

EXHIBIT F

**From:** [Kathy Wallace](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** 0521-051-08  
**Date:** Monday, June 12, 2023 11:41:17 AM

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We are opposed to this solar project coming in. We are already having health problems from the blattner project still in progress. We live on Chloride Road which is right across from this.

Please let us know if you need any further information from us.

William & Kathryn Wallace. 760-217-6634

**From:** [Chris Ternes](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Solar Project PROJ-2022-00071  
**Date:** Friday, June 09, 2023 9:16:46 PM

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**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

This email is in reference to a planned solar project here in Newberry Springs. The current solar projects out here have already done irreparable damage to the area and this one moves even closer to homes. The environment and landscape has been ruined by these massive projects not to mention the blowing sand and silica dust we must endure now. The view of the area from the freeway isn't even the same anymore. It used to be a beautiful scene with green farmland and scattered homes. Now it has turned into nothing but a sea of solar. It's ugly and harmful to the local environment and its inhabitants (animal and human). I don't want to see the area turn into a desolate wasteland of solar panels for miles, like so many other places have. If you've never seen the area for yourself and it's natural beauty in person, I would encourage you to see for yourself what it looks like. You won't be able to see what it was before any solar, but surely you can see and appreciate some of the beauty that is left before approving another solar project to further damage the area. Please give serious consideration to denying this project and any possible expansions in the future. Especially without some sort of concessions for the current home owners, who have to endure the negative health affects and lowered property values these projects continue to bring.

Thanks in advance for your careful consideration,  
Chris

**From:** [Gail Schatz](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Objection for solar plants in Daggett/ Newberry Springs  
**Date:** Friday, June 16, 2023 4:14:34 PM

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The continued building of the solar farms will drastically reduce our property values as well as our health. The fine sand that is constantly being blown due to the loss of shrubbery.

These are unattractive and ruining the natural environment and landscape.

I can't protest against more of these strongly enough.

Gail Schatz

--

Gail L. Schatz

**From:** [Ranel Schwab](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Parcel 0521-051-08  
**Date:** Monday, June 12, 2023 6:02:53 PM

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Download Attachment  
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Good afternoon, my name is Ranel Schwab. I live in Newberry Springs and I'm against the expansion of the Solar Plant happening. Me and my family have been dealing with multiple issues to our health and our home since the Solar project has started. My Fiancé has sleep apnea and theirs days our home is filled with sand and dirt smells inside our home. Winds in the area get bad. It's affect my children's allergies more. Our vehicles have been sand blasted driving to get home and while sitting in my car port. My fiancé just had to do an insurance claim for his car due to the sand, that cost 10,000 in repairs. My house due to them now has mice/rat issues. Me and my family have almost been hit multiple times due to them having a crossing for vehicles on an uphill incline. My front windshield has to be replaced due to a diesel going into the plant that kicked up debris off the road that was left in middle of road. The road they built on(Silver Valley road) doesn't even have proper lane dividers. I work for the local school district (Silver Valley Unified School District) as the health clerk, I seen a rise is children breathing issues, allergies worsen, and physical health. I fear for the safety of my children and family, even the families in the area, the environment and wildlife.. Sand storms are much worse as not theirs no plantation to help. Every-time winds pick up we have brown outs. It's a safety issue and emergency service are unable to help due to low or no visibility. We have had the most power outages we have ever had with my living at my house located at 42829 Silver Valley Road in Newberry Springs, ca then we have ever. I've lived out here my whole live and never have had these issues til now. Expansion of the Solar I believe should not take place especially in the residential area they have already taken over. The Shooting Star Ranch Airbnb that I used to be a cleaner for is no longer getting business due to having to go into the Solar Plant roads and they literally built the plant all the way around the house. The reflection from the plant has also impacts local Daggett Aviation Airport right next to it. I have family I talk to that works their and have spoken out about the issue as well.

I'm at a plea to please not expand the Solar Power Plant and completely against it. Due to the safety and health risks to the community.

If you have any questions please feel free to contact me anytime my cell is +17609857506 and my work phone is 7602542963 ext 2103.  
Thank you have a blessed day.

Attached are evidence of some issues we have been dealing with....



**From:** [Fredrick Stearn](#)  
**To:** [Morrissey, Jim](#); [Sonck, Alexa](#); [ctcdaggett@mindspring.com](mailto:ctcdaggett@mindspring.com); [newberrysprings@mail.com](mailto:newberrysprings@mail.com); [newberrycsd@gmail.com](mailto:newberrycsd@gmail.com)  
**Subject:** SUBJECT: ANOTHER SELLOUT OF NEWBERRY SPRINGS BY COUNTY GOVERNMENT  
**Date:** Thursday, December 07, 2023 2:00:14 PM

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You don't often get email from [silvervalleyrealty@yahoo.com](mailto:silvervalleyrealty@yahoo.com). [Learn why this is important](#)

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

JIM: Congratulations on your environmental offensive against our Environmental Justice Focus Area community and Scenic Route 66, in the BMT Minneola LLC solar energy project proposal; in a much documented sand-transport path. Have you read those professional sand-transport path studies on Daggett & Newberry Springs?

Have you ever read SB 1000? It gives you directions and instructions on the subject of Environmental Justice Focus Areas? And have you ever read Pages 43 through 50 in the County Policy Plan on the subject of special protections for Environmental Justice Focus Areas?

Sincerely,

Frederic Stearn  
Newberry Springs Resident

**From:** [newberrysprings@mail.com](mailto:newberrysprings@mail.com)  
**To:** [Fredrick Stearn](#)  
**Cc:** [Morrissey, Jim](#); [Sonck, Alexa](#); [ctcdaggett@mindspring.com](mailto:ctcdaggett@mindspring.com); [newberrycsd@gmail.com](mailto:newberrycsd@gmail.com); [Pat Flanagan](#)  
**Subject:** Re: SUBJECT: ANOTHER SELLOUT OF NEWBERRY SPRINGS BY COUNTY GOVERNMENT  
**Date:** Thursday, December 07, 2023 3:12:37 PM

You don't often get email from [newberrysprings@mail.com](mailto:newberrysprings@mail.com). [Learn why this is important](#)

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Hi Fred,

I have been digging into some of my past FPPC filings. Did you know that the community can take action against the Board of Supervisors over this?

The Board members are directly responsible for the negligent permitting of these hazardous solar facilities. By state law, as elected officials, Board members hold a fiduciary relationship with their constituents. In short, this means that the Board members have the legal obligation to always act in the best interests of the people they represent. This duty is based on the legal principle that elected officials hold a position of trust and responsibility to their constituents. (Mucho case law on this!)

On top of that list is the safety of their constituents.

These solar facilities do not benefit this county. They remove our taxable land and damage our tourism vistas. And, some ruin long established communities and like PG&E in Hinkley, gravely injure people.

The Board's obligation is not to other areas of the state or other states, or corporations, but to their constituents.

If a Board member acts outside the scope of their authority, there is a possibility that they can be held personally liable. The County will have the deep pockets on this liability but I wouldn't want to leave out any Board member. That would be discrimination.

