

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address): Michael J. Lampe (SBN 82199)/Michael P. Smith (SBN 206927) Law Offices of Michael J. Lampe 108 W. Center Avenue, Visalia, CA 93291		FOR COURT USE ONLY FILED SUPERIOR COURT, METROPOLITAN DIVISION COUNTY OF KERN FEB 10 2015 TERRY McNALLY, CLERK DEPUTY ENDORSED	
TELEPHONE NO.: (559) 738-5975 FAX NO.: (559) 738-5644 ATTORNEY FOR (Name): Petitioner/Plaintiff City of Los Angeles		CASE NUMBER: S-1500-CV-284100 KCT JUDGE: DEPT:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern STREET ADDRESS: 1415 Truxtun Avenue MAILING ADDRESS: CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division			
CASE NAME: City of Los Angeles, et al. v. County of Kern, et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 4 (CEQA violation; Govt. Code violation (x2); Code Civ. Proc. Violation)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 10, 2015

Michael J. Lampe

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

COUNTY OF KERN; KERN COUNTY BOARD OF SUPERVISORS; KERN COUNTY PLANNING COMMISSION; and DOES 1 through 20 Inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

CITY OF LOS ANGELES (Additional Parties Attachment form is attached)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

FEB 10 2015

TERRY McNALLY, CLERK
BY TERESA DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, FOR THE COUNTY OF KERN

Metropolitan Division, 1415 Truxtun Avenue, Bakersfield, CA 93301

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Michael J. Lampe/Michael P. Smith, 108 W. Center Avenue, Visalia, CA 93291 / Tel: (559) 738-5975

DATE:
(Fecha)

FEB 10 2015

TERRY McNALLY

Clerk, by
(Secretario)

S. JOSLIN

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify): CCP 416.50	
4. ☐ by personal delivery on (date):

SHORT TITLE:

CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

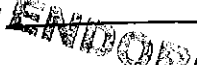
☒ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

COUNTY SANITATION DISTRICT NO. 2 OF LOS ANGELES COUNTY;
 ORANGE COUNTY SANITATION DISTRICT;
 RESPONSIBLE BIOSOLIDS MANAGEMENT, INC.;
 SIERRA TRANSPORT, INC.; and
 CALIFORNIA ASSOCIATION OF SANITATION AGENCIES

Page ____ of ____

Page 1 of 1

FEB 10 2015

TERRY McNALLY, CLERK
BY  DEPUTY

ENDORSED

MICHAEL FEUER (SBN 111529)
City Attorney
VALERIE FLORES (SBN 138572)
Managing Assistant City Attorney
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Attorneys for Petitioner/Plaintiff City of Los Angeles

[See signature pages for other parties and counsel.]

**FILING FEE EXEMPT
PER GOVERNMENT CODE § 6103**

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Attorneys for Petitioners/Plaintiffs City of Los Angeles, Responsible Biosolids Management, Inc., and Sierra Transport, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

CITY OF LOS ANGELES;
COUNTY SANITATION DISTRICT NO. 2 OF
LOS ANGELES COUNTY;
ORANGE COUNTY SANITATION DISTRICT;
RESPONSIBLE BIOSOLIDS MANAGEMENT,
INC.; SIERRA TRANSPORT, INC.; and
CALIFORNIA ASSOCIATION OF SANITATION
AGENCIES,

Petitioners/Plaintiffs,

v.

COUNTY OF KERN;

Case No. **S-1500-CV-** 284100 KOT

**VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF**

CEQA CASE

1 KERN COUNTY BOARD OF SUPERVISORS;
2 KERN COUNTY PLANNING COMMISSION; and
DOES 1 through 20 inclusive,

3 Respondents/Defendants.

4 Petitioners/Plaintiffs CITY OF LOS ANGELES, COUNTY SANITATION DISTRICT NO.
5 2 OF LOS ANGELES COUNTY, ORANGE COUNTY SANITATION DISTRICT,
6 RESPONSIBLE BIOSOLIDS MANAGEMENT, INC., SIERRA TRANSPORT, INC., and
7 CALIFORNIA ASSOCIATION OF SANITATION AGENCIES ("Petitioners/Plaintiffs") allege:

8 1. This action challenges Kern County's surreptitious adoption of a new zoning
9 ordinance the sole purpose of which is to impose onerous new requirements on the recycling of
10 biosolids. County officials concealed the purpose of the ordinance, never once mentioning biosolids
11 in the public notices of hearings on the proposed ordinance. Nor did the County pay heed to the
12 important environmental consequences of burdening the widespread practice of recycling biosolids
13 as an alternative to landfill disposal and a substitute for the use of chemical fertilizer on feed crops.
14 Because the County ignored the need for an analysis of the environmental impact of the ordinance
15 and denied the public proper notice of its purpose, Petitioners/Plaintiffs ask the Court to void the
16 ordinance.

17 2. Petitioners/Plaintiffs challenge Respondents/Defendants County of Kern's, Kern
18 County Board of Supervisors', and Kern County Planning Commission's (collectively "County")
19 December 11, 2014 recommendation to approve and January 6, 2015 approval of a revision to the
20 Kern County Zoning Ordinance (Title 19, Kern County Ordinance Code) ("Project" or "Ordinance
21 G-8533") and the County's determination of and filing of a Notice of Exemption ("NOE") on
22 January 7, 2015, declaring that the Project is exempt from the California Environmental Quality Act
23 ("CEQA"), Public Resources Code, section 21000 *et seq.*

24 3. Petitioners/Plaintiffs seek a determination from this Court that the County's approval
25 of the Project and use of the CEQA exemptions are invalid and void for failing to satisfy the
26 requirements of CEQA, and the CEQA Guidelines, Title 14, California Code of Regulations, section
27 15000 *et seq.* (Guidelines). Petitioners/Plaintiffs ask this Court to issue a writ of mandate against the
28 County for failing to comply with CEQA.

