), community oriented renewable energy (“**CORE**”) project that demonstrably meets the County’s existing criteria for siting CORE projects.<sup>2</sup> Applicant requested that the Commission, as the appropriate County reviewing authority, recommend approval to this Board for a Policy Plan Amendment, a Zoning Amendment, and adoption of the Project’s Mitigated Negative Declaration (“**MND**”) for compliance with the

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<sup>1</sup> Code § 86.08.050 (“Upon hearing the appeal, the appeal body shall consider the record and any additional evidence that may be offered and may **affirm, reverse, or modify**, in whole or in part, the decision appealed.”) (*emphasis added*).

<sup>2</sup> See, e.g., County of San Bernardino General Plan Renewable Energy and Conservation Element (“**RE Element**”), p. 11 (stating that “Large-scale (10 MW or greater) utility-oriented projects [should be kept] separate from or sufficiently buffered from existing communities”); p. 30 (describing “community-orientation” as those renewable energy projects “primarily intended to serve the people near them.”).

California Environmental Quality Act (“**CEQA**”), and to directly approve the necessary Conditional Use Permit (“**CUP**”).<sup>3</sup>

To inform the Commission’s deliberations, County staff reviewed the Project for compliance with both applicable zoning regulations and CEQA, concluded that the Project could be approved, and prepared findings and conditions of approval before ultimately recommending approval of each of the Project’s required entitlements. Rather than discharge its statutory duty to provide the Board with defensible recommendations on both the Policy Plan and Zoning Amendments, the Commission failed to provide either clear recommendations or necessary findings, and instead broadly denied the Project as “incompatible” with the existing land use designation. The central flaw in the Commission’s decision is that it denied the Project because it required amendments to existing policy and zoning, even though County procedures expressly authorize those amendments and prescribe the process to do so. The mere need for an amendment is not a legally sufficient reason to reject such an amendment. Relying on this rationale undermines the purpose of the County’s own planning process and prevents meaningful consideration of projects on their merits.

Accordingly, by proceeding in that manner, the Commission failed both (i) to proceed in the manner required by law and (ii) to provide adequate findings or support its decision with evidence—much less substantial evidence—that could adequately inform the Board, Applicant, and the public of its rationale. These failures alone are sufficient for the Board to overturn the Commission’s decision and fully approve the Project.

But even if the Commission had appropriately evaluated the Staff Report and the evidence presented by both Applicant and the public, the record before the Commission and now before this Board supports full approval of the Project. The purported issues raised by Project opponents cannot be relied upon to justify denial of the Project; put simply, those concerns are speculative and unsupported by evidence in the record. Had the Commission properly evaluated the evidence before it in an unbiased manner, it would have reached the same conclusion County staff reached: the Project satisfies all applicable standards and should be approved.

Accordingly, for the reasons set forth below, the Board should grant Applicant’s appeal and fully approve the Project, without remand to, or further consideration by, the Commission.

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<sup>3</sup> Both the Policy Plan Amendment and Zoning Amendment would always have required elevation to this Board, given the Code’s mandatory two-step process, which first requires evaluation by the Commission, issuance of a recommendation to the Board, and subsequent final approval by the Board. See Code §§ 86.12.030 – 050 (describing amendment process for Policy Plan and zoning changes). Approval of the CUP is typically vested in the Planning Commission, with appeal authority vested in the Board. See Code §§ 85.06.030(a) (establishing Commission as review authority); 85.06.110; 86.08.010(c) (establishing Board as appropriate appeal venue from Commission decisions).

## II. STATEMENT OF FACTS

### A. The Project Will Provide Significant Community Benefits by Serving Local Energy Needs in the Bear Valley Area at Lower Costs and With Greater Reliability than Current Supplies.