Ted

~~~~~

**Sent:** Thursday, December 07, 2023 at 1:57 PM  
**From:** "Fredrick Stearn" <[silvervalleyrealty@yahoo.com](mailto:silvervalleyrealty@yahoo.com)>  
**To:** "jim.morrissey@lus.sbcounty.gov" <[jim.morrissey@lus.sbcounty.gov](mailto:jim.morrissey@lus.sbcounty.gov)>, "alexa.sonck@bos.sbcounty.gov" <[alexa.sonck@bos.sbcounty.gov](mailto:alexa.sonck@bos.sbcounty.gov)>, "ctcdaggett@mindspring.com" <[ctcdaggett@mindspring.com](mailto:ctcdaggett@mindspring.com)>, "newberrysprings@mail.com" <[newberrysprings@mail.com](mailto:newberrysprings@mail.com)>, "newberrycsd@gmail.com" <[newberrycsd@gmail.com](mailto:newberrycsd@gmail.com)>  
**Subject:** SUBJECT: ANOTHER SELLOUT OF NEWBERRY SPRINGS BY COUNTY GOVERNMENT

JIM: Congratulations on your environmental offensive against our Environmental Justice Focus Area community and Scenic Route 66, inre the BMT Minneola LLC solar energy project proposal; in a much documented sand-transport path. Have you read those professional sand-transport path studies on Daggett & Newberry Springs?

Have you ever read SB 1000? It gives you directions and instructions on the subject of Environmental Justice Focus Areas?

And have you ever read Pages 43 through 50 in the County Policy Plan on the subject of special protections for Environmental Justice Focus Areas?

Sincerely,

Frederic Stearn  
Newberry Springs Resident

**From:** [sun.goddess...](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** solar field  
**Date:** Saturday, June 10, 2023 12:46:27 AM

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**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

Project number: PROJ-2022-00071  
Accessor Parcel Number: 0521-051-08

Mr. Morrissey:

It has been brought to the attention of the Newberry Springs/Daggett residents that **another** solar field is planned for OUR area! The residents that are left do not want another useless solar field going into our backyards.

First, these 'fields' are unsightly! Driving on the 40-freeway heading to my home in Newberry Springs, you see nothing but a field of black starting at the airport. That ugliness from Blatner goes from Silver Valley down to Valley Center. This unsightly project goes down Valley Center for miles, sucking in the homes of those that refused to let Blatner buy them out allowing the homeowners to view nothing but huge black solar panels for their 'new view'. Its doing the same going East on Silver Valley. Weaving in and out of homes that refuse to sell, punishing those homeowners with a view of these ugly panels.

Second, we all know that the meeting SBC had at Daggett Community Center was nothing more than an afterthought and a meeting they did to make their decision on this eyesore of a solar field 'legal'. They had already made up their minds to put this field here and what the community had to say didn't matter. They didn't care; its not in THEIR backyard! Its in OUR backyard. All of you think 'Desert People' are stupid, ignorant, uneducated.

Third, the impact you have made by digging up our beautiful desert, tearing up the soil, ripping up the plants that have held that soil/sand in its place is now moving into our homes! Every time the wind blows, the disturbed sand now goes with it. Since Blatner has done this, I've had to borrow a tractor to move bucket load after bucket load of sand from my property! Three foot tall sand dunes that are now in place against the west side of my garage, in front of my garage, along ANY fence in my backyard. Sticky silt is now in my garden area that was never there before! Once wet, this 'goo' sticks to every shoe walking over it. It can become a half inch in thickness on the bottom of my shoes. At my French doors, this sand came thru (where they close together) and made a 2 foot long path from that door! It was an inch deep!! I have sand in places inside my homes that I've never had before! Even in the desert, dusting my home wasn't every day... it is now, thanks to Blatner solar fields.

That 90 acre area you want to put MORE solar panels on is in direct line with my home!! Ripping up the plants/grasses to expose the soil is going to be another nightmare for those residents living in the crosshairs of this solar field. It doesn't take much wind for the top soil to start moving across the desert and onto our properties and homes, burying some of them. This is the second year I've had to borrow a tractor and dig out my property since Blatner came in and destroyed our desert.

STOP turning our area into a black field of ugliness that not one person living here can even utilize. Not one person living in this area will benefit from it. Not one person will get a job working there. Not one person's electric bill will go down. No one living in our area will receive any power from it. We get NOTHING from another unsightly solar field that will only benefit and make money for YOU, SBC and the actual company putting it in. WE, the stupid, ignorant, uneducated desert bumpkins you think of us as, will get nothing but a yard full of sand and an ugly view of what used to be our beautiful desert.

Now, should we talk about those with health problems that will be exacerbated even more with another field going in? Those with asthma, lung cancer? Lung cancer that can come years after all this? The tiny particles of silica being breathed in by those of us caught in the path of this new field? You are going to create another disaster and health hazard that we already have when we come to our annual "windy season".

The problems of 'brown-outs' in my area will become real again. My family moved here in 1972. My parents bought property off of Mountain View, not knowing of the impending "windy season" coming in 6 months time. It was a catfish farm with 8 ponds. An alfalfa field down wind from us (along the railroad tracks) off of Hwy 66 was cleared. It was never planted. Spring came and so did the winds. 40 mph winds hit and sent sand so thick we couldn't see a foot in front of us. Our car was parked 5 feet from the front door.. we couldn't see it. We saw nothing but a wall of brown sand blowing. Sitting down you could see the sand floating in the air around you! That lasted for 3 days straight. No leaving the house for food or anything else. After the winds stopped, you saw the disaster all this loose top soil from that field had done. Five of the 8 ponds had to be re-dug. We lost 10 feet of it! Catfish being rescued and put into buckets and moved to another pond so they could breathe. That, Sirs, was our livelihoods. Its how my parents made money to live and one huge mistake by another caused my family to lose money; profits needed to pay bills, buy food, survive.

We live in a rural area. Agricultural area. NOT industrial. So far, between you, Blatner and the Mojave Water Agency, you have all but gotten rid of the alfalfa farmers. Soon, the pistachio growers will leave if the MWA keeps ramping down their water. Water they say we use too much of and take away from Victorville/Apple Valley. Water that is DOWNSTREAM from them!! Its just a matter of time before you want to buy us all out and destroy our homes. ALL of these solar fields are considered INDUSTRIAL. They could've been put some place else, but the flat farmland appeals to all of you. Your fields are industrial and NOT rural or Agrovoltaics which would be considered Agriculture for the farming done between the panels - helping farmers! But , you again, choose not to do this.

Have you even bothered to do an environmental impact assessment? Never bothered to see how either solar field would affect the environment OR THE PEOPLE living in it? Its required by law for energy, (mining and tourism) to see if there is any significant environmental effects and there is! Take a look at the small but defunct solar panels on Mountain View Rd. They were put directly across from three mobile homes. Once the ground was leveled and the windy season came, those mobile homes were nearly buried in a months time. The furthest South of the other two had sand dunes that went up and over the 6 foot chain link fence surrounding the property. Anyone could now walk over those 'dunes' and onto that property. The person living there already has health issues, now made worse by solar panels that no longer work. Another eyesore that SBC has forgotten about and never see's, as they are not in their backyard.

We want ALL of you to leave our areas alone. Find another place to put in those unsightly solar fields. There is absolutely NO REASON to put them in a residential/rural/agricultural area. WE LIVE HERE! You don't. This isn't in the middle of your backyard or neighborhood. It's going directly into ours. The best thing you can do is have a public meeting OUT HERE where ALL residents can let you know exactly how we feel. STOP BUILDING THEM IN OUR BACKYARD!

Sincerely,

Robyn McMullin  
Newberry Springs resident.  
760.792.7327

**From:** [Maria Henderson](#)  
**To:** [Morrissey, Jim](#)  
**Cc:** [hello@saveourdeserts.org](mailto:hello@saveourdeserts.org)  
**Subject:** PROJ-2022-00119  
**Date:** Wednesday, November 01, 2023 7:37:06 PM

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[You don't often get email from mariaahenderson@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.

Please do not allow this project to receive approval to build a six site camping hotel. Preserve the current state of the land and the open space.

Maria Henderson

6/12/23

San Bernardino County  
Planning Department  
Att: Jim Morrissey, Contract Planner  
385 N. Arrowhead Ave.  
San Bernardino, CA 92415

Re: Project Number: PROJ-2022-00071 APN: 0521-051-08  
Project Proposal: Tentative parcel map to subdivide 91.9 acres into two parcels, one of which is 24.5 acres and proposed as a local use solar facility to be evaluated as a conditional use permit.

Dear Mr. Morrissey,

I am opposed to the above project for the following reasons:

The project to subdivide the property for a solar project is contrary to SB County policy for several reasons. First, the proposed property is adjacent to a National Scenic Byway. County Policy NR-3.1 is a policy for open space preservation to protect natural resources, including scenic resources that serve as recreation or tourist destination, or are central to the identity of an unincorporated community. Additionally, policy NR-4.1 targets preservation of scenic resources considering the location and scale of development to preserve regionally significant scenic vistas and natural features, including prominent hillsides, ridgelines, dominant landforms, and reservoirs. County policy RE 5.7.1 states that Renewable Energy generation facilities be developed in a manner that will avoid, minimize, or substantially mitigate adverse impacts to sensitive habitats, cultural resources, surrounding land uses, and scenic viewsheds.

The setting of Historic Route 66 through this area is particularly significant. The scenic resources are the context associated with Historic Route 66—a context that retains much of its integrity and is a contributing resource to the route's eligibility for the National Scenic Byway designation. Travelers can still see and feel the same vastness that original travelers felt back in the 30's as they migrated westward to escape the dust bowl. Daggett and Newberry Springs were designated in the 2020 San Bernardino Countywide Plan as Environmental Justice Focus Areas. This means that our communities have a disproportionate burden of pollution, health impacts, and social and economic disadvantages. These small communities depend on the income generated from Route 66 travelers. Another solar project would negatively effect, not only the scenic resources of Route 66 travelers, but also the health (fugitive silica dust) and economy of these neighboring communities.

On February 28, 2019, the SB County Board of Supervisors voted to prohibit utility-oriented renewable energy development in the Rural Living land use district, currently adopted Community Plan areas (Daggett & Newberry Springs) and other areas as determined in the Development Code update. Below is the information from the San Bernardino County Map Viewer identifying the above mentioned proposed project site as Rural Living land use.

APN: **052105108**  
Land Value: **49,214**  
Impr Value: **0**  
Exempt Value: **0**  
HOX:  
Acreage: **77.46**  
Tax Status: **ASSESSED BY COUNTY**

Zoning: **RL**  
Zoning Desc: **Rural Living**  
Jurisdiction: **County Land Use Services office**  
URL: <http://cms.sbcounty.gov/lus/Home.aspx>  
Base Year: **2017**  
Assess Desc: **VACANT LAND**  
Assess Class: **SINGLE FAMILY RESIDENTIAL**

If the Federal Government is prioritizing Renewable Energy projects, then these projects should be developed on federal land. The Desert Renewable Energy Conservation Plan (DRECP) is a landscape-level plan that streamlines renewable energy development while conserving unique and valuable desert ecosystems. According to SB County policy RE 5.4.2 the county encourages utility-oriented Renewable Energy generation to occur in the five DRECP Development Focus Areas (DFAs) that were supported by the Board of Supervisors on February 17, 2016, Resolution No. 2016-20. These areas are identified in the SLM DRECP LUPA (North of Kramer Junction, Trena, Hinkley, El Mirage, and Amboy). The communities of Daggett and Newberry Springs are NOT listed. I suggest that this project be evaluated for development in one of these areas.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rose Beardshear". The signature is fluid and cursive, with a large initial "R" and "B".

Rose Beardshear

Resident, Newberry Springs

**From:** [Cortney Rasplicka](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Project on Minneola  
**Date:** Monday, June 12, 2023 8:12:29 AM

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**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

Hello,

My name is Cortney Rasplicka I live at 33077 Minneola Rd Newberry Springs. I am emailing you today in behalf of the plans for more solar to go in on Minneola closer to the train tracks. The effects of having the solar this close to our homes is insurmountable. Not only does it effect the our health and our homes. It effects the general living culture out here. These plans have been made with our regards for the people who have to live in it every day. I have already witness how the sand from that area is unmanageable for that crew. This project needs to be stopped. If it is not you will have another PG&E situation on your hands. I can tell you it is not good for these residents and by letting this project continue you will be showing how much disregard you have for the lives of this community. Please shut it down!

**From:** [Judy Hohman](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Comment on the Initial Study / Mitigated Negative Declaration BMT Minneola Solar, Newberry Springs, CA (PROJ-2022-00071)  
**Date:** Sunday, December 17, 2023 5:49:02 PM  
**Attachments:** [Minneola Solar Project - Newberry Springs.pdf](#)

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You don't often get email from [jphohman@outlook.com](mailto:jphohman@outlook.com). [Learn why this is important](#)

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Hello Mr. Morrissey,

Attached are comments from the Desert Tortoise Council on the subject project. The Council appreciates the opportunity to comment on this project and that San Bernardino County notified the Council of the availability of the Initial Study / Mitigated Negative Declaration at the beginning of the public comment period.

Please respond to this email so that we know you received the Council's comments during the public comment period.

If you have any questions about this confirmation request or the Council's comments, please contact Mr. Ed LaRue of the Ecosystem Advisory Committee at the email address in our letterhead.

Kind regards,

Judy Hohman  
for Mr. Ed LaRue, Chairperson, Ecosystem Advisory Committee, Desert Tortoise Council.

Sent from [Mail](#) for Windows

**From:** [Andy & Ali Jones](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** PROJ-2022-00071 APN 0521-051-08  
**Date:** Saturday, June 10, 2023 10:19:28 AM

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**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

We are adamantly opposed to any further expansion of this solar project. It has done nothing positive to the community except for causing massive dust storms and health issues. Please do not allow this subdivide to take place.

Andy Jones, Ali Jones, Kassidy Jones & Katelyn Jones  
42637 Duntroon St  
Newberry Springs, CA 92365  
909-670-9328



# Project Notice

## An application has been filed with County Planning

**PROJECT NUMBER:** PROJ-2022-00071  
**ASSESSOR PARCEL NO (APN):** 0521-051-08  
**APPLICANT:** Merrell Johnson Engineering Inc.  
**LOCATION:** Between Chloride Road and Larch Street, west of Minneola Road  
**COMMUNITY:** Newberry Springs  
**LUC/ZONING:** Rural Living (RL)/RL (Rural Living)

### Project Proposal

**TENTATIVE PARCEL MAP TO SUBDIVIDE 91.9 ACRES INTO TWO PARCELS, ONE OF WHICH IS 24.5 ACRES AND PROPOSED AS A LOCAL USE SOLAR FACILITY TO BE EVALUATED AS A CONDITIONAL USE PERMIT.**



**Jim Morrissey, Contract Planner**  
 Phone: 909.387.4234  
 E-mail: Jim.Morrissey@lus.sbcounty.gov  
 Fax: 909.387.3223

### We'd love to hear from you....

Please submit comments by June 12, 2023, to be sure that they get considered in the review process. However, comments will be taken up to the time of the project decision. Please refer to this project by the Project Number and the Assessor Parcel Number (APN). If you have no comment, a reply is not necessary.

**Name:**

**E-mail Address:**

**Mailing Address:**

6/4/2023

I am Not in favor of this solar facility project.  
 Project number at the top of this notice

### Project Decision

If you would like to be notified of the decision rendered for this project, please provide your contact information in the section below and mail this notice back to one of the addresses listed below.

Michele Naval  
 e-mail: shell460ps@gmail.com  
 Address: 24600 Mountain Ave. #50  
 Hemet, CA 92344

**From:** [Anna Kelly](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Parcel number 0521-051-08  
**Date:** Monday, June 12, 2023 11:46:53 AM

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**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

Greetings,

My name is Elizabeth Pyatt. My wife Anna Kelly and I live at 41170 Coventry Street in Newberry Springs, CA 92365.

We heard there is an expansion of the solar farm located on Minneola Road which is right down the street from our property.

I have lived at this location since June 15, 1995 and have never had any issues.

Since the solar plant started clearing the current location, we have had so many issues with sand blowing onto our property, inside and outside of our home and our koi fish pond has turned into a nightmare. Prior to the solar plant we cleaned the pond once per month. Now since the solar plant we have to clean and maintain the koi pond on a weekly and sometimes more than once per week due to all the sand build up on the filters. We have lost some fish throughout the way as well.

Since the start of the solar plant we have had continuous health issues, including but not limited to severe coughing, headaches, sore throat, stomach issues for weeks at a time. I have depleted all my sick time at work due to health issues which I believe have started since the solar project commenced.

We are emailing you to protest this solar expansion project for fear of losing our home and property for the reasons listed above.

Why would San Bernardino County support this project which is clearly hurting the local residents and their families? I have major concerns about our health and home.

Please feel free to reach out with any questions or concerns.

V/R  
Elizabeth Pyatt  
Anna Kelly

760-265-1505  
760-263-4074

**From:** [Norm Park](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** solar plant  
**Date:** Monday, June 12, 2023 11:45:12 AM

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solar plant #2  
Parcel # 0521-051-08

Norm Park  
34788 Sandi Lane  
Newberry Springs, Ca. 92365

We disapprove of another solar plant in our area. as we will benefit nothing, again!

Thank You

Norm Park

L4Y Construction

909-266-6684

**From:** [Renee Kaminski RN](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** OPPOSED- The Proposed Solar Field off Minneola  
**Date:** Monday, June 12, 2023 2:59:00 PM  
**Attachments:** [IMG\\_0963.jpeg](#)

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**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

Good afternoon Mr. Morrissey-

Please consider this email as a formal written opposition to the proposed solar project proposal attached-

More solar fields contribute to the ALREADY LONG STANDING SB County identifies challenges facing this valley-

Such as-

- 1) Silica Dust related health conditions, cancer, emphysema, chronic lung disease. My husband with cancer has already suffered the effects with O2 machine filter filled with silica dust.
- 2) Decrease in property values as homes are filled with sand - as the dust BLOWS towards Newberry Springs and the current mitigation efforts by Clearwater, Edison and the County- are NOT effective.
- 3) The topography is decimated by these solar fields, the upper crust is gone. Unable to support the natural fauna and animals residing there. It is a barren wasteland.
- 4) Ruins the beauty of our federal and state designated corridor
- 5) Contributes to our food desert. Social impacts to underserved populations now. As land sold to solar farms, does NOT lend itself to commercial, restaurants, or families wanting to live in Newberry Springs.
- 6) PEOPLE LIVE HERE. Families LIVE here. We do not want solar farms in our front, or back yards.
- 7) The County and your office has an OBLIGATION to protect underserved populations verses throwing them under the bus with big Companies doing what they want in our Nieghbor hoods. We need your help!
- 8) There has to be a more logically and better situated space for these solar fields. Literally ruining Route 66 and our corridor. Out and up by Hinkley. Not here by family homes.
- 9) Absoltuley opposed- take the solar fields away from our already County underserved area-
- 10) If you APPROVE this project, you will be going AGAINST every COUNTY identified challenged listed in the SB County approved plan for Newberry Springs.

Sincerely-

Renee Kaminski RN

Business Owner -The Barn Route 66

Owner-The Barn Route 66 Radio on KJAY Epic Radio at EpicRocks.net

714-624-6210

Newberry Strings-

PROJECT NUMBER: PROJ-2022-00071

ASSESSOR PARCEL NO (APN): 0521-051-08

Jim Morrissey, Contract Planner,

We are submitting comments in response to the correspondence we received from your office.

We are concerned about the health of my family and the environment. As well as, the effect on my property. The construction and operation of solar facilities generates **Particulate Matter**, which can be a significant pollutant. Clearing large areas of land for solar power facilities results in potential loose soil which is blown in air during wind events which is common.

There is a law suit filed by those in the local area that have been adversely effected by the most recent installation of solar facilities. This is very concerning to me.

We are concerned about the spills and disposal of the damaged panels as they contain hazardous material. What effect of contamination of the soil and ground water. Also the use of dust suppressants, dielectric fluids, and herbicides.

We are concerned about the interference of local aircraft, as this parcel is adjacent to an airport.

We are concerned about solar facilities because they operate at such high temperatures, that could cause an environmental and safety risk.

How much electric power will they require and do they require water for cooling. Can that effect the water table. As that would directly affect my water well.

Sincerely,

James and Cheryl Mitchell

**From:** [Claudia Contreras](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Proj 2022-00071 and 0521-051-08  
**Date:** Monday, June 12, 2023 1:51:57 PM

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**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

Claudia Horta 29926Fort Cady Road Newberry Springs Ca 92365 . My concern is if this project will affect the air we breath if it will affect me and my family and neighbors. THANK YOU

[Sent from Yahoo Mail on Android](#)

**From:** [Fredrick Stearn](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** SUBJECT: BMT MINNEOLA, LLC SOLAR PROJECT APPLICATION  
**Date:** Tuesday, November 14, 2023 2:34:45 PM

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**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

TO: San Bernardino County Planner, Jim Morrissey, re his very inadequate staff report on a 27.2 acre industrial scale solar energy project proposal in our Environmental Justice Focus Area, which the County doesn't care about.  
Assessor Parcel Number 0521-051-08

Mr. Jim Morrissey::

After the County betrayed their legal obligation by their approval of a 3,500-acre Clearway Energy solar project in a documented sand-transport path, in our Environmental Justice Focus Area, now the County wants to rub salt in our wounds by welcoming the BMT Minneola project application on 27 acres, also in the same professionally studied Sand Transport Path, in our Environmental Justice Focus Area.

In re the local unwanted environmental impacts on Newberry Springs citizens, from the Clearway solar project, the McCune law firm has been retained by some Newberry Springs environmental abuse victims, from blowing sand/dust off the bare ground project area. Clearway was not required to apply gravel to the project area to control flowing dust.

In your Staff Report on the BMT solar project, on pages 9 and 14, you have incredibly indicated that project area air quality would NOT be affected. My reaction to that false finding by the County Planning Division is UNPRINTABLE.

A complaint has been made today re the above environmental abuse of this community by San Bernardino County to the California Attorney General's Office staff in charge of Proposition 65 enforcement.

What will it take to stop the County's flagrant environmental abuse of this Environmental Justice Focus Area community?

Sincerely,  
Frederic Stearn

[prop65@doj.ca.gov](mailto:prop65@doj.ca.gov)

alex.sonck@bos.sbcounty.gov  
luther.snock@cao.sbcounty.gov  
mark.wardlaw@lus.sbcounty.gov  
newberryCSD@gmail.com  
ctcdaggett@mindspring.com  
patflanagan29@gmail.com  
newberrysprings@mail.com

**From:** [Elizabeth Hilyard](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Solar Project  
**Date:** Saturday, June 10, 2023 5:17:52 PM

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**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

Please , if you give money to the community from your donation money. Make sure this time the money is used for the community not for personal like last time

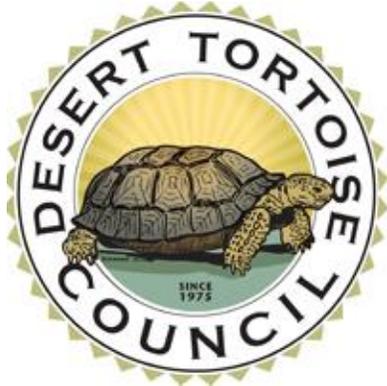
Elizabeth  
Excellence RealEstate HD

**From:** [Dominic Purdy](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Parcel number 0521-051-08  
**Date:** Monday, June 12, 2023 8:36:53 AM

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**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

Hello my name is Dominic and I live on minneola rd. I am writing you today to please ask that you guys stop this solar plant from going in on minneola rd. I have been a resident of newberry springs my whole life and with the current solar fields going in it has completely changed our environment. The current plant is completely unmanageable right now and has been since it began. Our health issues have become our main concern along with the fact the damages our homes are increasing. This solar plant needs to stop. The residents of this community have already been affected significantly and our community can not take more damage. Please stop this from going in and do not allow any others to come to our community. Thank you  
