COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING

In the Matter of:

Electronic Application of Telesto Energy Project LLC for Certificate of Construction for an approximately 110 Megawatt Merchant Electric Solar Generating Facility in Hardin County, Kentucky	)))))	Case No. 2022-00096

Motion for Deviation from Setback Requirements

Comes now Telesto Energy Project LLC ("the Applicant" or "Telesto"), by counsel, and requests that the Kentucky State Board on Electric Generation and Transmission Siting ("the Board") grant a deviation for its proposed project in Hardin County ("the Project") from the setback requirements of KRS 278.704(2) as allowed under KRS 278.704(4). In support of this motion, Telesto states as follows:

STATUTORY AUTHORITY

1. KRS 278.704(2) establishes setback requirements for merchant generating facilities such as the Project by requiring that "all proposed structures or facilities used for generation of electricity [be] two thousand (2,000) feet from any residential neighborhood, school, hospital or nursing home facility." There is reverse preemption of these state statutory setback requirements by any local planning and zoning setback requirements for an electric generating facility. KRS 278.704(3).

2. On April 22, 2022, when Telesto filed its Notice of Intent in this proceeding, the Hardin County Planning and Development Commission ("HCPDC") had a resolution in place allowing conditional use permits for solar farms and providing for setback requirements to be

designated as part of any such conditional use permit granted. *See* Application ¶¶ 17-18 and Exh. K.2 p.5/182. However, on June 23, 2022, the Hardin Circuit Court entered a Declaratory Judgment in Case No. 22-CI-00197, styled *Hardin Solar, LLC, et al. v. The Hardin County Planning and Development Commission, et al.*, that declared invalid the zoning ordinance section on which the resolution was based, thereby eliminating the conditional use for solar farms, and with it any "setback … established by a planning and zoning commission" to take primacy over the state statutory requirements. More than 30 days from the Declaratory Judgment have passed without an entry for a notice of appeal on the (informal) electronic docket, and so the judgment appears to have become final.

3. Under existing circumstances, the statutory setback requirements in KRS 278.704(2) apply. KRS 278.704(4) authorizes the Board to grant a deviation from setback requirements to allow a shorter distance upon "a finding that the proposed facility is designed to and, as located, would meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than [statutorily prescribed]."

NEIGHBORHOODS WITHIN 2000 FEET

4. The attached Figure 1 shows buffers of varying distance from the proposed siting of Project generating equipment, including a buffer distance of 2000 feet.[1] There are no schools, hospitals, or nursing homes within 2000 feet of Applicant's proposed location of Project structures or facilities used for generating electricity.

5. There are two groupings of residences within 2000 feet that meet the statutory definition of residential neighborhoods. See Figure 2 attached hereto. KRS 278.700(6) defines

[1] More-detailed depictions of proposed Project facilities, access roads, and property boundaries, are provided in Application Exhibits ("Appl. Exhs.") A.1. & A.2.

"residential neighborhood" as "a populated area of five (5) or more acres containing at least one (1) residential structure per acre." The two groupings that are populated areas meeting the acreage and density criteria of residential neighborhoods within 2000 feet are as follows:

- Neighborhood 1, The Orchard Subdivision (*see* Figure 2 attached hereto) is located to the north of the eastern third of the Project Site, bounded to the east by Cecilia Road and to the north by St. John Road (SR 1357).
    - The Neighborhood has a common access point to St. John Road from the south by Braeburn Court, at the intersection of St. John Road by Thomas Road and to the west of the "T" intersection by Cecilia Road.[2]
    - The blue continuous boundary shown around the subdivision residences is contiguous with the subdivision plat, and encompasses approximately 46.5 acres and includes 28 residences.
    - The Neighborhood area is in an unincorporated area of Hardin County and has been zoned R-1. All of the residences shown in the Neighborhood are within 2000 feet of proposed Project electricity generation facilities.[3]
    - The purple dashed line is 2000 feet outward from the Neighborhood (blue) boundary. Proposed Project electricity generation facilities within that buffer line are photovoltaic (PV) panels, the racking structures for the panel arrays, and inverters at the end of array rows. See Figure 2.

[2] Some of the houses on the eastern edge of the Neighborhood area appear to have direct access to Cecilia Road rather than through the internal streets leading to Braeburn Court and St. John Road.

[3] The northeastern tip of Neighborhood 1 (near the intersection of St. John and Cecilia Roads) is more than 2000 feet from proposed PV panels. See Figure 1. However, it is likely that any associated residence structure is within 2000 feet.

- The nearest proposed structures or facilities used for the generation of electricity (specifically, PV panel arrays) are at least 560 feet from the closest residence in Neighborhood 1.