The Project is a five-megawatt (5 MW) photovoltaic solar energy facility that will be located on an approximately 30-acre parcel at 2151 Erwin Ranch Road, in the Bear Valley area of unincorporated San Bernardino County. The Project will provide locally produced renewable energy within BVES's service territory and a reliable, affordable source of electric service for its residents and employers, without the resiliency or transmission weaknesses of imported power. Critically, the Project is community-oriented, and 100 percent of the power generated by the Project will be consumed locally within BVES's service territory.<sup>4</sup>

Presently, BVES relies primarily on imported power supplied by Southern California Edison to meet consumer demand. This power is produced "off-mountain" and transmitted to Bear Valley along transmission lines that are vulnerable to outages, particularly from Public Safety Power Shutoffs ("**PSPS**")<sup>5</sup> The Project would offer multiple benefits to alleviate increasingly common procurement issues by, among other things, providing approximately ten percent (10%) of BVES's annual demand through locally produced power, eliminating the need for "over-the-mountain" transmission (and thus reducing vulnerability to PSPS events), and further reducing procurement costs for ratepayers by effectively "on-shoring" power production at overall lower costs than existing renewable energy procurement. Indeed, before obtaining local land use approvals for the Project, BVES was first required to obtain a Certificate of Public Convenience from the California Public Utilities Commission ("**CPUC**"). In issuing that Certificate, the CPUC made clear findings, based on evidence, that "the forecasted cost of the ... Project's energy generation is less than BVES's recent generation procurement for eligible renewable resources, and therefore, ***provides superior value to BVES's ratepayers***."<sup>6</sup> County Staff identified and relied, in part, on that CPUC approval and underlying findings of these multiple ratepayer/reliability benefits as part of the overall public benefit supporting the Project.<sup>8</sup>

### B. Policy Plan and Zoning Amendments are Necessary for the Project.

Currently, the Project site's land use category is designated as Very Low Density Residential ("**VLDR**") and zoned BV/RS-1. Neighboring land use categories include Low Density Residential ("**LDR**"), Rural Living ("**RL**"), and Open Space ("**OS**").<sup>9</sup> Neighboring

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<sup>4</sup> See County Planning Commission Staff Report ("**Staff Report**") dated February 19, 2026, pp. 7–8.

<sup>5</sup> See Decision Approving Settlement Agreement for Bear Valley Electric Service's Application to Develop a Solar Facility and Battery Energy Storage System, Application 24-05.020 (Issued December 12, 2025) ("**CPUC Approval**"), pp. 3, 24; see also Commission Hearing Video dated February 19, 2026 Timestamp ("Hearing TS") 01:59:09–02:01:15; 02:05:04–02:09:23.

<sup>6</sup> CPUC Approval, pp. 24-25, 40 (emphasis added).

<sup>9</sup> See Code, Chapter 82.04 (describing land use categories).

zoning designations include BV/RC (Resource Conservation), BV/RS (Residential), BV/RS-10M (Residential, 10,000-square-foot minimum), BV/RL-5 (Rural Living, 5-acre minimum), and BV/RL-10 (Rural Living, 10-acre minimum). While renewable energy facilities are not authorized under the Code to be built on RS-1-zoned parcels, the Code does authorize renewable energy facilities on parcels zoned RL, with approval of a CUP.<sup>10</sup> Accordingly, Applicant requested the necessary approvals to modify the Project parcel from its current VLDR-BV/RS-1 designation to an RL-BV/RL designation, effectively maintaining low-density residential zoning while allowing for Project development with additional County oversight through the CUP process.<sup>11</sup> Critically for this Board's consideration of the Project, both RS-1 and RL are residential land use designations that emphasize low-density development. Applicant's requested zoning—RL—is a less dense residential zoning designation than the parcel's current zoning. RL is limited to one (1) dwelling unit per 2.5 acres, while VLDR zoning is more intensive and authorizes up to two (2) dwelling units per acre.<sup>12</sup> Put simply, the parcel's current zoning authorizes both denser and more limited uses than Applicant's proposed zoning. Per the County's land use guide, the differences between RS and RL zoning are used to implement two different types of development: rural living (and associated uses) under the RL designation, or subdivision-style, low-density residential development under the VLDR designation. County staff appropriately found that the requested RL designation would not be inconsistent with existing zoning (e.g., by imposing intensive industrial or commercial development amidst residential land use designations), but would maintain the existing rural residential land use framework.<sup>13</sup> Additionally, reclassifying the Project parcel from VLDR to RL would create a more effective and gradual buffer between the higher-density VLDR-BV/RS-1 designation to the south of the Project and the OS-BV/RC designation immediately to the north of the Project.