Dominic Purdy



**DESERT TORTOISE COUNCIL**

3807 Sierra Highway #6-4514

Acton, CA 93510

[www.deserttortoise.org](http://www.deserttortoise.org)

[eac@deserttortoise.org](mailto:eac@deserttortoise.org)

**Via email only**

17 December 2023

Jim Morrissey, Planner

County of San Bernardino

Land Use Services Department, Planning Division

385 N. Arrowhead Ave 1st Floor

San Bernardino, CA 92415

[Jim.Morrissey@lus.sbcounty.gov](mailto:Jim.Morrissey@lus.sbcounty.gov)

RE: Initial Study / Mitigated Negative Declaration BMT Minneola Solar, Newberry Springs, CA  
(PROJ-2022-00071)

Dear Mr. Morrissey,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer to receive emails for future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitat within the known distribution of the Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments include recommendations intended to enhance protection of this species and its habitat during activities authorized by the San Bernardino County, which we recommend be added to the project terms and conditions in the authorizing permit. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), "... based on population reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses have been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units."

This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from threatened to endangered in California.

We appreciate that the San Bernardino County Land Use Services Department (County) contacted the Council directly so we would have the opportunity to provide comments on the above-referenced project. Our comments are intended to ensure that the County fully complies with the purpose and intent of the California Environmental Quality Act (CEQA), Federal Endangered Species Act (FESA), California Endangered Species Act (CESA), other applicable environmental laws, and the regulations and codes to implement these laws. Our focus is applying these laws to the tortoise and its habitat to provide for its conservation.

### **Description of the Proposed Project**

San Bernardino County Land Use Services Department (County) has received a request for a Conditional Use Permit (CUP) from BMT Minneola, LLC (Applicant or Project Proponent) to create a separate 27.2-acre (net) parcel from an existing 91.9-gross acre parcel to construct and operate a 3-megawatt community solar photovoltaic facility (please see Figure 1). The solar project would have a capacity of 3 megawatts (MW) and would utilize approximately 7,000 crystalline photovoltaic modules, which would be mounted on single axis trackers, and use twelve (12) 250 kilowatt (kW) inverters. The number of modules and inverters is subject to change depending on the final design and equipment availability. The facility will interconnect with a 12kv distribution circuit that serves loads in the local area, rather than an interconnection to a transmission circuit that would primarily serve users outside of the region. The project was designed as a Community Oriented Renewable Energy (CORE) project. Construction would take about 3 months.

The BMT Mineola Solar Project (proposed project) would be operated on an autonomous, unstaffed basis and monitored remotely from an existing off-site facility. Six to eight employees are expected to visit the site approximately fifteen days per year for routine maintenance. Operational activities are limited to monitoring plant performance, preventative, and unscheduled maintenance. Operation and maintenance vehicles will include trucks (pickup, flatbed), forklifts, and loaders for routine and unscheduled maintenance, and water trucks for solar module washing.

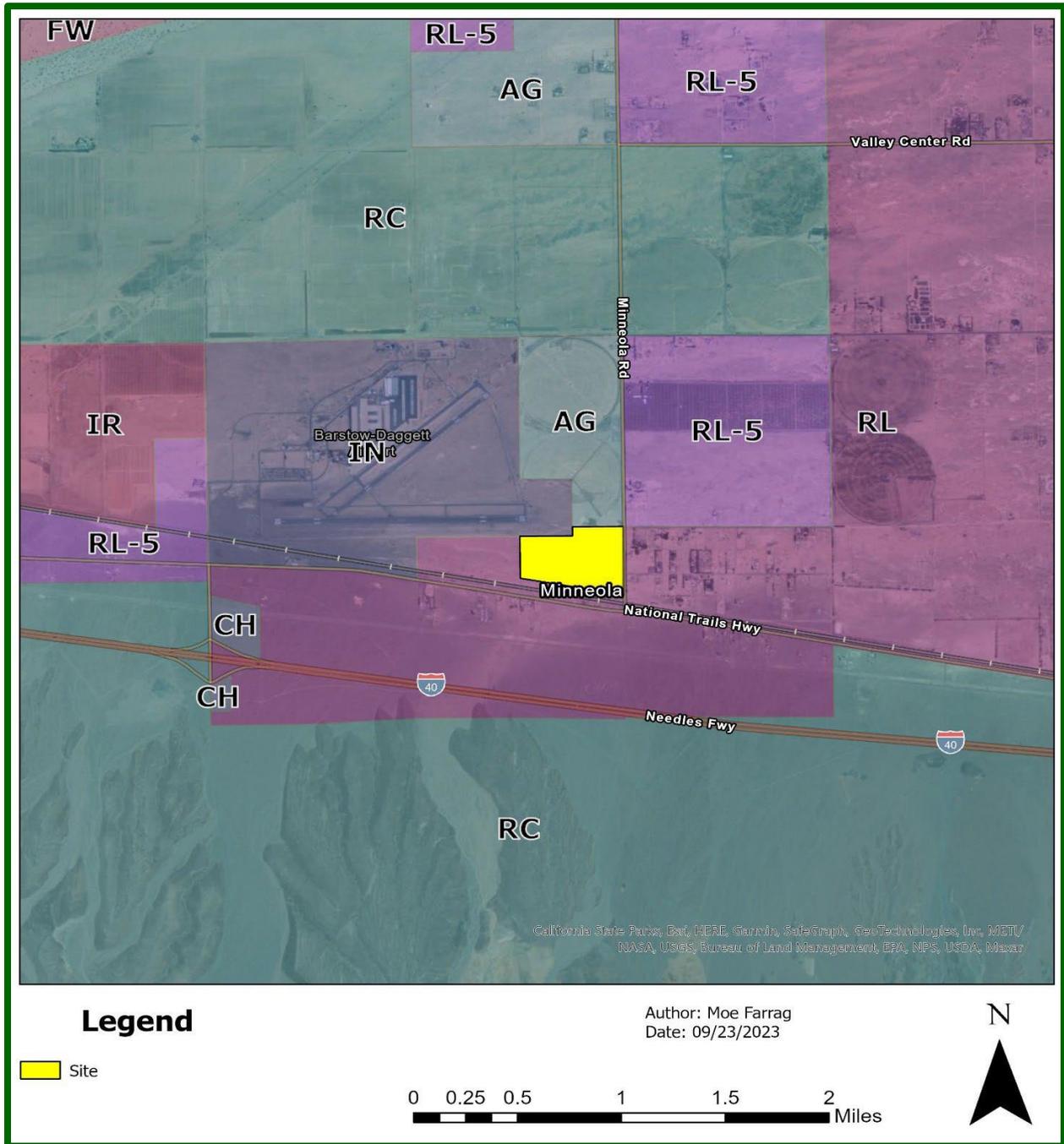


Figure 1. Location of the proposed BMT Minneola Solar Project.

Large heavy-haul transport equipment may be brought to the site infrequently for equipment repair or replacement. Southern California Edison (SCE) will make necessary inspections, maintenance and improvements to their facilities that are on-site connecting the Project to the distribution grid.

At the end of the Project's operational term, the applicant may determine that the site should be decommissioned and deconstructed, or it may seek a revision to its Conditional Use Permit (CUP). Following the implementation of a decommissioning plan, all equipment, foundations, and fencing would be removed, and the project site would be re-vegetated so that the end use and site condition are consistent with the surrounding landscape.

The proposed project is located at the northwest corner of the intersection of Minneola Road and Larch Street in the community of Newberry Springs. It is just north of the National Trails Highway and southeast of the Barstow-Daggett Airport (please see Figure 1).

### **Comments on the Initial Assessment/Mitigated Negative Declaration**

#### **Page 8: Additional Approval Required by Other Public Agencies**

In the Initial Study/Mitigated Negative Declaration (IS/MND) the County says, “Other public agencies whose approval may be required (e.g., permits, financing approval, or participation agreement):

- Federal: N/A
- State of California: California Fish & Wildlife”

We thank the County for including California Department of Fish and Wildlife (CDFW) as an agency whose approval is likely needed.

The proposed project is located within the range of the desert kit fox, a protected furbearing mammal. California Code of Regulations, Chapter 5, section 460 (14 CCR § 460) prohibits “take” of desert kit fox for any reason. It is also in the range of the Mojave desert tortoise, a threatened species protected under the California Endangered Species Act (CESA). However, the County neglected to include the U.S. Fish and Wildlife Service (USFWS) under “Federal” agencies from which additional approval may be required. The tortoise is also protected under the Federal Endangered Species Act (FESA). We request that USFWS be added to the list of agencies whose approval may be required before implementing the proposed project.

#### **Pages 18-21: Biological Resources**

Under the resource issue “Biological Resources,” the IS/MND responds to six standard questions (A through F) from a CEQA Handbook to determine whether the impacts of a proposed project would need to be analyzed in an environmental impact report. Below the Council provides additional information to inform the County of the regulatory requirements for projects that occur within the distribution of special status species and to show that the County’s current responses to questions A, D, and E, including mitigation to be implemented, need to be revised.

**“Question A – Have substantial adverse effects, either directly or through habitat modifications, on any species identified as a candidate, sensitive or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?”**

The County’s response includes the following, “the Project Study Area will not affect any sensitive trees or shrubs.”

Rare Plant Survey Protocols: The Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities are described in the document accessed through this link - <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>. From information provided in the IS/MND and the Biological Assessment Report (BA Report), we were unable to determine whether CDFW protocols were followed and implemented. Please ensure that these protocols are implemented and the results provided to CDFW and included in the IS/MND and to provide a complete administrative record and document that the County has complied with CDFW requirements.

The County's response continues, "Based upon the completion of a Biological Survey of the property, which included a visual survey and trapping sessions performed by W.O.W. Environmental Consultants, no species or habitat were found for Mojave Ground Squirrel."

The IS/MND and BA Report do not provide information on whether the CDFW trapping protocol for the Mohave ground squirrel (CDFW 2023) was implemented. CDFW protocol trapping surveys are required to ascertain presence or absence of Mohave ground squirrel. These include multiple trapping events and during specific times of the year. Alternately, the Project Proponent may forego trapping surveys, assume presence, and acquire a 2081 Incidental Take Permit from the CDFW. We request that information on the methodology implemented when trapping for Mohave ground squirrels and the CDFW's protocol be added to one of these documents to provide a complete administrative record and document that the County has complied with CDFW requirements.

The County's response continues, "Consultants also conducted field surveys for Burrowing Owl (BUOW) and Desert Tortoise during the Spring of 2023. No BUOW were observed during the survey. The field results were negative for Desert Tortoise as well."

Western Burrowing Owl – Surveys for western burrowing owl should be coordinated with the USFWS, because the species is protected under the Migratory Bird Treaty Act, and the CDFW because the species is protected under California Fish and Game Code. CDFW has a survey protocol survey for the western burrowing owl (CDFG 2012) that W.O.W. Environmental Consultants may/may not have implemented. In addition to the project footprint, the survey protocol requires that peripheral transects be surveyed at 30-, 60-, 90-, 120-, and 150-meter intervals in all suitable habitats adjacent to the subject property to determine the potential indirect impacts of the project to this species. We request that information on the methodology implemented when surveying for the western burrowing owl and the CDFW's western burrowing owl protocol be added to the IS/MND or BA Report to provide a complete administrative record and document that the County has complied with CDFW requirements.

Mojave Desert Tortoise – The USFWS has two types of surveys for the Mojave desert tortoise, 100% coverage surveys (USFWS 2019) and tortoise clearance surveys (USFWS 2009). One-hundred-percent surveys are specific to transect width, approval of the biologist conducting the surveys, area to be surveyed (i.e., actions area), and in some cases, the time of year. One-hundred-percent surveys are conducted to determine whether tortoises/tortoise sign are present in the "action area" for the proposed project (USFWS 2019). The "action area" is defined in 50 Code of Federal Regulations 402.2 and the USFWS Desert Tortoise Field Manual (USFWS 2009) as "all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action" (50 Code of Federal Regulations §402.02). Thus, the 100% coverage survey area is larger than the project footprint/project site. CDFW has adopted the USFWS's 100% coverage survey as the methodology to use (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281283-reptiles>) to determine tortoise presence/use of the action area.

The methodology and results of the 100% coverage survey are described and submitted to USFWS and CDFW. If any tortoise sign is found, the Project Proponent should coordinate with USFWS and CDFW to determine whether "take" under FESA or CESA is likely to occur from implementation of the proposed project. If USFWS or CDFW determines that the construction,

operation/use, maintenance, or decommissioning of the proposed project is likely to result in take of the tortoise, the Project Proponent must obtain a Section 10(a)(1)(B) incidental take permit from the USFWS and a Section 2081 incidental take permit from the CDFW prior to conducting any ground disturbance. Note that “take” includes capture, harm, or harass.

The incidental take permit will require that the Project Proponent conduct clearance surveys (USFWS 2009). If any tortoises are found, the incidental take permit(s) will include instructions on moving tortoises, which is a type of take, from the area to be impacted as well as other measures to minimize and mitigate the impacts of the taking.

We remind the County that this and any other action funded, carried out, or authorized by the County such as issuance of a permit, must comply with FESA and CESA. Therefore, the County should require the Project Proponent to comply with the USFWS (2019) and CDFW 100% coverage survey protocol for the tortoise, and if the agencies determine an incidental take permit is required, the Project Proponent must obtain these incidental permits prior to initiating any clearance surveys (USFWS 2009) or ground disturbing activities. The County should require the Applicant to obtain incidental take permits if USFWS and/or CDFW determine that a permit is needed.

We request that the County require the Project Proponent to implement CDFW’s western burrowing owl survey protocol and USFWS’s 100% coverage survey protocol for the tortoise. The results of these surveys should be added to the IS/MND or BA Report to provide a complete administrative record and document that the County has complied with USFWS and CDFW requirements.

The County’s response continues, “One burrow appeared to be inactive and the other appeared to be for Mojave Desert kit fox (*Vulpes macrotis arsipus*).”

Desert Kit Fox: As mentioned above, California Fish and Game Code prohibits “take” of desert kit fox for any reason. CDFW uses the USFWS’s (2011) protocol for San Joaquin kit fox, (<https://www.fws.gov/sites/default/files/documents/survey-protocols-for-the-san-joaquin-kit-fox.pdf>) for surveying for the desert kit fox. We request that information on the methodology implemented when surveying for the desert kit fox and the CDFW’s desert kit fox protocol be added to the IS/MND or BA Report to provide a complete administrative record and document that the County has complied with CDFW requirements.

The County’s response continues, “The proposed project is expected to impact no more than 27.2 acres.”

This statement should be modified to read, “The proposed project is expected to **directly** impact no more than 27.2 acres **but indirectly impact a larger area.**” The IS/MND should include a description of indirect impacts to special status species including the tortoise.

Species may use areas adjacent to the project site along with the project site. Species in the area of the proposed project may be indirectly impacted by the construction, operation/use, maintenance, and/or decommissioning of the Proposed Project, and these activities may result in incidental take of these species that would violate federal laws/regulations and/or state laws/California Fish and Game Codes.

For the tortoise, many reasons for its substantial decline in the last few decades have been from indirect impacts. One example of an indirect impact from the Proposed Project's construction, operation/use, and/or maintenance that may result in take of the tortoise is increased tortoise predation. Common ravens are known to prey on juvenile desert tortoises based on direct observations and circumstantial evidence, such as shell-skeletal remains with holes pecked in the carapace (Boarman 1993). The number of common ravens increased by 1,528% in the Mojave Desert since the 1960s (Boarman 1993). This increase in raven numbers is attributed to unintentional subsidies provided by humans in the Mojave Desert.

In the Mojave Desert, common ravens are subsidized predators because they benefit from resources associated with human activities that allow their populations to grow beyond their "natural" carrying capacity. Kristan et al. (2004) found that human developments in the western Mojave Desert affect raven populations by providing food subsidies, particularly trash and road-kill. Boarman et al. (2006) reported raven abundance was greatest near resource subsidies (specifically food = trash and water). Human subsidies include food and water from landfills and other sources of waste, reservoirs, sewage ponds, agricultural fields, feedlots, gutters, dumpsters, as well as perch, roost, and nest sites from power towers, telephone poles, light posts, billboards, fences, freeway or railroad overpasses, abandoned vehicles, and buildings (Boarman 1993). Human subsidies allow ravens to survive in the desert during summer and winter when prey and water resources are typically inactive or scarce in nature. Boarman (1993) concluded that the human-provided resource subsidies must be reduced to facilitate a smaller raven population in the desert and reduced predation on the tortoise.

Coyotes are known predators of tortoises. High adult tortoise mortality from coyote predation was reported by Petersen (1994), Esque et al. (2010), and Nagy et al. (2015) in part of the range of the tortoise. In some areas, numbers of ravens correlated positively with coyote abundance (Boarman et al. 2006). Lovich et al. (2014) reported tortoise predation may be exacerbated by drought if coyotes switch from preferred mammalian prey to tortoises during dry years. Because the Mojave Desert has been in a multi-decade drought (Stahle 2020, Williams et al. 2022) due to climate change, and drought conditions are expected to continue and intensify in future years, increased predation pressure from coyotes on tortoises is expected to continue.

The proposed project would increase the availability of human-provided subsidies for predators of the tortoise including the common raven and coyote primarily during construction and decommissioning, and to a lesser extent during operation/use/maintenance. For example, during the construction phase we presume that water would be used to control dust from soil that is disturbed (i.e., excavated, bladed, compacted, etc.) and the solid waste generated during construction including food brought to the project site by workers for meals, etc., are examples of food and water subsidies for ravens and coyotes that would attract these predators to the project site and increase their numbers in the surrounding area. Grading or digging at the site would unearth and injure, or kill fossorial animals and provide a subsidized food source for ravens and coyotes. During the operation/use/maintenance activities, the presence of food waste in waste containers/dumpsters may provide food subsidies for ravens and coyotes and water used for washing solar panels may provide a water source for these predators.

These subsidies of tortoise predators could be easily mitigated by requiring Best Management Practices (BMPs) that include limiting the use of water for dust suppression/cleaning panels so it does not form puddles or streams, requiring solid waste containers that are predator-proof, wind-proof, and regularly maintained by the Applicant/Owner of the property, and ensuring that any vertical structures (e.g., poles buildings, etc.) do not provide nesting substrate for ravens. We request that these BMPs be added to the CEQA document and the Applicant/Owner be required to implement them. Please see the Council's (2017) "A Compilation of Frequently Implemented Best Management Practices to Protect Mojave Desert Tortoise during Implementation of Federal Actions" ([https://deserttortoise.org/wp-content/uploads/dtc\\_construction\\_BMPs\\_090517.pdf](https://deserttortoise.org/wp-content/uploads/dtc_construction_BMPs_090517.pdf)) for examples of BMPs for the tortoise, many of which are applicable to the Proposed Project. While the title mentions implementation of Federal actions, the BMPs should also be implemented on non-Federal projects to avoid/minimize the likelihood of take under FESA and CESA.

We request that the County revise the CEQA document to include an analysis of increased predation and other indirect impacts to the tortoise that are likely to occur from the construction, operation/use, maintenance, and decommissioning of the proposed project. The County should require the Project Proponent to implement BMPs to substantially reduce/eliminate these indirect impacts to the tortoise and other special status species. Coordination with the USFWS and CFDW should occur in the finalization of these BMPs. In addition, the County should require the Project Proponent to contribute to the National Fish and Wildlife Foundation's Raven Management Fund for regional and cumulative impacts of projects that subsidize common ravens (USFWS 2010) and other predators of the tortoise and other wildlife, as other project proponents have done for projects on private property in San Bernardino County.

**“Question D - Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?”**

The County's response includes the following, "Due to the absence of sensitive biological species as described in the biological reports prepared by W.O.W. Environmental Consultants the Project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites, because there are no such corridors or nursery sites within or near the project site. Therefore, no impacts would occur."

The BA Report provided online to the public by the County did not provide information that protocol surveys for special status species (e.g., Mojave desert tortoise, Mohave ground squirrel, burrowing owl, kit fox) were conducted. Without this information, the County does not have sufficient data to claim that sensitive biological species are absent. Further, wildlife corridors are areas that are used periodically; they are not continuously occupied by wildlife species. Consequently, a one-day visit to a project site would not provide sufficient information that the project site or nearby areas would not interfere substantially with the movement of any native resident wildlife species or established native resident wildlife corridors.

We were disappointed that examination of species reports and the scientific literature were not conducted and cited to help determine whether wildlife corridors would be impacted by the proposed project. An online search of scientific literature (e.g., Google Scholar) would reveal the

existence of scientific papers on areas important for connectivity for species such as the Mojave desert tortoise and Mohave ground squirrel. For example, for the tortoise, Averill-Murray et al. (2021) published a paper on connectivity of Mojave desert tortoise populations and linkage habitat. The authors emphasized that “[m]aintaining an ecological network for the Mojave desert tortoise, with a system of core habitats (TCAs = Tortoise Conservation Areas) connected by linkages, is necessary to support demographically viable populations and long-term gene flow within and between TCAs.”

“Ignoring minor or temporary disturbance on the landscape could result in a cumulatively large impact that is not explicitly acknowledged (Goble, 2009); therefore, understanding and quantifying all surface disturbance on a given landscape is prudent.” Furthermore, “habitat linkages among TCAs must be **wide enough** [emphasis added] to sustain multiple home ranges or local clusters of resident tortoises (Beier and others, 2008; Morafka, 1994), while accounting for edge effects, in order to sustain regional tortoise populations.” Consequently, effective linkage habitats are not long narrow corridors. Any development within them has an edge effect (i.e., indirect impact) that extends from all sides into the linkage habitat further narrowing or impeding the use of the linkage habitat, depending on the extent of the edge effect.

Averill-Murray et al. (2021) further notes that “To help maintain tortoise inhabitation and permeability across all other non-conservation-designated tortoise habitat, all surface disturbance could be limited to less than 5-percent development per square kilometer because the 5-percent threshold for development is the point at which tortoise occupation drops precipitously (Carter and others, 2020a).” They caution that the upper threshold of 5 percent development per square kilometer may not maintain population sizes needed for demographic or functional connectivity; therefore, development thresholds should be lower than 5 percent.

The lifetime home range for the Mojave desert tortoise is more than 1.5 square miles (3.9 square kilometers) of habitat (Berry 1986) and, as previously mentioned, may make periodic forays of more than 7 miles (11 kilometers) at a time (Berry 1986).

For the Mohave ground squirrel, CDFW published “A Conservation Strategy for the Mohave Ground Squirrel, *Xerospermophilus mohavensis*” in 2019 (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=171301&inline>). This document contains a map with linkage areas among the identified populations of the Mohave ground squirrel. Information from documents like these should be used to support the existence or absence of wildlife linkages in the project area and nearby.

We add that the fundamentals of conservation biology include the need for gene flow between populations to maintain genetic diversity; this enables a species to more likely survive, especially during climate change, which enables biodiversity. Thus, linkage habitats are important as they provide connectivity among wildlife populations to maintain viability and biodiversity.

**“Question E: Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?”**

The County’s response includes the following, “Based on literature review and survey results, it has been concluded that the proposed project will result in minimal to no effects to special status species, including state or federal endangered and/or state or federal threatened species. There will be no effects on any sensitive plant communities or designated critical habitat because of this project location. No resource agency permits are anticipated because of this project. Therefore, impacts would be less than significant.”

We note that the project site was visited on April 16 to determine the potential for impacts to native vegetation, sensitive biological resources, jurisdictional waters, and/or wildlife. From this limited information, it appears that CDFW and USFWS protocol level surveys for special status species were not conducted. Until these surveys are conducted, the County is unable to say whether resource agency permits would be needed. The County should require the project proponent to (1) conduct protocol surveys for special status species and include these results in the revised BA Report, (2) conduct a search of the scientific literature to determine the needs of special status species with respect to linkage habitats, and (3) coordinate with USFWS and CDFW by presenting the results of the protocol surveys and search about linkage habitats to these agencies and requesting a determination from them on whether they would need to obtain incidental take permits. The project proponent should include this information in the BA Report to the County. With this information the County would have data to support a determination.

### **Mandatory Finding of Significance – Cumulative Impacts**

Two of the three questions in the CEQA Handbook for Mandatory Findings of Significance are applicable to the Mojave desert tortoise. They are:

Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

and

Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects?)

To assist the County in answering these two questions regarding the impacts to the tortoise, we are attaching "**Appendix A – Demographic Status and Trend of the Mojave Desert Tortoise including the Western Mojave Recovery Unit.**" Note that the Proposed Project is in the Western Mojave Recovery Unit, the tortoise populations in this Recovery Unit continue to be below the densities needed for population viability for almost a decade, and the density of tortoises continues to decline in the Western Mojave Recovery Unit. Also note that the tortoise cannot achieve recovery, that is, be removed from the list of threatened species under FESA unless recovery is achieved in all five recovery units including the Western Mojave Recovery Unit (USFWS 2011). Recovery criteria include having viable tortoise populations. We conclude that having populations below the density needed for population viability means these population are below the level needed to be self-sustaining and any additional impact to these populations would exacerbate this density below the level of self-sustaining, contribute to ongoing population declines, and extirpation. We conclude from these data that the answer to these two questions is "yes." Please include this information on the status and trend of the Mojave desert tortoise in the final, revised CEQA document.

