

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO

A RESOLUTION OF THE SAN BENITO COUNTY) Resolution No. _____
PLANNING COMMISSION RECOMMENDING)
THAT THE SAN BENITO COUNTY BOARD OF)
SUPERVISORS ADOPT AN)
ORDINANCE APPROVING PROPOSED FIRST)
AMENDED DEVELOPMENT AGREEMENT WITH)
PANOCH VALLEY SOLAR, LLC)
_____)

WHEREAS, on November 15, 2017, the Planning Commission held a duly-noticed public meeting on the proposed First Amended Development Agreement (hereinafter “FADA”), pursuant to section 19.11.008 of the San Benito County Code; and

WHEREAS, on November 15, 2017, the Planning Commission heard and received all oral and written testimony and evidence that was made, presented or filed, and all persons present at the hearing were given an opportunity to hear and be heard with respect to any matter related thereto;

WHEREAS, the Planning Commission considered the Addendum along with the 2010 Final Environmental Impact Report for the Panoche Valley Solar Farm Project as revised by the 2015 Final Supplemental Environmental Impact Report pursuant to the California Environmental Quality Act.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission hereby finds that the elements of the FADA proposed to be added to or changed from the Development Agreement (Ordinance No. 862, adopted November 10, 2010), and any elements affected by such changes, are consistent with the General Plan and any applicable specific or area plans.

- Evidence:
1. The FADA is consistent with the General Plan and any applicable specific or area plan because it incorporates the Project Approvals, which approvals have been found to be consistent with all applicable plans.
 2. Furthermore, the FADA incorporates all of the Conditions of Approval attached to the Project by the County which assure that Panoche Valley Solar, LLC (the “Owner”) must adhere to all of the provisions which ensure consistency with the General Plan and any applicable specific or area plan.
 3. Finally, the FADA contains certain public benefits listed in Section 2 which further advance objectives of the General Plan and any applicable specific or area plan and which would not have been legally possible in the absence of the FADA.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission hereby finds that the elements of the FADA proposed to be added to or changed from the Development Agreement, and any elements affected by such changes, are compatible with uses authorized in, and the regulation prescribed for, the zoning district in which the real property is located.

- Evidence:
1. Sections 25.07.005 and 25.29.106(f) of the San Benito County Code allow for the “development of natural resources together with the necessary buildings, apparatus or appurtenances incidental thereto,” as a conditionally permitted use in the Agricultural Rangeland zoning district.
 2. San Benito County Code §25.29.106(m) further allows for the development of a public utility facility as a conditionally permitted use in the Agricultural Rangeland zoning district. Prior to approving such use, the Planning Commission shall hold a duly noticed public hearing and determine that the use is deemed essential or desirable to the public convenience or welfare, and is in harmony with the various elements or objectives of the General Plan.
 3. The FADA is compatible with the uses authorized in, and the regulation prescribed for, the zoning district in which the real property is located because it incorporates all of the Project Approvals, which approvals have been found to be consistent with the Zoning Code.
 4. The FADA incorporates all of the Conditions of Approval attached to the Project by the County, which assure that the Owner must adhere to all of the provisions which ensure consistency with the Zoning Code.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission hereby finds that the elements of the FADA proposed to be added to or changed from the Development Agreement, and any elements affected by such changes, are consistent with the public health, safety and general welfare and good land use practice.

- Evidence:
1. The FADA is consistent with the public health, safety and general welfare and good land use practice because it provides greater assurance of compliance with all County requirements and the Conditions of Approval than would be the case in the absence of the FADA.
 2. Further, as listed herein, the FADA provides public benefits which would not have been possible in the absence of the FADA.
 3. The FADA provides public improvements and benefits that would not otherwise be obtained through other applicable development approval processes. Those public benefits include:
 - A. The Owner has agreed in the FADA to take best efforts to include in its construction and support services contracts language to help ensure that construction and operation

jobs are filled by qualified permanent residents living in San Benito County.

