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FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

JAN 09 2020

BY Nicole O'Dwyer  
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10 Attorneys for Petitioners,  
11 NEWBERRY COMMUNITY SERVICES DISTRICT and FRIENDS OF NEWBERRY SPRINGS

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SAN BERNARDINO

CIV DS 2000745

14 NEWBERRY COMMUNITY SERVICES )  
15 DISTRICT, a community services district; )  
16 FRIENDS OF NEWBERRY SPRINGS, an )  
17 unincorporated association, )  
18 Plaintiffs and Petitioners, )  
19 v. )  
20 COUNTY OF SAN BERNARDINO, a political )  
21 subdivision of the State of California and Charter )  
22 County; COUNTY OF SAN BERNARDINO )  
23 BOARD OF SUPERVISORS, governing body of )  
24 the County of San Bernardino; COUNTY OF )  
25 SAN BERNARDINO LAND USE SERVICES )  
26 DEPARTMENT, a public entity; and DOES 1-10; )

CASE NO.:  
**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**  
California Environmental Quality Act (Cal. Pub  
Res. Code § 21000 *et seq*; The Subdivision Map  
Act, Government Code §§ 66410, *et seq*, San  
Bernardino County General Plan; San Bernardino  
County Development Code

27 Defendants and Respondents, )  
28 DAGGETT SOLAR POWER FACILITY 1, )  
29 LLC., a California corporation; and ROES 1 - 10; )  
30 Real Parties In Interest. )

Department:

**INTRODUCTION**

1           1.       Among other consequences, this Project will result in massive amounts of sand and dust  
2           polluting the air and causing health risks in a disadvantaged community; it will contaminate the area’s  
3           primary source of drinking water; it will generate significant, permanent, and omnipresent noise  
4           pollution; and it will produce significant visual and esthetic impairments. Yet none of these concerns  
5           have been thus far adequately or properly addressed. Therefore, this action is necessary to challenge and  
6           enjoin the County of San Bernardino, its Board of Supervisors, and the county’s Land Use Services  
7           Department (collectively “Respondents” or “County”) action of December 10, 2019, and all subsequent  
8           actions certifying an environmental impact report (“EIR”) (SCH 2018041007) for land-use entitlements  
9           including six conditional use permits (“CUPS”) to construct and operate a 650 MW photovoltaic solar-  
10          power generating facility (including 450 MW of battery storage) phased over a 3,500-acre Project Site;  
11          the major variances to exceed the height limit and allow transmission structures and lines at up to 159  
12          feet; Tentative Parcel Map 20083 (P201900243) to consolidate the 51 existing parcels into 15 parcels,  
13          and other related actions (“Land Use Entitlements”), along with the certification of Final Environmental  
14          Impact Report SCH No. 2018041007 for the Daggett Solar Power Facility Project (“Project”) located  
15          along Valley Center Road and Minneola Road in the Daggett and Newberry Springs communities,  
16          involving 51 separate parcels including APN 0515-011-03 (“Project Site”).

17           2.       In approving the Project, the County violated the California Environmental Quality Act  
18          (“CEQA”), Cal. Public Resources Code §§ 21000, *et seq* (“CEQA”), the Subdivision Map Act,  
19          Government Code §§ 66410, *et seq* (“Subdivision Map Act”), the County’s General Plan, and the San  
20          Bernardino County Development Code.

**PARTIES**

21           3.       Petitioner and Plaintiff NEWBERRY COMMUNITY SERVICES DISTRICT, a  
22          community services district (“NCSD”), is a community services district formed under the California  
23          laws in 1958 to provide the Newberry Springs community in the County of San Bernardino with the best  
24          fire protection, parks and recreation, street lighting and water services available. NCSD represents the  
25          residents and property owners in the community of Newberry Springs, a disadvantaged community  
26          located downwind of the Project Site. NCSD, its employees, customers, and the many persons whom  
27          Petitioner serves are beneficially interested in and will be affected by the outcome of this Project.

28           4.       Petitioner and Plaintiff FRIENDS OF NEWBERRY SPRINGS (“Friends” or collectively  
            with NCSD as “Petitioners”), an unincorporated association, is an organization in San Bernardino  
            County composed of residents and property owners in Newberry Springs, dedicated to protecting the

1 quality of life and environmental health in the area. Its members live, work, and recreate in and around  
2 the Project Site and would be affected by the Project. Friends, and its members, are beneficially  
3 interested in and will be impacted by the outcome of this Project.

4 5. Defendant and Respondent COUNTY OF SAN BERNARDINO ("County") is a Charter  
5 County and subdivision of the State of California, organized and existing by virtue of the Constitution  
6 and laws of the State of California. The Project is within the jurisdictional limits of the County.