4. Petitioners/Plaintiffs seek declaratory relief for the County's violation of the California Government Code sections 65090 and 65091 regarding the Planning Commission's insufficient and misleading Notice of Public Hearing announcing a December 11, 2014 hearing and the County's insufficient and misleading Project description and notice in the January 6th Board of Supervisors Agenda. Neither the Planning Commission nor the Board of Supervisors provided notice that the proposed amendment to the Zoning Ordinance to be considered would regulate the use of biosolids as a soil amendment. The Planning Commission also failed to mail notice of the public hearing to the City of Los Angeles as required under Government Code sections 65854 and 65091, as the owner of real property affected by a zoning ordinance or amendment to a zoning ordinance. Petitioners/Plaintiffs ask this Court to issue a writ of mandate against the County for failing to comply with the Government Code.

5. Petitioners/Plaintiffs also seek a declaration that the County's adoption of Ordinance G-8533 without the preparation of an Environmental Impact Report ("EIR") violated the writ of mandate issued on December 2, 2005 by the Tulare County Superior Court in Case No. 189654. Petitioners/Plaintiffs ask this Court to issue a writ of mandate against the County for failing to comply with the 2005 writ.

6. For the Petitioner/Plaintiff public entities, this Petition is deemed verified. (Code of Civ. Proc. § 446.)

PARTIES

7. Petitioner/Plaintiff City of Los Angeles operates a vast and complex wastewater collection and treatment system. Included in that system are two wastewater treatment plants that generate biosolids that are recycled in Kern County: Hyperion and Terminal Island. The City also owns Green Acres Farm in Kern County where the City recycles biosolids and grows feed crops, pursuant to permits and authorizations from the State of California, and the United States Environmental Protection Agency (“EPA”).

8. Petitioner/Plaintiff County Sanitation District No. 2 of Los Angeles County operates wastewater treatment plants in Los Angeles County that generate biosolids that have been and may in the future be recycled by direct land application in Kern County.

1 9. Petitioner/Plaintiff Orange County Sanitation District (“OCSD”) operates wastewater
2 Treatment plants in Orange County that generate biosolids that have been and may in the future be
3 recycled by direct land application in Kern County.

4 10. Petitioner/Plaintiff Responsible Biosolids Management, Inc. (“RBM”) is a small
5 business in Lompoc, California that has a contract with the City of Los Angeles to manage its
6 biosolids recycling program at Green Acres Farm.

7 11. Petitioner/Plaintiff Sierra Transport, Inc. is a small business in Kern County that hauls
8 biosolids from the Hyperion and Terminal Island treatment plants in Los Angeles to Green Acres
9 Farm pursuant to a subcontract with RBM.

10 12. Petitioner/Plaintiff California Association of Sanitation Agencies (“CASA”) is a non-
11 profit mutual benefit corporation organized under California law. CASA’s members include public
12 agencies, cities, special districts and joint powers authorities engaged in the collection, treatment,
13 disposal or reclamation of wastewater, including Petitioners/Plaintiffs City, County Sanitation
14 District No. 2 of Los Angeles County, and Orange County Sanitation District. CASA provides
15 proactive leadership, innovative solutions, and timely education and information to CASA members,
16 legislators, and the public, and promotes partnerships on wastewater issues with other organizations,
17 so that sound public health and environmental goals may be achieved. CASA’s biosolids program
18 promotes the environmentally sound recycling of biosolids, and develops and maintains a system of
19 sharing up-to-date, accurate, science-based biosolids information with its members and the public.

20 13. Respondent/Defendant Kern County is a local governmental entity located in
21 California’s Central Valley.

22 14. Respondent/Defendant Kern County Board of Supervisors is the governing body of
23 Kern County and is a Respondent/Defendant in its official capacity.

24 15. Respondent/Defendant Kern County Planning Commission is a governmental
25 department of Kern County and is a Respondent/Defendant in its official capacity.

26 16. Petitioners/Plaintiffs are unaware of the true names and capacities of
27 Respondents/Defendants identified as Does 1-20, and sue such Respondents/Defendants herein by
28 fictitious names. Petitioners/Plaintiffs are informed and believe, and on that basis allege, that

1 Respondents/Defendants Does 1-20, are also responsible, in whole or in part, for the invalid and
2 unlawful approval of Ordinance G-8533 and the Notice of Exemption. When the true identities and
3 capacities of these Respondents/Defendants have been determined, Petitioners/Plaintiffs will, with
4 leave of the Court if necessary, amend this Petition and Complaint to insert such identities and
5 capacities.

6 **BACKGROUND FACTS**

7 17. The Project in this matter is the County's review and approval of Ordinance G-8533,
8 a revision to the Kern County Zoning Ordinance (Title 19, Kern County Ordinance Code). This new
9 ordinance is the most recent effort in a campaign by Kern County to prevent or obstruct the land
10 application of biosolids by Petitioners/Plaintiffs in Kern County.

11 18. The United States Environmental Protection Agency (EPA) defines biosolids as:

12 nutrient-rich organic materials resulting from the treatment of
13 domestic sewage in a treatment facility. When treated and
14 processed, these residuals can be recycled and applied as fertilizer
15 to improve and maintain productive soils and stimulate plant
16 growth. . . . The controlled land application of biosolids completes
a natural cycle in the environment. By treating sewage sludge, it
becomes biosolids which can be used as valuable fertilizer, instead
of taking up space in a landfill or other disposal facility.

17 <http://water.epa.gov/polwaste/wastewater/treatment/biosolids/genqa.cfm>. Land application of
18 biosolids has occurred across the United States for decades and recycles to the soil the majority of
19 the country's and California's sewage sludge.