- Neighborhood 2, Ashton Park Subdivision and nearby residences (see attached Figure 2) to the south of the easternmost part of the Project site, with one existing access point to Hayden School Road from the northwest by Canton Court,[4] in a "T" intersection south of the intersection with St. John Road and north of the intersection with the airport access road (Kitty Hawk Drive).
  - The blue continuous boundary encompasses the platted subdivision area and five (5) residential properties on 4.32 acres southwest of the subdivision area. The Ashton Park subdivision is under construction; the most-recently available GIS / aerial data (dated July 21, 2022) show 117 residences constructed or under construction on approximately 95 acres.
  - The Elizabethtown municipal boundary is shown as a teal dashed line. Everything within the blue Neighborhood boundary and also within the municipal boundary is zoned R-2. The five (5) residential properties within the blue boundary but beyond the Elizabethtown municipal boundary are in an unincorporated area of Hardin County and zoned R-1.
  - One or more of the residences existing or to be constructed at the northeastern tip of the Neighborhood are more than 2000 feet from proposed Project electricity generation

[4] The Kentucky Transportation Cabinet's general highway map shows that there is to be a second access point for this residential area farther south on Hayden School Road *via* Kessel Run, which will turn eastward and connect to Tristan Lane, then Aiden Lane, and then to Canton Lane. In addition, the Elizabethtown city boundary extends westward along a fence line to Cecilia Road, indicating another possible access point in the future. See Figure 2.

facilities; all other residences shown within the Neighborhood are within 2000 feet. Compare Figures 1 and 2.

- The nearest Project structures or facilities to be used for the generation of electricity (specifically, PV panel arrays) are at least 450 feet from the closest residence constructed or under construction in Neighborhood 2.
- The purple dashed line is 2000 feet outward from the Neighborhood (blue) boundary. Proposed Project electricity generation facilities within that buffer line are PV panels, the racking structures for the panel arrays, and inverters at the end of array rows. The Neighborhood 2 2000-foot buffer zone also includes Addington Field airport facilities, most of its runway, and portions of industrial properties on W. Park and Ring Roads.

The drawn Neighborhood boundaries circumscribe areas that meet the KRS 278.700(6) criteria of "five (5) or more acres containing at least one (1) residential structure per acre," although some of the residences included *(e.g.*, the five County properties included in Neighborhood 2), are not part of the platted subdivisions. The inclusion of such residences might be arguable, but extends to those properties the special protection accorded under KRS 278.706(2) to a residential neighborhood without diluting the protection to the "core" neighborhood properties.

6. There are no other clusters of residences that meet the statutory definition of residential neighborhood and are within 2000 feet of Project structures or facilities to be used for the generation of electricity.

a. Residences within 2000 feet of Project facilities that are <u>not</u> in Neighborhood 1 or 2 are indicated with yellow polygons on Figures 1 and 2. None of these other residences can be grouped to form a "populated area" meeting the acreage and density criteria of KRS 278.700(6) for a "residential neighborhood." In particular, the six (6) residences on mixed agri-

cultural/residential use properties to the south of Neighborhood 1 (and on the same side of Cecilia Road), have a density much lower than one residential structure per acre. In addition, lumping their acreage and residential structures in with those of Neighborhood 1, would lower the overall density below one per acre — disqualifying the 28 residences in The Orchard subdivision from being treated as a residential neighborhood.

b. Residences east of Neighborhood 1 and southwest of Neighborhood 2 were not included in those neighborhoods because they are separated by Cecilia Road or Hayden School Road, respectively, and were not part of the subdivision development that is the core of those neighborhoods.

REQUEST FOR DEVIATION

7. Telesto requests a deviation from the 2000-foot setback requirement as to Neighborhoods 1 and 2, and a ruling that there are no other neighborhoods within 2000 feet of the Project boundaries for which a deviation might be required. The setbacks apply to "structures or facilities used for the generation of electricity," KRS 278.704(2), and not security or perimeter fencing, vegetative buffers or enhancements (such as pollinator plantings), or roads used to access the Project site or within the site.[5]

8. The Board should grant a deviation from the 2000-foot setback requirement as to the residential neighborhoods because the Project "is designed to and, as located, would meet the goals of [the cited provisions in KRS Ch. 224 and 278] at a distance closer than those provided" by statute. KRS 278.704(4) (emphases added).

[5] See*, e.g.*, Case No. 2020-00190, *Horseshoe Bend Solar,* 6/11/21 Order Apx. A (condition #20).