7 6. Defendant and Respondent COUNTY OF SAN BERNARDINO BOARD OF  
8 SUPERVISORS ("Board") is the elected governing body of the County and is the body responsible for  
9 the decision being challenged herein.

10 7. Defendant and Respondent COUNTY OF SAN BERNARDINO LAND USE SERVICES  
11 DEPARTMENT ("Land Use Services Department") is an agency of the County responsible for advising  
12 the Board of Supervisors on all planning matters, as well as developing, applying, and enforcing state  
13 and local land-use and zoning laws within the jurisdictional limits of the County.

14 8. Defendants and Respondents DOES 1 – 10 are entities whose the true names, capacities,  
15 corporate, associate are unknown to Petitioners at this time who, therefore, sue said Respondents by  
16 fictitious names. Petitioners will amend this Petition to show the true names and capacities when  
17 ascertained.

18 9. Real Party in Interest DAGGETT SOLAR POWER FACILITY 1, LLC is a California  
19 limited liability company ("RPI" or "Real Party") is the owner of the Project Site and is the applicant to  
20 the County for the Project's conditional-use permits, major variances, vesting tentative parcel map and  
21 other associated entitlements.

22 10. Real Parties in Interest ROES 1 – 10 are entities whose the true names, capacities,  
23 corporate, associate are unknown to Petitioners at this time who, therefore, sue said Real Party in  
24 Interest by fictitious names. Petitioners will amend this Petition to show the true names and capacities  
25 when ascertained.

### 26 JURISDICTION AND VENUE

27 11. Pursuant to California Code of Civil Procedure section 1094.5 and section 1085 and  
28 Public Resources Code sections 21168, 21168.5 and 21168.9, this Court has jurisdiction to issue a writ  
of mandate to set aside Respondents' decision to certify the EIR and purported approval of the Project.

12. Venue is proper in this Court because the Project lies entirely within the County of San  
Bernardino and the environmental impacts of the Project will be acutely felt in this County. The cause  
alleged in this Petition, or some part of that cause arises in this county. (CCP § 393; *Cal. State Parks*

1 *Foundation v. Super. Ct.* (2007) 150 Cal.App.4th 826.) Venue is also proper in this Court pursuant to  
2 Code of Civil Procedure Sections 394 (actions against a city, county or local agency), and 395 (actions  
3 generally), since this action is against the County of San Bernardino.

4 13. This petition is timely filed within 30 days after Respondents' decision to issue a Notice  
5 of Determination in accordance with Public Resources Code sections 21167(a).

6 14. Petitioners have provided written notice of their intention to file this petition to  
7 Respondents in compliance with Public Resources Code section 21167.5, and are including the notice  
8 and proof of service as Exhibit A.

9 15. Petitioners have concurrently filed a notice of their election to prepare the record of  
10 administrative proceedings relating to this action, in compliance with Public Resources Code Section  
11 21167.6 or other applicable laws, and are including the notice of this election as Exhibit B.

12 16. Petitioners have performed any and all conditions precedent to filing this instant action  
13 and have exhausted administrative remedies to the extent required by law under the Public Resources  
14 Code section 21177. Petitioners and/or other agencies and individuals raised each of the legal  
15 deficiencies asserted in this petition orally or in writing during the Respondents' decision-making  
16 process.

17 17. The violations by Respondents as alleged herein have affected the beneficial interests of  
18 Petitioners and/or their supporting members. The relief sought by way of this Petition will redress this  
19 beneficial interest and the likelihood of future injury and interference with the Petitioner's interests, and  
20 those of its supporting members.

21 18. Petitioners have no plain, speedy, or adequate remedy in the course of ordinary law  
22 unless this Court grants the requested writ of mandate to require Respondents to set aside its certification  
23 of the Project and environmental documents. In the absence of such remedies, Respondents' decisions  
24 will remain in effect in violation of state law and injurious to Petitioners.

#### 25 **STATUTORY FRAMEWORK**

##### 26 **California Environmental Quality Act**

27 19. Passed in 1970 as a state counterpart to the National Environmental Policy Act (NEPA),  
28 the California Environmental Quality Act (CEQA) requires state and local agencies to identify the  
potentially significant environmental impacts of their actions, and then to avoid or mitigate those  
impacts if feasible.

20. CEQA requires that an agency analyze the potential environmental impacts of its  
proposed actions in an environmental impact report (except in certain limited circumstances). *See, e.g.,*

1 Cal. Pub. Res. Code ("PRC") § 21100, et seq. The EIR is the heart of CEQA. *Dunn-Edwards v.*  
2 *BAAQMD* (1992) 9 Cal.App.4th 644, 652. "The 'foremost principle' in interpreting CEQA is that the  
3 Legislature intended the act to be read so as to afford the fullest possible protection to the environment  
4 within the reasonable scope of the statutory language." *Cmtys. for a Better Env't v. Cal. Resources*  
5 *Agency* (2002) 103 Cal.App.4th 98, 109.