## **Mitigation**

In the IS/MND, the County is recommending mitigation measures for biological resources. These include requiring two-weeks advance notification of a certified biologist prior to construction so “preconstruction” surveys could be conducted; vegetation removal would occur outside the bird breeding season, if possible; and if any species of concern are observed during construction activities, all work shall immediately cease, the Project Biologist shall be immediately notified, and work shall not resume until clearance is given by the Project Biologist, construction of a tortoise exclusionary fence, and “If a tortoise is present, all work and any activities that could harm the tortoise is to stop and the Lead Engineer or other designated person, is to be contacted to have the tortoise safely removed.”

Please note that removing a tortoise from the work area requires capturing. Take under FESA is defined as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Take under CESA is defined as to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” Take includes capture, and under FESA, harm and harass. Take does not need to result in the injury or death of the tortoise. Consequently, implementation to this mitigation measure would violate both the FESA and CESA unless the Project Proponent first obtains an incidental take permit from USFWS and CDFW. Please correct the IS/MND to reflect this requirement.

In addition, the mitigation measures listed in the IS/MND would be implemented prior to and during construction. We found no mitigation measures identified to be implemented during the operation, maintenance, or decommissioning phases of the proposed project. For example, we found no requirement that the tortoise exclusionary fence would be regularly inspected and maintained during the life of the proposed project. Because tortoises have a large lifetime home ranges and make forays of several miles (please see our comment below under page 12 for the BA Report) a tortoise could wander into the project site through a downed portion of the exclusionary fence and become trapped inside the project site. This trapping is a form of take and would violate FESA and CESA unless the Project Proponent had been issued an incidental take permit.

We recommend that the County require the Project Proponent to consult with the USFWS and CDFW prior to conducting the 100% coverage and presence/absence protocol surveys for special status species to ensure those that are needed are implemented correctly, the results of these surveys are provided to the USFWS and CDFW, and additional consultation with these agencies occurs to determine the mitigation measures they deem necessary to avoid take of listed/protected species for all phases of the proposed project. If avoidance of take is not possible, the County should require the Project Proponent to obtain incidental take permits from USFWS and CDFW for the respective federally- and state-listed/protected species. These permits would likely require implementation of protocol clearance surveys.

### **Comments on the Biological Assessment Report**

The comments below are for the Biological Assessment Report, Minneola Solar Project, City [sic] of Newberry Springs, San Bernardino County, California – July 2023.

**Page 3:** “The biologists conducted a site visit on the project site on April 16th, 2023 to determine the potential for impacts to native vegetation, sensitive biological resources, jurisdictional waters,

and/or wildlife. In addition, the biologists reviewed “the project description, project plans, aerial and ground imagery (i.e., Google Earth and Google Maps), and project species lists provided by the United States Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) website (Appendix A), and California Department of Fish and Wildlife’s (CDFW) California Natural Diversity Database (CNDDDB) (Appendix B), California Native Plant Society (Appendix C).” Accessing IPaC, CNDDDB, and CNPS data are the initial sources of biological information the biologists should access and we appreciate that these federal and state resources were accessed. However, we did not find the three Appendices referenced in the BA Report. The County should ensure that the entire BA Report is available for public review.

**Pages 4, 8, and 13:** The BA Report discusses federal jurisdictional waters of the United States under the Federal Clean Water Act, Sections 404 and 401 (see sections on **4 – Results – Project Impacts and 5 - Conclusions & Regulatory Determination – Wetlands and Other Waters Coordination Summary**). However, we found no information on compliance with California Fish and Game Code 1600 and whether a streambed alteration agreement would be needed from CDFW. Please add this information to the IS/MND and BA Report for jurisdictional waters of the State of California.

**Page 10:** “If any species of concern are observed during any phase or construction, the RE will need to contact the Biologist...” We searched the BA Report but were unable to find what “RE” means. Please add this information to the BA Report.

**Page 11:** Under Section **4 - Results: Biological Resources, Discussion of Impacts & Mitigation – Avoidance and Minimization Efforts/Compensatory Mitigation**, the BA Report says, “No work should commence until the vegetation to be removed has been surveyed for nesting birds, desert tortoise, desert wildlife and has been cleared by the Project Biologist.” If this is referring to clearance surveys for the tortoise as described by USFWS (2009), only authorized biologists approved by USFWS and CDFW can conduct clearance surveys. We are unsure whether the Project biologist has submitted their experience to these agencies and received approval to conduct clearance surveys for the tortoise. Please provide this information in the BA Report and IS/MND. In addition, the clearance survey protocol for the tortoise should be implemented as described in USFWS (2009).

In addition, on page 6, the BA Report mentions, “Biological Study Area (BSA) consists of a 200-foot buffer from the project vicinity.” The USFWS (2019) survey protocol for the tortoise is for the action area. The “action area” is defined above on page 5. Thus, the survey area is larger than the project footprint/project site and may be larger than the project site plus 200-foot buffer. CDFW has adopted the USFWS’s 100% coverage survey as the methodology to use (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281283-reptiles>) to determine tortoise presence/use of the action area.

Clearance surveys should be conducted after the tortoise exclusionary fence has been completed. The construction of this fence should occur under the supervision of an authorized tortoise biologist.

**Page 12:** “3. INSTALLATION OF DESERT TORTOISE EXCLUSIONARY FENCING around the construction site to prevent the entrance (sic) of surrounding wildlife present.” The tortoise exclusionary fence will not exclude all wildlife. It is designed to exclude tortoises from the project site. In addition, we are unsure from the information provided in the BA Report whether the exclusionary fence will be removed following completion of the construction phase or maintained for the life of the project. If the latter, the BA Report should require that the fence be regularly inspected for damage

including immediately after a rain event, and the fence should be repaired/replaced immediately to eliminate the likelihood that a tortoise from nearby areas will wander onto the project site and possibly become trapped within the site. This would constitute take under FESA and CESA and violate these two laws.

**Page 12:** “DO NOT HANDLE OR MOVE A TORTOISE – yourself. Only a qualified biologist is authorized to do so.” We found no information in the BA Report that the Project Proponent was obtaining an incidental take permit under section 10(a)(1)(B) of FESA or section 2081 of CESA for the tortoise. Consequently, no one would be authorized to handle or move a tortoise without these permits. Please revise the BA Report to reflect these restrictions/requirements.

**Page 13, Section 5 - Conclusions & Regulatory Determination – Federal Endangered Species Act Section 7 Consultation Summary:** The BA Report says, “no formal Endangered Species Act Section 7 consultation with federal agencies is required. Informal consultation for Endangered Species Act Section 7 was initiated through the generation of IPaC species list.” This statement is true because there is no federal nexus. Section 7 of the FESA only applies to projects that are authorized, funded, or carried out by a federal agency. Rather as a non-federal project, the proposed project falls under the jurisdiction of section 10(a)(1)(B) of the FESA and section 2081 of the CESA if any phase of the proposed project is likely to result in take (which includes capture, harm, and harass) of the tortoise or a federal or state listed species. Please modify the BA Report to show requirements and compliance with these laws.

**Page 13: Wetlands and Other Waters Coordination Summary –** “The proposed project will not result in any effects to wetlands or jurisdictional waters due to the absence of (Waters of the State, Waters of the U.S., etc.); therefore, no resource agency coordination or permits are required.” We found no discussion on compliance with California Fish and Game Code 1600 and whether a streambed alteration agreement would be needed from CDFW. Please add this information to the IS/MND and BA Report about this for jurisdictional waters of the State of California in this section.

We appreciate this opportunity to provide comments on this project and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the County that may affect the desert tortoise. As an Affected Interest, the Council requests that the County contact the Council via email to advise us of the opening date of the public comment period for any proposed action that may affect tortoises/tortoise habitat. In addition, we request and that any subsequent environmental documentation for this Project is provided to us at the contact information listed above. We ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Respectfully,



Edward L. LaRue, Jr., M.S.  
Chairperson, Ecosystem Advisory Committee

Attachment: Appendix A – Demographic Status and Trend of the Mojave Desert Tortoise including the Western Mojave Recovery Unit

cc: Trisha A. Moyer, Region 6 – Desert Inland Region, Habitat Conservation Program Supervisor, California Department of Fish and Wildlife, Bishop, CA [Patricia.Moyer@wildlife.ca.gov](mailto:Patricia.Moyer@wildlife.ca.gov)  
Heidi Calvert, Regional Manager, Region 6 – Inland and Desert Region, California Department of Fish and Wildlife [Heidi.Calvert@wildlife.ca.gov](mailto:Heidi.Calvert@wildlife.ca.gov)  
Brandy Wood, Region 6 – Desert Inland Region, California Department of Fish and Wildlife [Brandy.Wood@wildlife.ca.gov](mailto:Brandy.Wood@wildlife.ca.gov)  
Rollie White, Assistant Field Supervisor, Palm Spring Fish and Wildlife Office, U.S. Fish and Wildlife Office, [rollie\\_white@fws.gov](mailto:rollie_white@fws.gov)

## Literature Cited

- Averill-Murray, R.C., T.C. Esque, L.J. Allison, S. Bassett, S.K. Carter, K.E. Dutcher, S.J. Hromada, K.E. Nussear, and K. Shoemaker. 2021. Connectivity of Mojave Desert tortoise populations—Management implications for maintaining a viable recovery network. U.S. Geological Survey Open-File Report 2021–1033, 23 p., <https://doi.org/10.3133/ofr20211033>. <https://pubs.usgs.gov/of/2021/1033/ofr20211033.pdf>
- Beier, P., D.R. Majka, and W.D. Spencer. 2008. Forks in the road—Choices in procedures for designing wildland linkages. *Conservation Biology* 22(4): 836–851, <https://doi.org/10.1111/j.1523-1739.2008.00942.x>  
<https://conbio.onlinelibrary.wiley.com/doi/epdf/10.1111/j.1523-1739.2008.00942.x>
- Berry, K.H. 1986. Desert tortoise (*Gopherus agassizii*) relocation: Implications of social behavior and movements. *Herpetologica* 42:113-125.  
<https://www.jstor.org/stable/3892242>
- Berry, K.H., L.J. Allison, A.M. McLuckie, M. Vaughn, and R.W. Murphy. 2021. *Gopherus agassizii*. The IUCN Red List of Threatened Species 2021: e.T97246272A3150871. <https://dx.doi.org/10.2305/IUCN.UK.2021-2.RLTS.T97246272A3150871.en>
- Boarman, W.I. 1993. When a native predator becomes a pest—A case study. *In* Majumdar, S.K., Miller, E.W., Baker, D.E., Brown, E.K., Pratt, J.R., and Schmalz, R.F., eds., *Conservation and resource management*. Easton, Pennsylvania Academy of Science, p. 186–201.
- Boarman, W.I., M.A. Patten, R.J. Camp, and S.J. Collis. 2006. Ecology of a population of subsidized predators: Common ravens in the central Mojave Desert, California. *Journal of Arid Environments* 67 (2006): 248–261.  
<https://www.sciencedirect.com/science/article/abs/pii/S0140196306003016>
- Carter, S.K., K.E. Nussear, T.C. Esque, I.I.F. Leinwand, E. Masters, R.D. Inman, N.B. Carr, and L.J. Allison. 2020. Quantifying development to inform management of Mojave and Sonoran desert tortoise habitat in the American southwest. *Endangered Species Research* 42: 167–184. <https://doi.org/10.3354/esr01045>. <https://www.int-res.com/articles/esr2020/42/n042p167.pdf>

- [CDFG] California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. The 7 March 2012 memo replacing 1995 staff report, State of California Natural resources Agency, Department of Fish and Wildlife. Sacramento, CA. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline> web address???
- [CDFW] California Department of Fish and Wildlife. 2019. A Conservation Strategy for the Mohave Ground Squirrel, *Xerospermophilus mohavensis*. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=171301&inline>.
- [CDFW] California Department of Fish and Wildlife. 2023. Mohave Ground Squirrel Survey Guidelines (January 2003; revised July 2010, October 2023). Unpublished guidelines produced by CDFW. Sacramento, CA.
- Defenders of Wildlife, Desert Tortoise Preserve Committee, and Desert Tortoise Council. 2020. A Petition to the State of California Fish And Game Commission to move the Mojave desert tortoise from listed as threatened to endangered. Formal petition submitted 11 March 2020. [https://defenders.org/sites/default/files/2020-03/Desert%20Tortoise%20Petition%203\\_20\\_2020%20Final\\_0.pdf](https://defenders.org/sites/default/files/2020-03/Desert%20Tortoise%20Petition%203_20_2020%20Final_0.pdf)
- Petersen 1994 Esque, T.C., K.E. Nussear, K.K. Drake, A.D. Walde, K.H. Berry, R.C. Averill-Murray, A.P. Woodman, W.I. Boarman, P.A. Medica, J. Mack, and J.S. Heaton. 2010. Effects of subsidized predators, resource variability, and human population density on desert tortoise populations in the Mojave Desert. USA: Endangered Species Research 12: 167–177. <https://www.int-res.com/articles/esr2010/12/n012p167.pdf>
- Goble, D.D., 2009, The endangered species act—What we talk about when we talk about recovery: Natural Resources Journal, v. 49, p. 1–44. <https://www.jstor.org/stable/24889187>
- Jennings Environmental. 2022. Biological Resources Assessment, Jurisdictional Delineation, and Native Plant Protection Plan for the Proposed Self Storage Facility Project in Joshua Tree, California. Yucaipa, CA. October 2022.
- Kristan, W.B., W.I. Boarman, and J.J. Crayon. 2004. Diet composition of common ravens across the urban wildland interface of the west Mojave Desert. Wildlife Society Bulletin 32: 244–253. [https://wildlife.onlinelibrary.wiley.com/doi/abs/10.2193/0091-7648\(2004\)32\[244:DCOCRA\]2.0.CO;2](https://wildlife.onlinelibrary.wiley.com/doi/abs/10.2193/0091-7648(2004)32[244:DCOCRA]2.0.CO;2)
- Lovich, J.E., C.B. Yackulic, J.E. Freilich, M. Agha, M. Austin, K.P. Meyer, T.R. Arundel, J. Hansen, M.S. Vamstad, and S.A. Root. 2014. Climatic variation and tortoise survival—Has a desert species met its match? Biological Conservation 169: 214–224. <https://www.sciencedirect.com/science/article/pii/S0006320713003443>
- Morafka, D.J., 1994, Neonates—Missing links in the life histories of North American tortoises, in Bury, R.B., and Germano, D.J., eds., Biology of North American tortoises: Washington, D.C., National Biological Survey, Fish and Wildlife Research, v. 13, p. 161–173.

- Nagy, K.A., L.S. Hillard, M.W. Tuma, and D.J. Morafka. 2015. Head-started desert tortoises (*Gopherus agassizii*)—Movements, survivorship and mortality causes following their release: *Herpetological Conservation and Biology* 10: 203–215. <https://escholarship.org/content/qt67f7t2n6/qt67f7t2n6.pdf>
- Peterson, C.C. 1994. Different rates and causes of high mortality in two populations of the threatened desert tortoise *Gopherus agassizii*. *Biological Conservation* 70: 101–108. <https://www.sciencedirect.com/science/article/abs/pii/0006320794902771>
- Stahle, D.W. 2020. Anthropogenic megadrought. *Science* 368 (6488): 238-239. DOI: 10.1126/science.abb6902. <https://par.nsf.gov/servlets/purl/10166645>
- [USFWS] U.S. Fish and Wildlife Service. 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). December 2009. Region 8, Sacramento, California. <https://www.fws.gov/sites/default/files/documents/Desert-Tortoise-Field-Manual.pdf>
- [USFWS] U.S. Fish and Wildlife Service. 2010. Common raven predation on the desert tortoise. USFWS, Ventura Fish and Wildlife Office, Ventura, CA.
- [USFWS] U.S. Fish and Wildlife Service. 2011. Standardized recommendations for protection of the endangered San Joaquin kit fox prior to or during ground disturbance. Prepared by the Sacramento Fish and Wildlife Office January 2011. <https://www.fws.gov/sites/default/files/documents/survey-protocols-for-the-san-joaquin-kit-fox.pdf>
- [USFWS] U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV. October 8, 2019. <https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise%20Pre-project%20Survey%20Protocol%202019.pdf>
- Williams, A.P., B.I. Cook, and J.E. Smerdon. 2022. Rapid intensification of the emerging southwestern North American megadrought in 2020–2021. *Nature Climate Change*. 12 (2022):232–234. <https://doi.org/10.1038/s41558-022-01290-z>.

## **Appendix A**

### **Demographic Status and Trend of the Mojave Desert Tortoise including the Western Mojave Recovery Unit**

Status of the Population of the Mojave Desert Tortoise: The Council provides the following information for resource and land management agencies so that these data may be included and analyzed in their project and land management documents and aid them in making management decisions that affect the Mojave desert tortoise (tortoise).

There are 17 populations of Mojave desert tortoise described below that occur in Critical Habitat Units (CHUs) and Tortoise Conservation Areas (TCAs); 14 are on lands managed by the BLM; 8 of these are in the California Desert Conservation Area (CDCA).

As the primary land management entity in the range of the Mojave desert tortoise, the Bureau of Land Management's (BLM's) implementation of a conservation strategy for the Mojave desert tortoise in the CDCA through implementation of its Resource Management Plan and Amendments through 2014 has resulted in the following changes in the status for the tortoise throughout its range and in California from 2004 to 2014 (**Table 1, Table 2**; USFWS 2015, Allison and McLuckie 2018). The Council believes these data show that BLM and others have failed to implement an effective conservation strategy for the Mojave desert tortoise as described in the recovery plan (both USFWS 1994a and 2011), and have contributed to tortoise declines in density and abundance between 2004 to 2014 (**Table 1, Table 2**; USFWS 2015, Allison and McLuckie 2018) with declines or no improvement in population density from 2015 to 2021 (**Table 3**; USFWS 2016, 2018, 2019, 2020, 2022a, 2022b).

Important points from these tables include the following:

#### *Change in Status for the Mojave Desert Tortoise Range-wide*

- Ten of 17 populations of the Mojave desert tortoise declined from 2004 to 2014.
- Eleven of 17 populations of the Mojave desert tortoise are below the population viability threshold. These 11 populations represent 89.7 percent of the range-wide habitat in CHUs/TCAs.

#### *Change in Status for the Western Mojave Recovery Unit – Nevada and California*

- This recovery unit had a 51 percent decline in tortoise density from 2004 to 2014.
- Tortoises in this recovery unit have densities that are below viability.

#### *Change in Status for the Superior-Cronese Tortoise Population in the Western Mojave Recovery Unit.*

- The population in this recovery unit experienced declines in densities of 61 percent from 2004 to 2014. In addition, there was a 51 percent decline in tortoise abundance.
- This population has densities less than needed for population viability (USFWS 1994a).

**Table 1.** Summary of 10-year trend data for the 5 Recovery Units and 17 CHUs/TCAs for Mojave desert tortoise. The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km<sup>2</sup> and standard errors = SE), and the percent change in population density between 2004 and 2014.

Populations below the viable level of 3.9 breeding individuals/km<sup>2</sup> (10 breeding individuals per mi<sup>2</sup>) (assumes a 1:1 sex ratio) or showing a decline from 2004 to 2014 are in red.

| Recovery Unit:<br>Designated Critical Habitat<br>Unit <sup>1</sup> /Tortoise Conservation<br>Area | Surveyed area<br>(km <sup>2</sup> ) | % of total habitat<br>area in Recovery<br>Unit & CHU/TCA | 2014<br>density/km <sup>2</sup><br>(SE) | % 10-year change<br>(2004–2014) |
|---------------------------------------------------------------------------------------------------|-------------------------------------|----------------------------------------------------------|-----------------------------------------|---------------------------------|
| <b>Western Mojave, CA</b>                                                                         | <b>6,294</b>                        | <b>24.51</b>                                             | <b>2.8 (1.0)</b>                        | <b>-50.7 decline</b>            |
| Fremont-Kramer                                                                                    | 2,347                               | 9.14                                                     | 2.6 (1.0)                               | -50.6 decline                   |
| Ord-Rodman                                                                                        | 852                                 | 3.32                                                     | 3.6 (1.4)                               | -56.5 decline                   |
| Superior-Cronese                                                                                  | 3,094                               | 12.05                                                    | 2.4 (0.9)                               | -61.5 decline                   |
| <b>Colorado Desert, CA</b>                                                                        | <b>11,663</b>                       | <b>45.42</b>                                             | <b>4.0 (1.4)</b>                        | <b>-36.25 decline</b>           |
| Chocolate Mtn AGR, CA                                                                             | 713                                 | 2.78                                                     | 7.2 (2.8)                               | -29.77 decline                  |
| Chuckwalla, CA                                                                                    | 2,818                               | 10.97                                                    | 3.3 (1.3)                               | -37.43 decline                  |
| Chemehuevi, CA                                                                                    | 3,763                               | 14.65                                                    | 2.8 (1.1)                               | -64.70 decline                  |
| Fenner, CA                                                                                        | 1,782                               | 6.94                                                     | 4.8 (1.9)                               | -52.86 decline                  |
| Joshua Tree, CA                                                                                   | 1,152                               | 4.49                                                     | 3.7 (1.5)                               | +178.62 increase                |
| Pinto Mtn, CA                                                                                     | 508                                 | 1.98                                                     | 2.4 (1.0)                               | -60.30 decline                  |
| Piute Valley, NV                                                                                  | 927                                 | 3.61                                                     | 5.3 (2.1)                               | +162.36 increase                |
| <b>Northeastern Mojave</b>                                                                        | <b>4,160</b>                        | <b>16.2</b>                                              | <b>4.5 (1.9)</b>                        | <b>+325.62 increase</b>         |
| Beaver Dam Slope, NV, UT, AZ                                                                      | 750                                 | 2.92                                                     | 6.2 (2.4)                               | +370.33 increase                |
| Coyote Spring, NV                                                                                 | 960                                 | 3.74                                                     | 4.0 (1.6)                               | + 265.06 increase               |
| Gold Butte, NV & AZ                                                                               | 1,607                               | 6.26                                                     | 2.7 (1.0)                               | + 384.37 increase               |
| Mormon Mesa, NV                                                                                   | 844                                 | 3.29                                                     | 6.4 (2.5)                               | + 217.80 increase               |
| <b>Eastern Mojave, NV &amp; CA</b>                                                                | <b>3,446</b>                        | <b>13.42</b>                                             | <b>1.9 (0.7)</b>                        | <b>-67.26 decline</b>           |
| El Dorado Valley, NV                                                                              | 999                                 | 3.89                                                     | 1.5 (0.6)                               | -61.14 decline                  |
| Ivanpah Valley, CA                                                                                | 2,447                               | 9.53                                                     | 2.3 (0.9)                               | -56.05 decline                  |