9. Several requests for deviations from setback requirements were considered in the first 15 years of KRS 278.704(4).[6] More recently, Siting Board orders have granted deviations from the statutory setback requirements for merchant solar energy projects like the Telesto Project, subject to certain mitigation measures.[7] To allow a deviation, the Board must make a finding that the proposed facility is designed to and, as located, would meet the goals of designated statutes. KRS 278.704(4). Included in the designated statutes are the setback requirements themselves. The 2010 *ecoPower* decision, Case No. 2009-00530, describes the similar setback requirements found in KRS 278.704(2) as "enacted to afford some level of protection for persons occupying a property adjacent to a property where a merchant generating plant is to be constructed and operated."[8] Therefore, "it is the effects of the planned facility on adjoining residents that the Siting Board must consider when determining whether to grant a deviation pursuant to KRS 278.704(4)."[9]

10. By its express words, KRS 278.704(4) simply requires a showing that the goals of the statutes cited therein can be met with facilities at a distance less than what is statutorily provided in KRS 278.704(2). On Figure 2, a purple dashed line circumscribes the area within 2000

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[6] See Case No. 2002-00149, *Application of Kentucky Mountain Power, LLC/Enviropower, LLC for a Merchant Power Plant Construction Certificate in Knott County, Kentucky* (9/5/02 Final Order); Case No. 2009-00530, *Application of ecoPower Generation-Hazard, LLC for a Certificate to Construct and Operate a Merchant Electric Generating Facility and a 69kV Transmission Line in Perry County* (4/22/10 Order denying and 5/18/10 Final Order granting deviation request); Case No. 2014-00162, *Application of SunCoke Energy South Shore, LLC for a Certificate to Construct a Merchant Electric Generating Facility and Non-Regulated Transmission Line* (2/20/15 Final Order).

[7] See, e.g., Case No. 2020-00040, *Turkey Creek* 9/23/20 Final Order and 7/22/21 reconsideration Order; Case No. 2020-00190, *Horseshoe Bend* 6/11/21 Final Order; Case No. 2020-00280, *Ashwood Solar* 6/21/2021 Final Order; Case No. 2020-00272, *Flat Run* 9/29/21 Final Order; Case No. 2021-00029, *Martin County* 11/15/21 Final Order; Case No. 2020-00244 *Caldwell Solar* 4/8/22 Final Order.

[8] Case No. 2009-00530, *ecoPower,* 5/18/10 Order at 31.

[9] *Id.* at 32 (referring specifically to the 1000-foot standard, which is inapplicable here).

feet of the respective Neighborhood boundaries. In the circumstances presented by the proposed Project, the question is whether the statutory goals are met even though some generating facilities will be closer to a residential neighborhood than the 2000 feet otherwise specified. Telesto respectfully submits that the answer to that question is "Yes."

COMPLIANCE WITH STATUTORY GOALS

11. **KRS 224.10-280** requires submission of a cumulative environmental assessment (CEA) to the Kentucky Energy and Environment Cabinet ("the Cabinet") before beginning construction of an electric power plant. Telesto included a copy of its CEA as Exhibit J to its Application filed with the Board, and will submit the CEA to the Cabinet on or before August 19, 2022. Telesto's CEA includes a detailed discussion of potential impacts and mitigation plans for air pollutants, water quality, waste, and water withdrawal. By submitting a CEA to the Cabinet before beginning construction, the goals of KRS 224.10-280 will have been met. As examples of steps the Applicant is taking to protect nearby property owners from any negative impacts of the Project, the elements of the CEA are briefly discussed as follows:

a. Regarding air pollutants, the CEA concludes (pp.4-5 of 9) that air quality impacts would occur during active construction in the up to 14-month construction period. However, anticipated emissions generated by construction are expected to be minor due to the limited scale and duration of the activities; no air permit is required for the Project. Temporary fugitive air pollutant emissions (dust and other suspended particulates) will be mitigated using Best Management Practices (BMPs)[10] so that any effect on air quality will be minor. The Project has been designed to minimize the need for grading, and clearing of existing trees will be

[10] These BMPs were discussed in more detail in the Site Assessment Report (Appl. Exh. C ¶¶ 41-47) and CEA (Appl. Exh. J p.5/9).

minimal. No burning of woody debris will occur on site. Any emissions from the operation of the Project would be generated by worker vehicles and maintenance equipment and would be negligible. By providing a zero-emissions source of energy for the region, the Project can yield a net benefit to air quality at both the local and regional levels.

b. Regarding water quality, as discussed in more detail in the CEA (pp.5-7 of 9), wetlands, ponds, and creeks/streams are present within the Project boundary, but none of the water bodies inside or immediately adjacent to the site have been designated as Kentucky Special Waters by the Kentucky Division of Water (DoW).