6 21. CEQA has two primary purposes. First, CEQA is designed to inform decision-makers  
7 and the public about the potential, significant environmental effects of a project. 14 Cal. Code Reg.  
8 ("CCR") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the  
9 environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only  
10 the environment but also informed self-government.'" *Citizens of Goleta Valley v. Bd. of Supervisors*  
11 (1990) 52 Cal.3d 553, 564. The EIR has been described as "an environmental 'alarm bell' whose  
12 purpose it is to alert the public and its responsible officials to environmental changes before they have  
13 reached ecological points of no return." *Berkeley Keep Jets Over the Bay v. Bd. of Port Comrs.* (2001)  
14 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*").

15 22. Second, CEQA requires public agencies to avoid or reduce environmental damage when  
16 "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. 14  
17 CCR § 15002(a)(2) and (3); *Citizens of Goleta Valley, supra*, 52 Cal.3d at 564. The EIR serves to  
18 provide agencies and the public with information about the environmental impacts of a proposed project  
19 and to "identify ways that environmental damage can be avoided or significantly reduced." 14 CCR §  
20 15002(a)(2).

21 23. The required CEQA environmental review involves both substantive and procedural  
22 steps. Public participation plays an important and protected role in the CEQA process. *Laurel Heights*  
23 *Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 ("The  
24 EIR process protects not only the environment but also informed self-government."); *Concerned*  
25 *Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936  
26 (members of the public have a "privileged position" in the CEQA process). "Each public agency should  
27 include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent  
28 with its existing activities and procedures, in order to receive and evaluate public reactions to  
environmental issues related to the agency's activities." 14 Cal. Code of Regulations ("CCR") § 15201.  
The lead agency must consider all "comments it receives on a draft environmental impact report,  
proposed negative declaration, or proposed mitigated declaration." PRC § 21091(d)(1); 14 CCR §  
15074(b).

1 24. Procedurally, a lead agency may not approve a project until the public has been given a  
2 full and adequate opportunity to participate and comment on the project.

3 25. CEQA also disallows approval of a project that fails to comply with other laws. A lead  
4 agency may not approve a project with significant unavoidable impacts unless it is “otherwise  
5 permissible under applicable laws and regulations.” PRC §21002.1(c).

6 26. An action alleging that a public agency is “carrying out or has approved a project that  
7 may have a significant effect on the environment” without having followed CEQA procedures with a  
8 legitimate approval of the project must be commenced within “180 days from the date of the public  
9 agency’s decision to carry out or approve the project, or, if a project is undertaken without a formal  
10 decision by the public agency, within 180 days from the date of commencement of the project.” PRC §  
11 21167(a).

#### 12 **The Subdivision Map Act**

13 27. The Subdivision Map Act, Government Code §§ 66410, *et seq.*, (“Subdivision Map Act”  
14 or “Act”) requires local agencies to review and approve all land subdivisions. The Act regulates both the  
15 process for approving subdivisions and sets substantive requirements for approval of land subdivisions.

16 28. The Act requires that a local agency deny approval of a land subdivision, referred to as a  
17 tentative map or a parcel map, if “(a) That the proposed map is not consistent with applicable general  
18 and specific plans . . . (b) That the design or improvement of the proposed subdivision is not consistent  
19 with applicable general and specific plans. (c) That the site is not physically suitable for the type of  
20 development. (d) That the site is not physically suitable for the proposed density of development. (e)  
21 That the design of the subdivision or the proposed improvements are likely to cause substantial  
22 environmental damage or substantial and avoidably injure fish or wildlife or their habitat. (f) That the  
23 design of the subdivision or type of improvements is likely to cause serious public health problems. (g)  
24 That the design of the subdivision or type of improvements will conflict with easements, acquired by the  
25 public at large, for find as part of approving a subdivision map that accesses through or use of, property  
26 within the proposed subdivision.”

#### 27 **The Planning and Zoning Law**

28 29. The Planning and Zoning Law, Cal. Government Code §§ 65000 *et seq.* (“Planning and  
Zoning Law”) governs the land-use planning process for the city, county and local government agencies  
within the State of California.

30. The Planning and Zoning Law mandates that cities and counties prepare a General Plan  
to govern the long term, physical development of the land under city and county jurisdiction addressing

1 the following eight mandatory elements: land use, circulation, housing, conservation, open space, noise,  
2 safety, and environmental justice. Cal. Government Code §§ 65300, 65302.