| <b>Upper Virgin River</b>                                                                         | <b>115</b>                          | <b>0.45</b>                                              | <b>15.3 (6.0)</b>                       | <b>-26.57 decline</b>           |
| Red Cliffs Desert                                                                                 | 115                                 | 0.45                                                     | 15.3 (6.0)                              | -26.57 decline                  |
| <b>Range-wide Area of CHUs -<br/>TCAs/Range-wide Change in<br/>Population Status</b>              | <b>25,678</b>                       | <b>100.00</b>                                            |                                         | <b>-32.18 decline</b>           |

<sup>1</sup> U.S. Fish and Wildlife Service. 1994b. Endangered and threatened wildlife and plants; determination of critical habitat for the Mojave population of the desert tortoise. Federal Register 55(26):5820-5866. Washington, D.C.

**Table 2.** Estimated change in abundance of adult Mojave desert tortoises in each recovery unit between 2004 and 2014 (Allison and McLuckie 2018). Decreases in abundance are in red.

| Recovery Unit         | Modeled<br>Habitat (km <sup>2</sup> ) | 2004<br>Abundance | 2014<br>Abundance | Change in<br>Abundance | Percent Change<br>in Abundance |
|-----------------------|---------------------------------------|-------------------|-------------------|------------------------|--------------------------------|
| <b>Western Mojave</b> | 23,139                                | 131,540           | 64,871            | -66,668                | -51%                           |
| Colorado Desert       | 18,024                                | 103,675           | 66,097            | -37,578                | -36%                           |
| Northeastern Mojave   | 10,664                                | 12,610            | 46,701            | 34,091                 | 270%                           |
| Eastern Mojave        | 16,061                                | 75,342            | 24,664            | -50,679                | -67%                           |
| Upper Virgin River    | 613                                   | 13,226            | 10,010            | -3,216                 | -24%                           |
| <b>Total</b>          | <b>68,501</b>                         | <b>336,393</b>    | <b>212,343</b>    | <b>-124,050</b>        | <b>-37%</b>                    |

**Table 3.** Summary of data for Agassiz’s desert tortoise, *Gopherus agassizii* (=Mojave desert tortoise) from 2004 to 2021 for the 5 Recovery Units and 17 Critical Habitat Units (CHUs)/Tortoise Conservation Areas (TCAs). The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km<sup>2</sup> and standard errors = SE), and percent change in population density between 2004-2014 (USFWS 2015). Populations below the viable level of 3.9 breeding individuals/km<sup>2</sup> (10 breeding individuals per mi<sup>2</sup>) (assumes a 1:1 sex ratio) (USFWS 1994a, 2015) or showing a decline from 2004 to 2014 are in **red**.

| Recovery Unit:<br>Designated<br>CHU/TCA & | % of total<br>habitat<br>area in<br>Recovery<br>Unit &<br>CHU/TCA | 2004<br>density/<br>km <sup>2</sup> | 2014<br>density/<br>km <sup>2</sup><br>(SE) | % 10-<br>year<br>change<br>(2004–<br>2014) | 2015<br>density/<br>km <sup>2</sup> | 2016<br>density/<br>km <sup>2</sup> | 2017<br>density/<br>km <sup>2</sup> | 2018<br>density/<br>km <sup>2</sup> | 2019<br>density/<br>km <sup>2</sup> | 2020<br>density/<br>km <sup>2</sup> | 2021<br>density/<br>km <sup>2</sup> |
|-------------------------------------------|-------------------------------------------------------------------|-------------------------------------|---------------------------------------------|--------------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| Western Mojave,<br>CA                     | 24.51                                                             |                                     | 2.8 (1.0)                                   | -50.7<br>decline                           |                                     |                                     |                                     |                                     |                                     |                                     |                                     |
| Fremont-Kramer                            | 9.14                                                              |                                     | 2.6 (1.0)                                   | -50.6<br>decline                           | 4.5                                 | No data                             | 4.1                                 | No data                             | 2.7                                 | 1.7                                 | No data                             |
| Ord-Rodman                                | 3.32                                                              |                                     | 3.6 (1.4)                                   | -56.5<br>decline                           | No data                             | No data                             | 3.9                                 | 2.5/3.4*                            | 2.1/2.5*                            | No data                             | 1.9/2.5*                            |
| Superior-Cronese                          | 12.05                                                             |                                     | 2.4 (0.9)                                   | -61.5<br>decline                           | 2.6                                 | 3.6                                 | 1.7                                 | No data                             | 1.9                                 | No data                             | No data                             |
| Colorado Desert,<br>CA                    | 45.42                                                             |                                     | 4.0 (1.4)                                   | -36.25<br>decline                          |                                     |                                     |                                     |                                     |                                     |                                     |                                     |
| Chocolate Mtn AGR,<br>CA                  | 2.78                                                              |                                     | 7.2 (2.8)                                   | -29.77<br>decline                          | 10.3                                | 8.5                                 | 9.4                                 | 7.6                                 | 7.0                                 | 7.1                                 | 3.9                                 |
| Chuckwalla, CA                            | 10.97                                                             |                                     | 3.3 (1.3)                                   | -37.43<br>decline                          | No data                             | No data                             | 4.3                                 | No data                             | 1.8                                 | 4.6                                 | 2.6                                 |
| Chemehuevi, CA                            | 14.65                                                             |                                     | 2.8 (1.1)                                   | -64.70<br>decline                          | No data                             | 1.7                                 | No data                             | 2.9                                 | No data                             | 4.0                                 | No data                             |
| Fenner, CA                                | 6.94                                                              |                                     | 4.8 (1.9)                                   | -52.86<br>decline                          | No data                             | 5.5                                 | No data                             | 6.0                                 | 2.8                                 | No data                             | 5.3                                 |
| Joshua Tree, CA                           | 4.49                                                              |                                     | 3.7 (1.5)                                   | +178.62<br>increase                        | No data                             | 2.6                                 | 3.6                                 | No data                             | 3.1                                 | 3.9                                 | No data                             |
| Pinto Mtn, CA                             | 1.98                                                              |                                     | 2.4 (1.0)                                   | -60.30<br>decline                          | No data                             | 2.1                                 | 2.3                                 | No data                             | 1.7                                 | 2.9                                 | No data                             |

|                                                                            |               |                           |                   |                             |         |         |         |         |         |         |         |
|----------------------------------------------------------------------------|---------------|---------------------------|-------------------|-----------------------------|---------|---------|---------|---------|---------|---------|---------|
| Piute Valley, NV                                                           | 3.61          |                           | 5.3 (2.1)         | +162.36<br>increase         | No data | 4.0     | 5.9     | No data | No data | No data | 3.9     |
| <b>Northeastern Mojave AZ, NV, &amp; UT</b>                                | <b>16.2</b>   |                           | <b>4.5 (1.9)</b>  | <b>+325.62<br/>increase</b> |         |         |         |         |         |         |         |
| Beaver Dam Slope, NV, UT, & AZ                                             | 2.92          |                           | 6.2 (2.4)         | +370.33<br>increase         | No data | 5.6     | 1.3     | 5.1     | 2.0     | No data | No data |
| Coyote Spring, NV                                                          | 3.74          |                           | 4.0 (1.6)         | + 265.06<br>increase        | No data | 4.2     | No data | No data | 3.2     | No data | No data |
| Gold Butte, NV & AZ                                                        | 6.26          |                           | 2.7 (1.0)         | + 384.37<br>increase        | No data | No data | 1.9     | 2.3     | No data | No data | 2.4     |
| Mormon Mesa, NV                                                            | 3.29          |                           | 6.4 (2.5)         | + 217.80<br>increase        | No data | 2.1     | No data | 3.6     | No data | 5.2     | 5.2     |
| <b>Eastern Mojave, NV &amp; CA</b>                                         | <b>13.42</b>  |                           | <b>1.9 (0.7)</b>  | <b>-67.26<br/>decline</b>   |         |         |         |         |         |         |         |
| El Dorado Valley, NV                                                       | 3.89          |                           | 1.5 (0.6)         | -61.14<br>decline           | No data | 2.7     | 5.6     | No data | 2.3     | No data | No data |
| Ivanpah Valley, CA                                                         | 9.53          |                           | 2.3 (0.9)         | -56.05<br>decline           | 1.9     | No data | No data | 3.7     | 2.6     | No data | 1.8     |
| <b>Upper Virgin River, UT &amp; AZ</b>                                     | <b>0.45</b>   |                           | <b>15.3 (6.0)</b> | <b>-26.57<br/>decline</b>   |         |         |         |         |         |         |         |
| Red Cliffs Desert**                                                        | 0.45          | 29.1<br>(21.4-<br>39.6)** | 15.3 (6.0)        | -26.57<br>decline           | 15.0    | No data | 19.1    | No data | 17.2    | No data |         |
| <b>Rangewide Area of CHUs - TCAs/Rangewide Change in Population Status</b> | <b>100.00</b> |                           |                   | <b>-32.18<br/>decline</b>   |         |         |         |         |         |         |         |

\*This density includes the adult tortoises translocated from the expansion of the MCAGCC, that is resident adult tortoises and translocated adult tortoises.

\*\*Methodology for collecting density data initiated in 1999.

*Change in Status for the Mojave Desert Tortoise in California*

- Eight of 10 populations of the Mojave desert tortoise in California declined from 29 to 64 percent from 2004 to 2014 with implementation of tortoise conservation measures in the Northern and Eastern Colorado Desert (NECO), Northern and Eastern Mojave Desert (NEMO), and Western Mojave Desert (WEMO) Plans.
- Eight of 10 populations of the Mojave desert tortoise in California are below the population viability threshold. These eight populations represent 87.45 percent of the habitat in California that is in CHU/TCAs.
- The two viable populations of the Mojave desert tortoise in California are declining. If their rates of decline from 2004 to 2014 continue, these two populations will no longer be viable by about 2030.

*Change in Status for the Mojave Desert Tortoise on BLM Land in California*

- Eight of eight populations of Mojave desert tortoise on lands managed by the BLM in California declined from 2004 to 2014.
- Seven of eight populations of Mojave desert tortoise on lands managed by the BLM in California are no longer viable.

*Change in Status for Mojave Desert Tortoise Populations in California that Are Moving toward Meeting Recovery Criteria*

- The only population of Mojave desert tortoise in California that is not declining is on land managed by the National Park Service, which has increased 178 percent in 10 years.

Important points to note from the data from 2015 to 2021 in Table 3 are:

*Change in Status for the Mojave Desert Tortoise in the Western Mojave Recovery Unit:*

- Density of tortoises continues to decline in the Western Mojave Recovery Unit
- Density of tortoises continues to fall below the density needed for population viability from 2015 to 2021

*Change in Status for the Mojave Desert Tortoise in the Colorado Desert Recovery Unit:*

- The population that had the highest density in this recovery unit had a continuous reduction in density since 2018 and fell substantially to the minimum density needed for population viability in 2021.

*Change in Status for the Mojave Desert Tortoise in the Northeastern Mojave Recovery Unit:*

- Two of the three population with densities greater than needed for population viability declined to level below the minimum viability threshold.
- The most recent data from three of the four populations in this recovery unit have densities below the minimum density needed for population viability.
- The population that had the highest density in this recovery unit declined since 2014.

*Change in Status for the Mojave Desert Tortoise in the Eastern Mojave Recovery Unit:*

- Both populations in this recovery unit have densities below the minimum density needed for population viability.

*Change in Status for the Mojave Desert Tortoise in the Upper Virgin River Recovery Unit:*

- The one population in this recovery unit is small and appears to have stable densities.

The Endangered Mojave Desert Tortoise: The Council believes that the Mojave desert tortoise meets the definition of an endangered species. In the FESA, Congress defined an “endangered species” as “any species which is in danger of extinction throughout all or a significant portion of its range...” In the California Endangered Species Act (CESA), the California legislature defined an “endangered species” as a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant, which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes (California Fish and Game Code § 2062). Because most of the populations of the Mojave desert tortoise were non-viable in 2014, most are declining, and the threats to the Mojave desert tortoise are numerous and have not been substantially reduced throughout the species’ range, the Council believes the Mojave desert tortoise should be designated as an endangered species by the USFWS and California Fish and Game Commission. Despite claims by USFWS (Averill-Murray and Field 2023) that a large number of individuals of a listed species and an increasing population trend in part of the range of the species prohibits it from meeting the definitions of endangered, we are reminded that the tenants of conservation biology include numerous factors when determining population viability. The number of individual present is one of a myriad of factors (e.g., species distribution and density, survival strategy, sex ratio, recruitment, genetics, threats including climate change, etc.) used to determine population viability. In addition, a review of all the available data does not show an increasing population trend (please see Tables 1 and 3).

### **Literature Cited in Demographic Status and Trend of the Mojave Desert Tortoise Including the Western Mojave Recovery Unit**

Allison L.J. and A.M. McLuckie. 2018. Population trends in Mojave desert tortoises (*Gopherus agassizii*). *Herpetological Conservation and Biology*. 2018 Aug 1. 13(2):433–452. [http://www.herpconbio.org/Volume\\_13/Issue\\_2/Allison\\_McLuckie\\_2018.pdf](http://www.herpconbio.org/Volume_13/Issue_2/Allison_McLuckie_2018.pdf)

or

<https://www.fws.gov/media/allison-and-mcluckie2018mojave-desert-tortoise-population-trends>

[USFWS] U.S. Fish and Wildlife Service. 1994a. Desert tortoise (Mojave population) Recovery Plan. U.S. Fish and Wildlife Service, Region 1, Portland, Oregon. 73 pages plus appendices. [https://ecos.fws.gov/docs/recovery\\_plan/940628.pdf](https://ecos.fws.gov/docs/recovery_plan/940628.pdf)

[USFWS] U.S. Fish and Wildlife Service. 1994b. Endangered and threatened wildlife and plants; determination of critical habitat for the Mojave population of the desert tortoise. Federal Register 55(26):5820-5866. Washington, D.C. . <https://www.govinfo.gov/content/pkg/FR-1994-02-08/html/94-2694.htm>

- [USFWS] U.S. Fish and Wildlife Service. 2011. Revised Recovery Plan for the Mojave Population of the Desert Tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, California and Nevada Region, Sacramento, California. <https://www.fws.gov/sites/default/files/documents/USFWS.2011.RRP%20for%20the%20Mojave%20Desert%20Tortoise.pdf>
- [USFWS] U.S. Fish and Wildlife Service. 2015. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2013 and 2014 Annual Reports. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. <https://www.fws.gov/sites/default/files/documents/USFWS.2015%20report.%20Rangewide%20monitoring%20report%202013-14.pdf>
- [USFWS] U.S. Fish and Wildlife Service. 2016. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2015 and 2016 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. <https://www.fws.gov/sites/default/files/documents/USFWS.2016%20report.%20Rangewide%20monitoring%20report%202015-16.pdf>
- [USFWS] U.S. Fish and Wildlife Service. 2018. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2017 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. <https://www.fws.gov/sites/default/files/documents/USFWS.2018%20report.%20Rangewide%20monitoring%20report%202017.pdf>
- [USFWS] U.S. Fish and Wildlife Service. 2019. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2018 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. <https://www.fws.gov/sites/default/files/documents/USFWS.2019%20report.%20Rangewide%20monitoring%20report%202018.pdf>
- [USFWS] U.S. Fish and Wildlife Service. 2020. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2019 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. 42 pages. [https://www.fws.gov/sites/default/files/documents/2019\\_Rangewide%20Mojave%20Desert%20Tortoise%20Monitoring.pdf](https://www.fws.gov/sites/default/files/documents/2019_Rangewide%20Mojave%20Desert%20Tortoise%20Monitoring.pdf)
- [USFWS] U.S. Fish and Wildlife Service. 2022a. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2020 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. <https://www.fws.gov/sites/default/files/documents/USFWS.2022%20report.%20Rangewide%20monitoring%20report%202020.pdf>
- [USFWS] U.S. Fish and Wildlife Service. 2022b. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2021 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. <https://www.fws.gov/sites/default/files/documents/USFWS.2022%20report.%20Rangewide%20monitoring%20report%202021.pdf>



**From:** [Matt Cantor](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** dagget solar project  
**Date:** Tuesday, June 20, 2023 7:50:12 AM

---

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i'm a resident of newberry springs my family have owned property out here since the 90's over 1000 acres worth of land and yet i'm not sure at this rate if that land will even be useable and safe by the time comes to pass it to my kids because of the extremely dangerous silica dust these plants have caused not to mention to thousands i've spent in my tractor to clean the dirt off my property that started building up since they started construction on the other ones if they build these ones it will make it worse for us downwind off the plants not to mention the 20° difference solar panels make near them

Sent from my iPhone

Sent from my iPhone

**From:** [Mke Currier](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Solar project # 0521-051-08  
**Date:** Monday, June 12, 2023 10:26:58 AM

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Sirs , first I would like to complain about the fact that the country of San Bernardino never notified the residents of Newberry Springs of this planed expansion . And given the fact that current solar project has caused so many health problems and property damage in our area and that we were guaranteed by there contractor Blattner /Clearwater that they would stabilize the top soil so that the sand and dust would cause any more issues, that has never happened and the sand and dust continues to blow to this day . bottom line this project will just compound the existing problems that we have to live with so I'm fully against this new project # 0521-051-08 and the country of San Bernardino should feel ashamed for letting down its residents as well as destroying our desert environment.

Michael Currier , 34825 Minneola Road Newberry Springs California

[Sent from Yahoo Mail on Android](#)

**From:** [Claudia Contreras](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Proj.2022-00071apn05210521-051-08  
**Date:** Monday, June 12, 2023 1:19:33 PM

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12:04 

   50% 

**Jun 12** 11:48 AM

 **Anonymous member** · 2d · 

The gentleman to call, email or write regarding the continued solar project heading towards Newberry Springs' way. Please share. There is still time. Although the letter states comments are due by June 12th, still submit as will be considered by the planning committee.

  5

10 comments

 Like

 Comment

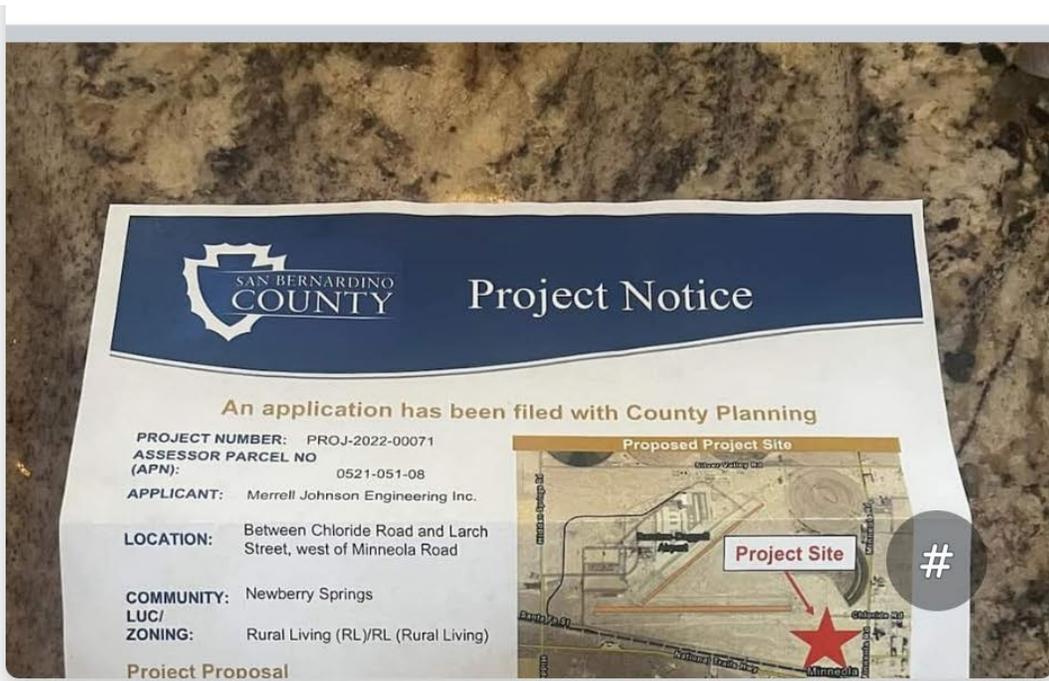


 **Jim Morrissey, Contract Planner**  
Phone: 909.387.4234  
E-mail: [Jim.Morrissey@lus.sbcounty.gov](mailto:Jim.Morrissey@lus.sbcounty.gov)  
Fax: 909.387.3223

**Project Decision**

 Like

 Comment



Screenshot\_20230612-114802\_Facebook.jpg

646.35 KB 1080x2400



/Internal storage/DCIM/Screenshots



Claudia Horta 29926Fort CadyRoad New Berrysprings Ca.92365 I object to the solar project if it is going to do harm to the air and to me and my family. THANK YOU 562) 786-1190

[Sent from Yahoo Mail on Android](#)

**From:** [wclemons](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** BMT Minneola Solar - PROJ-2022-00071  
**Date:** Saturday, December 02, 2023 3:12:25 PM  
**Attachments:** [Screenshot\\_20231123\\_124155\\_Facebook.jpg](#)

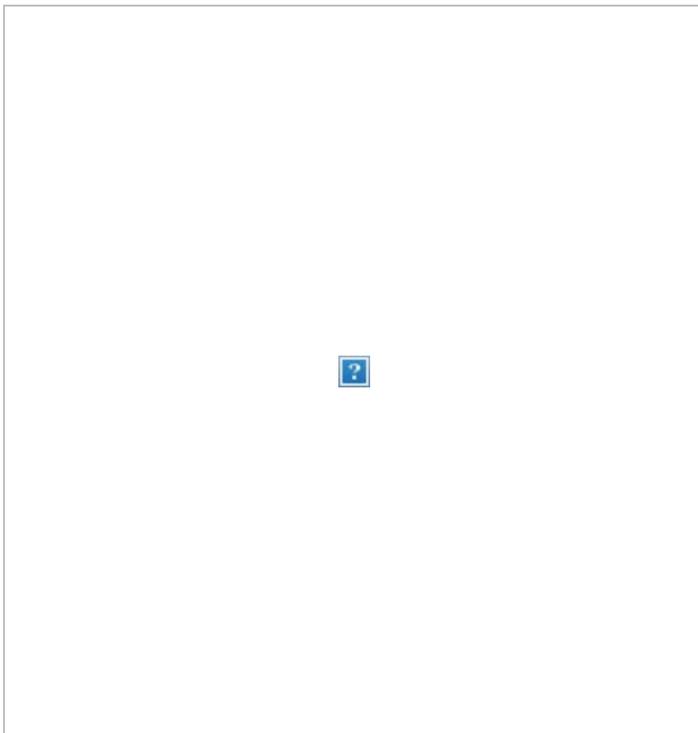
---

You don't often get email from [wclemons@daggettfire.org](mailto:wclemons@daggettfire.org). [Learn why this is important](#)

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Hi Jim-

I found this study notice online and have one comment to make, this property is *not* located in Newberry Springs. The property is located in Daggett.



**Wayne Clemons Jr., M.Ed.**

Fire Chief – C4100

**Daggett Fire Department**

**Station** (760) 254-5474 · **Mobile** (951) 966-0966

**Email** [wclemons@DaggettFire.org](mailto:wclemons@DaggettFire.org)

**Address** 33702 Second St., Daggett, CA 92327

**Web** [www.DaggettFire.org](http://www.DaggettFire.org)

**From:** [Amanda Purdy](#)  
**To:** [Morrissey, Jim](#)  
**Subject:** Parcel NO 0521-051-08  
**Date:** Monday, June 12, 2023 8:18:47 AM

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Hello my name is Amanda Purdy and I'm writing in regards to the new solar project that is set to be at the corner of minneola rd and national trails. I currently live on minneola rd directly across from the solar field that is currently being built. I need to start out by saying this solar field that is currently being built is already causing big problems that have yet to be addressed. I have grown up on this street my whole life and I never remember the dust being a sever as it is now, to the point that my kids and myself have been placed on inhalers and nebulizer machines. All of our complaints and issues have never been addressed and the county has done nothing to stop it, in fact it's quite opposite. Never at 1 point were the residents being affected taken into consideration. As if the health issues that we have occurred from the current plants were not enough of an issue, our home have now taken a significant hit with damage and the value of our homes decreasing. If the one that is currently going in is unmanageable than the second one will be no better. In fact it will only make our matters worse. We now have long term health issues to deal with and we also have to come out of our owns pockets to fix the damage that is being done to our properties. I do not believe this solar project would benefit our community. None of this energy is being supplied to our community but it sure is our community that is taken the worst hit. Something has to stop! This is not ok for the residents of newberry springs/dagget community. Thank you for your time.  
Amanda Purdy

# **Newberry Springs Community Alliance**

P.O. Box 11  
Newberry Springs, CA 92365  
newberrysprings@mail.com

December 18, 2023

County of San Bernardino  
Attn: Jim Morrissey, Planner  
Land Use Services Department, Planning Division  
385 N. Arrowhead Ave. 1st Floor  
San Bernardino, CA 92415

Sent via e-mail: Jim.Morrissey@lus.sbcounty.gov

## **Public Comment in Opposition to the BMT Minneola Solar Project PROJ-2022-00071 SCH Number 2023110357**

### **Introduction**

Founded by residents and property owners in Newberry Springs, California, the Newberry Springs Community Alliance is a grassroots Community Based Organization (CBO) dedicated to protecting the community's quality of life and environmental health. The Alliance opposes the BMT Minneola Solar project, believing it would negatively impact the area where its members live, work, and play.