i. The Project will follow BMPs to limit surface water pollution from dust and erosion sediment during construction. Telesto will mitigate the effects of construction activities that may result in stormwater discharges through the use of silt fences, temporary sediment basins and traps, buffer zones around streams, wetlands, and open waters, and other BMPs.

ii. Telesto will work with DoW to design and implement a stormwater pollution prevention plan and intends to comply with requirements of any DoW Construction Storm Water Discharge General Permit.

iii. It is not planned for any Project access roads or other infrastructure sited within mapped floodplains. If such siting become necessary, Telesto will complete all required state and local permitting relating to floodplain development and mitigation.

iv. Jurisdictional waters will be avoided in siting electricity generation structures and facilities, such as the substation and PV panels. However, in order to access the entire Project area, six (6) road crossings of jurisdictional waters will be required. These road crossings will be covered under a U.S. Army Corps of Engineers Clean Water Act Nationwide

Permit 14 (Linear Transportation Crossings). Telesto will comply with all general and regional conditions of the permit.

v. A Spill Prevention, Control, and Countermeasure (SPCC) plan will be developed and implemented during construction. After construction, all disturbed areas not occupied by generating facilities or other Project equipment or infrastructure will be reclaimed and revegetated to return them approximately to their pre-construction use and capability to stabilize exposed soil and control sedimentation.

vi. With respect to groundwater, during construction or operation, BMPs will minimize any risk of onsite leaks or spills of any hazardous materials (including but not limited to fuel, lubricants, hydraulic fluids, herbicides, and fertilizers) and require implementation of plans and procedures to address any spills or leaks that do occur.

vii. Much of the current land use is dedicated to cultivated crops and pasture, which introduces fertilizers, herbicides, and pesticides into the local water system; thus, surface water conditions may improve over the life of the Project's use of the land for solar fields. Conversion of the Project area from agricultural land use to solar energy production can produce a net reduction in fertilizer, herbicide, and pesticide application to the land, and minor benefits to groundwater systems are also anticipated as a result.

c. Regarding waste, Telesto's CEA notes (Appl. Exh. J pp.7-8 of 9) that construction and operation will generate small quantities of waste, including hazardous waste. Waste produced on site is expected to be minimal and mainly related to maintenance/repair of construction equipment or operations maintenance activities. During construction and operation of the Project, designated waste-management companies will manage any waste generated on site.

d. Finally, regarding water withdrawal, as the CEA discusses more fully (pp.8-9 of 9), construction and operation of Telesto's solar electric generating facilities are not anticipated to be water-intensive or to adversely affect groundwater resources. The water for construction activities will be obtained as needed from different possible sources, including off- or onsite water groundwater wells or trucking it in from an offsite water purveyor.

12. **KRS 278.010** sets forth definitions to be used for KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and 278.990 — none of which are directly applicable to Telesto or the Project. To the extent relevant,[11] Telesto has satisfied any goals of KRS 278.010 by preparing and presenting its Project proposal and Application in terms consistent with the statutory definitions.

13. **KRS 278.212** requires the filing (by a utility) of plans and specifications for electrical interconnection with merchant electric generating facilities and imposes the obligation upon a merchant electric generating developer for any costs or expenses associated with upgrading the existing electricity transmission grid as a result of the additional load caused by the merchant electric generating facility. Telesto is working to finalize an interconnection agree ment with East Kentucky Power Company ("EKPC") to connect to the transmission grid at the EKPC Central Hardin Substation and pay the related costs.[12] As designed and as located, the Project therefore meets the goals of KRS 278.212.

14. **KRS 278.214** governs the curtailment of service and establishes the progression of entities whose service may be interrupted or curtailed pursuant to an emergency or other

[11] As the first section in the chapter, KRS 278.010 may have been mistaken for a "purposes and goals" statement for Chapter 278. Or its inclusion in the KRS 278.704(4) list may have been to help discern the goals of the other Chapter 278 sections listed.

[12] See also the Generation Interconnection Feasibility Study Report (July 2020) and System Impact Study Report (Feb. 2021), Appl. Exhs. L.1 & L.2, respectively.

event. To the extent this section applies to operation of the proposed Project, Telesto commits to following all appropriate and legally binding operating procedures. Applicant's project is thus designed and located to meet the goals of KRS 278.214.

15. **KRS 278.216** requires utilities under the jurisdiction of the Kentucky Public Service Commission to obtain a site compatibility certificate before beginning construction of an electric generating facility capable of generating more than 10 megawatts. As with Siting Board certificates, applications for utility site compatibility certificates must include a site assessment report as specified in KRS 278.708(3) and (4) or show compliance with the National Environmental Policy Act. Telesto's filing of a site assessment report as part of its Application (Exhibit C) in the present proceeding satisfies the goals of KRS 278.216.