3 31. Each California city and county must adopt a comprehensive, long-term general plan  
4 governing development. *Napa Citizens for Honest Gov. v. Napa County Bd. of Supervisors* (2001) 91  
5 Cal.App.4th 342, 352, citing Gov. Code §§ 65030, 65300. The general plan sits at the top of the land use  
6 planning hierarchy (see *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773), and serves as a  
7 “constitution” or “charter” for all future development. *Leshner Communications, Inc. v. City of Walnut*  
8 *Creek* (1990) 52 Cal.3d 531, 540.

9 32. General plan consistency is “the linchpin of California’s land use and development laws;  
10 it is the principle which infused the concept of planned growth with the force of law.” See *Debottari v.*  
11 *Norco City Council* (1985) 171 Cal.App.3d 1204, 1213.

12 33. State law mandates two levels of consistency. First, a general plan must be internally or  
13 “horizontally” consistent: its elements must “comprise an integrated, internally consistent and  
14 compatible statement of policies for the adopting agency.” See Gov. Code § 65300.5; *Sierra Club v. Bd.*  
15 *of Supervisors* (1981) 126 Cal.App.3d 698, 704. A general plan amendment thus may not be internally  
16 inconsistent, nor may it cause the general plan as a whole to become internally inconsistent. See *DeVita*,  
17 9 Cal.4th at 796 fn. 12.

18 34. Second, state law requires “vertical” consistency, meaning that zoning ordinances and  
19 other land-use decisions also must be consistent with the general plan. See Gov. Code § 65860(a)(2)  
20 [land uses authorized by zoning ordinance must be “compatible with the objectives, policies, general  
21 land uses, and programs specified in the [general] plan.”]; see also *Neighborhood Action Group v.*  
22 *County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184. A zoning ordinance that conflicts with the  
23 general plan or impedes the achievement of its policies is invalid and cannot be given effect. See *Leshner*,  
24 52 Cal.3d at 544.

25 35. State law requires that all subordinate land-use decisions, including conditional use  
26 permits, be consistent with the general plan. See Gov. Code § 65860(a)(2); *Neighborhood Action Group*,  
27 156 Cal.App.3d at 1184.

28 36. A project cannot be found consistent with a general plan if it conflicts with a general plan  
policy that is “fundamental, mandatory, and clear,” regardless of whether it is consistent with other  
general plan policies. See *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th  
777, 782-83; *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (1998) 62  
Cal.App.4th 1332, 1341-42 (“*FUTURE*”). Moreover, even in the absence of such direct conflict, an

1 ordinance or development project may not be approved if it interferes with or frustrates the general  
2 plan's policies and objectives. *See Napa Citizens*, 91 Cal.App.4th at 378-79; *see also Leshner*, 52 Cal.3d  
3 at 544 (zoning ordinance restricting development conflicted with growth-oriented policies of the general  
4 plan).

5 **The San Bernardino County Development Code – Chapter 84.29 Renewable Energy Generation  
6 Facilities**

7 37. The San Bernardino County Development Code (“SBCDC”) Chapter 84.29 establishes  
8 standards and permit procedures for the establishment, maintenance and decommissioning of renewable  
9 energy generation facilities. SBCDC § 84.29.010. These regulations are intended to ensure that  
10 renewable energy generation facilities are designed and located in a manner that minimizes visual and  
11 safety impacts on the surrounding community. *Id.*

12 38. Before the County can approve a commercial solar energy facility like the Project, the  
13 County must make required findings of fact under SBCDC § 84.29.035, which include but are not  
14 limited to:

- 15 (1) The proposed commercial solar energy generation facility is either
- 16 (A) sufficiently separated from existing communities and existing/developing  
17 rural residential areas so as to avoid adverse effects, or
  - 18 (B) of a sufficiently small size, provided with adequate setbacks, designed to be  
19 lower profile than otherwise permitted, and sufficiently screened from  
20 public view as to not adversely affect the desirability and future  
21 development of communities, neighborhoods, and rural residential use.
- 22 (2) Proposed fencing, walls, landscaping and other perimeter features of the proposed  
23 commercial solar energy generation facility will minimize the visual impact of the  
24 project....
- 25 (3) The siting and design of the proposed commercial solar energy generation facility  
26 will be either:
- 27 (A) Unobtrusive and will not detract from the natural features, open space and  
28 visual qualities of the area as viewed from the communities, rural residential  
uses, and major roadways and highways, or
  - (B) ...will not further detract from natural features, open space and visual  
qualities of the area as viewed from the communities, rural residential uses,  
and major roadways and highways.
- .....
- (5) The proposed commercial solar energy generation facility will not adversely affect  
the feasibility of financing infrastructure development in areas planned for  
infrastructure development or will be located within an area not planned for future  
infrastructure development (e.g., areas outside of water agency jurisdiction).



