

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
MITCHELL M. TSAI (Cal. State Bar No. 277156)
MITCHELL M. TSAI, ATTORNEY AT LAW PC
155 South El Molino Avenue, Ste. 104
Pasadena, CA 91101
TELEPHONE NO.: (323) 819-0300 FAX NO.:
ATTORNEY FOR (Name): Newberry Community Services District, et al.

FOR COURT USE ONLY
RECEIVED
JAN 09 2020
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
CASE NUMBER:
JUDGE:
DEPT.:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
STREET ADDRESS: 247 West 3rd St
MAILING ADDRESS: 247 West 3rd St
CITY AND ZIP CODE: San Bernardino, CA 92415
BRANCH NAME: SAN BERNARDINO JUSTICE CENTER

CASE NAME:
Newberry Community Svcs Dist, et al. v. County of San Bernardino, et al

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)
Complex Case Designation
 Counter **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) | 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) | 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) |
| Other PI/DP/DW (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/DP/DW (23) | Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26) | Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20) |
| Non-PI/DP/DW (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/DP/DW tort (35) | Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38) | Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42) |
| Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | 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) | Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |

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): FIVE (5)
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: January 9, 2020
Mitchell M. Tsai

(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.

1 MIKE GATTO (Cal. Bar No. 232674)
2 ACTIUM LLP
3 5419 Hollywood Blvd, Ste C-356
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5 Phone: (323) 819-0300
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14 Attorneys for Petitioners,
15 NEWBERRY COMMUNITY SERVICES DISTRICT and FRIENDS OF NEWBERRY SPRINGS

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SAN BERNARDINO**

18 NEWBERRY COMMUNITY SERVICES)
19 DISTRICT, a community services district;)
20 FRIENDS OF NEWBERRY SPRINGS, an)
21 unincorporated association,)

22 Plaintiffs and Petitioners,)

23 v.)

24 COUNTY OF SAN BERNARDINO, a political)
25 subdivision of the State of California and Charter)
26 County; COUNTY OF SAN BERNARDINO)
27 BOARD OF SUPERVISORS, governing body of)
28 the County of San Bernardino; COUNTY OF)
29 SAN BERNARDINO LAND USE SERVICES)
30 DEPARTMENT, a public entity; and DOES 1-10;)

31 Defendants and Respondents,)

32 DAGGETT SOLAR POWER FACILITY 1,)
33 LLC., a California corporation; and ROES 1 - 10;)

34 Real Parties In Interest.)

RECEIVED
JAN 09 2020
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

) 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

) Department:

SUMMONS (CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

County of San Bernardino, a political subdivision of the State of California and Charter County;
Additional Parties Attachment Form is attached.

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

Newberry Community Services District, Additional Parties Attachment form is attached.

RECEIVED
JAN 09 2020

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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 the 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 ó 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): SAN BERNARDINO JUSTICE CENTER: 247 West 3rd St, San Bernardino, CA 92415

CASE NUMBER: (Número del Caso):

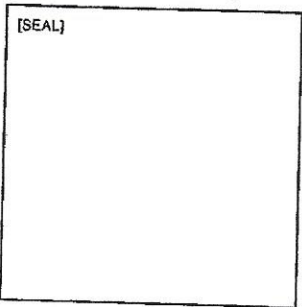
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Mitchell M. Tsai, MITCHELL M. TSAI, ATTORNEY AT LAW, P.C., 155 S. El Molino Ave., #104, Pasadena, CA 91101; (626) 381-9248

DATE: January 9, 2020
(Fecha)

Clerk, by _____, Deputy
(Secretario) (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).)



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date)

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10 Attorneys for Petitioners,
NEWBERRY COMMUNITY SERVICES DISTRICT and FRIENDS OF NEWBERRY SPRINGS

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN BERNARDINO**

14 NEWBERRY COMMUNITY SERVICES)
15 DISTRICT, a community services district;)
16 FRIENDS OF NEWBERRY SPRINGS, an)
unincorporated association,)

17 Plaintiffs and Petitioners,)

18 v.)

19 COUNTY OF SAN BERNARDINO, a political)
20 subdivision of the State of California and Charter)
County; COUNTY OF SAN BERNARDINO)
21 BOARD OF SUPERVISORS, governing body of)
22 the County of San Bernardino; COUNTY OF)
SAN BERNARDINO LAND USE SERVICES)
23 DEPARTMENT, a public entity; and DOES 1-10;)

24 Defendants and Respondents,)

25 DAGGETT SOLAR POWER FACILITY 1,)
26 LLC., a California corporation; and ROES 1 - 10;)

27 Real Parties In Interest.)
28

RECEIVED
JAN 09 2020
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

) CASE NO.:

) **REQUEST FOR HEARING & NOTICE**
) **OF REQUEST FOR HEARING**

) 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

) Department:

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JAN 09 2020
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

) CASE NO.:

) **NOTICE TO ATTORNEY GENERAL**

) California Environmental Quality Act (Cal. Pub
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) Act, Government Code §§ 66410, *et seq*, San
) Bernardino County General Plan; San Bernardino
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34 Real Parties In Interest.)