16. **KRS 278.218** governs certain transfers of utility assets having an original book value of $1 million or more. Telesto is not a utility as defined in 278.010(3), and therefore this statute does not apply to the Applicant. However, to the extent approval may at some time be required for change of ownership or control of Project assets owned by Telesto or its parent company, Telesto will comply with the rules and regulations applicable thereto.

17. **KRS 278.700 – .716** governs the Board's jurisdiction and process. Telesto's Application and timely participation in the present proceeding demonstrates that the proposed facility is designed to, and as located, would meet the goals of KRS 278.700 *et seq*., including the allowance for deviation from setback requirements in KRS 278.704(4).

a. Moreover, the mitigation measures discussed in the Application relative to noise, traffic, scenic, and other impacts of the proposed project are additional steps the Applicant has committed to take in order to minimize the effects of the planned facility on, *inter alia*, the two

Neighborhoods for which most of their area is closer than 2000 feet to proposed Project structures or facilities used for generation of electricity.

b. In addition, the Project site and Neighborhoods are in a part of Hardin County where City and County and differently zoned areas meet. The respective setback standards applicable to the Neighborhoods' zoning or those applicable under the (invalidated) County conditional-use Resolution[13] or the City permitted use in I-1 zones are for lesser distances than 2000 feet and for less setback distance than Telesto requests in this Motion. For example, the setback requirement for structures:

- on County R-1 zoned property is no more than 100 feet;[14]
- on City R-2 zoned property is no more than 40 feet;[15] and
- on City I-1 zoned property (permitting public/private utility use) is no more than 75 feet.[16]

The Project's fenced generating facilities and structures will be at least 100 feet from any leased property boundary, and thus will meet any minimum 100-foot setback requirement. In this way, the Neighborhoods and residences therein will be protected by no less setback distance than they would receive under general local zoning standards.

[13] As more fully discussed in Site Assessment Report ¶17 (Appl. Exh. C pp. 6-7/20), the generally applicable standards are for 100-foot setbacks; the conditional-use permit required under the Resolution could designate other setbacks and buffers.

[14] See Development Guidance System Zoning Ordinance, Hardin County (2009) §3-1-C (100-foot side and rear setbacks for platted subdivision lots adjoining agricultural or industrial zones).

[15] See Zoning Ordinance, City of Elizabethtown (Feb. 2022) §2.8.2.5(6) (40-foot front setback for permitted assembly and commercial uses).

[16] *Id.* §2.8.12(4) (listing public or private utility facilities (or a substantial similar use) as a principal industrial use); §2.8.12.5 (75-foot front and rear setbacks when abutting property zoned R-2 or another residential category).

MITIGATION EFFORTS

18. Noise offsite is not anticipated to be a material issue for either the construction or operation phase of the Project. The Sound Study presented as Exhibit H to the Application recognized Neighborhood residences as concentrations of sensitive receptors (p.3). As more fully reported in the Site Assessment Report (Appl. Exh. C ¶¶ 28-37) and Sound Study:

a. It is anticipated that construction activity will be audible at times to nearby residences or other sensitive receptors. Appl. Exh. H pp. 8, 12. Telesto will mitigate the sound impacts of construction by limiting noise-creating construction activities to take place only Monday – Saturday, 8 A.M. to 6 P.M. local time. Appl. Exh. C ¶ 49.a.

b. During operations, the principal sound sources are from the onsite substation step-up transformer and the central inverters distributed through the panel arrays. Sound Study modeled daytime operational sound at maximum and concluded that 45 dBA contours did not extend beyond Project fencing for the central inverters and did not reach any residence or beyond the leased property boundaries for the substation. Appl. Exh. H pp. 9, 14 (showing dBA contours). At night, all inverters are inactive and the substation operates at a sound level significantly lower than during the daytime — reducing any sound impacts on any residences or other receptors. *Id*. p.9. Telesto commits to siting the substation at least 1000 feet from any residence in Neighborhood 1 or 2 in the final layout.

c. Site visits and maintenance activities, such as mowing, will take place during daylight hours and will not significantly contribute to noise. The noise associated with these activities is very similar to that currently generated onsite by farming activities and offsite by commercial and farm uses.