**C. The Project Is Consistent With All Applicable County Requirements and Will Not Have a Significant Effect on the Environment.**

County staff further reviewed the Project for consistency with applicable land use, zoning, CUP, commercial solar, and CEQA requirements and prepared multiple specific findings to support the approval recommendation. For the Policy Plan Amendment and Zoning Amendment, staff found that the Project is internally consistent with the Policy Plan, is not detrimental to the public interest, provides a community benefit, provides a reasonable and logical extension of the existing land use pattern, does not conflict with the Development Code, would not have a substantial adverse effect on surrounding property, and is physically suitable for the proposed use.<sup>14</sup> Additionally, staff prepared and presented findings specific to the CUP, finding that the parcel size was adequate for the Project, that the parcel has adequate access for the Project, and that the Project would not have a

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<sup>10</sup> See Staff Report, pp. 1-2, 7, 13-14; see also Code Table 82-7.

<sup>11</sup> *Id.*

<sup>12</sup> Code § 82.01.020

<sup>13</sup> Staff Report, Ex. A, pp. 16-18.

<sup>14</sup> Staff Report, Ex. A, pp. 16-19

substantial adverse effect on abutting property or allowed uses.<sup>15</sup> Staff further prepared findings specific to the County’s commercial solar facility requirements and recommended that the Commission find that the Project’s location, design, screening, biological mitigation, water and drainage controls, infrastructure, and decommissioning requirements all satisfy the County’s applicable solar criteria.<sup>16</sup> Each of staff’s proposed findings is supported by ample evidence in the underlying record.

Finally, staff undertook the necessary level of CEQA review. The Project’s Initial Study/Mitigated Negative Declaration (“**IS/MND**”) identified several potentially significant impacts, including cultural resources, tribal cultural resources, geology and soils, noise, and biological resources.<sup>17</sup> In all instances, the IS/MND identified those resources that may be potentially impacted and the appropriate mitigation measures to adequately reduce impacts to less than significant.<sup>18</sup> Accordingly, staff prepared and presented findings recommending that the Commission recommend that the Board adopt the relevant CEQA documents: a Mitigated Negative Declaration (“**MND**”), a Mitigation Monitoring and Reporting Program (“**MMRP**”), and the filing of a Notice of Determination (“**NOD**”) under CEQA.<sup>19</sup>

#### **D. The Commission Denied the Project.**

On February 19, 2026, the Project’s various approvals came before the Commission in a duly noticed public hearing. During the hearing, the Commission received staff’s presentation, Applicant testimony, public testimony, and legal guidance from County Counsel.<sup>20</sup> Staff reiterated the key findings in the Staff Report: that the existing BV/RS-1 zoning does not allow renewable energy generation facilities; that the Applicant requested the Policy Plan Amendment and Zoning Amendment because the Project could be approved in the RL district upon approval of a CUP; and that the Project was truly a CORE Project, and did not exceed the relevant, County standards for CORE siting requirements.<sup>21</sup>

Following the staff presentation, Applicant presented additional information regarding the Project’s local energy benefits, reliability and resiliency benefits, CPUC review and approval, as well as addressing potential public comment issues such as site design, screening, drainage, noise, biological resources, and lack of on-site battery storage.<sup>22</sup>

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<sup>15</sup> Staff Report, Ex. A, pp. 19–22.

<sup>16</sup> Staff Report, Ex. A, pp. 22–30.

<sup>17</sup> Staff Report, Ex. E, p. 9.