- B. The Owner has also agreed to sponsor two (2) job fairs to be conducted by the County through the One Stop Career Center to inform permanent residents of San Benito County about jobs involved in the construction and ongoing operation of the Project. The Owner has also agreed to encourage its contractors to cooperate with the County on such job fairs.
4. In lieu of payment of mitigation fees, the Owner has promised to conserve land adjacent to the Project site for habitat, open space, and agricultural conservation at a ratio of more than 9:1.
 5. The Owner has agreed in good faith to take best efforts to direct its contractors to have sales and use tax occur in the County. Such efforts may include directing its general contractor to establish a place of business in San Benito County. The Owner has also agreed to establish a business location in the County in order to maximize receipt of sales tax in the County.
 6. The Owner has agreed to guarantee that it and its vendors, contractors, and subcontractors shall collectively remit a minimum of four million two hundred fifty thousand dollars (\$4,250,000) of sales and use tax to the California Department of Tax and Fee Administration attributable to specified components of the State-wide sales and use tax rate imposed with respect to construction of the Project.
 7. The Owner has agreed to pay the County two million five hundred thousand dollars (\$2,500,000) to compensate the County for any sales and use tax revenue that may be foregone as a result of the Owner constructing a Project of less than 247 megawatts.
 8. The Owner has agreed to provide the County with public benefit compensation for a set number of years equal to the amount estimated to be lost to County General Fund as a result of the California property tax exemption under Revenue and Taxation Code Section 73. Such compensation shall be reduced by the amount of ad valorem property tax, if any, assessed by the County on Project fixtures and equipment (excluding land and Project fixtures and equipment that did not qualify for the California property tax exemption under Revenue and Taxation Code Section 73).
 9. The Owner has agreed to take steps to accommodate reasonable requests for educational and research opportunities related to the Project on the Project site, subject to indemnification and safety limitations.
 10. The Owner will provide the County with \$50,000 for the County's sole use and discretion toward future solar improvements to one or

more County-owned facilities or for other uses as determined by the County.

11. The Owner will fund a Decommission Fund that will be held in the County Treasury to ensure a source of funding for eventual decommissioning.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission hereby finds that the elements of the FADA proposed to be added to or changed from the Development Agreement, and any elements affected by such changes, will not adversely affect the orderly development of the surrounding community.

- Evidence:
1. The County has designated the Panoche Valley as Agricultural Rangeland in both its General Plan and Zoning Code.
 2. The land uses in Panoche Valley are primarily grazing, however, there are also some small commercial farming and dairy operations, as well as scattered residential uses.
 3. The FADA will not adversely affect orderly development in the surrounding community because the FADA is compatible with the uses authorized in, and the regulation prescribed for, the General Plan and the zoning district in which the real property is located. It incorporates all of the Project Approvals, which approvals have been found to be consistent with the General Plan and Zoning Code.
 4. The FADA incorporates all of the Conditions of Approval attached to the Project by the County which assure that the Owner must adhere to all of the provisions which ensure consistency with the General Plan and Zoning Code, and which mandates that the Project is developed consistent with and not detrimental to the surrounding community.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission hereby finds that the proposed development project should be encouraged in order to meet important economic, social, environmental and planning goals of the County.

- Evidence:
1. The Project will preserve more than 25,000 acres of on-site and off-site mitigation lands as grazing, open space, and wildlife habitat in perpetuity for existing and future generations of San Benito County through the placement of conservation easements on this land. These conservation areas will be connected to surrounding open spaces and wildlife corridors to preserve and enhance wildlife migration patterns. These conservation areas also provide aesthetic and scenic value for residents in this area by protecting these areas from future development no matter how much future growth occurs in this area.
 2. The 2009 Biennial Report of the California Climate Action team found that climate changes could lead to “extreme events from heat

waves, floods, droughts, wildfires, and bad air quality,” which pose major challenges for California. The draft 2017 Climate Change Scoping Plan prepared by the California Air Resources Board, states that “California is already feeling the effects of climate change,” including “[a]n increase in the occurrence of extreme events, including wildfire and heat waves.” The Project would provide up to 247 MW of clean, safe, sustainable energy that would displace up to approximately 271,000 metric tons of equivalent carbon dioxide emissions each year that would otherwise be generated by traditional fossil fuel based energy sources. Even if built at less than 247 MW, the existence of the project will contribute at least 123 MW of clean, safe, sustainable energy, and also provide greater mitigation lands in the County for the conservation of species native to the area.