19. As discussed in Telesto's Site Assessment Report (Appl Exh. C ¶¶ 19-22 pp.7-9), the visual impact of the Project on neighboring property owners is low and is mitigated by vegetative buffers.

a. Telesto presented a Landscape Plan as Exhibit F to its Application. The plan is designed to use existing forested or shrubland areas and add dense or light plantings along segments of the Project's perimeter fencing where viewership intensity and adjacent land use make increased screening or visual barriers advisable. Appl. Exh. F p.5/93. As shown on context and inset maps filed with the Application,[17] that plan includes plantings between Project panel arrays and (i) the southeastern quadrant of Neighborhood 1 and (ii) the southernmost part of Neighborhood 2. In connection with this Motion, Telesto has added a planned row of trees near the Neighborhood 1 boundary's southwestern corner and along the Neighborhood 2 boundary in an area to be constructed and that is farthest from Hayden School Road. See Figure 2.

b. A Glare Hazard Analysis (Appl. Exh. G) was prepared for the Project and predicted no Project-related glare for area airports (and one helipad) or for drivers on all but one road segment modeled.[18] The Analysis specifically addressed modeled predictions for the western end of one of the cul-de-sac roads in Neighborhood 1 (W. Anjou Court),[19] of glare at various times of the day and year, but concluded that the possible glare on that road segment to have a negligible effect. Appl. Exh. G p. 20. The Analysis noted that the prediction was of only green glare (low potential for temporary after-image) and that the model did not account for the

[17] Appl. Exh. F, Apx.A (screening plan); these maps and details are repeated as Appl Exh. A.3.

[18] The Glare Hazard Analysis modeled Neighborhood road segments, including West Anjou Court, Damson Trail, and Braeburn Court (with Thomas Road) in Neighborhood 1 and Aiden Lane and Canton, Alcott/Arden, and Hopewell/Radford Courts in Neighborhood 2.

[19] Please refer to Figure 2. West Anjou Court is the cul-de-sac road in the southeastern quadrant of The Orchard (Neighborhood 1) with its western terminus near the midpoint of the Neighborhood's southern boundary. See also Appl. Exh. G p.17 (Figure 6, closeup of West Anjou Court).

ameliorative effects of woodland areas (visible in Figure 2) and existing structures between that roadway segment and Project panels. *Id.* pp. 16-20.

c. The Project is designed to minimize light pollution, by limiting fixed lighting to gates at the perimeter and the substation. In addition, this lighting will be motion-activated to minimize light spillage.

d. Given that adjacent property values are not anticipated to be affected by the siting of the solar facility (see Appl. Exhs. E.1 and E.3),[20] the implementation of vegetative screening buffers, and compliance with all regulatory requirements, the Project is scenically compatible with its surroundings, including the two Neighborhoods.

20. As discussed in the Traffic Impact Study, impacts to traffic are expected to be minimal and occur only during the construction phase, and — even at peak a.m. and p.m. construction traffic — area roadways will continue to operate at acceptable (or better) levels of service. Appl. Exh. I pp. 8-11. The planned public road crossings or access points for the Project nearest to the Neighborhoods are on Cecilia Road, to the south of Neighborhood 1. See Appl. Exh. A.1 p.3/3.

21. Furthermore, the residences in the Neighborhoods are covered by siting design and mitigation measures applicable to all residences and surrounding properties. See, generally, Appl. Exh. C ¶¶ 42-50. For example, the onsite substation (with its step-up transformer) and operation and maintenance center will be located near the Project center, significantly closer to the bisecting railroad tracks than to the Neighborhoods. See Appl. Exh. A-1 (layout figures).

[20] The CohnReznick Addendum Report (Appl. Exh. E.3) specifically discussed the 3/3/22 sale of one of the Neighborhood 2 residential properties across Hayden School road from the airport. The associated real estate agent stated that the proximity of the airport and the proposed solar project in the area had no negative impact on pricing or buyer interest. Appl. Exh. E.3 p.21.

22. To support the deviation requested in this Motion, and with respect to the two Neighborhoods, Telesto makes the additional commitments to add the rows of vegetative buffer indicated on Figure 2 to its Landscape Plan and to place electricity generating facilities and structures no closer than 450 feet and the substation no closer than 1000 feet to any residence in Neighborhood 1 or 2.

CONCLUSION

The proposed mitigation measures will protect residents in any residential neighborhood from any adverse impact that may result from generating equipment of the proposed Project being located closer than 2000 feet. Applicant will continue to work closely with property owners throughout the design phase of the project and proposes to retain natural buffers and to implement mitigation measures to address visual impact and noise concerns.

WHEREFORE, because the proposed facility is designed to and, as located, would meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716, at a distance closer to residential neighborhoods than 2000 feet, Telesto respectfully requests a ruling from the ESB that:

(1) The only residential neighborhoods as defined by KRS 278.700(6) within 2000 feet of the Project boundary are Neighborhood 1 and Neighborhood 2;

(2) Telesto is granted a deviation from the setback requirement of KRS 278.704(2) for each residential neighborhood that lies within 2000 feet of the Project site, such that the setback required from any residence in the neighborhood is 1000 feet for the substation and 450 feet for other structures or facilities used for the generation of electricity.