) CASE NO.:

) ELECTION REGARDING
) ADMINISTRATIVE RECORD

) 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

) Department:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

RECEIVED
 JAN 09 2020
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

Newberry Community Services District, et al.

Case No.: _____

vs.

CERTIFICATE OF ASSIGNMENT

County of San Bernardino, et al.

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the SAN BERNARDINO District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

General

Collection

Nature of Action

Ground

- 1. Adoption
- 2. Conservator
- 3. Contract
- 4. Equity
- 5. Eminent Domain
- 6. Family Law
- 7. Guardianship
- 8. Harassment
- 9. Mandate
- 10. Name Change
- 11. Personal Injury
- 12. Personal Property
- 13. Probate
- 14. Prohibition
- 15. Review
- 16. Title to Real Property
- 17. Transferred Action
- 18. Unlawful Detainer
- 19. Domestic Violence
- 20. Other _____
- 21. THIS FILING WOULD

- Petitioner resides within the district
- Petitioner or conservatee resides within the district.
- Performance in the district is expressly provided for.
- The cause of action arose within the district.
- The property is located within the district.
- Plaintiff, defendant, petitioner or respondent resides within the district.
- Petitioner or ward resides within the district or has property within the district.
- Plaintiff, defendant, petitioner or respondent resides within the district.
- The defendant functions wholly within the district.
- The petitioner resides within the district.
- The injury occurred within the district.
- The property is located within the district.
- Decedent resided or resides within or had property within the district.
- The defendant functions wholly within the district.
- The defendant functions wholly within the district.
- The property is located within the district.
- The lower court is located within the district.
- The property is located within the district.
- The petitioner, defendant, plaintiff or respondent resides within the district.

NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

County of San Bernardino

385 N. Arrowhead Avenue

NAME -- INDICATE TITLE OR OTHER QUALIFYING FACTOR

ADDRESS

San Bernardino

California

92415

CITY

STATE

ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on January 9, 2020 at Pasadena California.


 Signature of Attorney/Party

1 MIKE GATTO (Cal. Bar No. 232674)
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36 Real Parties In Interest.)

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
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Department:

INTRODUCTION

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

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

PARTIES

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

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 quality

1 of life and environmental health in the area. Its members live, work, and recreate in and around the
2 Project Site and would be affected by the Project. Friends, and its members, are beneficially interested in
3 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 which 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 which 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, arise 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 Public Resources Code
14 section 21177. Petitioners and/or other agencies and individuals raised each of the legal deficiencies
15 asserted in this petition orally or in writing during the Respondents' decision-making process.

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

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

24 STATUTORY FRAMEWORK

25 **California Environmental Quality Act**

26 19. Passed in 1970 as a state counterpart to the National Environmental Policy Act (NEPA),
27 the California Environmental Quality Act (CEQA) requires state and local agencies to identify the
28 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.*,
Cal. Pub. Res. Code ("PRC") § 21100, et seq. The EIR is the heart of CEQA. *Dunn-Edwards v.*

1 BAAQMD (1992) 9 Cal.App.4th 644, 652. “The ‘foremost principle’ in interpreting CEQA is that the
2 Legislature intended the act to be read so as to afford the fullest possible protection to the environment
3 within the reasonable scope of the statutory language.” *Cmtys. for a Better Env’t v. Cal. Resources*
4 *Agency* (2002) 103 Cal.App.4th 98, 109.

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

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

20 23. The required CEQA environmental review involves both substantive and procedural
21 steps. Public participation plays an important and protected role in the CEQA process. *Laurel Heights*
22 *Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 (“The
23 EIR process protects not only the environment but also informed self government.”); *Concerned*
24 *Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936
25 (members of the public have a “privileged position” in the CEQA process). “Each public agency should
26 include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent
27 with its existing activities and procedures, in order to receive and evaluate public reactions to
28 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).

24. Procedurally, a lead agency may not approve a project until the public has been given a

1 full and adequate opportunity to participate and comment on the project.

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

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

10 **The Subdivision Map Act**

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

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

23 **The Planning and Zoning Law**

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

27 30. The Planning and Zoning Law mandates that cities and counties prepare a General Plan
28 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 achievement of its policies is invalid and cannot be given effect. See *Leshner*, 52
24 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 a 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 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).