<sup>18</sup> Staff Report, Ex. E, pp. 35 – 37 (biological resources, mitigated by surveys and monitoring); pp. 44 – 46 (cultural resources, mitigated by surveys and monitoring); pp. 60 – 63 (geology and soil resources, mitigated by implementation of seismological design choices and undertaking necessary slope stability assessments); pp. 93-95 (noise, mitigated by construction activity limitations and physical restrictions on the placement of inverters at least forty (40) feet from residences); and pp. 110 – 112 (tribal cultural resources, mitigated by surveys, tribal monitoring, and appropriate protocols relating to any discoveries).

<sup>19</sup> Staff Report, pp. 2, 13–14.

Following Applicant’s presentation, the hearing was opened to public comment. Some comments favored the Project, while the majority opposed it. Those members of the public who opposed the Project did so on several grounds, often relying on personal observations and speculative and unsupported impacts. Nearby residents described the site as part of a rural residential and equestrian area and expressed concern that the Project would alter the neighborhood’s character, remain visible from nearby homes and roads, and diminish private views.<sup>23</sup>

Other public comments focused on wildlife and environmental concerns based largely on residents’ own observations of the site and surrounding area. Speakers reported seeing wildlife on or near the parcel—including burros, bobcats, hawks, snakes, and a coyote den—and expressed concern that the Project could interfere with habitat or wildlife movement. Public testimony also raised concerns that the biological studies may not have captured all species present and that construction activities could affect downstream or adjacent environmental resources.<sup>24</sup>

Residents likewise expressed concern about possible effects on groundwater, wells, and nearby residential use. Commenters stated that homes in the area rely on shallow wells and suggested that grading, trenching, spills, hydraulic fluid, diesel, herbicides, runoff, or piledriving in wet conditions could affect groundwater quality or availability. Other speakers described concerns about inverter or transformer noise, the loss of informal riding areas, and the possibility that fencing or construction activity would redirect horse riders onto paved roads. Additional testimony referenced end-of-life disposal issues and public-safety concerns associated with batteries and fire risk.<sup>25</sup>

In overall character, the objections raised during public testimony were presented chiefly through individual experience, lay observation, and predictions about what the project could cause in the future, including effects on views, wildlife, groundwater, quiet enjoyment, access, and property marketability. The testimony was thus directed primarily to perceived and anticipated impacts described by neighboring residents rather than to quantified analysis offered during public comment.

Following public comments, the Commission moved immediately into decision mode, effectively bypassing any deliberation or clarifying questions relating to the various findings, Project benefits, or public comments. Commissioner Gongora moved to deny the Project without providing any basis, facts, or proposed findings to support denial. Commissioner Weldy seconded the motion and asked whether the Commission needed only a single finding (or any findings at all) to support denial, and County Counsel advised that the Commission needed at least one finding to support denial.<sup>26</sup> Commissioner Weldy proposed a denial finding: “the zoning change is incompatible for the ultimate use” Applicant was seeking. This promulgated finding is facially nonsensical, given that Applicant

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<sup>23</sup> Hearing TS 02:10:14-02:11:11; 02:14:54-02:15:25

<sup>24</sup> Hearing TS 02:10:14-02:13:17; 02:32:08-02:32:43; 03:14:32-03:16:17; 03:15:25-03:15:51

<sup>26</sup> Hearing TS 03:16:31-03:17:23

was requesting the applicable Policy Plan and Zoning Amendments to explicitly render the parcel compatible for the proposed “ultimate use.”<sup>27</sup> Given the facial vagueness of that finding, County Counsel inquired if Commissioner Weldy was articulating concern with Project’s overall compatibility with the County’s Policy Plan policies.<sup>28</sup>