Respectfully submitted,

/s/ Katherine K. Yunker

Katherine K. Yunker
Kathryn A. Eckert
McBrayer PLLC
201 East Main St., Suite 900
Lexington, KY 40507
(859) 231-8780
kyunker@mcbrayerfirm.com
keckert@mcbrayerfirm.com

Counsel for Applicant,
Telesto Energy Project LLC

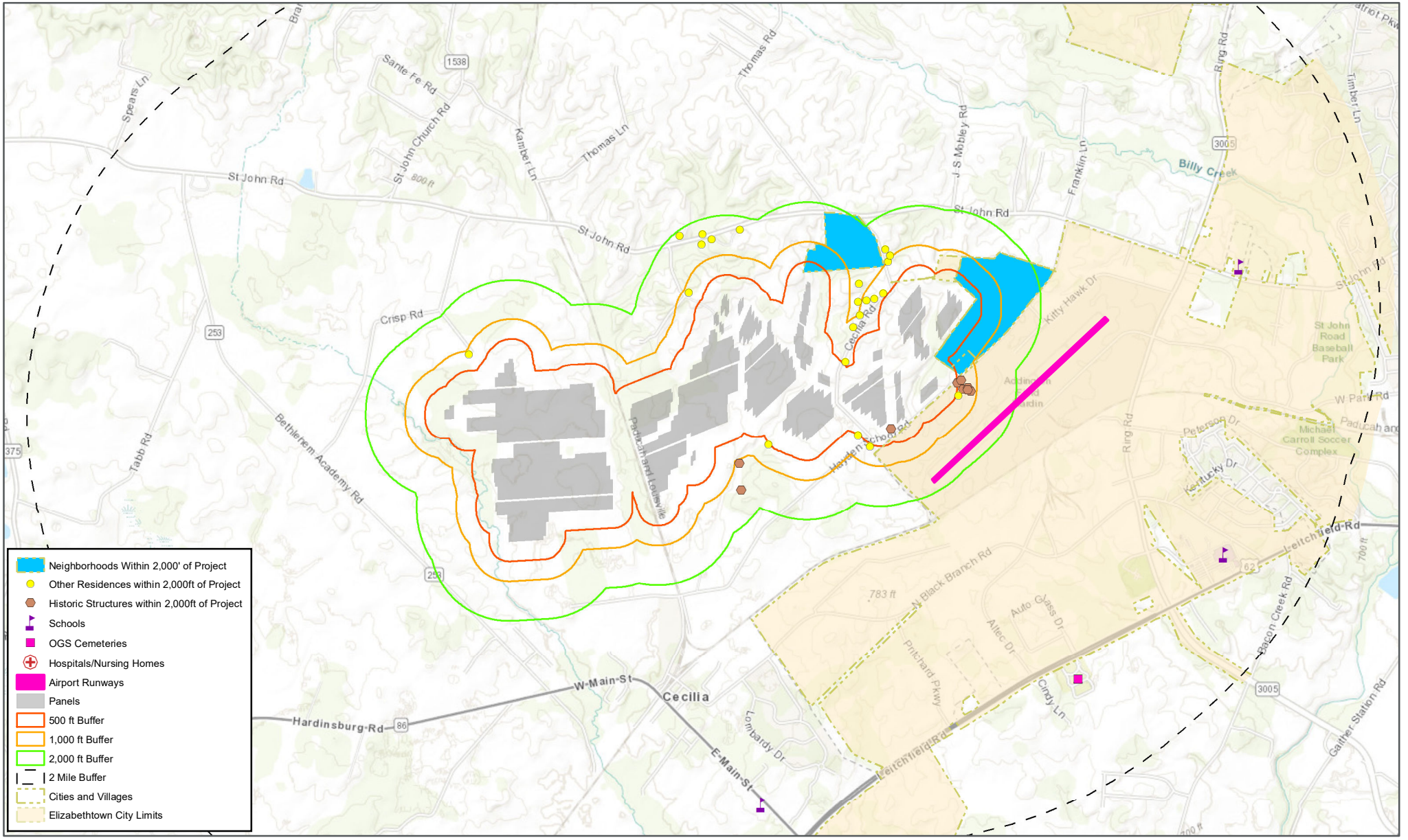

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Figure 1: 2,000ft from Project Facilities