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- .....
- (9) The proposed commercial solar energy generation facility will be sited so as to avoid or minimize impacts to the habitat of special status species, including threatened, endangered, or rare species, Critical Habitat Areas as designated by the U.S. Fish and Wildlife Service, important habitat/wildlife linkages or areas of connectivity designated by County, state or federal agencies, areas of Habitat Conservation Plans or Natural Community Conservation Plans that discourage or preclude development.
- (10) Adequate provision has been made to maintain and promote native vegetation and avoid the proliferation of invasive weeds during and following construction.
- .....
- (19) The proposed commercial solar energy generation facility will avoid the modification of scenic natural formations.
- .....
- (22) For sites where the boundary of a new commercial solar energy generation facility will be located within one-quarter mile of a primary residential structure, an adequate wind barrier will be provided to reduce potentially blowing dust in the direction of the residence during construction and ongoing operation of the commercial solar energy generation facility.
- .....
- (29) For proposed facilities within two (2) miles of the boundaries of any active military base, the location, design, and operation of the proposed commercial solar energy facility will not substantially impair the mission of the facility.

SBCDC § 84.29.035(c).

39. SBCDC also provides Solar Energy Development Standards which provide, *inter alia*, that solar energy facilities shall be designed to preclude daytime glare on any abutting residential land use zoning district, residential parcel, or public right-of-way. SBCDC § 84.29.040.

**The San Bernardino County General Plan**

40. The Economic Development Element of the San Bernardino County General Plan provides the following relevant goals and policies applicable to the Project:

- a. Policy ED 15.3 requires the County to “[e]ncourage economic development within community planning areas that is sensitive to their respective visions of a rural lifestyle.”
- b. Goal D/ED 1 requires the County to “[p]romote economic development that is compatible with the rural desert character of the desert region.”
- c. Policy D/ED 1.1 requires the County to “[s]upport commercial development that is of a size and scale that complements the natural setting, is compatible with

surrounding development and enhances the rural character.”

1  
2 41. The Land Use Element of the San Bernardino County General Plan provides the  
3 following relevant goals and policies applicable to the Project:

- 4 a. Goal LU 1 requires that “[t]he County will have a compatible and harmonious  
5 arrangement of land uses by providing a type and mix of functionally well-  
6 integrated land uses that are fiscally viable and meet general social and economic  
7 needs of the residents.”
- 8 b. Policy LU 1.2 provides that “[t]he design and siting of the new development will  
9 meet locational and development standards to ensure compatibility of the new  
10 development with adjacent land uses and community character.”
- 11 c. Policy LU 1.4 requires the County to “[e]ncourage preservation of the unique  
12 aspects of the rural communities and their rural character.”
- 13 d. Goal LU 10 requires the County to “[e]ncourage distinct communities with a  
14 sense of ‘place and identity.’”
- 15 e. Policy D/LU 1.2 requires the County to “[l]imit future industrial developments to  
16 those uses that are compatible with the Community Industrial Land Use Zoning  
17 District or zone, and necessary to meet the service, employment and support  
18 needs of the region, do not have excessive water requirements.”

19 42. The Safety Element of the San Bernardino County General Plan provides the following  
20 relevant goals and policies applicable to the Project:

- 21 a. Goal S 4 requires that “[t]he County will minimize damage due to wind and water  
22 erosion where possible.”
- 23 b. Policy S 4.1 requires the County to “[m]ap high wind areas as part of the hazard  
24 overlay. Listed programs include (1) conducting detailed mapping of potential  
25 blows and hazard areas for use as a hazard overlay and (2) map potential wind  
26 erosion areas on the basis of soil characteristics for use as a hazard overlay.

27 43. The Conservation Element of the San Bernardino County General Plan provides the  
28 following relevant goals and policies applicable to the Project:

- a. Goal CO 4 requires that “[t]he County will ensure good air quality for its  
residents, businesses, and visitors to reduce impacts on human health and the  
economy.”
- b. Policy CO 4.3 requires that “[t]he County will continue to ensure through

1 coordination and cooperation with all airport operators a diverse and efficient  
2 ground and air transportation system, which generates the minimum feasible  
3 pollutants.”

4 **PRIVATE ATTORNEY GENERAL**

5 44. This proceeding involves the enforcement of important rights affecting the public  
6 interest. Issuance of the relief requested in this Petition will confer a substantial benefit on the public,  
7 including citizens, residents, businesses and taxpayers of the County, and will result in the enforcement  
8 of important public rights by requiring Respondents to comply with CEQA and other legal requirements  
9 applicable to the proposed Project; by voiding the Project approvals and prohibiting Respondents and  
10 Real Parties in Interest from taking further actions with respect to the Project until it has complied with  
11 those legal requirements; and by prohibiting the Respondents from undertaking any portion of the  
12 Project until they have fully complied with these legal requirements

13 45. Petitioners are entitled to recover attorneys’ fees as provided in Code of Civil Procedure  
14 section 1021.5 if they prevail in this action. The necessity and financial burden of enforcement of these  
15 public rights entitle Petitioners to an award of reasonable attorneys’ fees pursuant to that section.