Commissioner Weldy further explained that the Commission’s concern was the sequencing of the approvals. He stated that the Project involved “changing a zoning to get to an ultimate use that isn’t [currently] allowed in the original zoning,” creating “in essence, a lily pad.” Notwithstanding that Policy Plan and Zoning Amendments to alter zoning are both explicitly authorized by the Code, if supported by the necessary findings, and are also typical approvals put before the Commission, Commissioner Weldy went on to add that the approval sequence (Policy Plan Amendment, Zoning Change, and CUP approval) “work[s] on paper,” but was not what residents expected, and described the Project as “an incompatible end use justified by a zoning change.”<sup>29</sup>

Commissioner Gongora then requested advice from County Counsel as to whether the Commission’s articulated justification was sufficient to support denial of the Project. County Counsel responded that a denial decision was ultimately the Commission’s and stated, “if that’s [the Commission’s “lily-pad rationale”] sufficient for the Commission,” then the Commissioners had articulated the grounds on which the Project would be denied. Commissioner Slowik then asked for clarification on which of the staff report’s proposed findings was being found unsupported. Rather than answer, County Counsel repeated the legal aphorism that the Commission only “need[s] one finding that doesn’t support it [Project approval].”<sup>30</sup>

The Commission voted 4-0 to deny the Project.<sup>31</sup> The only articulated basis for the denial was the vague and unsupported statement that the proposed zoning change was incompatible with the County’s Policy Plan and the existing land use.<sup>32</sup> No specific denials were made, no detailed findings were made, and no written decision or justification was provided. The only certainty stemming from the Commission’s denial was that it was for the entirety of the Project. Following the denial, Applicant timely appealed the Commission’s denial to this Board.

### **III. STANDARD OF REVIEW**

The pending appeal before the Board is procedural items but in that two of the necessary Project approvals (the Policy Plan Amendment and Zoning Amendment) would always have been subject to final Board review, based on the recommendations provided by the Commission.<sup>33</sup> Here, however, the Commission did not provide appropriate

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<sup>27</sup> Hearing TS 03:17:23–03:17:40

<sup>28</sup> Hearing TS 03:17:50–03:18:32

<sup>29</sup> Hearing TS 03:18:33–03:20:02.

<sup>33</sup> See Code §§ 86.12.030 – 050; see also Cal. Gov’t Code §§ 65850, 65853, 65854, 65855, 65856; *Arnel Dev. Co. v. City of Costa Mesa* (1980) 28 Cal. 3d 511, 521-522.

recommendations relating to denial for those two items, but instead acted in a manner that denied the Project in its entirety based on a facially vague “inconsistency” finding. This procedural posture has created a situation that requires the Board to sit concurrently as both an appellate body and the ultimate land use authority for the County.

As an initial matter, the need for the Board’s careful and searching review of the Project is clear: under California law, an agency’s decision is unlawful when it is an abuse of discretion because the agency fails to proceed in the manner required by law, the decision is not supported by the findings, or the findings are not supported by substantial evidence.<sup>34</sup> Zoning decisions, in particular, are reviewed for whether they are arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.<sup>35</sup> Accordingly, the Board must ensure that its decision in this appeal addresses the procedural irregularities of the underlying Commission proceeding, the Commission’s lack of adequate findings, and the lack of any substantial evidence in the record to support the Commission’s actions. It is therefore proper for the Board to effectively rehear Applicant’s Project.

The Board has authority to consider appeals of land use decisions made by the Commission *de novo* and effectively rehear the entire land use application, considering “the record and any additional evidence that may be offered,” and may “affirm, reverse, or modify, in whole or in part, the decision appealed.”<sup>36</sup> The Board is subject to the same criteria, findings, and requirements otherwise imposed on the Commission.<sup>37</sup>

As the ultimate land use authority in the County, the Board independently evaluates the Project and makes all necessary findings based on the full record before it, which includes both the record prepared for the instant hearing and the record before the Commission. Additionally, given the fundamental inadequacy of the Commission’s actions in this instance—no recommendations or specific findings related to the Project in favor of what amounted to a full but unspecified denial of the Project—the Board must also, sitting in its appellate role, “scrutinize the record and determine whether substantial evidence” supports the Commission’s decision, the Commission’s findings, and whether the Commission’s findings support the Commission’s denial of the Project.<sup>38</sup>

#### IV. ARGUMENT

As demonstrated herein, the Commission failed to provide the Board with any grounds to uphold denial of the Project, and, sitting as an appellate body, the Board must find that the Commission (1) proceeded in a manner inconsistent with law; (2) failed to issue adequate findings; and (3) denied the Project without substantial evidence in the record.