Telesto Energy Project
Telesto Energy, LLC
Hardin County, Kentucky

Cardno now Stantec
76 San Marcos Street, Austin, TX 78702 USA
Phone(+1) 512-306-9669
www.cardno.com

Date: 8/4/2022

File Path: S:\PROJECTS\7x.Energy\E319302605 - Telesto Solar KY\GIS\Sensitive Receptors within 2 Miles.mxd

GIS Analyst: samuel.waltman

Basemap: Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

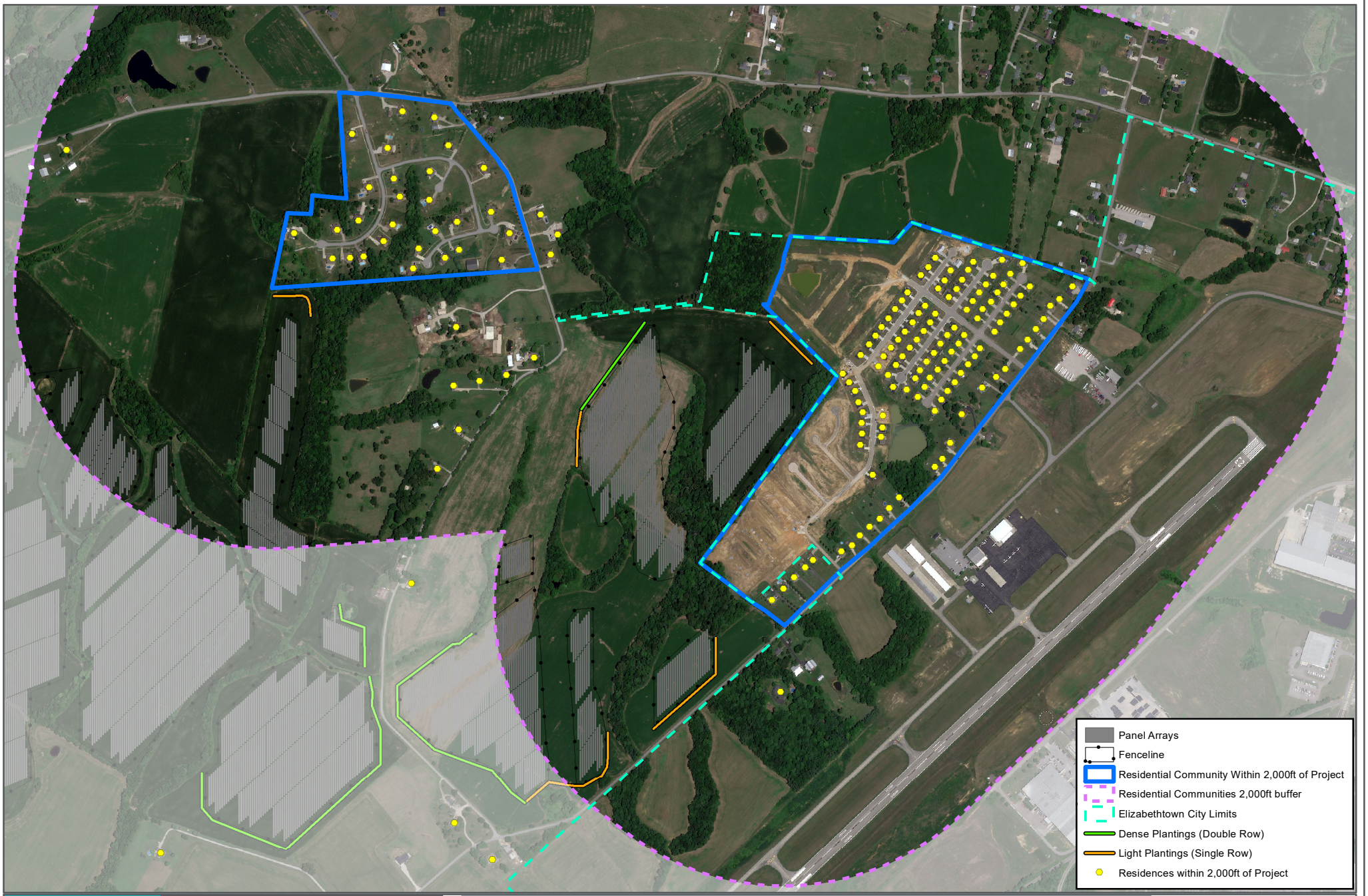

Figure 2: Residential Neighborhood Map

Telesto Energy Project
Telesto Energy, LLC
Hardin County, Kentucky

Cardno now Stantec
76 San Marcos Street, Austin, TX 78702 USA
Phone(+1) 512-306-9669
www.cardno.com

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GIS Analyst: samuel.waltman