16 **STATEMENT OF FACTS**

17 46. On March 26, 2018, the County published the Notice of Preparation (“NOP”) identifying  
18 the scope of the environmental issues for the Project. The NOP was sent to responsible agencies and  
19 interested parties for a 30-day review period.

20 47. On April 11, 2018, the County held a Public Scoping Meeting for the Project.

21 48. The Draft EIR for the Project (SCH 2018041007) was issued on March 15, 2019, for a 45  
22 day review period with the comment period expiring on April 29, 2018.

23 49. On March 15, 2019, the Notice of Available of a Draft Environmental Impact Report was  
24 issued.

25 50. In September 2019, the County issued the Final EIR for the Project.

26 51. The Final EIR concluded that the following impacts are significant but determined to be  
27 mitigated to less than significant levels:

- 28 (a) Biological resources
- (b) Cultural, Trial Cultural, and Paleontological Resources
- (c) Geology and Soils
- (d) Hazards and Hazardous Materials
- (e) Land Use and Planning

- (f) Noise
- (g) Traffic

52. The Final EIR determined that the Project would result in the following significant and unavoidable environmental impacts:

- (a) Air Quality
- (b) Hydrology and Water Quality

53. On September 19, 2019, the County's Planning Commission heard and approved the Project, taking the following actions: (1) approved the Water Supply Assessment, (2) certified the Final EIR, (3) adopt the CEQA Findings of Fact and Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program, (4) adopted the recommended Findings for approval for the Conditional Use Permits, (5) adopted the recommended Findings for approval for the Major Variances, (6) adopted the recommended Findings of approval for Tentative Parcel Map 20083, (7) approved the six Conditional Use Permits for the construction and operation of the 650 MW photovoltaic solar power generating facility and up to 450 MW of battery storage, and (8) approve Tentative Parcel Map 20083, subject to the recommended Conditions of Approval.

54. On December 10, 2019, the County's Board of Supervisors heard the appeal filed by Petitioner NCSD. After hearing the appeal, the Board voted to deny the appeal and sustained the actions of the Planning Commissions in approving the Project.

**FIRST CAUSE OF ACTION**

**(Violations of CEQA; EIR Does Not Comply With CEQA)**

55. Petitioners hereby re-allege and incorporate all of the above paragraphs as if fully set forth herein.

56. CEQA requires the lead agency for a project to prepare an EIR that complies with the requirements of the statute. The lead agency also must provide for public review and comment on the project and associated environmental documentation. An EIR must provide an adequate project description and sufficient environmental analysis such that decision-makers can intelligently consider environmental consequences when acting on the proposed project.

57. Respondents violated CEQA by certifying a Final EIR that fails to adequately analyze and mitigate the Project's environmental impacts, including but not limited to:

- a. Failure to adequately disclose, analyze or mitigate the Project's impacts on air quality, including operational emissions, long-term greenhouse-gas emissions,

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and especially as to particulate air pollution including operational wind-blown particulate pollution, and Valley Fever.

- b. Improper deferral of mitigation measures including Air Quality mitigation measures (e.g. Mitigation Measures AIR-1, AIR-3).
- c. Failure to establish an accurate baseline or existing condition regarding air quality data involving PM10 and PM2.5.
- d. Failure to adequately disclose, analyze or mitigate the Project's impacts on water resources, including groundwater overdraft, and fails to mitigate such impacts to the extent feasible.
- e. Failure to adequately disclose, analyze or mitigate the Project's impacts related to fire hazards from the Battery Energy Storage System, failing to explain its conclusion that such batteries pose no significant fire hazards and failing to mitigate such potentially significant impacts.
- f. Improper deferral of formulation of Hazardous Materials Business Plan and Emergency Response Plan until after Project approval.
- g. Failure to adequately disclose, analyze or mitigate the Project's impacts associated with the Project's use of hazardous lithium-ion batteries.
- h. Failure to adequately disclose, analyze or mitigate the Project's impacts related to biological resources including desert tortoises, burrowing owls, desert kit foxes, creosote rings, etc.
- i. Deficient and improper deferral of mitigation measures related to biological resources, including but not limited to, Mitigation Measures BIO-1, BIO-2, BIO-3, BIO-4, and BIO-5.
- j. Failure to adequately disclose, analyze or mitigate the Project's impacts related to cultural, historical, tribal and archaeological resources.
- k. Adoption of vague and ineffective mitigation measures related to cultural resources, including improper deferral of mitigation measures (e.g. Mitigation Measures CUL-1, CUL-2, CUL-4, CUL-5, CUL-7, CUL-8, CUL-9)
- l. Failure to adequately disclose, analyze or mitigate the Project's impacts of glint and glare to aviation safety.

