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March 22, 2011

Hearing Officer Kenneth Celli
California Energy Commission
1516 9th Street
Sacramento, CA 95814

| | |
|-----------------|-------------|
| DOCKET | |
| 09-AFC-3 | |
| DATE | Mar 22 2011 |
| RECD. | Mar 22 2011 |

Re: Mariposa Energy Project (09-AFC-3)
Applicant's Exhibit 69

Dear Hearing Officer Celli:

Pursuant to your direction at the evidentiary hearing on March 7, 2011, we are providing the Committee and all parties of record with a certified copy of Applicant's Exhibit 69 – Resolution Z-11-09 of the East County Board of Zoning Adjustments.

During the evidentiary hearing, I indicated that we expected the final Resolution to be identical to the draft Resolution we distributed at the evidentiary hearings. However, the final Resolution contains some language that is not in the draft Resolution. In addition to slight revisions in the Whereas and Resolved Clause sections in the draft, the final resolution refers to certain conditions regarding the application. Because these additional conditions were not included in the draft, the Applicant will not refer to these additional terms of Exhibit 69 in any briefs or argument that we will make in this proceeding.

Sincerely,



Greggory L. Wheatland

GLW/sgp

**RESOLUTION NO. Z-11-09 OF
THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS
ADOPTED AT THE HEARING OF JANUARY 13, 2011, CONCERNING
PLN2010-00126**

WHEREAS GREENVOLTS, INC./KUHNS has filed for a MODIFIED CONDITIONAL USE PERMIT, PLN2010-00126, to allow the production capacity of the previously approved utility-scale solar electricity production facility (Conditional Use Permit, C-8719) to be increased from 2 megawatts (MW) to 3 MW using a new system of solar tracker arrays and increase the facility area from 10.76 acres to 14.08 acres, in an "A" (Agricultural) District, located at 16091 Kelso Road, south side, approximately half a mile west of Mountain House Road, on a 20.5 acre portion of an approximately 62-acre parcel at 4378 Mountain House Road, west side, corner southwest of Kelso Road, Byron area of unincorporated Alameda County, bearing Assessor's Parcel Number 099B-7200-001-00; and

WHEREAS the Board did hold a public hearing on said application at the hour of 1:30 p.m. on the 13th day of January, 2010, in the City of Pleasanton Council Chamber, 200 Old Bernal Avenue, Pleasanton, California; 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 this application has been reviewed in accordance with the provisions of the California Environmental Quality Act and a Subsequent Mitigated Negative Declaration (SMND) has been prepared; and

WHEREAS a Planning Department Staff Report was submitted recommending the application be conditionally approved; and

WHEREAS a representative of the Applicant appeared at said public hearing and presented testimony in support of the application; and

WHEREAS a representative of the Sierra Club – San Francisco Bay Chapter appeared at said public hearing and offered testimony in opposition to the application on the grounds that the project is not consistent with the Large Parcel Agriculture designation in the East County Area Plan; and

WHEREAS the Board did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE

BE IT RESOLVED that the Board finds that:

- (a) The use is required by the public need as the State of California has adopted a goal of requiring investor-owned utilities, including PG&E, to

acquire 20 percent of the power provided to California customers from renewable energy sources by 2010. The proposed project would qualify as a renewable energy source and therefore contribute to meeting this goal. The energy produced from the 3 MW facility would provide for the energy needs of an estimated 2,250 homes in a manner that would not generate noise, have adverse aesthetic effects or otherwise pollute the environment.

- (b) The use will be properly related to other land uses and transportation and service facilities in the vicinity as the use is properly related to other land uses and transportation and service facilities in the vicinity as the project site is located in level area of agriculture, utility and state water management facility uses, including a PG&E substation to which the facility can efficiently connect. The use would not interfere with adjacent or nearby agricultural or residential uses, and a buffer of between 50 and 200 feet would be provided around the solar array and adjacent properties and agricultural fields. The site and adjacent facilities and properties are served by a lightly traveled road, and impacts from traffic are negligible.
- (c) The use, if permitted, under all the circumstances and conditions of this particular case, 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 injuries to property or improvements in the neighborhood as the solar array 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 will be appropriate signage and fencing to prevent the public or unauthorized members of the public from exposure to electrical hazards and equipment, with redundant barbed wire and opaque fencing and landscaping to restrict access to the arrays and equipment. As regulated during both construction and operation by the Occupational Safety and Health Administration (OSHA) and in compliance with county, state and federal safety standards, with the implementation of the project Worksite Safety Plan, Emergency Plan and Fire Safety Plan, the use will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.
- (d) The use, if permitted, under all the circumstances and conditions of this particular case, 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 injuries to property or improvements in the neighborhood as the site is located in the A (Agriculture) District, 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 would serve a range of general plan land use goals and policies (or proposals) for a use that is not suitable for location in an urban area because it is land extensive and not cost-effective to use more expensive land in an urban area that is more effectively used for conventional urban land uses and where the aesthetic effects could be more adverse. The project does not constitute intensive development such as would require a wide range of urban utilities, services and support. The use, as mitigated with the adoption of a requirement to maintain and cultivate on- and/or off-site areas designated as Prime Farmland at a 1:1 ratio, would conserve and protect the predominant agricultural uses elsewhere on the site and in the vicinity. The project would also conform to the performance standards of the A District, such as building site status and yards.

