

ORDINANCE NO. 2021-_____

**AN URGENCY INTERIM ORDINANCE PURSUANT TO GOVERNMENT CODE
SECTION 65858 ADOPTING A MORATORIUM ON THE APPROVAL OF
COMMERCIAL SOLAR ENERGY FACILITIES IN THE UNINCORPORATED AREA IN
THE COUNTY OF ALAMEDA SUBJECT TO THE EAST COUNTY AREA PLAN**

SECTION I

In enacting this ordinance, the Board of Supervisors of the County of Alameda makes the following findings:

1. Government Code Section 65858 allows a county, without following the procedures otherwise required prior to adoption of a zoning ordinance, to adopt, as an urgency measure, an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission or planning department is intending to study within a reasonable time; and
2. The County of Alameda ("County") regulates land uses in the unincorporated area of the County through various regulations including the General Plan, which includes the East County Area Plan ("ECAP") and the Zoning Ordinance (Title 17 of the Alameda County Ordinance Code); and
3. The County is in the process of studying a solar policy and accompanying proposed amendments to the County's Zoning Ordinance, as well as potential ECAP amendments, regarding Commercial Solar Energy Facilities. This has included reviewing proposed policies with various stakeholder groups, including review at multiple Agricultural Advisory Committee and Transportation and Planning Committee meetings over the past year; and
4. Commercial Solar Energy Facilities are generally large constructions consisting of multiple photovoltaic panels or other solar energy collection devices that are potentially visible from great distances. Current County of Alameda land use regulations do not provide sufficient guidance regarding the construction of Commercial Solar Energy Facilities; and
5. County residents have reported concerns regarding adverse effects of Commercial Solar Energy Facilities, including aesthetic impacts and potential impacts on residential and other property values; and
6. County residents have reported concerns that Commercial Solar Energy Facilities can occupy a large swath of land which will potentially impact wildlife habitats, including impacting the health and safety of wildlife by creating a visual hazard. Current County of Alameda land use regulations do not provide guidance regarding wildlife and Commercial Solar Energy Projects; and
7. The County is currently conducting a conflict mapping process to study impacts of the siting of Commercial Solar Energy Facilities on rural portions of the County, which provide agricultural benefits and products, have a diverse natural environment and requires additional mapping and study to understand the impacts to important farmlands, prime soils, biological habitat, aquatic environments and wetland areas, and cultural and tribal cultural resources; and
8. County residents have reported that Commercial Solar Energy Facilities may create potentially significant impacts on water quality. Commercial Solar Energy Facilities require regular washing maintenance to clear photovoltaic panels to ensure proper

functioning, which may impact local groundwater supplies. Current County land use regulations do not provide guidance regarding the water quality impacts of Commercial Solar Energy Facilities; and

9. The County has a compelling interest in protecting the public health, safety, and welfare of its residents, visitors and businesses, and in preserving the agricultural areas of the neighborhoods within the unincorporated areas of the County by regulating Commercial Solar Energy Facilities as a land use; and
10. The County currently has an application pending for Commercial Solar Energy Facilities that would be affected by a changes in the regulations, ordinances, or General Plan that the County is currently contemplating; and
11. The County anticipates increased applications for Commercial Solar Energy Facilities as solar energy generation technology matures and becomes more cost effective and consumer demand for renewable energy grows; and
12. There is a current and immediate threat to public health, safety, and welfare if permits or entitlements for construction of new Commercial Solar Energy Facilities are issued. Such permits or entitlements may result in the development of facilities that conflict with amendments to the County's land use regulations that are under review, and imposition of the moratorium will give the County time to introduce, review, and adopt a comprehensive revision of relevant County land use regulations; and
13. The County's land use regulations govern the types of land uses that are permitted by right or conditionally permitted; and
14. The ECAP is a portion of the County's General Plan which regulates the use of land in the unincorporated portions of the County; and
15. The ECAP contains multiple land use designations including Large Parcel Agriculture, Resource Management, and Water Management Lands; and
16. The Board of Supervisors has previously determined that certain individual large scale Commercial Solar Energy Facilities are compatible with the ECAP; and
17. The County wishes to consider, adopt, and incorporate regulations and guidance regarding Commercial Solar Energy Facilities into the ECAP to minimize the administrative burden of approval of Commercial Solar Energy Facilities in the future; and
18. The Zoning Ordinance now in effect does not contain any regulatory requirements governing the approval of Commercial Solar Energy Facilities within the County; and
19. The Alameda County Planning Commission has previously determined, with respect to a prior Commercial Solar Energy Facility project application, pursuant to Sections 17.54.050 and 17.54.060 of the Zoning Ordinance, that the construction of a privately-owned solar energy production facility is both an allowable use on lands that are designated by the ECAP as Large Parcel Agriculture and a conditionally permitted use in the A (Agriculture) District of the Alameda County Zoning Ordinance; and
20. The County wishes to consider, adopt, and incorporate regulations and guidance regarding Commercial Solar Energy Facilities into the Zoning Ordinance to minimize the administrative burden of approval of Commercial Solar Energy Facilities in the future; and