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<sup>34</sup> Code Civ. Proc. § 1094.5(b).

<sup>35</sup> *Spring Valley Lake Assn. v. City of Victorville*, 248 Cal.App.4th 91, 99 (2016).

<sup>36</sup> Code §§ 86.08.010(c)(1); 86.08.050(a).

<sup>37</sup> Code § 86.08.050(b).

<sup>38</sup> *Topanga Assn. for a Scenic Cmty. v. County of Los Angeles* (1974) 11 Cal.3d 506, 514; *Bixby v. Pierno* (1971) 4 Cal.3d 130, 143, n.10 (substantial evidence test requires review of entire record).

Moreover, sitting as the County’s ultimate land use authority, the record before the Board demonstrates that staff’s original recommendation was appropriate, and each of the Project’s three pending entitlements should be approved.

**A. The Commission Did Not Provide the Board with the Code Required Recommendations When It Denied the Project, Thereby Failing to Proceed in the Manner Required by Law.**

The Planning Commission’s denial rests on a rationale that is both legally and factually untethered from the findings the County was required to make. The Commission’s stated concern was, in essence, that the Project required rezoning to allow a use not permitted under the existing zoning—a point that merely explains why the amendment application was filed. Here, the Commission failed to follow either the Policy Plan Amendment process or the Zoning Amendment process and failed to consider or apply the approval criteria mandated by the Code. Those failures demonstrate that the Commission did not proceed in the manner required by law, and its denial must be overturned.

When reviewing a request for a policy plan or zoning amendment, the Code does not require the Commission to opine whether a proposed use is authorized under the current zoning; rather, it requires the Commission to evaluate statutorily mandated factors and then make findings thereon.<sup>39</sup> These mandatory findings include: (1) whether the proposed amendment(s) are internally consistent with the applicable general or subarea plans; (2) whether the proposed amendment(s) are detrimental to the public interest, health, safety, convenience, or welfare; (3) whether the zone change is in the public interest; (4) whether the zone change provides a community benefit; (5) whether the zone change compromises existing or allowed uses; (6) whether the zone change logically extends the existing land use pattern; (7) whether the zone change conflicts with the Development Code; (8) whether there will be substantial harm to surrounding property; and (9) whether the zone change is physically suitable for the site.<sup>40</sup> Here, the Commission’s entire approach to Applicant’s requested approvals is wholly inconsistent with the applicable law and cannot stand.

Effectively, the Commission’s denial decision is based on faulty rationale: that requesting policy plan amendments or zoning amendments is *de facto* evidence of the Project’s incompatibility and an adequate basis for denial. Yet this position is a tautological Catch-22. Taken to its logical conclusion, the Commission’s justification for denying this Project would effectively eliminate the ability of any applicant, landowner, or private party to initiate a zoning change—if a proposed end use cannot be supported by existing zoning, and that fact alone is grounds enough for denial, then what use is the zoning amendment process?

Zoning consistency, cohesive development, and regulatory certainty are legitimate concerns in evaluating any Policy Plan or Zoning Amendment. But the County has already

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<sup>39</sup> Code § 86.12.060. The Commission need not make findings on all of these factors; but it must at provide recommendations on negative findings to support a denial.

<sup>40</sup> Code § 86.12.060(a)

accounted for those concerns by establishing a detailed evaluation framework for the Commission’s review and requiring at least nine specific findings to support approval. Here, the Commission abandoned that statutory framework in favor of an outcome-driven denial.