- (e) The use has been found, on the basis of the whole record before the Board (including the Subsequent Mitigated Negative Declaration/Initial Study/Environmental Checklist and the comments received on the project, that there is no substantial evidence that the project will have a significant effect on the environment.

NOW THEREFORE

BE IT FURTHER RESOLVED that the Board does hereby adopt pursuant to the California Environmental Quality Act the Subsequent Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for Modified Conditional Use Permit, PLN2010-00126, with revisions to Mitigation Measure AG-1-B regarding Prime Farmland incorporated into said Program, and approve the said application as shown by materials labeled Exhibit ‘B’ on file with the Alameda County Planning Department, subject to the following conditions:

AUTHORIZATION

1. Approval of this permit authorizes the operation of a 3-megawatt solar electricity production facility or solar energy collection array structures as shown on plans marked “Exhibit A – PLN2010-00126” dated July 2010 on file with the Planning Department. The Applicant shall develop no more than 14.1 acres of solar array units and may install them in no more than five phases. The array and inverter equipment shall be bordered by an opaque 8.5-foot tall fence with appropriate signage (such as “No Trespassing” and “Electric Shock Hazard”) installed on the fence, also with language that is consistent with local and National Electric Code (NEC) requirements. The site shall have a construction work area to be reduced in area upon completion of construction activities and a workshop/office building on a temporary foundation.

2. Liability. By exercise of this Conditional Use Permit, the Permittee agrees to defend, indemnify and hold harmless the County of Alameda, its officers, employees, agents and servants for any and all liability caused by the negligence or wrongful act of the Permittee arising out of the exercise of this Conditional Use Permit, and to pay all claims, damages, judgments, legal costs, adjuster fees, and attorney fees related thereto.

ADDITIONAL MATERIALS TO BE SUBMITTED TO THE PLANNING DEPARTMENT PRIOR TO OBTAINING A BUILDING PERMIT

3. Plans. Applicant shall submit scaled site plan drawings at a minimum scale of 1"=60', illustrating the property lines and lease area, placement and dimensions of all inverter and equipment pads, utility connections, roadways, parking and loading areas (temporary and permanent), fencing, and other details. A California licensed architect or engineer shall be designated as the design professional responsible for the building permit application and site plans.
4. Landscape Plan: Applicant shall submit a Landscape Plan for approval by the Planning Director showing exclusively native, local, Mediterranean or pollinator trees and planting along the side of Kelso Road, the northern edge of the solar array enclosure, the eastern and western sides of the enclosure, and around the base of the office/workshop structure. Said Plan shall include drought-tolerant plants, a mechanical irrigation plan, planting and staking details, landscape maintenance program, and outdoor and security lighting. Said Plan shall also comply with state and local ordinances requirements for water conservation (Water Efficient Landscape Ordinance).

GENERAL REQUIREMENTS

5. Fire Department Approval. Applicant shall comply with and maintain compliance with the codes and standards of the Alameda County Fire Department, and obtain a fire inspection and Fire Clearance prior to the commencement of project operations. Applicant shall conform to all applicable recommendations and requirements identified in the Fire Department/Fire Prevention Office's letter of August 16, 2010. Vegetation management shall be maintained and expanded as needed to avoid growth of flammable plant material underneath or around any solar array structure, transformer, inverter or other equipment but shall not prevent the cultivation of grasses or ground cover suitable for small animal grazing or hand-tended crops under or around the tracker panels. A Fire Inspection shall occur prior to commencement of the first phase of operations, and shall be used to evaluate permit approvals of the second and any third phase of construction.