20 19. Biosolids provide farmers with an effective, organic fertilizer that is rich in nitrogen,
21 phosphorous, potassium, and trace elements (such as zinc) that are essential for plant growth. In
22 1972, Congress passed the Clean Water Act and directed the EPA to encourage recycling biosolids.
23 33 U.S.C. § 1281(d). In 1987, Congress directed EPA to develop national standards for beneficial
24 use of biosolids. 33 U.S.C. § 1345. After years of research and notice and comment rule making,
25 EPA in 1993 promulgated a nationwide, risk-based standard allowing land application of biosolids.
26 40 C.F.R. Pt. 503. Biosolids have many important environmental benefits. They add organic matter
27 to farm fields that increases soil tilth, improving the soil's ability to retain moisture and encouraging
28 plant root development. Their elements are bound in organic materials that release slowly during the

1 growing season. Land application of biosolids reduces or eliminates the need for chemical fertilizers
2 that can adversely affect the environment and accelerate climate change. Almost a quarter of a
3 gallon of fossil fuel (0.22 gallons) is required to produce every pound of synthetic nitrogen fertilizer
4 and chemical fertilizer effectively removes organic carbon from the soil; both of which contribute to
5 climate change. Sewage sludge that is not recycled as biosolids usually is disposed of in landfills or
6 incinerated. Land application of biosolids reduces demand for landfill space and eliminates the
7 production of air emissions associated with incineration.

8 20. In 2000, to provide a single regulatory framework for land application of biosolids in
9 California, the State Water Resources Control Board (State Water Board) issued General Order
10 2000-10, which endorsed the use of Class B, Class A, and Exceptional Quality (“EQ”) biosolids and
11 supplemented EPA’s Part 503 with regulations regarding appropriate sites and crops for land
12 application and protections for groundwater. To support issuance of the General Order, the State
13 Water Board prepared a detailed Environmental Impact Report (“EIR”) analyzing the environmental
14 impacts of land application of biosolids, pursuant to the requirements of CEQA.

15 21. The State Water Board issued a new General Order (2004-12) and a revised EIR in
16 2004, conducting a further CEQA analysis of land application of Class B, Class A, and Exceptional
17 Quality (“EQ”) biosolids. EQ biosolids meet not only the Class A standards for pathogen reduction
18 and vendor attraction, but also stringent metals standards. Based on the comprehensive
19 environmental review in the revised EIR, which sets forth more than 600 pages of scientific analysis
20 of land application of biosolids, the State Water Board concluded in its 2004-12 General Order that
21 land application of biosolids is “environmentally sound and preferable to non-beneficial disposal.”
22 Additionally, the General Order “establishes a regulatory system to manage biosolids in a manner
23 that is reasonably protective of public health and the environment to the extent of present scientific
24 knowledge.” The 2004-12 General Order allows land application of both Class A and B biosolids
25 and notes that “EQ biosolids [which are now the only kind applied in the unincorporated areas of
26 Kern County] may not necessitate regulation in the future.”

27 22. Since the early 1990s, Petitioners/Plaintiffs and other California communities,
28 businesses and farms have successfully recycled biosolids in Kern County. Over the years,

1 Petitioners/Plaintiffs have complied with the biosolids ordinances adopted by Kern County that set
2 health and safety standards for the land application of biosolids in the County. The Kern ordinances
3 provided detailed requirements for monitoring the quality and controlling the use of biosolids and in
4 large part complemented or exceeded federal and state regulations. Petitioners/Plaintiffs have
5 invested millions of dollars on wastewater treatment plant changes and management improvements
6 to meet Kern's exacting standards for biosolids quality and monitoring.

7 23. Kern's adoption of its 1999 biosolids ordinance without preparing an environmental
8 impact report led to litigation between Kern and most of the Petitioners/Plaintiffs in this action in a
9 matter styled *County Sanitation District No. 2 of Los Angeles County, et al. v. County of Kern*, Case
10 No. 189564, Tulare County Superior Court. In that action, the Superior Court, on December 2,
11 2005, issued a writ requiring, among other things, that Kern "prepare an environmental impact report
12 ("EIR") that covers the adoption of an ordinance regulating the land application of treated sewage
13 sludge within your jurisdiction." Kern has never prepared an EIR for any ordinance regulating the
14 land application of treated sewage sludge, including Ordinance G-8533 at issue here.

15 24. On June 6, 2006, Kern County voters adopted Measure E, a county ballot initiative
16 that bans the land application of biosolids in the unincorporated areas of Kern County (the "Kern
17 Ban"). The Kern Ban was not based upon any legitimate health or environmental concerns. On
18 information and belief, Kern cities including Bakersfield, Taft, Wasco and Delano continue to apply
19 biosolids to lands within their city limits, which are unaffected by Measure E. The Kern Ban flatly
20 prohibits Petitioners'/Plaintiffs' recycling of biosolids.

21 25. Petitioners/Plaintiffs successfully challenged the Kern Ban in federal district court
22 shortly after its passage, obtaining a preliminary injunction. *City of Los Angeles v. County of Kern*,
23 462 F.Supp.2d 1105 (C.D. Cal. 2006). Petitioners/Plaintiffs later prevailed on summary judgment
24 on their claim that the Ban violated the Commerce Clause of the United States Constitution and their
25 claim that the Ban conflicted with and was preempted by the California Integrated Waste
26 Management Act. *City of Los Angeles v. County of Kern*, 509 F.Supp.2d 865 (C.D. Cal. 2007). On
27 appeal by Kern, the Ninth Circuit vacated the judgment, solely on the basis that Plaintiffs lacked
28 prudential standing to assert their federal claims, an issue not raised by Kern. *City of Los Angeles v.*

1 *County of Kern*, 581 F.3d841 (9th Cir. 2009). On remand, the district court then declined
2 supplemental jurisdiction to reinstate the judgment on the state law claim, leaving
3 Petitioners/Plaintiffs to pursue their challenge to the Kern Ban in state court. *City of Los Angeles v.*
4 *County of Kern*, No. 06-5094 (C.D. Cal. Nov. 9, 2010) (order granting motion to dismiss). .