1
2 (9) The proposed commercial solar energy generation facility will be sited so as to
3 avoid or minimize impacts to the habitat of special status species, including
4 threatened, endangered, or rare species, Critical Habitat Areas as designated by the
5 U.S. Fish and Wildlife Service, important habitat/wildlife linkages or areas of
6 connectivity designated by County, state or federal agencies, areas of Habitat
7 Conservation Plans or Natural Community Conservation Plans that discourage or
8 preclude development.

9 (10) Adequate provision has been made to maintain and promote native vegetation and
10 avoid the proliferation of invasive weeds during and following construction.

11
12 (19) The proposed commercial solar energy generation facility will avoid modification of
13 scenic natural formations.

14
15 (22) For sites where the boundary of a new commercial solar energy generation facility
16 will be located within one-quarter mile of a primary residential structure, an
17 adequate wind barrier will be provided to reduce potentially blowing dust in the
18 direction of the residence during construction and ongoing operation of the
19 commercial solar energy generation facility.

20
21 (29) For proposed facilities within two (2) miles of the boundaries of any active military
22 base, the location, design, and operation of the proposed commercial solar energy
23 facility will not substantially impair the mission of the facility.

24 SBCDC § 84.29.035(c).

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

28 **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 compliments 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 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 blowsand 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 enforcement of important rights affecting the public interest.
6 Issuance of the relief requested in this Petition will confer a substantial benefit on the public, including
7 citizens, residents, businesses and taxpayers of the County, and will result in the enforcement of
8 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 NSCD. 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 for 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,

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

- 3 b. Improper deferral of mitigation measures including Air Quality mitigation
4 measures (e.g. Mitigation Measures AIR-1, AIR-3).
- 5 c. Failure to establish an accurate baseline or existing condition regarding air quality
6 data involving PM10 and PM2.5.
- 7 d. Failure to adequately disclose, analyze or mitigate the Project's impacts on water
8 resources, including groundwater overdraft, and fails to mitigate such impacts to
9 the extent feasible.
- 10 e. Failure to adequately disclose, analyze or mitigate the Project's impacts related to
11 fire hazards from the Battery Energy Storage System, failing to explain its
12 conclusion that such batteries pose no significant fire hazards and failing to
13 mitigate such potentially significant impacts.
- 14 f. Improper deferral of formulation of Hazardous Materials Business Plan and
15 Emergency Response Plan until after Project approval.
- 16 g. Failure to adequately disclose, analyze or mitigate the Project's impacts
17 associated with the Project's use of hazardous lithium ion batteries.
- 18 h. Failure to adequately disclose, analyze or mitigate the Project's impacts related to
19 biological resources including desert tortoises, burrowing owls, desert kit foxes,
20 creosote rings, etc.
- 21 i. Deficient and improper deferral of mitigation measures related to biological
22 resources, including but not limited to, Mitigation Measures BIO-1, BIO-2, BIO-
23 3, BIO-4 and BIO-5.
- 24 j. Failure to adequately disclose, analyze or mitigate the Project's impacts related to
25 cultural, historical, tribal and archaeological resources.
- 26 k. Adoption of vague and ineffective mitigation measures related to cultural
27 resources, including improper deferral of mitigation measures (e.g. Mitigation
28 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 for the Project's inconsistencies with
10 the County's General Plan and the County's Development Code.

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

15 **SECOND CAUSE OF ACTION**

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

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

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

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

- 26 a. The determination that certain environmental impacts would be significant and
27 unavoidable;
28 b. The determination that certain environmental impacts would be less than
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 is inconsistent with 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 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 are 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 blowsand 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 its
16 lawful duties under the County’s General Plan and its Development Code.

FIFTH CAUSE OF ACTION

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

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

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

25 78. Section 84.29.035(c) of the County’s Development Code provides a list of 31 findings of
26 facts that the County is required to make before approving a commercial solar energy facility like the
27 Project, which are designed to aid the County determine that the location of the proposed commercial
28 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 provide that solar energy facilities
2 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 complies 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

7 By: _____
8 MICHAEL A. GATTO
9 Attorneys for NEWBERRY COMMUNITY
10 SERVICES DISTRICT and FRIENDS OF
11 NEWBERRY SPRINGS

11 DATED: January 9, 2020

MITCHELL M. TSAI, ATTORNEY AT LAW

13 By: _____
14 MITCHELL M. TSAI
15 Attorneys for NEWBERRY COMMUNITY
16 SERVICES DISTRICT and FRIENDS OF
17 NEWBERRY SPRINGS