- 1 m. Failure to adequately disclose, analyze or mitigate the Project's greenhouse gas  
2 impacts including on the desert ecosystem carbon sequestration processes,  
3 foreclosing a meaningful evaluation of the Project.  
4 n. Failure to adequately describe a range of reasonable alternatives that will allow a  
5 reasoned choice since only two unreasonable alternatives were evaluated.  
6 o. Failure to adequately disclose, analyze or mitigate the Project's aesthetic and  
7 visual resources impacts.  
8 p. Failure to adequately analyze or mitigate the Project's impact on land use and  
9 planning by failing to consider or mitigate the Project's inconsistencies with the  
County's General Plan and the County's Development Code.

10 58. As a result of the foregoing defects and others according to proof, Respondents  
11 prejudicially abused their discretion by certifying an EIR that does not comply with CEQA and by  
12 approving the Project in reliance thereon. Accordingly, Respondents' certification of the Final EIR and  
13 purported approval of the Project must be set aside.

14 **SECOND CAUSE OF ACTION**

15 **(Violations of CEQA; Failure to Substantially Support Factual Findings and Overriding  
16 Considerations)**

17 59. Petitioners hereby re-allege and incorporate all of the above paragraphs as if fully set  
18 forth herein.

19 60. CEQA requires that a lead agency's findings for the approval of a project be supported by  
20 substantial evidence in the administrative record. CEQA further requires that a lead agency provide an  
21 explanation of how evidence in the record supports the conclusions it has reached.

22 61. Respondents violated CEQA by adopting findings that are inadequate as a matter of law  
23 as they are not supported by substantial evidence in the record, including but not limited to the  
24 following:

- 25 a. The determination that certain environmental impacts would be significant and  
26 unavoidable;  
27 b. The determination that certain environmental impacts would be less than  
28 significant or that adopted mitigation measures would avoid or lessen the  
Project's significant effects on the environment; and  
c. The determination that alternatives to the Project and proposed mitigation  
measures that would have avoided or lessened the significant impacts of the

1 Project were infeasible, including but not limited to the no-Project alternative and  
2 the other alternatives examined in the EIR.

3 62. As a result of the foregoing defects, Respondents prejudicially abused their discretion by  
4 making determinations or adopting findings that do not comply with the requirements of CEQA and  
5 approving the Project in reliance thereon. Accordingly, Respondents' certification of the Final EIR and  
6 purported approval of the Project must be set aside.

7 **THIRD CAUSE OF ACTION**

8 **(Violations of Subdivision Map Act)**

9 63. Petitioners hereby re-allege and incorporate all of the above paragraphs as if fully set  
10 forth herein.

11 64. Respondents abused their discretion under the Subdivision Map Act in approving the  
12 Project's tentative vesting tract map because the findings are not supported by substantial evidence.  
13 Substantial evidence before Respondents at the time of the approval required the denial of the Project  
14 due to its inconsistency with the Subdivision Map Act's substantive requirements.

15 65. The Project is inconsistent with the Subdivision Map Act's requirements as the Project's  
16 location and design are inconsistent with the applicable general plan. Moreover, the Project site is not  
17 physically suitable for the type of development. Finally, the Project is likely to cause substantial  
18 environmental damage and substantially injure wildlife or their habitat, and cause serious public health  
19 problems and conflicts with easements acquired by the public at large.

20 66. The Project is also inconsistent with the applicable general plan and the County's  
21 Development Code governing development standards as required by the Subdivision Map Act.

22 67. As a result of the foregoing defects, Respondents prejudicially abused their discretion by  
23 making determinations and adopting findings that do not comply with the requirements of the  
24 Subdivision Map Act. Accordingly, Respondents' approval of the Project must be set aside.

25 **FOURTH CAUSE OF ACTION**

26 **(State Planning and Zoning Law, Violation of County's General Plan)**

27 68. Petitioners hereby re-allege and incorporate all of the above paragraphs as if fully set  
28 forth herein.

69. As required by state law, the County has a General Plan that governs land use planning  
throughout the County.

70. The Project fails to comply with the goals and policies set out in the County's General  
Plan's conservation, land use, safety, economic development elements.

1           71. In particular, the Project's failure to promote and encourage economic development  
2 within the community planning area that is sensitive and compatible with the rural desert character and  
3 rural lifestyle is inconsistent with the Economic Development Policies of the General Plan.