5 26. Following the dismissal of the federal action, Petitioners/Plaintiffs filed suit in this
6 Court in January 2011, again seeking to enjoin enforcement of Measure E. Since its transfer to
7 Tulare County Superior Court, the matter has been known as *City of Los Angeles v. County of Kern*,
8 Case No. VCU 242057. In June 2011 the Visalia County Superior Court, like the federal district
9 court before it, issued a preliminary injunction against enforcement of Measure E. After an
10 interlocutory appeal by Kern, the matter returned to the Tulare County Superior Court where, in
11 September 2014, Petitioners/Plaintiffs filed a motion for summary judgment. Kern faced the
12 possibility that the Court would issue a final ruling striking down Measure E at the hearing on the
13 motion, originally set for January 15, 2015.

14 27. While Petitioners'/Plaintiffs' motion for summary judgment was pending, the Kern
15 County Planning Commission (Commission) issued an undated document titled: "Notice of Public
16 Hearing" (Notice) announcing that the Commission would hold a hearing on Thursday, December
17 11, 2014.

18 28. The Planning Commission failed to mail notice of the public hearing on the new
19 ordinance to the City of Los Angeles, whose Green Acres Farm property in Kern County is affected
20 by the ordinance.

21 29. According to the Notice, the purpose of the hearing was to consider a request to
22 revise the Kern County Zoning Ordinance to "add a regulation ensuring land usage complies with
23 National Pollutant Discharge Elimination System (NPDES) requirements to protect water quality.
24 No changes in zoning district classification affecting public or private property are proposed. A
25 copy of the recommended text change is on file at the Kern County Planning and Community
26 Development Department and available online at
27 www.co.kern.ca.us/planning/pdfs/zo/2014ZOupdates.pdf. Nowhere does the Notice mention
28 biosolids.

1 30. The Commission's Notice further stated that the "project has been found to be
2 categorically exempt from the requirement for preparation of environmental documents pursuant to
3 Sections 15307 and 15308 of the State CEQA Guidelines and under General Rule, Section
4 15061(b)(3) of the State CEQA Guidelines, the Kern County Planning and Community
5 Development Department has reviewed the subject project and has found that there is no possibility
6 that the activity in question may have a significant effect on the environment."

7 31. Kern County plays no role in the issuance of NPDES permits, nor does the proposed
8 ordinance purport to create a role for the County in NPDES permitting. NPDES permits are required
9 under the federal Clean Water Act before an entity may discharge pollutants into waters of the
10 United States. In California, anyone seeking to discharge pollutants into waters of the state,
11 including groundwater, must obtain a Waste Discharge Requirements ("WDR") permit under the
12 Porter-Cologne Water Quality Act, which often doubles as an NPDES permit. Both WDR and
13 NPDES permits are issued by the State Water Board and the Regional Water Quality Control
14 Boards. Kern County plays a role in the administration of the State Water Board's Construction
15 General Permit for storm water, but the ordinance proposed no change to that program. Instead of
16 an ordinance of general application addressing holders of NPDES permits, as suggested by the
17 notice, the ordinance considered by the Commission on December 11, 2014, targets only the use of
18 biosolids.

19 32. The actual revision proposed to the Kern County Ordinance Code was to add Section
20 19.08.490 to Chapter 19.08 of Title 19. The one-paragraph revision directs that all development
21 shall comply with the Clean Water Act and the Porter-Cologne Water Quality Act and that "The use
22 of bio solids, defined as treated sewage sludge that meets United States Environmental Protection
23 Agency pollutant and pathogen requirements for land application and surface disposal, as an
24 agricultural amendment shall only occur on lands that include the PD Combining District and upon
25 review and approval of a site development plan pursuant to Section 19.56.130 through 19.56.200 of
26 this title." (Kern County Planning Commission Board of Supervisors Staff Report (Report), January
27 6, 2015, at pg 2). The Commission staff defines a "PD District" in the Report as a Precise
28 Development Combining District with the purpose to "designate areas with unique site

1 characteristics or environmental conditions or areas surrounded by sensitive land uses to ensure
2 development in such areas is compatible with such constraints.”

3 33. Per the Report, the text changes “include a requirement that any spreading of bio
4 solids on agricultural land as an amendment be on land zoned with PD District” and “will require a
5 discretionary zoning change that would need to be considered by your Board. After the zoning is
6 changed, a site development plan is required to be considered and processed for consideration either
7 to your Board or at a publicly noticed Director’s hearing. Both actions, the original zone change and
8 the site development plan, are projects subject to compliance with the California Environmental
9 Quality Act (CEQA).” In other words, from this point on, anyone seeking to recycle biosolids in
10 Kern will have to obtain a zoning change and approval of a site development plan, both of which
11 would be subject to a potentially lengthy and expensive CEQA review.

12 34. On December 11, 2014, the Planning Commission recommended that the Kern
13 County Board of Supervisors adopt the proposed amendment to the Zoning Ordinance.

14 35. On January 6, 2015, the Kern County Board of Supervisors enacted ordinance G-
15 8533 approving changes to the Kern County Zoning Ordinance as requested. The Board of
16 Supervisors found the project to be categorically exempt from CEQA review. Like the Planning
17 Commission’s hearing announcement, the Board of Supervisors Agenda item, CA-4, describing the
18 ordinance to be considered on January 6, 2015, made no mention of biosolids nor did it contain the
19 text of the proposed ordinance.

20 36. On January 7, 2015, the County filed a Notice of Exemption stating that “The Board
21 of Supervisors has determined that it can be seen with certainty that there is no possibility that the
22 action taken may have a significant effect on the environment...” The County stated in the NOE
23 that the Project was exempt from CEQA per CEQA Guidelines sections 15061(b)(3), 15307 and
24 15308.

25 **JURISDICTION AND VENUE**

26 37. This action arises under CEQA and its implementing regulations. (Pub. Resources
27 Code §21000 et seq.; Cal. Code Regs., title 14, § 15000 et seq.). This Court has jurisdiction over the
28

1 matters alleged in this Petition pursuant to Code of Civil Procedure section 1085 and 1094.5, and
2 Public Resources Code sections 21168 and 21168.5.