### **Preface**

This letter is being prefaced with the fact that San Bernardino County's ('County') operation is under the supervision and control of the County's Board of Supervisors.

The County was extremely negligent with its earlier siting in the Mojave Valley the Solutions for Utilities, Inc. Phase 1 & 2 (now 'Soitec') solar project, the Daggett Solar Power Facility project (hereinafter 'Clearway'), the Daggett Solar 66 Project, and the Daggett Solar 33 Project.

As testified to by members of the community of Newberry Springs, and others, on each of these projects during their public licensing debate, the Mojave Valley has a Sand Transport Path, that prohibits the safe establishment of any industrial photovoltaic solar facility upwind to Newberry Springs.

The negative impacts of these County-authorized solar facilities, particularly the decade-old Soitec, and the now nearly completed Clearway facility, have been more destructive to Newberry Springs than the dire prior projections that were forecasted to the County during the permitting process by the residents. The residents live in and understand their natural elements.

Damages from the County-placed solar projects in the Mojave Valley are being recorded and archived by the residents.

Please take note that the Board of Supervisors is directly responsible for the negligent permitting of these hazardous solar facilities. By state law, as elected officials, the Board of Supervisors hold a fiduciary relationship with their constituents. In short, this means that the Board members have the legal obligation to always act in the best interests of the people they represent. This fundamental duty is based on the legal principle that elected officials hold a position of trust and responsibility to their constituents. (Thomson v. Call, supra, 38 Cal.3d at p. 648; Stigall v. City of Taft (1962) 58 Cal. 2d 565, 569 [25 Cal. Rptr. 441, 375 P.2d 289].)

Note, the legal obligation is for the performance of the best interests of the constituents, not to outside solar developers, the people in other areas of the state, or the promoters of the Climate Change theory in Sacramento who are trying to save the world. In a recent California Supreme Court decision, the Court recognized that the common law rule in Government Code § 1090 recognized the truism that a person cannot serve two masters simultaneously. (Lexin v. Superior Court, 47 Cal. 4th 1050, 1073 (2010); see, also, Thomson v. Call, 35 Cal. 3d 633, 63.)

The County Supervisors' breach of their fiduciary duty to protect the safety of Newberry Springs residents may play a major role should the residents seek recovery for their severe health and property damages. The Supervisors' actions and inactions have resulted in an unconstitutional taking of the constituents' rights, including the right to health, property rights, and the right to a clean environment. The placement of industrial solar facilities in Sand Transport Paths has caused residents in the Mojave Valley, the Morongo Basin, and elsewhere to suffer from respiratory problems, decreased property values, and environmental damage.

Environmental and Social Justice has been illegally suppressed by the County in its previous solar considerations in the Mojave Valley. The County, as the lead agency behind Clearway's Environmental Impact Report ('EIR'), has claimed (contrary to the public's written input) that "*CEQA requires an analysis of physical impacts to the environment; it does not require analysis of social and economic impacts.*" This printed response is dead wrong and the Attorney General has directly advised the County on it a decade earlier. Further ignored are case laws and state law, such as portions of California Government Code § 65040.12. California Senate Bill 1000 (2016) on Environmental Justice does exist.

Contrary to previous County response statements, people are defined as part of the environment. This has been emphatically stated in an Attorney General Opinion dated July 10, 2012. I hereby attach by reference, as though fully set forth hereto, the Attorney General's Opinion, Environmental Justice at the Local and Regional Level, Legal Background. It can be located at the URL:

[https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej\\_fact\\_sheet.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf)

Despite this Opinion having been repeatedly hammered by members of the public to the County's Land Use Services Department, the Planning Commissioners, and the Board of Supervisors, the Opinion has been systematically ignored by all County officials in favor of the developers. The County's injuries to the public have been willful, reckless, and wanton.

The community of Newberry Springs has been grossly overburdened by solar facilities being placed upwind that have disturbed the desert soil crust within a Sand Transport Path. The soil disturbances by the solar projects are allowing ever-increasing amounts of aeolian sand and deadly crystalline silica dust (airborne particles of respirable size) of 'high to very high' rated blow propensity to regularly blanket the community. Since 1988, crystalline silica has been listed under California Proposition 65 as a chemical known to the State to cause cancer.

The crystalline silica causes very similar damage to the lungs and other body organs as asbestos and the microscopic crystalline silica can stay suspended in the air for days after a light wind. Winds are common and regularly blow in the Mojave Valley.

The Soitec solar project, the first industrial solar project within Newberry Springs, should have been a wake-up for the County. This 27-acre project has caused severe sand drifts and literal chaos to the residences directly east of the project. Yet, despite having full knowledge of this damage in a Sand Transport Path, the County has venomously doubled down against Newberry Springs by authorizing the 5.5-square-mile Clearway project upwind and within the community. The County then tripled down by authorizing the Daggett Solar 66 Project, and then again quad down with the Daggett Solar 33 Project. Now comes the BMT Minneola Solar.

Newberry Springs has many young and elderly residents who are acutely sensitive receptors to the hazardous silica dust that is being emitted by the solar projects. Before the solar farms, Newberry Springs residents had a higher rate of hospitalizations for respiratory ailments than the county average. The solar projects have now greatly burdened the complexity of the respiratory problems.

The Attorney General's Opinion of July 10, 2012, clearly states, "*In addition, CEQA requires a lead agency to consider whether a project's effects, while they might appear limited on their own, are "cumulatively considerable" and therefore significant. (Pub. Res. Code, § 21083, subd. (b)(3).) "[C]umulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.*" (Id.) This requires a local lead agency to determine whether pollution from a proposed project will have significant effects on any nearby communities, when considered together with any pollution burdens those communities already are bearing, or may bear from probable future projects. Accordingly, the fact that an area already is polluted makes it more likely that any additional, unmitigated pollution will be significant. Where there already is a high pollution burden on a

*community, the "relevant question" is "whether any additional amount" of pollution "should be considered significant in light of the serious nature" of the existing problem. (Hanford, supra, 221 Cal.App.3d at 661; see also Los Angeles Unified School Dist. v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1025 [holding that "the relevant issue ... is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools."])*

The injuries to Newberry Springs from these projects are ongoing and a few residents are beginning to address the matter with the developer. It is reasonable to expect that the majority of the residents will eventually want the County to reimburse them for the health injuries and the property damages that are being unlawfully inflicted upon them. The County had the responsibility to protect them and maliciously refused.

The County is responsible for knowingly permitting the poisoning of the air that the residents must breathe. Like PG&E's poisoning of the water in Hinkley and then buying up the land, the County now needs to mitigate its caused injuries by purchasing the homes and businesses in Newberry Springs.

PG&E delivered bottled water to the residents of Hinkley, however, the County can not supply 24-hour bottled safe air to the residents of Newberry Springs.

The Mojave Valley has been permitted by the Board of Supervisors to be the dumping grounds for photovoltaic solar facilities despite the County's full knowledge of the carcinogenic crystalline silica danger. The BMT Minneola Solar's **Initial Study ('IS')** is yet another malicious sham report to allow more toxic hazards to be placed on Newberry Springs.

Similarly, as a CONDITION OF APPROVAL of the Daggett Solar Power Facility (P2017679) Conditional Use Permit, the owner (Clearway) is required under item 19, Continuous Maintenance, "*The Project property owner shall continually maintain the property so that it is not visually derelict **and not dangerous to the health, safety and general welfare of both on-site users (e.g. employees) and surrounding properties.** The property owner shall ensure that all facets of the development are regularly inspected, maintained and that any defects are timely repaired. Among the elements to be maintained, include but are not limited to:*

(Selected) c. *Dust control: The developer shall maintain dust control measures on any **undeveloped** areas where soil stabilization is required.*" (Bold emphasis added.)

Note: Whenever the residents have complained to the County of massive sand and dust blowing from the Clearway project, at times so bad that the California Highway Patrol has had to close a major community thoroughfare, the County has refused to act to police its above CONDITION. Instead, County officials have repeatedly flipped the

residents to the Mojave Desert Air Quality Management District (MDAQMD), claiming that the MDAQMD handles air quality complaints. Likewise, the MDAQMD has been inept (elaborated below). Under the selected subsection 'c' (above) the obvious loophole is that the entire project is considered developed, therefore, the developer is given a free pass as 'c' is about undeveloped areas.

Another CONDITION OF APPROVAL for the Clearway project is item 18 which reads in part, "*Additional Permits. The developer shall ascertain compliance with all laws, ordinances, regulations and any other requirements of Federal, State, County and Local agencies that may apply for the development and operation of the approved land use.*"

As covered in this letter, the developer has trumped upon and ignored Federal, State, and County health and safety regulations with impunity.

### **Points of Opposition**

- While the promoters of BMT Solar are presenting the proposal under the guise of a Community Oriented Renewable Energy (CORE) project, it is not a project that the neighbors across the road from it want. Nor does Newberry Springs want it. This project would only add to the cumulative carcinogenic crystalline silica dust. The project represents an additional spread of a recognized toxic matter upon an Environmental Justice Focus Area. The project is in direct conflict with Social and Environmental Justice, and the project by its placement requires by law a full Environment Impact Study.

- The project's IS fails to address and establish a reasonable ability for the County to declare an end-to-life determination on the project and to subject the project to an environmentally friendly removal. The current language is inadequate. The existing 27-acre Soitec solar project in Newberry Springs, after only a decade, is now a broken-down facility and a community eyesore that needs to be removed. To avoid or delay the expense of removal or to bring the facility up to proper operation standards, the owner reportedly has declared the site an experimental facility. San Bernardino County has failed to inspect and hold the owner responsible for the purpose of the licensed permit.

The County lacks and needs stronger permit language to decommission a derelict solar facility and it needs the willingness to inspect and decommission a facility should a solar operation fall below a reasonable standard of operational care (which needs to be defined in the Code) for which a permit was issued. Failure to have done this may now lead to the 5.5-square-mile Clearway project, covered with hazardous photovoltaic materials, to be later abandoned for decades if neglect is found to be more economical for the owner.

The County needs muscle to prevent owners from walking away from maintenance and continued operation for which a facility is permitted.



Junkyard of inoperative Soitec solar trackers.

• INITIAL STUDY/MITIGATED NEGATIVE DECLARATION - ENVIRONMENTAL CHECKLIST FORM

This form is faulty regarding the environmental factors potentially affected.

**ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

The environmental factors checked below will be potentially affected by this Project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

|                                     |                                           |                                     |                                                    |                                     |                                                    |
|-------------------------------------|-------------------------------------------|-------------------------------------|----------------------------------------------------|-------------------------------------|----------------------------------------------------|
| <input type="checkbox"/>            | <a href="#">Aesthetics</a>                | <input type="checkbox"/>            | <a href="#">Agriculture and Forestry Resources</a> | <input type="checkbox"/>            | <a href="#">Air Quality</a>                        |
| <input checked="" type="checkbox"/> | <a href="#">Biological Resources</a>      | <input checked="" type="checkbox"/> | <a href="#">Cultural Resources</a>                 | <input type="checkbox"/>            | <a href="#">Energy</a>                             |
| <input type="checkbox"/>            | <a href="#">Geology/Soils</a>             | <input type="checkbox"/>            | <a href="#">Greenhouse Gas Emissions</a>           | <input type="checkbox"/>            | <a href="#">Hazards &amp; Hazardous Materials</a>  |
| <input type="checkbox"/>            | <a href="#">Hydrology/Water Quality</a>   | <input type="checkbox"/>            | <a href="#">Land Use/Planning</a>                  | <input type="checkbox"/>            | <a href="#">Mineral Resources</a>                  |
| <input type="checkbox"/>            | <a href="#">Noise</a>                     | <input type="checkbox"/>            | <a href="#">Population/Housing</a>                 | <input type="checkbox"/>            | <a href="#">Public Services</a>                    |
| <input type="checkbox"/>            | <a href="#">Recreation</a>                | <input type="checkbox"/>            | <a href="#">Transportation</a>                     | <input checked="" type="checkbox"/> | <a href="#">Tribal Cultural Resources</a>          |
| <input type="checkbox"/>            | <a href="#">Utilities/Service Systems</a> | <input type="checkbox"/>            | <a href="#">Wildfire</a>                           | <input type="checkbox"/>            | <a href="#">Mandatory Findings of Significance</a> |

Above, is a snippet of the page 9 chart of the BMT Initial Study/Mitigated Negative Declaration.

Unchecked on page 9 is the **Aesthetics** of the desert viewscape. The IS ignores that the site is within view of Interstate-40 and adjacent to the state's Historic Route 66, a county Scenic Route, and now an esteemed National Scenic Byway. The IS further takes the position that "*most of the surrounding parcels are vacant and undeveloped.*" The IS fails to account that the vast openness of the Mojave Valley is what has driven

the tourism economics of the area. The continued placement of photovoltaic solar facilities in the Mojave Valley is destroying the area's tourism on which the economics of the area largely depends. The further degrading of the valley with photovoltaic solar will have a significant impact. The project site is situated adjacent to the Clearway 5.5-square-mile photovoltaic placement. Too much of an eyesore is too much saturation. A full EIR is necessary to properly study and fully address the cumulative effect of the Aesthetics issue as it is not 'Potentially Significant,' it is Significant.

Unchecked on page 9 is **Geology/Soils**. The proposed site's aeolian soil is of high erodibility with a "*high to very high*" fugitive dust rating in a Sand Transport Path that is a major health hazard to the adjacent and downwind Environmental Justice Focus Area of Newberry Springs. The lack of the IS to properly address the soil is a major omission and it underscores the exceptionally poor understanding and standard of care that is behind the IS.

Also, not properly addressed in the IS and analyzed is the release of massive amounts of sequestered carbon from the project's disturbance of the site's ancient topsoil. The background purpose of solar installations is to address the Climate Change theory and therefore the reduction of carbon in the atmosphere. Yet, by disturbing the undisturbed topsoil and the removal of creosote bush and other vegetation that stabilizes the soil, sequestered carbon will be released into the atmosphere. This mobilization of carbon is exasperated by being in a Sand Transport Path. The IS fails to factor in and address the significant element of carbon release. For additional background on this vital concern, see:

<http://newberryspringsinfo.com/Alliance/Sequestration-Letter.pdf>



A portion of the Clearway Energy's Daggett Solar Power 5.5 sq. mile habitat cover-up.

Unchecked on page 9 is **Wildlife**. This low-area portion of the Mojave Valley has a rich history of wildlife that includes Endangered and Restricted species. The wildlife

research done for the adjacent 5.5-square-mile Clearway project that devastated much of the valley's wildlife was only conducted by a couple of biologists over a few part days during periods of extreme summer heat. Wildlife during that time were in burrows for protection from the desert's extreme heat and well hidden from their predators. Naturally, the biologists didn't see anything damaging for their employer. The limited number of biologists and the limited number of hours for the 5.5 sq. mile site was a sham. Newberry Springs resident, Mike Matson, a Newberry Community Services District board member, is a local expert on the desert's reptiles and he can be contacted for detailed information regarding the Mojave Valley's wildlife burial.

Unchecked on page 9 is **Air Quality**. The public will be further damaged by the proposed BMT project from the cumulative effect of this site having its desert topsoil crust disturbed and allowing the Sand Transport Path's winds to spread further sand and crystalline silica upon the adjacent and downwind Environmental Justice Focus Area population.

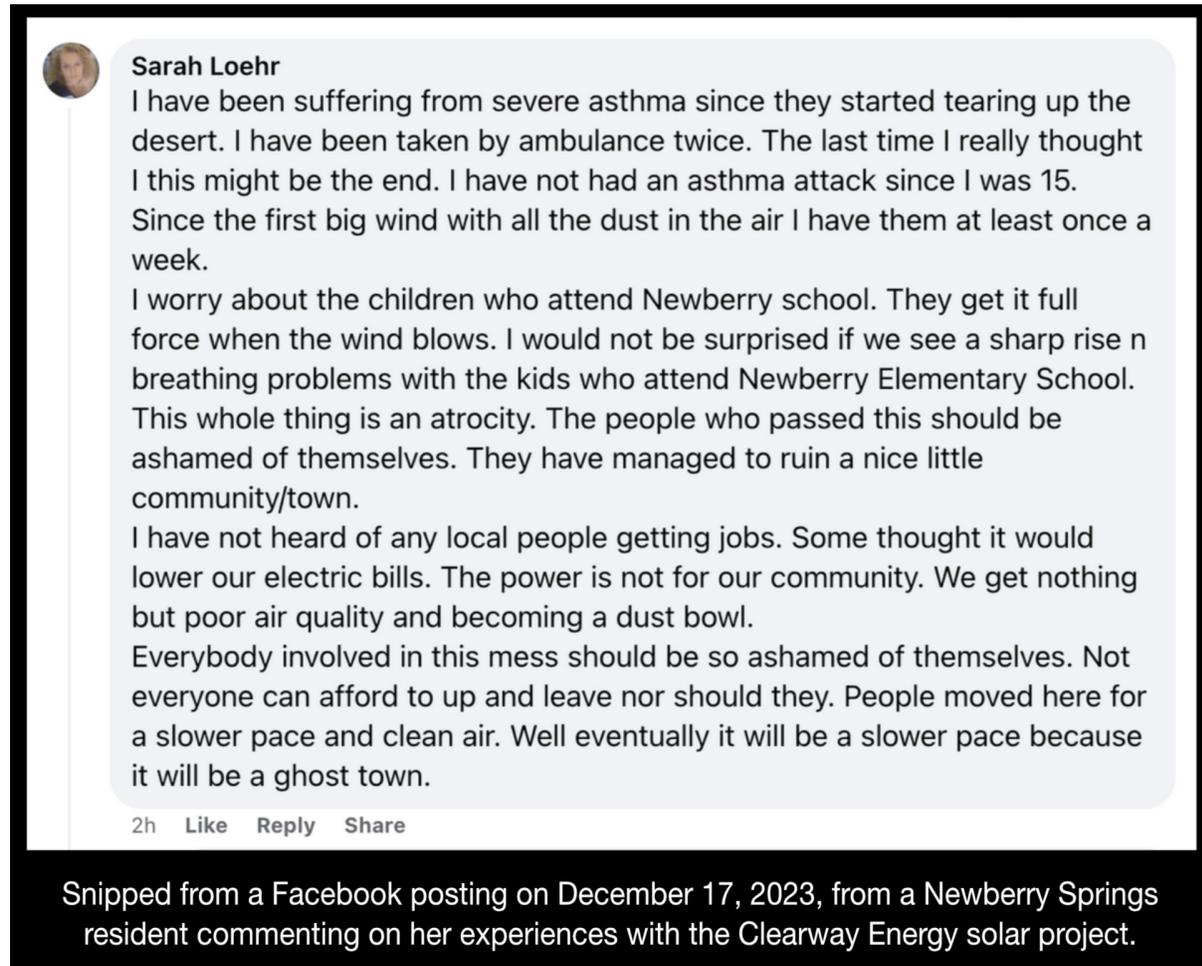
The Air Quality Study for Minneola Solar prepared by Elevated Entitlement (May 30, 2023) states, "*Under CEQA, the Mojave Desert Air Quality Management District is an expert commenting agency on air quality and related matters within its jurisdiction or impacting on its jurisdiction. Under the Federal Clean Air Act, the District has adopted federal attainment plans for ozone and PM10. The District has dedicated assets to reviewing projects to ensure that they will not: (1) cause or contribute to any new violation of any air quality standard; (2) increase the frequency or severity of any existing violation of any air quality standard; or (3) delay timely attainment of any air quality standard or any required interim emission reductions or other milestones of any federal attainment plan. These Guidelines are intended to assist persons preparing environmental analysis or review documents for any project within the jurisdiction of the District by providing background information and guidance on the preferred analysis approach.*"

The community of Newberry Springs has learned through a decade with Soitec and two years of direct experience with the Clearway project that the MDAQMD has been a complete failure in addressing extremely high levels of sand and deadly crystalline silica being emitted from the solar projects. The MDAQMD lacks adequate monitoring equipment, and it lacks funding, codes, policies, and guidelines, to enforce policing of violations. It lacks qualified personnel who care, and sadly, it lacks a willingness to meet with and protect the public which the MDAQMD is paid to do.

The MDAQMD's focus has been on combustibles and it has turned a blind eye to properly address crystalline silica particulate matter. The above lengthy quotation from the air study fails to state what the referenced "*dedicated assets*" are in reviewing projects to ensure that they will not "*cause or contribute to any new violation of any air quality standard.*" The base criteria that is being used by the MDAQMD for reviewing the siting of solar facilities is based upon construction standards for industrial buildings that are surrounded by parking pavement. Not open space facilities consisting of bladed and disturbed crystalline silica-based soil that is left open to high wind in Sand

Transport Path. The MDAQMD's check-off criteria are not relatable in properly addressing industrial solar installations. The issue is beyond being ridiculous.

As the MDAQMD has demonstrated a total inability to address the problems that Newberry Springs has experienced over the Clearway project, the MDAQMD is not capable of doing any better with the BMT Minneola Solar project than with Clearway.



**Sarah Loehr**  
I have been suffering from severe asthma since they started tearing up the desert. I have been taken by ambulance twice. The last time I really thought I this might be the end. I have not had an asthma attack since I was 15. Since the first big wind with all the dust in the air I have them at least once a week.  
I worry about the children who attend Newberry school. They get it full force when the wind blows. I would not be surprised if we see a sharp rise in breathing problems with the kids who attend Newberry Elementary School. This whole thing is an atrocity. The people who passed this should be ashamed of themselves. They have managed to ruin a nice little community/town.  
I have not heard of any local people getting jobs. Some thought it would lower our electric bills. The power is not for our community. We get nothing but poor air quality and becoming a dust bowl.  
Everybody involved in this mess should be so ashamed of themselves. Not everyone can afford to up and leave nor should they. People moved here for a slower pace and clean air. Well eventually it will be a slower pace because it will be a ghost town.

2h Like Reply Share

Snipped from a Facebook posting on December 17, 2023, from a Newberry Springs resident commenting on her experiences with the Clearway Energy solar project.

While preparing this comment letter, the above posting was noticed and is presented here as an example of what is happening in Newberry Springs.

A recent study from UC Davis sponsored by the California Air Resources Board indicates that adverse lung and heart effects are associated with particulate matter smaller than one-10th of a micron (1/25 the size of PM 2.5). This size of particulate matter can become airborne in a light breeze.

Unfortunately, the MDAQMD lacks the equipment capable of measuring these microscopic particles, which are precisely the ones that are harming the Newberry

Springs residents. To rely on the MDAQMD as a guardian for safe air quality from solar farms emitting crystalline silica within the Mojave Valley's Sand Transport Path is naive and hazardous.

An expanded wind and air quality study using equipment capable of measuring particulate matter far finer than PM 2.5, preferably PM .1, is needed in a full EIR.

Unchecked on page 9 is **Hazards & Hazardous Materials**. The proposed site is being proposed to be built upon crystalline silica inside of a Sand Transport Path. Crystalline silica is a California Proposition 65 recognized carcinogen that when the soil crust is disturbed has a propensity to become airborne in a very light wind. When inhaled by humans, crystalline silica has a similar effect on the human body as that of asbestos. Besides the lungs, crystalline silica can enter the bloodstream and damage the liver, heart, and other body organs, and in a recent study from Havard, it may contribute to dementia.

**Fugitive Dust Mitigation**

| Yes/No | Mitigation Measure                     | Mitigation Input   | Mitigation Input    | Mitigation Input    |
|--------|----------------------------------------|--------------------|---------------------|---------------------|
| No     | Soil Stabilizer for unpaved Roads      | PM10 Reduction     | PM2.5 Reduction     |                     |
| No     | Replace Ground Cover of Area Disturbed | PM10 Reduction     | PM2.5 Reduction     |                     |
| No     | Water Exposed Area                     | PM10 Reduction     | PM2.5 Reduction     | Frequency (per day) |
| No     | Unpaved Road Mitigation                | Moisture Content % | Vehicle Speed (mph) | 0.00                |
| No     | Clean Paved Road                       | % PM Reduction     | 0.00                |                     |

Fugitive Dust Mitigation chart from page 47 of the [Air Quality Study for Minneola Solar](#). Fugitive Dust Mitigation is a major environmental concern not given much consideration.

**Summary**

The County as the lead agency has misclassified the DETERMINATION for the project as not having a "significant effect" on the environment and that, "A MITIGATED NEGATIVE DECLARATION shall be prepared."

There is overwhelming evidence that Soitec and the huge Clearway solar projects have already greatly damaged the environment and the health of the downwind Newberry Springs' population by subjecting the community to very hazardous crystalline silica and heavier sand that clogs high rooftop evaporation coolers and even blocks driveways near the project.

The County's consideration of the placement of the BMT Minneola Solar site upwind

to Newberry Springs represents ongoing discrimination to intentionally increase an established hazard to an already overburdened Environmental Justice Focus Area. This is in direct violation of state law and a deliberate action to subject an economically disadvantaged designated community to repeated and unnecessary burdens and injuries.

This project will contribute to the additional spread of airborne carcinogenic crystalline silica, and as the disturbance of the soil and the removal of the creosote and other vegetation on the bajada will release sequestered carbon that has not been addressed in the IS, and as the biological impact has not been adequately addressed in the IS as community known endangered and restricted species do exist in the area, and as no wind baseline study has been performed and analyzed, and as the aesthetics will be visually impacted from Interstate-40 and a county designated Scenic Route (Historic Route 66) which is also a National Scenic Byway, and as the project's removal of a natural "greenbelt" separation to the Clearway project will further negatively impact the open space vital to the economics of desert tourism, Significant Issues do exist that have NOT been properly addressed in the IS.