3. As one of the largest photovoltaic solar facilities in the United States, this Project potentially could benefit San Benito County in attracting future green energy industry. This Project would provide a solid foundation and a potential impetus for attracting other high-tech “green” businesses to the County. The Project would also provide educational and learning opportunities for other industry leaders, educators, students, and the community by witnessing, first hand, the operation of a utility scale solar facility. Finally, species monitoring will occur during the construction and operation of the Project, which will provide insights on the interface of elevated solar arrays and species movement and distribution.
4. Assembly Bill 32, the California Global Warming Solutions Act of 2006, created a program to reduce greenhouse gas emissions to 1990 levels by the year 2020. Updates to California law have established a goal of achieving an 80% reduction from 1990 level by the year 2050. By Executive Order and legislation, electricity retailers must meet a 33% renewable energy target by 2020. Senate Bill 350, enacted in 2015, requires retail sellers to procure 50% of their electricity from renewable sources by 2030. The Project puts the County of San Benito on the map of the State’s efforts to reduce greenhouse gas emissions and fortifies the County’s commitment to and important leadership role in helping California meet these critical renewable energy targets and corresponding greenhouse gas emission reduction goals.
5. In addition to the benefits identified above, the Owner is also mandated to provide all beneficial activities agreed upon in the FADA.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission hereby finds that the subject development project and the elements of the FADA proposed to be added to or changed from the Development Agreement, and any elements affected by

such changes, are consistent with chapter 19.11 “Development Agreements” of Title 19 of the San Benito County Code.

- Evidence:
1. San Benito County Code Section 19.11.003 states that in order to qualify for a development agreement, a project must be of a size and nature to produce one or more of the following benefits:
 - (1) Provisions for construction of critical roadway lengths where their construction might otherwise be accomplished tract by tract, uncoordinated with the need for overall arterial roadway system completion;
 - (2) Provisions for transportation system management plans to include greater availability of public transit opportunities, carpooling, vanpooling, staggered work hours and/or staggered work days, thereby reducing roadway congestion during peak periods;
 - (3) Commitments to accelerate development of employment sites to promote county work opportunities;
 - (4) Accelerated or increased dedication of improvement of parks and open space in excess of current requirements;
 - (5) Dedication of land and/or construction of other needed county infrastructure, including, without limitation, fire stations, libraries, schools, police facilities or water, sewer or solid waste disposal facilities. It is the policy of this Board is that a commitment to participate, on a pro rata basis, in county library, fire and Sheriff facilities necessary to serve new development be included as a public benefit in all development agreements; and
 - (6) Greater commitment to affordable housing than that which is authorized by state law or county policies.
 2. The Owner has agreed in the FADA to take best efforts to include in its construction and support services contracts language to help ensure that construction and operation jobs are filled by qualified permanent residents living in San Benito County. The Owner has also agreed to sponsor two (2) job fairs to be conducted by the County through the One Stop Career Center to inform permanent residents of San Benito County about jobs involved in the construction and ongoing operation of the Project. The Owner has also agreed to encourage its contractors to cooperate with the County on such job fairs.
 3. The Owner has agreed to permanently preserve more than 25,000 acres of on-site and off-site mitigation lands for purposes of wildlife habitat and migration corridor preservation, grazing, and open space.
 4. The FADA also provides for annual payments to the County on improvements which would otherwise be exempt from taxation pursuant to Revenue and Taxation Code Section 73. These

payments, which would not otherwise be due to the County, will allow the County to provide additional benefits such as those specified in section 19.11.003 as well as funding other vital County infrastructure and services.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission hereby finds that the FADA is in the best interests of the public.

Evidence: 1. The FADA is in the best interests of the public for all of the reasons included herein.

NOW THEREFORE BE IT RESOLVED, based on the Planning Commission's review of the proposed First Amended Development Agreement, and all written and oral comments received, the Commission hereby recommends that the Board of Supervisors adopt the ordinance attached to this Resolution as Exhibit "A", approving the First Amended Development Agreement.

The foregoing Resolution was adopted at a duly noticed public hearing at a regularly-scheduled meeting of the San Benito County Planning Commission, held on the 15th day of November, 2017, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Pat Loe, Chair

ATTEST:
Clerk of the Planning Commission

APPROVED AS TO LEGAL FORM:
San Benito County Counsel's Office

By: _____

By: _____
Barbara Thompson
Acting Assistant County Counsel

Date: _____

Date: _____