3 38. Pursuant to Code of Civil Procedure section 388, Petitioners/Plaintiffs are serving the
4 California Attorney General with a copy of this Petition. Additionally, consistent with Public
5 Resources Code Section 21167.5, Petitioners/Plaintiffs have served Respondents with notice of this
6 suit. A true and correct copy of that notice is attached as Exhibit 1.

7 39. Pursuant to Code of Civil Procedure section 394(a), venue is proper in this Court.

8 40. As described above, this action is related to two earlier-filed actions currently
9 pending in the Tulare County Superior Court: *County Sanitation District No. 2 of Los Angeles*
10 *County v. County of Kern*, Case No. 189564; and *City of Los Angeles v. County of Kern*, Case No.
11 VCU 242057. This action is also subject to transfer to another county pursuant to Code of Civil
12 Procedure section 394.

13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 41. Petitioners/Plaintiffs have performed to the extent feasible, all conditions precedent to
15 filing the instant action. The improper and misleading notice of the true Project being considered by
16 the County frustrated the ability of the Petitioners/Plaintiffs to provide comments to the Board of
17 Supervisors. Respondents/Defendants deliberately omitted disclosing that the true purpose of the
18 ordinance is to regulate the use of biosolids knowing that, had there been proper disclosure, some or
19 all Petitioners/Plaintiffs would have provided comments and testimony in opposition to the
20 ordinance, consistent with the long-standing dispute between Kern and Petitioners/Plaintiffs over the
21 land application of biosolids.

22 42. Petitioners/Plaintiffs have complied with Public Resources Code section 21167.6 by
23 concurrently filing a request concerning the preparation of the record of administrative proceedings
24 relating to the Project.

25 43. Petitioners/Plaintiffs have no plain, speedy or adequate remedy in the ordinary course
26 of law unless this Court grants the requested writ of mandate to require Respondents/Defendants to
27 set aside their approval of the Project and finding that the Project is categorically exempt under
28 CEQA.

44. Petitioners/Plaintiffs have brought this action within 35 days of the Respondents/Defendants filing the Notice of Exemption as required by Public Resources Code section 21167(d).

STANDING

45. Petitioners/Plaintiffs have standing to assert the claims raised in this Petition because their environmental and/or beneficial interests are directly and adversely affected by the County's approval of the project. Additionally, Petitioner/Plaintiff City of Los Angeles is adversely affected because the ordinance purports to transform its current biosolids recycling operations at Green Acres Farm in Kern County to a nonconforming use, restricting the City's ability to alter or extend its operations.

FIRST CAUSE OF ACTION
(Violation of the California Environmental Quality Act)

46. Petitioners/Plaintiffs reallege and incorporate by reference the paragraphs set forth above.

47. Petitioners/Plaintiffs brings this First Cause of Action pursuant to Public Resources Code sections 21168 and 21168.5, on the grounds that the County failed to act in accordance with the law and committed a prejudicial abuse of discretion, in that it considered and approved a zoning ordinance revision without undertaking an analysis of the potential environmental impacts as required by CEQA.

48. The County is a “Public Agency” within the meaning of CEQA. Pub. Res. Code §21063; Guidelines §15383. CEQA requires public agencies to conduct environmental review prior to approving any discretionary project that may have a significant impact on the environment. Pub. Res. Code 21080; Guidelines §15004(a). The County’s approval of the zoning ordinance revision is a discretionary approval. Guidelines §15357.

49. Per CEQA, “Project” means the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Guidelines § 15378(a).

1 50. “Approval” of a project, per CEQA, means “the decision by a public agency which
2 commits the agency to a definite course of action in regard to a project intended to be carried out by
3 any person.” Guidelines §15352. The County’s actions and approval of the revision to the zoning
4 ordinance constitutes the “approval of a project” under CEQA.

5 51. Compliance with the procedural requirements of CEQA informs the public of the
6 proposed project and helps to identify alternatives and mitigation to reduce the potential for resulting
7 in either a direct or a reasonably foreseeable indirect physical change in the environment. Without a
8 proper procedural foundation, a public agency cannot comply with CEQA’s mandate to not approve
9 projects as proposed if there are feasible alternatives or feasible mitigation measures available which
10 would substantially lessen the significant environmental effects of such projects. (Pub. Res. Code
11 §21002.)

12 52. If there is any possibility that a discretionary project being considered for approval by
13 a public agency may have the potential for resulting in a direct or reasonably foreseeable indirect
14 significant effect on the environment, the agency must comply with CEQA. Pub. Res. Code
15 §§21001, 21002, and 21080).

16 53. The County committed a prejudicial abuse of discretion and failed to comply with
17 CEQA when it failed to conduct an adequate investigation of the impacts of the proposed Project
18 (revision to the zoning ordinance concerning the land application of biosolids as an agricultural
19 amendment) in the following respects, among others:

20 a. The County improperly and invalidly exempted the Project from CEQA under
21 Section 15061(b)(3) of the CEQA Guidelines finding that the “Board of Supervisors has determined
22 that it can be seen with certainty that there is no possibility that the action taken may have a
23 significant effect on the environment.” (Board of Supervisors January 6, 2015 agenda item CA-4
24 and the County Notice of Exemption, January 7, 2015).

25 b. The County improperly and invalidly categorically exempted the Project from
26 CEQA under Sections 15307 and 15308 of the Guidelines.

27 c. The County did not properly analyze that the Project does have the potential
28 for a direct or reasonably foreseeable indirect significant effect on the environment because the

1 additional zoning requirements and costly, time-consuming procedures may prevent entities from
2 pursuing the beneficial uses of biosolids land application in Kern County and resort to other, less
3 beneficial, alternative management strategies such as landfilling or incineration, or to shift biosolids
4 land application activities to more distant locations entailing greater environmental impacts. Local
5 land owners may be denied an alternative to the use of chemical fertilizers.