6. 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. Alameda County Fire Department
 - d. California State Public Utilities Commission
 - e. California Energy Commission
 - f. Alameda County Sheriff's Department
 - g. Byron Bethany Irrigation District
7. Improvement Plans. Secure approval from the Director of Public Works of detailed construction plans prepared by an registered engineer (including location, extent and sizes of all permanent and temporary facilities) for: grading, drainage, water quality, erosion and sedimentation control, and on-site paving, including an entry road to the facility that is paved for a minimum distance of 40' from Kelso Road.
8. Grading. Building Permits shall be subject to review by the Alameda County Public Works Agency – Grading Section, for possible adverse effects on drainage, and an erosion and sedimentation control plan may be required to the extent required by the County Grading Ordinance.
9. Mitigation Measures. Applicant shall be responsible for implementing all of the Mitigation Measures adopted herein under the Subsequent Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program, except for those Measures that are explicitly the responsibility of an appropriate regulatory agency.
10. Mitigation Monitoring and Reporting. Applicant shall be responsible for reporting annually to the Planning Department regarding the implementation of all Mitigation Measures adopted herein under the Subsequent Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program. Planning 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).
11. Inspection Fees and Costs. The project sponsor or its 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.
12. Roadway Inspection and Repair. Applicant shall be responsible for the costs of a roadway inspection on Kelso Road before and after each phase of construction of the facility, and for any repair work necessary to restore the roadway to a condition approved by the Director of Public Works. If the Director determines that project-related construc-

tion truck traffic has resulted in damage to Mountain House Road, the Applicant shall be held similarly responsible for repair costs.

13. 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.
14. Transfer of Operations. Any entity that has acquired the facilities as authorized under this permit may maintain the benefits of the existing use permit provided that a letter of notification is submitted to the Board of Zoning Adjustments within six months after such transaction, and all conditions of approval for the subject facility are carried out by the new operator/permittee.
15. Site Restoration. Permittee shall provide written notification to the Board of Zoning Adjustments upon cessation of operations on the site. The permittee/property owner shall remove all improvements authorized under this permit from the site and the property shall be returned to its pre-application condition within three months of cessation.
16. Project Guarantee. Application for Building Permits to implement any portion of this Conditional Use Permit shall be accompanied by a financial guarantee or bond, which shall be indexed annually for inflation, satisfactory to County Counsel, for the removal of the facility in the event that its use is abandoned or its use permit expires or is terminated. The amount of the guarantee for the facility may be reduced or eliminated if the property owner and lessee of the site provides for removal of unused improvements through their lease agreements that are satisfactory to the County. If the owner or lessee does not remove any obsolete or unused facilities, as described in Condition #15 herein, the financial guarantee shall be used by the County to remove any obsolete or unused facilities. Applicant and/or property owner shall continue to be responsible for full site reclamation, and shall provide additional funding as may be necessary to fully restore the site. Any unused financial guarantee shall be relinquished to the applicant upon termination of the use and removal of facility or transfer of the lease accompanied by a financial guarantee by the new lessee or owner in compliance with zoning requirements in effect at that time.
17. 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 solar array structures, mountings, cabinets, buildings or fencing shall not be used for advertising.

18. Maintenance. All structures, cabinets, equipment, landscaping and fencing shall be maintained in good condition throughout the term of the permit. This shall include keeping equipment, cabinets, fencing, and other structures visible from Kelso Road free of graffiti and grounds clear of excessive litter.
19. Expiration. Said Conditional Use Permit shall terminate on January 13, 2031.

Pursuant to Section 17-52.050 of the Alameda County Zoning Ordinance said Modified 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.

If implemented, said Conditional Use Permit shall terminate on January 13, 2031, and shall remain revocable for cause in accordance with Section 17-54.030 of the Alameda County Zoning Ordinance.

**EAST COUNTY BOARD OF ZONING ADJUSTMENTS
ALAMEDA COUNTY PLANNING DEPARTMENT**

THIS IS TO CERTIFY THAT THIS IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL RESOLUTION NO. Z-11-09 APPROVED BY THE ALAMEDA COUNTY EAST BOARD OF ZONING ADJUSTMENTS ON JANUARY 13, 2011

BY: 

ALBERT LOPEZ

PLANNING DIRECTOR

ALAMEDA COUNTY PLANNING DEPARTMENT

STATE OF CALIFORNIA


Energy Resources Conservation
and Development Commission

In the Matter of:)
) Docket No. 09-AFC-03
Application for Certification for the Mariposa)
Energy Project)
)
)
_____)

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on March 22, 2011 I served copies of the attached *Letter to Hearing Officer Kenneth Celli dated March 22, 2011 regarding Applicant's Exhibit 69* by email and U.S. Mail to each party on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



Karen A. Mitchell



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION
FOR THE **MARIPOSA ENERGY PROJECT**
(MEP)

Docket No. 09-AFC-3

PROOF OF SERVICE
(Revised 3/18/2011)

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