21. There is a current and immediate threat to the health and safety of County residents and the County's natural environments if Commercial Solar Energy Facilities are not immediately curtailed to allow for the County to amend its ECAP and Zoning Ordinance to provide guidance regarding Commercial Solar Energy Facilities; and
22. In light of the concerns noted herein, including but not limited to the potential harms to the safety, health, and welfare of the County residents should Commercial Solar Energy Facilities be permitted to operate, it is in the interest of immediately preserving the public safety, health and welfare to adopt this urgency ordinance establishing a moratorium. The moratorium will allow the County to, among other related tasks, immediately proceed with a study and public hearings to consider revisions to the Zoning Ordinance, ECAP, and policies that most effectively regulate Commercial Solar Energy Facilities, minimizes the negative effects of such facilities including traffic, safety, noise, risk to human health, and environmental concerns, and allows for adequate review of the proposed revisions pursuant to the California Environmental Quality Act; and
23. California Government Code section 65858 allows the County to adopt an interim ordinance that prohibits otherwise allowed uses when those uses conflict with a pending land use study. Such a measure requires a four-fifths (4/5ths) vote of the Board of Supervisors; must contain a finding that there is a current and immediate threat to the public health, safety or welfare; and may be adopted without following the notice and adoption procedures required for other zoning ordinances. The interim moratorium has an initial duration of forty-five (45) days and may be extended as specified by Government Code Section 65858; and
24. The Board finds this urgency ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Title 14, California Code of Regulations section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and therefore the activity is not subject to CEQA; and
25. The Board of Supervisors considers it necessary to adopt this urgency interim ordinance to explicitly prohibit future Commercial Solar Energy Facilities while the updates to the Zoning Ordinance and other land use regulations are studied and developed.

NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

SECTION II

The Board of Supervisors of the County of Alameda finds and determines the foregoing recitals to be true and correct and hereby makes them part of this ordinance.

SECTION III

The Board of Supervisors of the County of Alameda hereby directs the Community Development Agency to work on the preparation of amended zoning regulations governing the establishment of Commercial Solar Energy Facilities subject to the ECAP, which may also include preparation of a policy, a mapping exercise and amendments to ECAP.

SECTION IV

The uncodified Alameda County Ordinance Code is hereby amended to add the following interim zoning ordinance:

Temporary Prohibition of Commercial Solar Energy Facilities

From and after the date of enactment of the interim ordinance, no use permit, variance, building permit, business license, or any other entitlement for use shall be approved or issued for the establishment, construction, or operation of a Commercial Solar Energy Facility, as defined herein, for any location or property within the unincorporated territory of the County designated Large Parcel Agriculture, Resource Management, or Water Management Lands in the ECAP, subject to the exemptions set forth below.

An application for a Commercial Solar Energy Facility may be accepted and processed during the moratorium and any extension of the moratorium. However, the application shall be accepted and processed at the applicant's sole cost and expense and with the understanding that no permit shall be issued until the moratorium, including any extension of the moratorium, has expired and that the permit may not be issued if it is inconsistent with any amendments to County laws, ordinances, General Plan, or regulations that are amended by reason of the review that occurs during the moratorium.

For purposes of this ordinance, a Commercial Solar Energy Facility is defined as a Solar Energy Facility that is designed to collect, store, and distribute solar energy for the primary purpose of resale or off-site use, which includes but is not limited to, sale for off-site consumption to a utility company, a Community Choice Aggregator, or a third-party retailer.

A Solar Energy Facility means any solar collector or other solar energy device that collects, stores, and distributes solar energy for space heating, space cooling, electric generation, or water heating. Solar Energy Facility includes a photovoltaic system consisting of one or more solar panels, a solar thermal system that converts solar energy to electricity by heating a working fluid to power a generator, and a solar hot water system designed to heat water.

Exemptions. Solar Energy Facilities using only roof-mounted solar arrays are excluded from this definition and are exempt from this interim ordinance. Solar Energy Facilities that are designed to collect, store, and distribute solar energy primarily for the purpose of on-site demand are excluded from this definition and are exempt from this interim ordinance. Solar Energy Facilities that have a use permit that was approved prior to [DATE OF ENACTMENT], authorizing the establishment, construction, and operation of that facility are exempt from this interim ordinance.

SECTION V

Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION VI

Pursuant to Government Code Section 65858, this measure is declared to be an urgency interim ordinance, to take effect and be in force immediately upon its passage.

The Clerk is directed to publish this ordinance within fifteen (15) days in accordance with Government Code section 25124. As an urgency interim ordinance, this ordinance shall be of no further force or effect forty-five (45) days from its date of adoption, expiring on [DATE], unless otherwise extended by the Board of Supervisors pursuant to Government Code Section 65858.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the [DAY] day of, November, by the following called vote:

AYES:

NOES:

EXCUSED:

KEITH CARSON
President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: _____
Rachel Sommovilla
Assistant County Counsel