6 d. The County failed to adequately inform the public of the true nature of the
7 Project. The actual Project that the County approved was to impose new restrictions on the use of
8 biosolids as an agricultural amendment, but the notice provided by the County listed the issue as
9 adding a regulation ensuring land usage complies with National Pollutant Discharge Elimination
10 System (NPDES) requirements to protect water quality.

11 e. The County failed to comply with CEQA and committed an abuse of
12 discretion by not considering the cumulative impacts of the Project, including the lack of nutrients to
13 the soil and the more harmful environmental disposal activities such as landfilling and incineration,
14 by creating a large impediment to the practice of biosolids land application in unincorporated Kern
15 County, while also frustrating the State's goal of reducing waste disposal.

16 f. The County failed to comply with CEQA and committed an abuse of
17 discretion by not considering a reasonable range of alternatives of the Project that fosters informed
18 decision-making and informed public participation.

19 g. The County's Project approval was not based upon substantial evidence and
20 therefore, the County prejudicially abused its discretion and failed to follow procedural requirements
21 in violation of CEQA.

22 **SECOND CAUSE OF ACTION**
23 **(Violation of the Government Code)**

24 **FAILURE OF THE PLANNING COMMISSION TO PROVIDE NOTICE REQUIRED BY
GOVERNMENT CODE SECTIONS 65090, 65091, AND 65854**

25 54. Petitioners/Plaintiffs reallege and incorporate by reference paragraphs 1 through 53 of
26 this Complaint, inclusive, as though fully set forth herein.

27 55. Government Code Section 65854 requires that a planning commission hold a public
28 hearing on any proposed zoning ordinance or amendment to a zoning ordinance and give notice of

1 the hearing pursuant to Government Code Section 65090. If the proposed ordinance or amendment
2 to a zoning ordinance affects the permitted uses of real property, as was the case here, Section 65854
3 also requires that notice also be given pursuant to Section 65091.

4 56. The notice provision of Government Code Section 65090 requires that notice be
5 given in accordance with Government Code Section 65094, which requires that the notice include “a
6 general explanation of the matter to be considered, and a general description, in text or by diagram,
7 of the location of the real property, if any, that is the subject of the hearing.”

8 57. The notice provision of Government Code Section 65091 requires that notice of the
9 hearing “be mailed or delivered at least 10 days prior to the hearing to the owner of the subject real
10 property. . . .”

11 58. Government Code Sections 65854, 65090, and 65091 apply to the Kern County
12 Planning Commission’s adoption on December 11, 2014, of a proposed zoning ordinance affecting
13 the use of biosolids as an agricultural amendment.

14 59. The Kern County Planning Commission’s notice regarding the consideration on
15 December 11, 2014, of a proposed zoning ordinance affecting the use of biosolids as an agricultural
16 amendment violated Government Code Sections 65854, 65090, and 65091. By omitting from the
17 public notice that the sole purpose of the proposed ordinance was to impose new restrictions on the
18 use of biosolids as an agricultural amendment, the Planning Commission failed to include a “general
19 explanation of the matter to be considered.” By failing to identify Green Acres Farm as a property
20 that would be affected by the ordinance, the Planning Commission failed to provide “a general
21 description . . . of the location of the real property . . . that is the subject of the hearing. By failing to
22 provide notice to the City of Los Angeles, the Planning Commission failed to have notice “mailed or
23 delivered at least 10 days prior to the hearing to the owner of the subject real property.”

24 **THIRD CAUSE OF ACTION**
25 **(Violation of the Government Code)**

26 **FAILURE OF THE BOARD OF SUPERVISORS TO PROVIDE NOTICE REQUIRED BY**
27 **GOVERNMENT CODE SECTION 65090 AND 65896**

28 60. Petitioners/Plaintiffs reallege and incorporate by reference paragraphs 1 through 59 of
this Complaint, inclusive, as though fully set forth herein.

1 61. Government Code Section 65856 requires the legislative body of a county to hold a
2 hearing on a recommendation of the planning commission and to give notice pursuant to
3 Government Code Section 65090.

4 62. The notice provision of Government Code Section 65090 requires that notice be
5 given in accordance with Government Code Section 65094, which requires that the notice include “a
6 general explanation of the matter to be considered, and a general description, in text or by diagram,
7 of the location of the real property, if any, that is the subject of the hearing.”

8 63. Government Code Sections 65856 and 65090 apply to the Kern County Board of
9 Supervisors’ adoption at a January 6, 2015 public hearing of a recommendation by the Planning
10 Commission for a proposed zoning ordinance affecting the use of biosolids as an agricultural
11 amendment. The Kern County Board of Supervisors’ agenda notice regarding the hearing on
12 January 6, 2015, on the Planning Commission’s recommendation for a proposed zoning ordinance
13 affecting the use of biosolids as an agricultural amendment violated Government Code Sections
14 65856 and 65090. By omitting from the public notice that the sole purpose of the proposed
15 ordinance was to impose new restrictions on the use of biosolids as an agricultural amendment, the
16 Board of Supervisors failed to include a “general explanation of the matter to be considered.” By
17 failing to identify Green Acres Farm as a property that would be affected by the ordinance, the
18 Board of Supervisors failed to provide “a general description . . . of the location of the real property .
19 . . that is the subject of the hearing.”

20 **FOURTH CAUSE OF ACTION**
21 **(Violation of Code of Civil Procedure)**

22 **FAILURE OF KERN COUNTY AND THE BOARD OF SUPERVISORS TO COMPLY**
23 **WITH THE WRIT REQUIRING PREPARATION OF AN EIR**

24 64. Petitioners/Plaintiffs reallege and incorporate by reference paragraphs 1 through 63 of
25 this Complaint, inclusive, as though fully set forth herein.

26 65. Code of Civil Procedure section 1097 prohibits a party subject to a peremptory
27 mandate from refusing to obey the writ without just cause. Kern is subject to the writ issued by the
28 Tulare County Superior Court on December 2, 2005 in Case No. 189564, mandating that it prepare

an environmental impact report in connection with the adoption of an ordinance regulating the land application of treated sewage sludge. Kern's adoption of Ordinance G-8533 on January 6, 2015 without preparing an EIR is a violation of that writ.