In framing its deliberations around the “sufficiency” of a denial justification—without evaluating the Project, without evaluating any of the nine statutorily required factors, and while relying on logic that would effectively obviate the need for future zoning amendments—the Commission acted in a manner inconsistent with the law, and its decision cannot be upheld by the Board.

Moreover, the Commission’s approach threatens to undermine—and effectively nullify—the County’s statutory scheme. If applied to future Policy Plan or Zoning Amendment requests, the Commission’s rationale would render meaningless the Code provisions that expressly permit such requests and instead reduce zoning changes to legislative fiat, initiated only by government rather than by landowners and residents as County land-use needs evolve. That result would allow the Commission—or any other delegated decisionmaker—to disregard the Code’s requirement that proposed projects be evaluated across the full range of prescribed criteria, thereby stripping County residents of the balanced process the County has already adopted to reconcile zoning consistency with zoning flexibility.

**B. The Commission Did Not Provide Adequate Findings to Support Its Denial and Cannot Be Upheld.**

In addition to the procedural failures above, or perhaps because of them, the Commission also failed to promulgate defensible findings. Neither the Board—in evaluating the Commission’s decision—nor Applicant—in appealing the denial—has sufficient grounds to understand the Commission’s reasoning. The failure to articulate a rational connection between the facts and law evaluated and the decision reached is a fundamental flaw that violates well-established precedent that an agency “must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision[.]”<sup>41</sup> Here, the Commission has not provided any findings beyond those quoted above. The lack of such findings is a fundamental, fatal flaw in the Commission’s decision, and the Board should overturn the Commission’s denial of the Project.

**C. The Commission’s Denial Is Not Supported by Substantial Evidence in the Record and Cannot Be Upheld.**

Because the Commission did not draw any connection between the facts presented during the hearing, detailed in the Staff Report, or otherwise properly before it, there is a presumption that the denial is not supported by substantial evidence (and indeed, this presumption underlies the need for adequate findings, such that an appellant and public are not left guessing as to why).<sup>42</sup> While the Commission’s denial seems to have substituted

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<sup>41</sup> *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

generalized discomfort with the rezoning “sequence” for an actual finding-based analysis grounded in the record, even *arguendo*, taking into account concerns raised in the record and during the hearing, such concerns do not amount to substantial evidence.

As an initial matter, Staff did not merely recommend approval in conclusory fashion; Exhibit A sets out detailed findings that the amendment is: internally consistent with the Policy Plan, not detrimental to the public interest, supported by a community benefit, a logical extension of surrounding land use patterns, and noninjurious to surrounding property.

Beyond the thoroughness of the original Staff Report, there is simply no evidence on which to deny the Project. For example, the record does not show an incompatible industrial intrusion into a rural neighborhood as alleged during public testimony; it shows a modest 5 MW community-oriented solar facility on a 29.9-acre site, with low-profile panels, setbacks, agricultural-style fencing, vegetative screening, shielded lighting, minimal operational activity, and mandatory decommissioning requirements. Staff specifically found that the RL designation was chosen precisely because it is intended to balance residential use with open space and preservation of rural character, that the Project would not physically divide an established community, and that—because of its scale, setbacks, buffering, and conditions—it would not generate excessive noise, glare, lighting, or other disturbance affecting abutting properties. Project opponents’ purported contrary evidence is not sufficient to support denial, but rather articulated preferences that the Project site remains vacant, coupled with anecdotal assertions about views, neighborhood expectations, and property values. But personal opposition and unsupported assertions are not substantial record evidence and cannot sustain a denial.

