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San Bernardino County Board of Supervisors
385 N Arrowhead Ave
San Bernardino, CA 92415

Re: Appeal of San Bernardino County Planning Commission Denial, PROJ-2025-00036

Dear Supervisors:

I. INTRODUCTION AND REQUEST FOR RELIEF

Bear Valley Electric Service, Inc. ("BVES"), as the project applicant,[1] together with EDF Power Solutions Distribution-Scale Power ("EDF")[2] (together with BVES, "Applicant"), hereby appeals to the San Bernardino County Board of Supervisors ("Board") the denial of the certain aspects of the Bear Valley Solar Project, PROJ-2025-0036 ("Project") by the San Bernardino County Planning Commission ("Commission"), and respectfully requests that the Board undertake the following actions:

1. **Vacate or Otherwise Overturn** the Planning Commission's denial of the Project on the stated grounds of "Noncompliance with general plan land uses of district designation," and specifically, "that the proposed zoning change was incompatible with the General Plan and surrounding land use [*i.e.*, the] existing very-low density residential character of the area."

2. **Adopt** the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program.

3. **Adopt** the DRAFT Findings in support of the Policy Plan Amendment, Zoning Amendment, and Conditional Use Permit.

4. **Approve** the Policy Plan Amendment to amend the Land Use Category designation from Very Low Density Residential ("VLDR") to Rural Living ("RL") on a 29.966-acre parcel.[3]

[1] We note that BVES has sufficient land control via an option to purchase, which shall be exercised upon approval of the Project.

[2] Formerly EDF Renewables Distribution-Scale Power

[3] Consistent with applicable provisions of the Code, RL parcels have a minimum parcel size of 30-acres. As further provided by the Code, common rounding conventions are applied to the nearest tenth of an acre, yielding a practical lot size of 30-acres.

5. **Approve** the Zoning Amendment to amend the Land Use Zoning District designation from Bear Valley Single Residential – 1 acre minimum ("BV/RS-1") to Rural Living ("RL") on a 29.966-acre parcel.

6. **Approve** the Conditional Use Permit to construct and operate a five-megawatt photovoltaic power generating facility on a 29.966-acre parcel, subject to the conditions of approval; and

7. **Direct** the Land Use Services Department to file the Notice of Determination in compliance with the California Environmental Quality Act.

For the reasons set forth below, the requested relief is timely, appropriate, and within the jurisdiction of the Board to grant.

II. JURISDICTION AND TIMELINESS

San Bernardino County Code ("SBC Code" or "Code") section 86.08.010(c) authorizes appeal of a Commission decision to the Bord prior the effective date of a decision. Here, Applicants presume that the Commission's denial shall be treated as the "final action" for purpose of the effective date, requiring that any appeal of the Commission's denial be appealed within ten days following the Commission's action. *See* SBC Code § 86.06.020. Without waiving any rights related to the Commission's failure to provide a written denial or findings thereon, or timely post minutes of the same fully describing the reasons, rationale, and evidence for the denial, the Commission verbally denied the Project on February 19, 2026. Ten (10) days from February 19 is Sunday, March 1, 2026. Under the SBC Code, a "decision[] shall instead become effective on the second consecutive County business day following the tenth day." SBC Code § 86.06.020(b). Accordingly, this appeal is timely, as it has been submitted on or before Monday, March 2, 2026, and prior to the earliest effective date of the Commission's decision.

III. GROUNDS FOR APPEAL AND GRANTING APPLICANT'S REQUESTED RELIEF

County staff prepared a comprehensive staff report, recommending approval consistent with Applicant's requested relief. A copy of that staff report is enclosed herewith. Despite the comprehensive staff review and affirmative recommendation to approve the Project, the Commission improperly exercised its discretion and instead issued a denial that not supported by either the evidence in the record, applicable zoning standards, or County policies.

A. Standard of Review

As an initial matter, the Board reviews the Commission's Project denial *de novo* and effectively rehears the entire application. It is appropriate for the Board to render its own decision, and it may disregard the

Commission's findings. Indeed, under applicable non-delegation precedent,[4] it is imperative that this Board grapple with the realities of this Project, rather than rely on the unsubstantiated and unsupported findings of the Commission, which are in every way inconsistent with both applicable law and the evidence in the record.