PRAYER FOR RELIEF

WHEREFORE, Petitioners/Plaintiffs pray for judgment and further relief as follows:

1. For a peremptory writ of mandate ordering the County to:
 - a. Vacate and set aside its approval of the Project on the grounds it violates the California Environmental Quality Act, Public Resources Code Section 21000 et seq. , the California Government Code Sections 65090, 65091, 65854, and 65856, and the December 2, 2005 writ of the Tulare County Superior Court in Case No. 189564;
 - b. Withdraw the Notice of Exemption for the Project;
 - c. Prepare, circulate, and consider a new legally adequate CEQA analysis for the Project, and give all required notice under the Government Code;
2. For declaratory relief declaring the Project to be unlawful and declaring the ordinance null and void;
3. For costs associated with this action;
4. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5; and
5. For such other equitable or legal relief as the Court may deem just and proper.

Dated: February 10, 2015

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By: 

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Signed with permission on behalf of:

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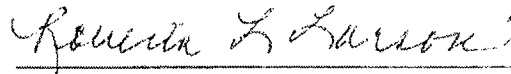
VERIFICATION

I, ROBERTA L. LARSON, declare as follows:

I am Executive Director of the California Association of Sanitation Agencies and I am authorized to make this Verification on behalf of CASA. I have read the foregoing document entitled Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and know the contents thereof. I am informed and believe and on that ground allege that the matters therein stated are true.

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

Executed this 6th day of February, 2015 at Sacramento, California.



Roberta L. Larson

EXHIBIT 1

February 9, 2015

VIA FACSIMILE & U.S. MAIL

Kern County Board of Supervisors
Kathleen Krause
Clerk of the Board of Supervisors
County of Kern
1115 Truxtun Avenue, 5th floor
Bakersfield, CA 93301
Fax: (661) 868-3636

Mary B. Bedard, CPA
County Clerk
County of Kern
1115 Truxtun Avenue, 1st Floor
Bakersfield, CA 93301-4639
Fax: (661) 868-3799

Theresa Goldner
Office of County Counsel for the County of Kern
1115 Truxtun Avenue, Fourth Floor
Bakersfield, CA 93301
Fax: (661) 868-3875

Re: NOTICE OF INTENT TO FILE CEQA PETITION

Dear Ms. Krause, Ms. Bedard and Ms. Goldner:

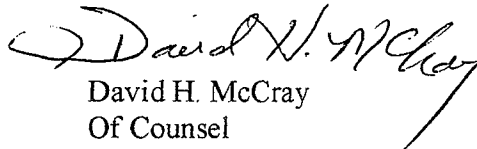
Please take notice that under Public Resources Code section 21167.5, that
Petitioners/Plaintiffs CITY OF LOS ANGELES, COUNTY SANITATION DISTRICT NO. 2
OF LOS ANGELES COUNTY, ORANGE COUNTY SANITATION DISTRICT,
RESPONSIBLE BIOSOLIDS MANAGEMENT, INC., R&G FANUCCHI, INC., SIERRA
TRANSPORT, INC., and CALIFORNIA ASSOCIATION OF SANITATION AGENCIES
intend to file a petition for Writ of Mandate and Declaratory Relief in Kern County Superior

Kathleen Krause
Mary B. Bedard, CPA
Theresa Goldner
February 9, 2015
Page 2

Court under the provisions of the California Environmental Quality Act against the County of Kern, the Board of Supervisors of the County of Kern and the Kern County Planning Commission, challenging their January 6, 2015 recommendation to approve and approval of a revision to the Kern County Zoning Ordinance (Title 19, Kern County Ordinance Code) ("Project") and the County's determination of and filing of a Notice of Exemption ("NOE") on January 7, 2015, declaring that the Project is exempt from the California Environmental Quality Act.

The petition for writ of mandate will request that the court direct respondents to vacate and set aside the approval of the Project and to issue declaratory relief. Additionally, the petition will seek Petitioners/plaintiffs' costs and attorney's fees associated with this action.

Sincerely,


David H. McCray
Of Counsel

DHM:acc

PROOF OF SERVICE

I, the undersigned, declare that I am employed in the County of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is Beveridge & Diamond, P.C., 456 Montgomery Street, Suite 1800, San Francisco, CA 94104.

I further declare that on February 9, 2015, I served the following document(s):

NOTICE OF INTENT TO FILE CEQA PETITION on the interested party(ies) in this action.

Kathleen Krause Clerk of the Board of Supervisors County of Kern 1115 Truxtun Avenue, 5th floor Bakersfield, CA 93301 Tel: (661) 868-3585 Fax: (661) 868-3636	Mary B. Bedard, CPA Auditor-Controller-County Clerk County of Kern 1115 Truxtun Avenue Bakersfield, CA 93301-4639 Tel: (661) 868-3590 Fax: (661) 868-3799
Theresa A. Goldner Office of County Counsel for the County of Kern 1115 Truxtun Avenue, Fourth Floor Bakersfield, CA 93301 Tel: (661) 868-3800 Fax: (661) 868-3875	

The documents were served by the following means:

* **BY UNITED STATES MAIL.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses set forth in the attached service list.

* deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

* placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Francisco, California.

* **BY FACSIMILE TRANSMISSION:** I faxed the documents to the persons at the fax numbers set forth above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, will be maintained with the document(s) in our office.

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

Date: 2/10/15


ADELA C. CRUZ

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN
ALTERNATIVE DISPUTE RESOLUTION (ADR)
INFORMATION PACKAGE**



Most civil disputes are resolved without filing a lawsuit and most civil lawsuits are resolved without the necessity of a trial. The courts, community organizations and private providers offer a variety of ADR processes to help people resolve disputes without a trial. Kern County Superior Court encourages, and under certain circumstances may require, parties to try ADR before trial. Courts have also found ADR to be beneficial when used early in the case process.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. You may find more information about these ADR processes at <http://www.courts.ca.gov/programs/adr.htm>.