As earlier stated, the project will significantly add to the cumulative negative impacts that industrial solar is having upon Newberry Springs in violation of the state's Environmental Justice codes. Further study is necessary to analyze the significant items for possible mitigation and possible relocation of the project to another site for which a proper consideration (again) has not been properly considered in the IS. The federal government has 10.8 million acres set aside for solar development in the Desert Renewable Energy Conservation Plan.

Regarding the Mojave Valley, for over a decade as the solar projects have come before the County for approval, letters like this have clearly defined that Environmental Impact Reports are required on developments that may have a significant impact on the cumulative effects that a project may have upon neighboring communities, especially communities like Newberry Springs, a disproportionately burden, low-income community that already had a previous higher than normal hospitalization rate in the county for respiratory ailments. Only the Clearway project came forth with an EIR, but that EIR was riddled with ignored errors and omissions that were quickly accepted and rubber-stamped by the County as the lead agency for the report.

The State Attorney General has opined that under CEQA, projects such as BMT Minneola Solar must have an Environment Impact Review that fully weighs the cumulative effects of the development upon neighboring communities.

*As stated in the Attorney General's Opinion of July 10, 2012, "Under CEQA, "public agencies should not approve as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects ..." (Pub. Res. Code, § 21002.) Human beings are an integral part of the "environment." An agency is required to find that a "project*

*may have a 'significant effect on the environment'" if, among other things, "[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly[.] (Pub. Res. Code, § 21083, subd. (b)(3); see also CEQA Guidelines, § 15126.2 [noting that a project may cause a significant effect by bringing people to hazards].)"*

According to the State Attorney General's website (at <https://oag.ca.gov/environment/sb1000>), *"Low-income communities and communities of color often bear a disproportionate burden of pollution and associated health risks. Environmental justice seeks to correct this inequity by reducing the pollution experienced by these communities and ensuring their input is considered in decisions that affect them. "Environmental justice" is defined in California law as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (Cal. Gov. Code, § 65040.12, subd. (e).)"*

Newberry Springs is the poster child of a low-income community facing a history of *"disproportionate burden of pollution and associated health risks"* due to a County that historically refuses to listen to its residents.

After over a decade of refusing to recognize Environmental Justice, the County is now considering the updating of its Development Code by including SB 1000 language. However, despite SB 1000 existing since 2016, the County has ignored residents' pleas to include it in the consideration of numerous solar developments located in Sand Transport Paths. In drafting its Environmental Justice language, the County has lacked the courtesy to acknowledge multiple requests from residents to hold one or two workshops to include the residents' input. The residents are upset that the County's draft as proposed is lacking as presented.

The BMT 'DETERMINATION' that is signed by Chris Warrick, County Supervising Planner, and Jim Morrissey, County Planner, demonstrates a fast-tracking and a mishandling of the State of California's laws and regulations and the County's regulations that have not been properly adhered to.

This project, if built, will further negatively impact the local health of county residents and their livestock and pets, the economy, viewscape, and wildlife. Industrial solar facilities are not compatible in Sand Transport Paths that have carcinogenic crystalline silica.

Respectfully submitted,

**TS**

Ted Stimpfel, Executive Director  
Newberry Springs Community Alliance

bcc: Martha Guzman Aceves, Regional 9 Administrator, US EPA  
California Attorney General, Please attach to Complaint submitted 11/14/23.  
State Clearing House Ref. #2023110357  
Jeff Lindbery, CARB  
Brad Poiriez, Exec. Dir. MDAQMD  
Clerk of the Board, San Bernardino County  
Supervisor Dawn Rowe, SB Third District  
Mark Wardlaw, SB LUSD Director  
Jonathan Weldy, SB Planning Commissioner  
Pat Flanagan, Director MBCA  
Fred Stearn, Residential Activist  
Mark Gutglueck, San Bernardino County Sentinel  
Newberry Community Services District  
Newberry Springs Chamber of Commerce

**From:** [Newberry Springs](#)  
**To:** [Wardlaw, Mark](#)  
**Subject:** URGENT: Environmental Justice Violation  
**Date:** Monday, May 6, 2024 9:26:03 AM  
**Attachments:** [AG Fact Sheet.pdf](#)  
[BMT Minneola Solar Opposition 121823.pdf](#)  
[Environmental-Justice-Letter-To-SBC.pdf](#)

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You don't often get email from newberrysprings@mail.com. [Learn why this is important](#)

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

Dear Mr. Wardlaw,

While the County has not adopted an Environmental Justice ordinance for EJ Focus Areas, Environmental Justice is State Law.

The Planning Commission appears to be positioned to approve this coming Thursday, May 9, 2023, the BMT Minneola Solar project (Project No.: PROJ-2022-00071) based upon a LUSD staff recommendation.

This recommendation ignores the opposition contents of a letter that I e-mailed to the then assigned LUSD planner, Jim Morrissey, on December 18, 2023, that was also cc'd to you. Please review.

This project flagrantly violates Environmental Justice!

The staff recommendation further ignores the Attorney General's letters dated July 10, 2012, and August 15, 2019, to the County regarding Environmental Justice, and a letter dated December 17, 2023, regarding the BMT Minneola Solar project from the Desert Tortoise Council.

This project will seriously impact the residents immediately east of the project and the downwind community of Newberry Springs. The staff report egregiously ignores the adverse impacts on the neighboring residents.

The County's permitting of the 5.5 square miles Clearway Energy project can only be considered as an epic Environmental Justice violation. The BMT Minneola Solar project is a continuing violation of cumulatively adding to the disturbance and release of carcinogenic silica dust in a Sand Transport Path upon a recognized disadvantaged community. The staff report ignores this factor.

As the staff recommendation of this project may have a future blowback upon your department, I wanted to alert you to the problem for a possible correction.

Best wishes,

Ted Stimpfel

Newberry Springs

Attachments: Letter of Opposition 12/18/23

Attorney General's letter 7/10/12

Attorney General's letter 8/15/19

# **Newberry Springs Community Alliance**

P.O. Box 11  
Newberry Springs, CA 92365  
newberrysprings@mail.com

December 18, 2023

County of San Bernardino  
Attn: Jim Morrissey, Planner  
Land Use Services Department, Planning Division  
385 N. Arrowhead Ave. 1st Floor  
San Bernardino, CA 92415

Sent via e-mail: Jim.Morrissey@lus.sbcounty.gov

## **Public Comment in Opposition to the BMT Minneola Solar Project PROJ-2022-00071 SCH Number 2023110357**

### **Introduction**

Founded by residents and property owners in Newberry Springs, California, the Newberry Springs Community Alliance is a grassroots Community Based Organization (CBO) dedicated to protecting the community's quality of life and environmental health. The Alliance opposes the BMT Minneola Solar project, believing it would negatively impact the area where its members live, work, and play.

### **Preface**

This letter is being prefaced with the fact that San Bernardino County's ('County') operation is under the supervision and control of the County's Board of Supervisors.

The County was extremely negligent with its earlier siting in the Mojave Valley the Solutions for Utilities, Inc. Phase 1 & 2 (now 'Soitec') solar project, the Daggett Solar Power Facility project (hereinafter 'Clearway'), the Daggett Solar 66 Project, and the Daggett Solar 33 Project.

As testified to by members of the community of Newberry Springs, and others, on each of these projects during their public licensing debate, the Mojave Valley has a Sand Transport Path, that prohibits the safe establishment of any industrial photovoltaic solar facility upwind to Newberry Springs.

The negative impacts of these County-authorized solar facilities, particularly the decade-old Soitec, and the now nearly completed Clearway facility, have been more destructive to Newberry Springs than the dire prior projections that were forecasted to the County during the permitting process by the residents. The residents live in and understand their natural elements.

Damages from the County-placed solar projects in the Mojave Valley are being recorded and archived by the residents.

Please take note that the Board of Supervisors is directly responsible for the negligent permitting of these hazardous solar facilities. By state law, as elected officials, the Board of Supervisors hold a fiduciary relationship with their constituents. In short, this means that the Board members have the legal obligation to always act in the best interests of the people they represent. This fundamental duty is based on the legal principle that elected officials hold a position of trust and responsibility to their constituents. (Thomson v. Call, supra, 38 Cal.3d at p. 648; Stigall v. City of Taft (1962) 58 Cal. 2d 565, 569 [25 Cal. Rptr. 441, 375 P.2d 289].)

Note, the legal obligation is for the performance of the best interests of the constituents, not to outside solar developers, the people in other areas of the state, or the promoters of the Climate Change theory in Sacramento who are trying to save the world. In a recent California Supreme Court decision, the Court recognized that the common law rule in Government Code § 1090 recognized the truism that a person cannot serve two masters simultaneously. (Lexin v. Superior Court, 47 Cal. 4th 1050, 1073 (2010); see, also, Thomson v. Call, 35 Cal. 3d 633, 63.)

The County Supervisors' breach of their fiduciary duty to protect the safety of Newberry Springs residents may play a major role should the residents seek recovery for their severe health and property damages. The Supervisors' actions and inactions have resulted in an unconstitutional taking of the constituents' rights, including the right to health, property rights, and the right to a clean environment. The placement of industrial solar facilities in Sand Transport Paths has caused residents in the Mojave Valley, the Morongo Basin, and elsewhere to suffer from respiratory problems, decreased property values, and environmental damage.

Environmental and Social Justice has been illegally suppressed by the County in its previous solar considerations in the Mojave Valley. The County, as the lead agency behind Clearway's Environmental Impact Report ('EIR'), has claimed (contrary to the public's written input) that "*CEQA requires an analysis of physical impacts to the environment; it does not require analysis of social and economic impacts.*" This printed response is dead wrong and the Attorney General has directly advised the County on it a decade earlier. Further ignored are case laws and state law, such as portions of California Government Code § 65040.12. California Senate Bill 1000 (2016) on Environmental Justice does exist.

Contrary to previous County response statements, people are defined as part of the environment. This has been emphatically stated in an Attorney General Opinion dated July 10, 2012. I hereby attach by reference, as though fully set forth hereto, the Attorney General's Opinion, Environmental Justice at the Local and Regional Level, Legal Background. It can be located at the URL:

[https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej\\_fact\\_sheet.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf)

Despite this Opinion having been repeatedly hammered by members of the public to the County's Land Use Services Department, the Planning Commissioners, and the Board of Supervisors, the Opinion has been systematically ignored by all County officials in favor of the developers. The County's injuries to the public have been willful, reckless, and wanton.

The community of Newberry Springs has been grossly overburdened by solar facilities being placed upwind that have disturbed the desert soil crust within a Sand Transport Path. The soil disturbances by the solar projects are allowing ever-increasing amounts of aeolian sand and deadly crystalline silica dust (airborne particles of respirable size) of 'high to very high' rated blow propensity to regularly blanket the community. Since 1988, crystalline silica has been listed under California Proposition 65 as a chemical known to the State to cause cancer.

The crystalline silica causes very similar damage to the lungs and other body organs as asbestos and the microscopic crystalline silica can stay suspended in the air for days after a light wind. Winds are common and regularly blow in the Mojave Valley.

The Soitec solar project, the first industrial solar project within Newberry Springs, should have been a wake-up for the County. This 27-acre project has caused severe sand drifts and literal chaos to the residences directly east of the project. Yet, despite having full knowledge of this damage in a Sand Transport Path, the County has venomously doubled down against Newberry Springs by authorizing the 5.5-square-mile Clearway project upwind and within the community. The County then tripled down by authorizing the Daggett Solar 66 Project, and then again quad down with the Daggett Solar 33 Project. Now comes the BMT Minneola Solar.

Newberry Springs has many young and elderly residents who are acutely sensitive receptors to the hazardous silica dust that is being emitted by the solar projects. Before the solar farms, Newberry Springs residents had a higher rate of hospitalizations for respiratory ailments than the county average. The solar projects have now greatly burdened the complexity of the respiratory problems.

The Attorney General's Opinion of July 10, 2012, clearly states, "*In addition, CEQA requires a lead agency to consider whether a project's effects, while they might appear limited on their own, are "cumulatively considerable" and therefore significant. (Pub. Res. Code, § 21083, subd. (b)(3).) "[C]umulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.*" (Id.) This requires a local lead agency to determine whether pollution from a proposed project will have significant effects on any nearby communities, when considered together with any pollution burdens those communities already are bearing, or may bear from probable future projects. Accordingly, the fact that an area already is polluted makes it more likely that any additional, unmitigated pollution will be significant. Where there already is a high pollution burden on a

*community, the "relevant question" is "whether any additional amount" of pollution "should be considered significant in light of the serious nature" of the existing problem. (Hanford, supra, 221 Cal.App.3d at 661; see also Los Angeles Unified School Dist. v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1025 [holding that "the relevant issue ... is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools."])*

The injuries to Newberry Springs from these projects are ongoing and a few residents are beginning to address the matter with the developer. It is reasonable to expect that the majority of the residents will eventually want the County to reimburse them for the health injuries and the property damages that are being unlawfully inflicted upon them. The County had the responsibility to protect them and maliciously refused.

The County is responsible for knowingly permitting the poisoning of the air that the residents must breathe. Like PG&E's poisoning of the water in Hinkley and then buying up the land, the County now needs to mitigate its caused injuries by purchasing the homes and businesses in Newberry Springs.

PG&E delivered bottled water to the residents of Hinkley, however, the County can not supply 24-hour bottled safe air to the residents of Newberry Springs.

The Mojave Valley has been permitted by the Board of Supervisors to be the dumping grounds for photovoltaic solar facilities despite the County's full knowledge of the carcinogenic crystalline silica danger. The BMT Minneola Solar's **Initial Study ('IS')** is yet another malicious sham report to allow more toxic hazards to be placed on Newberry Springs.

Similarly, as a CONDITION OF APPROVAL of the Daggett Solar Power Facility (P2017679) Conditional Use Permit, the owner (Clearway) is required under item 19, Continuous Maintenance, "*The Project property owner shall continually maintain the property so that it is not visually derelict **and not dangerous to the health, safety and general welfare of both on-site users (e.g. employees) and surrounding properties.** The property owner shall ensure that all facets of the development are regularly inspected, maintained and that any defects are timely repaired. Among the elements to be maintained, include but are not limited to:*

(Selected) c. *Dust control: The developer shall maintain dust control measures on any **undeveloped** areas where soil stabilization is required.*" (Bold emphasis added.)

Note: Whenever the residents have complained to the County of massive sand and dust blowing from the Clearway project, at times so bad that the California Highway Patrol has had to close a major community thoroughfare, the County has refused to act to police its above CONDITION. Instead, County officials have repeatedly flipped the

residents to the Mojave Desert Air Quality Management District (MDAQMD), claiming that the MDAQMD handles air quality complaints. Likewise, the MDAQMD has been inept (elaborated below). Under the selected subsection 'c' (above) the obvious loophole is that the entire project is considered developed, therefore, the developer is given a free pass as 'c' is about undeveloped areas.

Another CONDITION OF APPROVAL for the Clearway project is item 18 which reads in part, "*Additional Permits. The developer shall ascertain compliance with all laws, ordinances, regulations and any other requirements of Federal, State, County and Local agencies that may apply for the development and operation of the approved land use.*"

As covered in this letter, the developer has trumped upon and ignored Federal, State, and County health and safety regulations with impunity.

### **Points of Opposition**

- While the promoters of BMT Solar are presenting the proposal under the guise of a Community Oriented Renewable Energy (CORE) project, it is not a project that the neighbors across the road from it want. Nor does Newberry Springs want it. This project would only add to the cumulative carcinogenic crystalline silica dust. The project represents an additional spread of a recognized toxic matter upon an Environmental Justice Focus Area. The project is in direct conflict with Social and Environmental Justice, and the project by its placement requires by law a full Environment Impact Study.

- The project's IS fails to address and establish a reasonable ability for the County to declare an end-to-life determination on the project and to subject the project to an environmentally friendly removal. The current language is inadequate. The existing 27-acre Soitec solar project in Newberry Springs, after only a decade, is now a broken-down facility and a community eyesore that needs to be removed. To avoid or delay the expense of removal or to bring the facility up to proper operation standards, the owner reportedly has declared the site an experimental facility. San Bernardino County has failed to inspect and hold the owner responsible for the purpose of the licensed permit.

The County lacks and needs stronger permit language to decommission a derelict solar facility and it needs the willingness to inspect and decommission a facility should a solar operation fall below a reasonable standard of operational care (which needs to be defined in the Code) for which a permit was issued. Failure to have done this may now lead to the 5.5-square-mile Clearway project, covered with hazardous photovoltaic materials, to be later abandoned for decades if neglect is found to be more economical for the owner.

The County needs muscle to prevent owners from walking away from maintenance and continued operation for which a facility is permitted.



Junkyard of inoperative Soitec solar trackers.

• INITIAL STUDY/MITIGATED NEGATIVE DECLARATION - ENVIRONMENTAL CHECKLIST FORM

This form is faulty regarding the environmental factors potentially affected.

**ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

The environmental factors checked below will be potentially affected by this Project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

|                                     |                                           |                                     |                                                    |                                     |                                                    |
|-------------------------------------|-------------------------------------------|-------------------------------------|----------------------------------------------------|-------------------------------------|----------------------------------------------------|
| <input type="checkbox"/>            | <a href="#">Aesthetics</a>                | <input type="checkbox"/>            | <a href="#">Agriculture and Forestry Resources</a> | <input type="checkbox"/>            | <a href="#">Air Quality</a>                        |
| <input checked="" type="checkbox"/> | <a href="#">Biological Resources</a>      | <input checked="" type="checkbox"/> | <a href="#">Cultural Resources</a>                 | <input type="checkbox"/>            | <a href="#">Energy</a>                             |
| <input type="checkbox"/>            | <a href="#">Geology/Soils</a>             | <input type="checkbox"/>            | <a href="#">Greenhouse Gas Emissions</a>           | <input type="checkbox"/>            | <a href="#">Hazards &amp; Hazardous Materials</a>  |
| <input type="checkbox"/>            | <a href="#">Hydrology/Water Quality</a>   | <input type="checkbox"/>            | <a href="#">Land Use/Planning</a>                  | <input type="checkbox"/>            | <a href="#">Mineral Resources</a>                  |
| <input type="checkbox"/>            | <a href="#">Noise</a>                     | <input type="checkbox"/>            | <a href="#">Population/Housing</a>                 | <input type="checkbox"/>            | <a href="#">Public Services</a>                    |
| <input type="checkbox"/>            | <a href="#">Recreation</a>                | <input type="checkbox"/>            | <a href="#">Transportation</a>                     | <input checked="" type="checkbox"/> | <a href="#">Tribal Cultural Resources</a>          |
| <input type="checkbox"/>            | <a href="#">Utilities/Service Systems</a> | <input type="checkbox"/>            | <a href="#">Wildfire</a>                           | <input type="checkbox"/>            | <a href="#">Mandatory Findings of Significance</a> |

Above, is a snippet of the page 9 chart of the BMT Initial Study/Mitigated Negative Declaration.

Unchecked on page 9 is the **Aesthetics** of the desert viewscape. The IS ignores that the site is within view of Interstate-40 and adjacent to the state's Historic Route 66, a county Scenic Route, and now an esteemed National Scenic Byway. The IS further takes the position that "*most of the surrounding parcels are vacant and undeveloped.*" The IS fails to account that the vast openness of the Mojave Valley is what has driven

the tourism economics of the area. The continued placement of photovoltaic solar facilities in the Mojave Valley is destroying the area's tourism on which the economics of the area largely depends. The further degrading of the valley with photovoltaic solar will have a significant impact. The project site is situated adjacent to the Clearway 5.5-square-mile photovoltaic placement. Too much of an eyesore is too much saturation. A full EIR is necessary to properly study and fully address the cumulative effect of the Aesthetics issue as it is not 'Potentially Significant,' it is Significant.

Unchecked on page 9 is **Geology/Soils**. The proposed site's aeolian soil is of high erodibility with a "*high to very high*" fugitive dust rating in a Sand Transport Path that is a major health hazard to the adjacent and downwind Environmental Justice Focus Area of Newberry Springs. The lack of the IS to properly address the soil is a major omission and it underscores the exceptionally poor understanding and standard of care that is behind the IS.

Also, not properly addressed in the IS and analyzed is the release of massive amounts of sequestered carbon from the project's disturbance of the site's ancient topsoil. The background purpose of solar installations is to address the Climate Change theory and therefore the reduction of carbon in the atmosphere. Yet, by disturbing the undisturbed topsoil and the removal of creosote bush and other vegetation that stabilizes the soil, sequestered carbon will be released into the atmosphere. This mobilization of carbon is exasperated by being in a Sand Transport Path. The IS fails to factor in and address the significant element of carbon release. For additional background on this vital concern, see:

<http://newberryspringsinfo.com/Alliance/Sequestration-Letter.pdf>



A portion of the Clearway Energy's Daggett Solar Power 5.5 sq. mile habitat cover-up.

Unchecked on page 9 is **Wildlife**. This low-area portion of the Mojave Valley has a rich history of wildlife that includes Endangered and Restricted species. The wildlife

research done for the adjacent 5.5-square-mile Clearway project that devastated much of the valley's wildlife was only conducted by a couple of biologists over a few part days during periods of extreme summer heat. Wildlife during that time were in burrows for protection from the desert's extreme heat and well hidden from their predators. Naturally, the biologists didn't see anything damaging for their employer. The limited number of biologists and the limited number of hours for the 5.5 sq. mile site was a sham. Newberry Springs resident, Mike Matson, a Newberry Community Services District board member, is a local expert on the desert's reptiles and he can be contacted for detailed information regarding the Mojave Valley's wildlife burial.

Unchecked on page 9 is **Air Quality**. The public will be further damaged by the proposed BMT project from the cumulative effect of this site having its desert topsoil crust disturbed and allowing the Sand Transport Path's winds to spread further sand and crystalline silica upon the adjacent and downwind Environmental Justice Focus Area population.

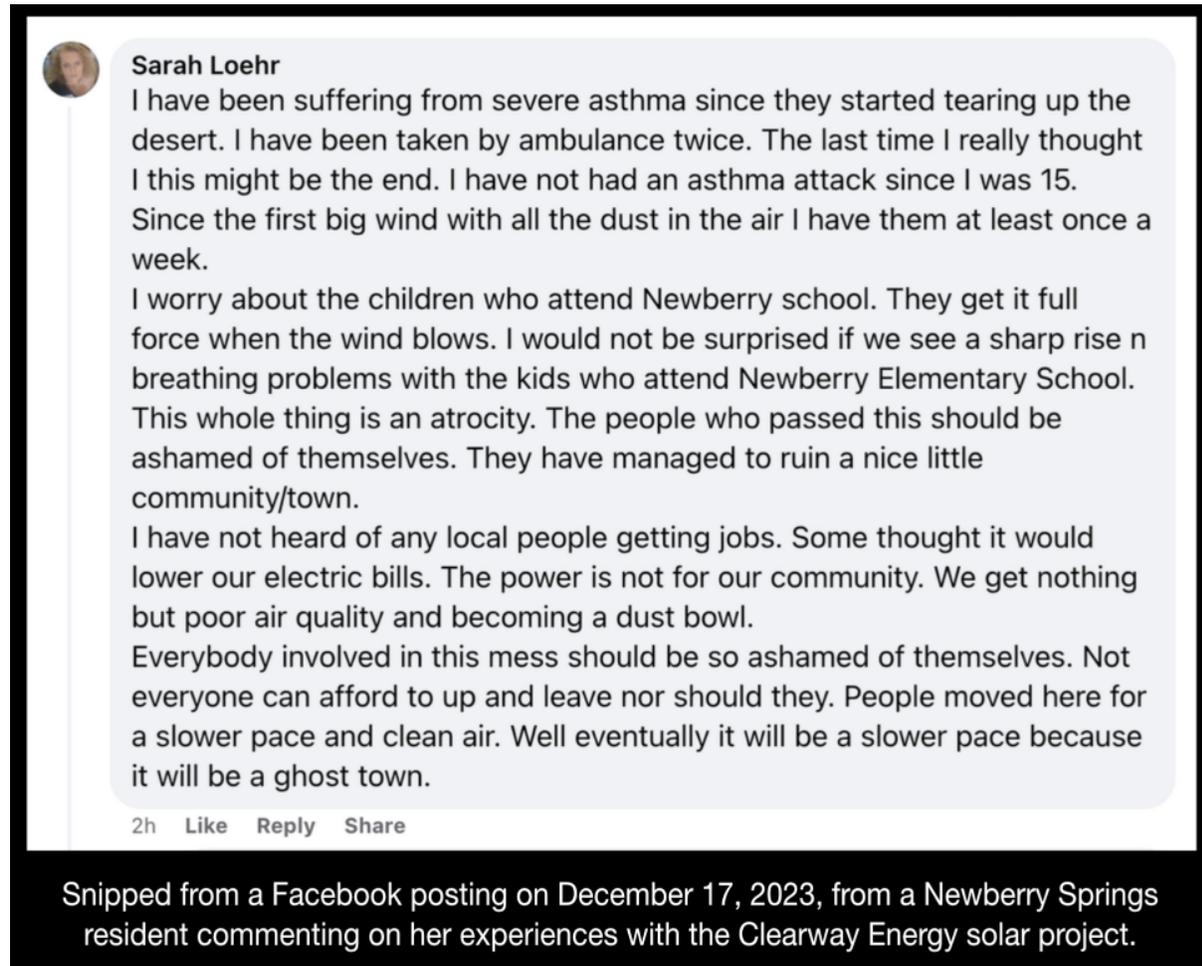
The Air Quality Study for Minneola Solar prepared by Elevated Entitlement (May 30, 2023) states, "*Under CEQA, the Mojave Desert Air Quality Management District is an expert commenting agency on air quality and related matters within its jurisdiction or impacting on its jurisdiction. Under the Federal Clean Air Act, the District has adopted federal attainment plans for ozone and PM10. The District has dedicated assets to reviewing projects to ensure that they will not: (1) cause or contribute to any new violation of any air quality standard; (2) increase the frequency or severity of any existing violation of any air quality standard; or (3) delay timely attainment of any air quality standard or any required interim emission reductions or other milestones of any federal attainment plan. These Guidelines are intended to assist persons preparing environmental analysis or review documents for any project within the jurisdiction of the District by providing background information and guidance on the preferred analysis approach.*"