B. The Commission's Decision to Deny the Project

Specifically, the Commission denied the Project for purported "noncompliance with [the] general plan for land use of district designation," and specifically, finding that "the proposed zoning change was [sic] incompatible with the General plan and surrounding land use [*i.e.*, the] existing very-low-density residential character of the area."

In addition to this finding, Commission members also expressed unsupported concerns relating to, *inter alia*, (1) the accuracy of studies supporting the Project; (2) the feeling that a solar project did not feel compatible with certain, residential, ranch-like parcels surrounds the parcel; (3) that the lack of other available parcels felt insufficient to justify rezoning; (4) unsubstantiated concerns about wildlife in the area; and (5) concerns regarding changes in aesthetics and beauty to the area, as raised by residents.[5]

C. The Commission Erred in Denying the Project by Erroneously Applying Applicable Legal Standards and Making Findings Unsupported by Substantial Evidence

As an initial matter, the Commission's findings are unsupported by either the General Plan or the adjacent zoning. As properly analyzed by County Staff, the Project is consistent with, or otherwise implement, the following General Plan elements:

1. **Policy LU-2.1: Compatibility with Existing Uses**, because the Project would be subject to a Policy Plan Amendment, Zoning Amendment, and Conditional Use Permit ("CUP"), with sufficient conditions to ensure consistency with neighboring uses (*e.g.*, maximum fifteen-foot solar panel height, screening requirements).

2. **Policy LU-2.3: Compatibility with Natural Environment**, because the Project evaluated potential impacts to species, incorporated all necessary minimization measures as part of the CEQA process, and otherwise limits potential impacts (*e.g.*, screening for aesthetic impacts).

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[4] *See, e.g.*, *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307; *Vendanta Soc. of Southern California v. California Quartet, Ltd.* (2000) 85 Cal.App.4th 517, 526-527.

[5] Applicant notes that during the pendency of this appeal, it will be reviewing the video recording of the denial proceeding for additional details regarding the Commission's unsubstantiated bases on each of these points, and will be providing appropriate evidence from the record to counter all such unsubstantiated claims.

3. **Policy LU-2.4: Land Use Map Consistency**, because the Project does not require a change in Land Use Category.

4. **Policy RE-2.1: Renewable Energy Systems**, because the project is a community-orientated renewable energy ("CORE") project to local residents, while obviating the need for otherwise significant and costly transmission system upgrades (as discussed below).

5. **Policy RE-3.2: Community-Oriented Renewable Energy**, because the Project is a CORE system that will serve local needs and is ***smaller*** than utility-scale renewable energy projects (10 MW).

6. **Policy RE-4.5: Decommissioning Plans**,

Here, the Commission has relied on a purported inconsistency with the County's General Plan. But, under the General Plan, there is no prohibition or prohibitive policy on the type of Project at issue here. Specifically, for applicable zoning designation, RE Policy 4.10 "Prohibits [only] development of "utility oriented RE projects in the Rural Living land use districts throughout the County." This Project is ***not*** a "utility-oriented" renewable energy project but is instead a CORE renewable energy project. Therefore the Project – and the requested rezoning – is not inconsistent with RE Policy 4.10.

Moreover, while the Project requires both a Zoning Amendment and a Policy Plan Amendments, these amendments are, relatively speaking, minor, and effectively bridge existing land uses and maintain the status quo. As described in the Staff Report, the Policy Plan Amendment would modify the current "Very Low Density Residential" ("VLDR") designation to the "Rural Living" ("RL") designation. Additionally, the Zoning Amendment would modify the current "Bear Valley/Single Residential – 1 acre minimum ("BV/RS-1") to "Rural Living" ("RL"), on the Project site. These two changes do not, fundamentally, alter the existing land use standards, and preserve both the existing residential land use category and rural nature of the community.

Moreover, there is no fundamental incompatibility between existing, neighboring land uses. Applicant's requested rezoning effectively creates a logical extension of the existing land use pattern and provides a necessary and effective transition between existing VLDR parcels (2 residential units per 1 acre), immediately west, east, and south of the Project, and Resource Conservation/Open Space parcels to the north of the Project. Effectively, the Zoning Amendment is effectively a downzoning to the lowest density residential zoning designation – RL (1 unit per 2.5 acres) and is neither denser nor more intensive of a zoning designation than currently exists on the Project site. Finally, from the perspective of consistency, this rezoning request, RL is a lower density zoning designation and would be adjacent to other "low density" districts, thereby ensuring that the area remains of a consistent character and overall density.