Possible Advantages and Disadvantages

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used as well as the particular type of case involved:

Possible Advantages: Saves time; saves money; gives the parties more control over the dispute resolution process and outcome; helps to preserve and/or improve party relationships.

Possible Disadvantages: May add additional cost to the litigation if ADR does not resolve the dispute; procedures such as discovery, jury trial, appeals, and other protections may be limited or unavailable.

Most Common Types of ADR

Mediation: A neutral person, or "mediator," helps the parties communicate in an effective and constructive manner so the parties can try to resolve their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is generally confidential, and may be particularly useful where on going relationships are involved, such as between family members, neighbors, employers/employees or business partners.

Settlement Conferences: A judge or another neutral person assigned by the court helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement conference neutral does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different views about the likely outcome of a trial in their case.

Neutral Evaluation: The parties briefly and informally present their facts and arguments to a neutral person who is often an expert in the subject matter of the dispute. The neutral does not decide the outcome of the dispute, but helps the parties to do so by providing them with a non-binding opinion about the strengths, weaknesses and likely outcome of their case. Depending on the neutral evaluation process and the parties' consent, the neutral may then help the parties try to negotiate a settlement. Neutral evaluation may be appropriate if the parties desire a neutral's opinion about how the case might be resolved at trial, if the primary dispute is about the amount of damages, or if there are technical issues the parties would like a neutral expert to resolve.

Arbitration: The parties present evidence and arguments to a neutral person, or "arbitrator," who then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are generally more

relaxed. If the parties agree to *binding* arbitration, they waive their right to a jury trial and agree to accept the arbitrator's decision. With *nonbinding* arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time and expense of a trial, or desire an expert in the subject matter of their dispute to make a decision.

Selecting an ADR Program and Neutral

Selecting an ADR program and neutral are important decisions. Be sure to learn about the rules of any program and the qualifications and required fees of any neutral you are considering. Some programs and neutrals do not charge the parties for their ADR services, but others may charge the parties administrative fees and/or fees for the neutral's time. Information about the various neutrals listed on the court's ADR Panel is available at www.kern.courts.ca.gov/home/civil/civilmediatorpanel. To find a private ADR program or neutral, you may search the internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement or arbitration services.

Local ADR Programs

Kern County Superior Court has collaborated with the Kern County Bar Association, the Better Business Bureau and community representatives to establish alternative dispute resolution (ADR) programs which comply with legal requirements and provide a high quality of service to the public. The court currently sponsors programs such as arbitration and mediation in general civil cases (limited and unlimited) and may refer cases under \$50,000 to mediation under local rules. Kern County Superior Court has also contracted with the Better Business Bureau (BBB) under the Dispute Resolution Programs Act (DRPA) to provide mediation services in small claims, unlawful detainer, civil harassment and probate matters. The services of the BBB are also available to the public whether or not a lawsuit has been filed. Other programs, similar to those existing in other California counties, are being investigated for their feasibility in Kern County. One such program is the Victim Offender Reconciliation Program (VORP) in juvenile court proceedings. More information about BBB Mediation Services is available at www.bbbmediation.org, or call toll free 800-675-8118, ext. 300 or 661-616-5252.

Although complaints about ADR neutrals in court programs are uncommon, Kern County Superior Court provides a complaint procedure. If you have a complaint or a concern about a neutral in any of this court's ADR programs, or simply a question about ADR, please contact the ADR Administrator at ADRAdministrator@kern.courts.ca.gov.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California Courts Web Site at www.courtinfo.ca.gov/selfhelp/lowcost.

For questions, please contact: ADR Administrator at ADRAdministrator@kern.courts.ca.gov or (661) 868-4957.

Additional ADR information can be found at www.kern.courts.ca.gov.

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): TELEPHONE NO.	FOR COURT USE ONLY
ATTORNEY FOR (NAME)	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF; DEFENDANT;	
ADR STIPULATION AND ORDER FORM	
	CASE NUMBER:

Pursuant to California Rule of Court 3.221(a)(4), the parties and their attorneys stipulate that all claims in this action will be submitted to the following alternative dispute resolution (ADR) process:

- ☐ Court-connected mediation pursuant to Local Rules (no fee or order required when filed within 10 days of Case Management Conference)
- ☐ Private Mediation
- ☐ Neutral Evaluation
- ☐ Binding Arbitration
- ☐ Referee/Special Master
- ☐ Settlement Conference with Private Neutral
- ☐ Non-binding Judicial Arbitration pursuant to CCP1141.10 et seq., and applicable Rules of Court
- ☐ Discovery will remain open until 30 days before trial
- ☐ Other _____

It is also stipulated that _____ (name of individual neutral, not organization) has consented to and will serve as _____ (neutral function/process) and that the session will take place on _____ (enter a FIRM date) and that all persons necessary to effect a settlement and having full authority to resolve the dispute will appear at such session.

Date: _____

On behalf of Plaintiffs

(Type or print name)

(Signature)

On behalf of Defendants

(Type or print name)

(Signature)

Attach additional signature pages if needed

KC ADR-101 (Mandatory)

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ADR STIPULATION AND ORDER FORM

ORDER:

Case Number: _____

☐ The ADR process is to be completed by _____
(date)

☐ The Case Management Conference currently set for _____
(date)

20 _____ at _____ a.m./p.m. in Department _____
☐ is hereby vacated
☐ is not hereby vacated

☐ Mediation Status Review

☐ Case Status Review
re: _____

☐ Final Case Management Conference
is set for _____, 20 _____ at _____ a.m./p.m.
in Department _____

☐ Judicial Arbitration Order Review Hearing will be set by notice upon assignment of the arbitrator.

It is so ordered.

Date

Judicial Officer of the Superior Court