The environmental objections hold no greater evidentiary value. The County prepared and circulated an IS/MND, received and considered public and agency comments, responded to CDFW, and concluded that identified impacts could be mitigated to a less-than-significant level through an MMRP that includes measures addressing biological resources, cultural resources, geology and soils, noise, and tribal cultural resources. Staff further found that the site does not overlap federally designated critical habitat, does not contain CDFW-designated sensitive natural communities, and would not significantly affect hydrology or groundwater supplies, particularly because the Project requires no on-site water or sewer service during operation and construction-related water can be trucked in. The same is true of the wildlife corridor and survey-timing complaints: those issues were aired, reviewed, and addressed through CEQA and project mitigation, including an additional survey already completed and submitted into the record that does not alter the IS/MND’s conclusions and ensures that all necessary mitigation measures will be adopted. Those opposition statements aired during the Commission hearing were, again, speculative assertions and anecdotal evidence, not contrary technical analysis sufficient to undercut or rebut the County’s environmental review. And to the extent some testimony focused on battery-fire risks, the record makes clear that

those concerns largely related to a separate off-site battery-storage project at the Meadow Substation, not the solar CUP site before the Commission.

Finally, the Commission's denial failed to address the significant record evidence supporting the affirmative public interest: a reliable source of locally produced electricity that would benefit thousands of residential property owners and the local economy, including necessary public services and a thriving tourism and hospitality industry. That Bear Valley-wide public interest was recognized and demonstrated by, among other things, CPUC findings, letters of support from organizations that provide local public services, health care, and assistance to residents with developmental disabilities, and organizations that represent small businesses and the tourism and hospitality industry. This is a CORE project designed for local use: 100 percent of the electricity will be consumed within the BVES service territory, and the Project is expected to supply approximately 10 percent of BVES's annual retail sales. County staff found that those facts directly supported the required community-benefit and public-interest findings. The CPUC independently approved the solar project and off-site battery project, concluding that the Project is in the public interest, provides net value to ratepayers, is cost-efficient, and serves reliability needs. Against that record, the opposition offered little more than conjecture, speculative and unsupported claims, and policy disagreement, coupled with impacts on entirely private interests, such as viewsheds. The Board should give that purported evidentiary showing the weight it deserves: very little. On the whole record, there is substantial evidence supporting each required finding for approval, and no substantial evidence supports denial.

**D. The Board Should Approve the Project Because the Record Supports All Necessary Findings and Discloses No Defect Sufficient to Justify Denial.**

Ultimately, the Board should grant the appeal and approve the Project rather than remand it for further Commission proceedings. The record is sufficient to support the Board's approval: staff's analysis, the IS/MND, the MMRP, proposed conditions of approval, and detailed findings supporting the Policy Plan Amendment, Zoning Amendment, CUP, and commercial solar facility approval.

Moreover, remand would serve no useful purpose. The Commission already received the detailed staff report, proposed findings, CEQA analysis, conditions, Applicant testimony, and public testimony. Rather than address and analyze these documents and then deliberate and apply the Code-prescribed findings to that record, the Commission focused on the fact that the existing zoning did not allow the Project and utilized only that rationale as the basis to deny the Project. The result was not a reasoned application of the Code; it was a denial in search of a finding. Sending the matter back would only repeat a process the Commission has already shown it did not properly apply. The Board has the authority to fix that error now and should do so by making its own decision, approving the full Project, and adopting staff's original, proposed findings.

## V. CONCLUSION

Based on the foregoing, Applicant respectfully requests that the Board:

- 1) Vacate or otherwise overturn the Planning Commission's denial and find that the Commission: (i) acted in a manner that was arbitrary and capricious, (ii) acted in a manner inconsistent with law; (iii) failed to make adequate findings; and (iv) failed to support the denial with substantial evidence;
- 2) Adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program;
- 3) Adopt the findings in support of the Policy Plan Amendment, Zoning Amendment, Conditional Use Permit, commercial solar facility approval, and CEQA determination;
- 4) Approve the Policy Plan Amendment changing the land use category from Very Low Density Residential to Rural Living;
- 5) Approve the Zoning Amendment changing the zoning district from Bear Valley/Single Residential – 1 acre minimum to Rural Living;
- 6) Approve the Conditional Use Permit to construct and operate the five-megawatt photovoltaic solar facility, subject to conditions of approval; and
- 7) Direct the Land Use Services Department to file the Notice of Determination in compliance with CEQA.