Downzoning the Project parcel is also consistent with the low-intensity and rural nature of the immediate area. Unlike residential development, the CORE project will have significantly reduced development impacts compared to continued residential development – less daily traffic, less noise, and less demand on county services (*e.g.*, water, sewage, and schools). Moreover, because CORE development requires a CUP, there are additional limitations imposed on the Project that ensure it maintains (and even enhances) the rural character of area, based on specific design choices that are, again, lower intensity that otherwise allowed by right in the existing zoning. These intentional design choices, such as a vegetative screening consisting of a fixed knot, agricultural style fence; strict height limits which are lower than residential structures authorized by right in the current zoning; and the determination that the Project acts as an effective land bank against more intensive, residential development for the lifespan of the project, are all directed at maintaining the existing zoning character and rural residential use of the Project and surrounding parcels.

Finally, there are other, neighboring RL parcels in the immediate vicinity (as close as 680 feet). The proximity of these additional RL parcels again reinforces that the requested zoning change is neither out of character nor an improper spot zone. Instead, both the Policy Plan Amendment and Zone Change, contrary to the Commission's findings, are consistent with both the existing zoning and the County General Plan in the multitude of ways properly identified in the Staff Report– from maintaining or lowering density and intensity, actively promoting key County land use priorities, and engaging with the local character in a manner that maintains the rural nature of Bear Valley.

In addition, while not necessarily a basis for the Commission's denial, none of the stated concerns raised by Commissioners can serve to support the denial. For example, the Commissioner's concerns regarding wildlife are easily debunked by evidence in the record, including significant biological studies, engagement between the Applicant and California Department of Fish and Wildlife ("CDFW"), and were approved by the County's own biologist. While inquiry into a Project's potential impacts is necessary, such inquiry cannot be based or sustained on mere unsupported concerns, presumptions, or conjectures. The lack of any evidence – beyond feelings – is not a basis to deny a project and is actively contradicted by all relevant precedent.

At base, the Commission's findings of inconsistency both erroneously apply the law and cannot be supported by any evidence in the record and should accordingly be overturned.

D. The Commission's Decision Ignores the Public Good in Favor of a Few Constituents' Private Interests

Finally, portions of the Commission's decision that rest on speculative concerns voiced by opposition residents are inconsistent with the public interest, which is a critical factor. For instance, the Commission's improperly placed weight on viewshed or aesthetic impacts to a few residents ignores

well established precedent that impacts to private viewsheds should not be considered as "impacts" for the purposes environmental review.[6]

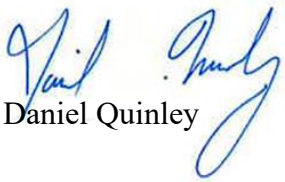
Indeed, the weighting of individual concerns over both applicable law, applicable standards, and the broader public good are indicative of a fundamental flaw in the Commission's denial. This Project has been approved by the California Public Utilities Commission ("CPUC"), which found that the Project was in the public interest for several, critical reasons. First, as demonstrated by the CPUC approval, construction and operation of the Project will have a significant public benefits to existing rate payers, by providing significant amounts of low-cost electricity – lower than equivalent power purchases, while also simultaneously meeting critical renewable portfolio standards, lowering transmission costs, and increasing overall energy reliability, effectively a "three for the price of one" benefit. Quite simply, the Project provides significant benefits to ***all*** ratepayers within the BVES service area. Yet despite these decidedly important public benefits, particularly when coupled with demonstrable land use and zoning consistency, the Commission denied the project on the basis of unsubstantiated and speculative harms voiced by only a few residents, and which are wholly unsupported by any concrete evidence in the record.

IV. CONCLUSION

For the forgoing reasons, the Commission's decision denying the Project should be overturned and the Board should approve the Project in its entirety, as originally recommended by County Staff. The Commission's decision is inconsistent with the law, not based on substantial evidence, and cannot be allowed to stand. Applicant looks forward to providing additional information and arguments and reserves the right to raise additional evidence and arguments in its presentation to the Board.

Sincerely

Davis Wright Tremaine LLP



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[6] *See, e.g.*, *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 586; *Mira Mar Mobil Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 492-494.