4           72. Moreover, the Project is not harmonious and compatible with the adjacent land uses in  
5 the Project area.

6           73. The Project is inconsistent with the Air Quality goals which require the County to ensure  
7 good air quality for its residents to reduce impacts on human health and the economy. Not only are  
8 there local air-quality effects not properly addressed, but it can also be shown that this project will harm  
9 the state's long-term efforts to mitigate greenhouse gases and air pollution.

10           74. Finally, the Project is inconsistent with the safety policies of the General Plan related to  
11 damages and hazards from blows and in a high wind area.

12           75. As a result of the foregoing defects, Respondents prejudicially abused their discretion by  
13 making determinations and adopting findings that do not comply with the requirements of the County's  
14 General Plan. Accordingly, the Court should order that Respondent's approval of the Project, as well as  
15 construction and operation of the Project, be vacated and stayed and declare that Respondents violated  
16 its lawful duties under the County's General Plan and its Development Code.

17                                       **FIFTH CAUSE OF ACTION**

18                       **(San Bernardino County Development Code, Chapter 84.29 Renewable Energy Generation  
19 Facilities)**

20           76. Petitioners hereby re-allege and incorporate all of the above paragraphs as if fully set  
21 forth herein.

22           77. Chapter 84.29 of the County's Development Code (or "SBCDC") establishes standards  
23 and permit procedures for the establishment, maintenance and decommissioning of renewable energy  
24 generation facilities which are intended to ensure that renewable energy generation facilities are  
25 designed and located in a manner that minimizes visual and safety impacts on the surrounding  
26 community.

27           78. Section 84.29.035(c) of the County's Development Code provides a list of 31 findings of  
28 facts that the County is required to make before approving a commercial solar energy facility like the  
Project, which are designed to aid the County determine that the location of the proposed commercial  
solar energy facility is appropriate in relation to the desirability and future development of communities,  
neighborhoods, and rural residential uses, and will not lead to loss of the scenic desert qualities that are  
key to maintaining a vibrant desert tourist economy.



1 79. Section 84.29.040 of the County's Development Code provides that solar energy  
2 facilities shall be designed to preclude daytime glare on any abutting residential land use zoning district,  
3 residential parcel, or public right-of-way. SBCDC § 84.29.040.

4 80. The County's findings under Section 84.29.035(c) are unsupported by evidence because  
5 the Project's siting and design were not designed to avoid and minimize the adverse effects to the  
6 community, residents and wildlife and their habitat. The Project is also not designed to maintain and  
7 promote native vegetation and to avoid modification of scenic natural formations. Moreover, the Project  
8 does not provide adequate wind barrier to reduce dust blowing toward nearby residences. Finally, the  
9 Project is not designed to preclude daytime glare on surrounding residences and public rights-of-way.

10 81. As a result of the foregoing defects, Respondents prejudicially abused their discretion by  
11 making determinations and adopting findings that do not comply with the requirements of the County's  
12 Development Code. Accordingly, the Court should order that Respondent's approval of the Project, as  
13 well as construction and operation of the Project, be vacated and stayed and declare that Respondents  
14 violated its lawful duties under the County's Development Code.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioners pray for judgment as set forth below:

17 A. For a writ of mandate commanding Respondents to vacate and withdraw the  
18 certification of the EIR and any purported approvals of the Project, and to require Respondents to  
19 comply with CEQA, the Subdivision Map Act, Planning and Zoning Law, the County's General Plan  
20 and the County's Development Codes;

21 B. For a temporary stay, temporary restraining order, and preliminary and permanent  
22 injunctions enjoining Respondents and Real Parties in Interest, and their agents, employees, officers or  
23 representatives, and all persons acting in concert or participating with Real Parties in Interest from  
24 taking any action to implement the project, unless and until Respondents fully comply with CEQA, the  
25 Subdivision Map Act, Planning and Zoning Law, County's General Plan, and County Development  
26 Codes;

27 C. For a declaration of the rights and duties of the parties hereto, including but not  
28 limited to a declaratory judgment that Respondents violated its duty pursuant to CEQA, the Subdivision  
Map Act, Planning and Zoning Law, County General Plan, and County Development Codes;

D. For Petitioners' fees and costs, including reasonable attorneys' fees and costs, as

1 authorized by California Code of Civil Procedure section 1021.5 and any other applicable provisions of  
2 law; and

3 E. For such other relief as this Court deems appropriate and just.

4 DATED: January 9, 2020, ACTIUM LLP

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By: Mike Gatto  
MICHAEL A. GATTO  
Attorneys for NEWBERRY COMMUNITY  
SERVICES DISTRICT and FRIENDS OF  
NEWBERRY SPRINGS

DATED: January 9, 2020, MITCHELL M. TSAI, ATTORNEY AT LAW

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