The community of Newberry Springs has learned through a decade with Soitec and two years of direct experience with the Clearway project that the MDAQMD has been a complete failure in addressing extremely high levels of sand and deadly crystalline silica being emitted from the solar projects. The MDAQMD lacks adequate monitoring equipment, and it lacks funding, codes, policies, and guidelines, to enforce policing of violations. It lacks qualified personnel who care, and sadly, it lacks a willingness to meet with and protect the public which the MDAQMD is paid to do.

The MDAQMD's focus has been on combustibles and it has turned a blind eye to properly address crystalline silica particulate matter. The above lengthy quotation from the air study fails to state what the referenced "*dedicated assets*" are in reviewing projects to ensure that they will not "*cause or contribute to any new violation of any air quality standard.*" The base criteria that is being used by the MDAQMD for reviewing the siting of solar facilities is based upon construction standards for industrial buildings that are surrounded by parking pavement. Not open space facilities consisting of bladed and disturbed crystalline silica-based soil that is left open to high wind in Sand

Transport Path. The MDAQMD's check-off criteria are not relatable in properly addressing industrial solar installations. The issue is beyond being ridiculous.

As the MDAQMD has demonstrated a total inability to address the problems that Newberry Springs has experienced over the Clearway project, the MDAQMD is not capable of doing any better with the BMT Minneola Solar project than with Clearway.



The image shows a screenshot of a Facebook comment. On the left is a circular profile picture of Sarah Loehr. To the right of the picture is her name, "Sarah Loehr". Below her name is the text of her comment, which is a multi-paragraph expression of concern and frustration about the Clearway Energy solar project's impact on the local community, particularly regarding air quality and health. At the bottom of the comment box, there are icons for "Like", "Reply", and "Share", along with the text "2h". Below the screenshot, a black box contains white text that reads: "Snipped from a Facebook posting on December 17, 2023, from a Newberry Springs resident commenting on her experiences with the Clearway Energy solar project."

**Sarah Loehr**  
I have been suffering from severe asthma since they started tearing up the desert. I have been taken by ambulance twice. The last time I really thought I this might be the end. I have not had an asthma attack since I was 15. Since the first big wind with all the dust in the air I have them at least once a week.  
I worry about the children who attend Newberry school. They get it full force when the wind blows. I would not be surprised if we see a sharp rise in breathing problems with the kids who attend Newberry Elementary School. This whole thing is an atrocity. The people who passed this should be ashamed of themselves. They have managed to ruin a nice little community/town.  
I have not heard of any local people getting jobs. Some thought it would lower our electric bills. The power is not for our community. We get nothing but poor air quality and becoming a dust bowl.  
Everybody involved in this mess should be so ashamed of themselves. Not everyone can afford to up and leave nor should they. People moved here for a slower pace and clean air. Well eventually it will be a slower pace because it will be a ghost town.

2h Like Reply Share

Snipped from a Facebook posting on December 17, 2023, from a Newberry Springs resident commenting on her experiences with the Clearway Energy solar project.

While preparing this comment letter, the above posting was noticed and is presented here as an example of what is happening in Newberry Springs.

A recent study from UC Davis sponsored by the California Air Resources Board indicates that adverse lung and heart effects are associated with particulate matter smaller than one-10th of a micron (1/25 the size of PM 2.5). This size of particulate matter can become airborne in a light breeze.

Unfortunately, the MDAQMD lacks the equipment capable of measuring these microscopic particles, which are precisely the ones that are harming the Newberry

Springs residents. To rely on the MDAQMD as a guardian for safe air quality from solar farms emitting crystalline silica within the Mojave Valley's Sand Transport Path is naive and hazardous.

An expanded wind and air quality study using equipment capable of measuring particulate matter far finer than PM 2.5, preferably PM .1, is needed in a full EIR.

Unchecked on page 9 is **Hazards & Hazardous Materials**. The proposed site is being proposed to be built upon crystalline silica inside of a Sand Transport Path. Crystalline silica is a California Proposition 65 recognized carcinogen that when the soil crust is disturbed has a propensity to become airborne in a very light wind. When inhaled by humans, crystalline silica has a similar effect on the human body as that of asbestos. Besides the lungs, crystalline silica can enter the bloodstream and damage the liver, heart, and other body organs, and in a recent study from Havard, it may contribute to dementia.

**Fugitive Dust Mitigation**

| Yes/No | Mitigation Measure                     | Mitigation Input   | Mitigation Input    | Mitigation Input    |
|--------|----------------------------------------|--------------------|---------------------|---------------------|
| No     | Soil Stabilizer for unpaved Roads      | PM10 Reduction     | PM2.5 Reduction     |                     |
| No     | Replace Ground Cover of Area Disturbed | PM10 Reduction     | PM2.5 Reduction     |                     |
| No     | Water Exposed Area                     | PM10 Reduction     | PM2.5 Reduction     | Frequency (per day) |
| No     | Unpaved Road Mitigation                | Moisture Content % | Vehicle Speed (mph) | 0.00                |
| No     | Clean Paved Road                       | % PM Reduction     | 0.00                |                     |

Fugitive Dust Mitigation chart from page 47 of the [Air Quality Study for Minneola Solar](#). Fugitive Dust Mitigation is a major environmental concern not given much consideration.

**Summary**

The County as the lead agency has misclassified the DETERMINATION for the project as not having a "significant effect" on the environment and that, "A MITIGATED NEGATIVE DECLARATION shall be prepared."

There is overwhelming evidence that Soitec and the huge Clearway solar projects have already greatly damaged the environment and the health of the downwind Newberry Springs' population by subjecting the community to very hazardous crystalline silica and heavier sand that clogs high rooftop evaporation coolers and even blocks driveways near the project.

The County's consideration of the placement of the BMT Minneola Solar site upwind

to Newberry Springs represents ongoing discrimination to intentionally increase an established hazard to an already overburdened Environmental Justice Focus Area. This is in direct violation of state law and a deliberate action to subject an economically disadvantaged designated community to repeated and unnecessary burdens and injuries.

This project will contribute to the additional spread of airborne carcinogenic crystalline silica, and as the disturbance of the soil and the removal of the creosote and other vegetation on the bajada will release sequestered carbon that has not been addressed in the IS, and as the biological impact has not been adequately addressed in the IS as community known endangered and restricted species do exist in the area, and as no wind baseline study has been performed and analyzed, and as the aesthetics will be visually impacted from Interstate-40 and a county designated Scenic Route (Historic Route 66) which is also a National Scenic Byway, and as the project's removal of a natural "greenbelt" separation to the Clearway project will further negatively impact the open space vital to the economics of desert tourism, Significant Issues do exist that have NOT been properly addressed in the IS.

As earlier stated, the project will significantly add to the cumulative negative impacts that industrial solar is having upon Newberry Springs in violation of the state's Environmental Justice codes. Further study is necessary to analyze the significant items for possible mitigation and possible relocation of the project to another site for which a proper consideration (again) has not been properly considered in the IS. The federal government has 10.8 million acres set aside for solar development in the Desert Renewable Energy Conservation Plan.

Regarding the Mojave Valley, for over a decade as the solar projects have come before the County for approval, letters like this have clearly defined that Environmental Impact Reports are required on developments that may have a significant impact on the cumulative effects that a project may have upon neighboring communities, especially communities like Newberry Springs, a disproportionately burden, low-income community that already had a previous higher than normal hospitalization rate in the county for respiratory ailments. Only the Clearway project came forth with an EIR, but that EIR was riddled with ignored errors and omissions that were quickly accepted and rubber-stamped by the County as the lead agency for the report.

The State Attorney General has opined that under CEQA, projects such as BMT Minneola Solar must have an Environment Impact Review that fully weighs the cumulative effects of the development upon neighboring communities.

As stated in the Attorney General's Opinion of July 10, 2012, "*Under CEQA, "public agencies should not approve as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects ..."* (Pub. Res. Code, § 21002.) *Human beings are an integral part of the "environment."* An agency is required to find that a "project

*may have a 'significant effect on the environment'" if, among other things, "[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly[.] (Pub. Res. Code, § 21083, subd. (b)(3); see also CEQA Guidelines, § 15126.2 [noting that a project may cause a significant effect by bringing people to hazards].)"*

According to the State Attorney General's website (at <https://oag.ca.gov/environment/sb1000>), *"Low-income communities and communities of color often bear a disproportionate burden of pollution and associated health risks. Environmental justice seeks to correct this inequity by reducing the pollution experienced by these communities and ensuring their input is considered in decisions that affect them. "Environmental justice" is defined in California law as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (Cal. Gov. Code, § 65040.12, subd. (e).)"*

Newberry Springs is the poster child of a low-income community facing a history of *"disproportionate burden of pollution and associated health risks"* due to a County that historically refuses to listen to its residents.

After over a decade of refusing to recognize Environmental Justice, the County is now considering the updating of its Development Code by including SB 1000 language. However, despite SB 1000 existing since 2016, the County has ignored residents' pleas to include it in the consideration of numerous solar developments located in Sand Transport Paths. In drafting its Environmental Justice language, the County has lacked the courtesy to acknowledge multiple requests from residents to hold one or two workshops to include the residents' input. The residents are upset that the County's draft as proposed is lacking as presented.

The BMT 'DETERMINATION' that is signed by Chris Warrick, County Supervising Planner, and Jim Morrissey, County Planner, demonstrates a fast-tracking and a mishandling of the State of California's laws and regulations and the County's regulations that have not been properly adhered to.

This project, if built, will further negatively impact the local health of county residents and their livestock and pets, the economy, viewscape, and wildlife. Industrial solar facilities are not compatible in Sand Transport Paths that have carcinogenic crystalline silica.

Respectfully submitted,

**TS**

Ted Stimpfel, Executive Director  
Newberry Springs Community Alliance

bcc: Martha Guzman Aceves, Regional 9 Administrator, US EPA  
California Attorney General, Please attach to Complaint submitted 11/14/23.  
State Clearing House Ref. #2023110357  
Jeff Lindbery, CARB  
Brad Poiriez, Exec. Dir. MDAQMD  
Clerk of the Board, San Bernardino County  
Supervisor Dawn Rowe, SB Third District  
Mark Wardlaw, SB LUSD Director  
Jonathan Weldy, SB Planning Commissioner  
Pat Flanagan, Director MBCA  
Fred Stearn, Residential Activist  
Mark Gutglueck, San Bernardino County Sentinel  
Newberry Community Services District  
Newberry Springs Chamber of Commerce



## Environmental Justice at the Local and Regional Level Legal Background

Cities, counties, and other local governmental entities have an important role to play in ensuring environmental justice for all of California's residents. Under state law:

“[E]nvironmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

(Gov. Code, § 65040.12, subd. (e).) Fairness in this context means that the *benefits* of a healthy environment should be available to everyone, and the *burdens* of pollution should not be focused on sensitive populations or on communities that already are experiencing its adverse effects.

Many local governments recognize the advantages of environmental justice; these include healthier children, fewer school days lost to illness and asthma, a more productive workforce, and a cleaner and more sustainable environment. Environmental justice cannot be achieved, however, simply by adopting generalized policies and goals. Instead, environmental justice requires an ongoing commitment to identifying existing and potential problems, and to finding and applying solutions, both in approving specific projects and planning for future development.

There are a number of state laws and programs relating to environmental justice. This document explains two sources of environmental justice-related responsibilities for local governments, which are contained in the Government Code and in the California Environmental Quality Act (CEQA).

### Government Code

Government Code section 11135, subdivision (a) provides in relevant part:

No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state....

While this provision does not include the words “environmental justice,” in certain circumstances, it can require local agencies to undertake the same consideration of fairness in the distribution of environmental benefits and burdens discussed above. Where, for example, a general plan update is funded by or receives financial assistance from the state or a state agency, the local government should take special care to ensure that the plan's goals, objectives, policies

and implementation measures (a) foster equal access to a clean environment and public health benefits (such as parks, sidewalks, and public transportation); and (b) do not result in the unmitigated concentration of polluting activities near communities that fall into the categories defined in Government Code section 11135.<sup>1</sup> In addition, in formulating its public outreach for the general plan update, the local agency should evaluate whether regulations governing equal “opportunity to participate” and requiring “alternative communication services” (*e.g.*, translations) apply. (See Cal. Code Regs., tit. 22, §§ 98101, 98211.)

Government Code section 11136 provides for an administrative hearing by a state agency to decide whether a violation of Government Code section 11135 has occurred. If the state agency determines that the local government has violated the statute, it is required to take action to “curtail” state funding in whole or in part to the local agency. (Gov. Code, § 11137.) In addition, a civil action may be brought in state court to enforce section 11135. (Gov. Code, § 11139.)

### **California Environmental Quality Act (CEQA)**

Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects ....” (Pub. Res. Code, § 21002.) Human beings are an integral part of the “environment.” An agency is required to find that a “project may have a ‘significant effect on the environment’” if, among other things, “[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly[.]” (Pub. Res. Code, § 21083, subd. (b)(3); see also CEQA Guidelines,<sup>2</sup> § 15126.2 [noting that a project may cause a significant effect by bringing people to hazards].)

CEQA does not use the terms “fair treatment” or “environmental justice.” Rather, CEQA centers on whether a project may have a significant effect on the physical environment. Still, as set out below, by following well-established CEQA principles, local governments can further environmental justice.

#### **CEQA’s Purposes**

The importance of a healthy environment for all of California’s residents is reflected in CEQA’s purposes. In passing CEQA, the Legislature determined:

- “The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.” (Pub. Res. Code, § 21000, subd. (a).)
- We must “identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds from being reached.” (*Id.* at subd. (d).)

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<sup>1</sup> To support a finding that such concentration will not occur, the local government likely will need to identify candidate communities and assess their current burdens.

<sup>2</sup> The CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000, et seq.) are available at <http://ceres.ca.gov/ceqa/>.

- “[M]ajor consideration [must be] given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.” (*Id.* at subd. (g).)
- We must “[t]ake all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.” (Pub. Res. Code, § 21001, subd. (b).)

Specific provisions of CEQA and its Guidelines require that local lead agencies consider how the environmental and public health burdens of a project might specially affect certain communities. Several examples follow.

### Environmental Setting and Cumulative Impacts

There are a number of different types of projects that have the potential to cause physical impacts to low-income communities and communities of color. One example is a project that will emit pollution. Where a project will cause pollution, the relevant question under CEQA is whether the environmental effect of the pollution is significant. In making this determination, two long-standing CEQA considerations that may relate to environmental justice are relevant – setting and cumulative impacts.

It is well established that “[t]he significance of an activity depends upon the setting.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 [citing CEQA Guidelines, § 15064, subd. (b)]; see also *id.* at 721; CEQA Guidelines, § 15300.2, subd. (a) [noting that availability of listed CEQA exceptions “are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.”]) For example, a proposed project’s particulate emissions might not be significant if the project will be located far from populated areas, but may be significant if the project will be located in the air shed of a community whose residents may be particularly sensitive to this type of pollution, or already are experiencing higher-than-average asthma rates. A lead agency therefore should take special care to determine whether the project will expose “sensitive receptors” to pollution (see, e.g., CEQA Guidelines, App. G); if it will, the impacts of that pollution are more likely to be significant.<sup>3</sup>

In addition, CEQA requires a lead agency to consider whether a project’s effects, while they might appear limited on their own, are “cumulatively considerable” and therefore significant. (Pub. Res. Code, § 21083, subd. (b)(3).) “[C]umulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future

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<sup>3</sup> “[A] number of studies have reported increased sensitivity to pollution, for communities with low income levels, low education levels, and other biological and social factors. This combination of multiple pollutants and increased sensitivity in these communities can result in a higher cumulative pollution impact.” Office of Environmental Health Hazard Assessment, *Cumulative Impacts: Building a Scientific Foundation* (Dec. 2010), Exec. Summary, p. ix, available at <http://oehha.ca.gov/ej/cipa123110.html>.

projects.” (*Id.*) This requires a local lead agency to determine whether pollution from a proposed project will have significant effects on any nearby communities, when considered together with any pollution burdens those communities already are bearing, or may bear from probable future projects. Accordingly, the fact that an area already is polluted makes it *more likely* that any additional, unmitigated pollution will be significant. Where there already is a high pollution burden on a community, the “relevant question” is “whether any additional amount” of pollution “should be considered significant in light of the serious nature” of the existing problem. (*Hanford, supra*, 221 Cal.App.3d at 661; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 [holding that “the relevant issue . . . is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools.”])

### The Role of Social and Economic Impacts Under CEQA

Although CEQA focuses on impacts to the physical environment, economic and social effects may be relevant in determining significance under CEQA in two ways. (See CEQA Guidelines, §§ 15064, subd. (e), 15131.) First, as the CEQA Guidelines note, social or economic impacts may lead to physical changes to the environment that are significant. (*Id.* at §§ 15064, subd. (e), 15131, subd. (a).) To illustrate, if a proposed development project may cause economic harm to a community’s existing businesses, and if that could in turn “result in business closures and physical deterioration” of that community, then the agency “should consider these problems to the extent that potential is demonstrated to be an indirect environmental effect of the proposed project.” (See *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 446.)

Second, the economic and social effects of a physical change to the environment may be considered in determining whether that physical change is significant. (*Id.* at §§ 15064, subd. (e), 15131, subd. (b).) The CEQA Guidelines illustrate: “For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant.” (*Id.* at § 15131, subd. (b); see also *id.* at § 15382 [“A social or economic change related to a physical change may be considered in determining whether the physical change is significant.”])

### Alternatives and Mitigation

CEQA’s “substantive mandate” prohibits agencies from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that would substantially lessen or avoid those effects. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.) Where a local agency has determined that a project may cause significant impacts to a particular community or sensitive subgroup, the alternative and mitigation analyses should address ways to reduce or eliminate the project’s impacts to that community or subgroup. (See CEQA Guidelines, § 15041, subd. (a) [noting need for “nexus” between required changes and project’s impacts].)

Depending on the circumstances of the project, the local agency may be required to consider alternative project locations (see *Laurel Heights Improvement Assn. v. Regents of University of*

*California* (1988) 47 Cal.3d 376, 404) or alternative project designs (see *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1183) that could reduce or eliminate the effects of the project on the affected community.

The lead agency should discuss and develop mitigation in a process that is accessible to the public and the affected community. “Fundamentally, the development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral negotiation between a project proponent and the lead agency after project approval; but rather, an open process that also involves other interested agencies and the public.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.) Further, “[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.” (CEQA Guidelines, § 15126.4, subd. (a)(2).)

As part of the enforcement process, “[i]n order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented,” the local agency must also adopt a program for mitigation monitoring or reporting. (CEQA Guidelines, § 15097, subd. (a).) “The purpose of these [monitoring and reporting] requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Federation of Hillside and Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.) Where a local agency adopts a monitoring or reporting program related to the mitigation of impacts to a particular community or sensitive subgroup, its monitoring and reporting necessarily should focus on data from that community or subgroup.

#### Transparency in Statements of Overriding Consideration

Under CEQA, a local government is charged with the important task of “determining whether and how a project should be approved,” and must exercise its own best judgment to “balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian.” (CEQA Guidelines, § 15021, subd. (d).) A local agency has discretion to approve a project even where, after application of all feasible mitigation, the project will have unavoidable adverse environmental impacts. (*Id.* at § 15093.) When the agency does so, however, it must be clear and transparent about the balance it has struck.

To satisfy CEQA’s public information and informed decision making purposes, in making a statement of overriding considerations, the agency should clearly state not only the “specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits” that, in its view, warrant approval of the project, but also the project’s “unavoidable adverse environmental effects[.]” (*Id.* at subd. (a).) If, for example, the benefits of the project will be enjoyed widely, but the environmental burdens of a project will be felt particularly by the neighboring communities, this should be set out plainly in the statement of overriding considerations.

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The Attorney General's Office appreciates the leadership role that local governments have played, and will continue to play, in ensuring that environmental justice is achieved for all of California's residents. Additional information about environmental justice may be found on the Attorney General's website at <http://oag.ca.gov/environment>.



August 15, 2019

***Via E-Mail***

Jerry L. Blum  
Countywide Plan Coordinator  
County of San Bernardino  
Land Use Services Department  
385 N. Arrowhead Avenue, 1st Floor  
San Bernardino, CA 92415  
Email: CountywidePlan@lus.sbcounty.gov

**RE: San Bernardino Countywide Plan and Draft Environmental Impact Report**

Dear Mr. Blum:

Thank you for the opportunity to comment on the County of San Bernardino's Draft General Plan Update ("Countywide Plan" or "Plan") and Draft Environmental Impact Report for the Countywide Plan ("DEIR").<sup>1</sup> The Attorney General's Office appreciates the County's efforts to comply with Senate Bill 1000 ("SB 1000") by including environmental justice goals and policies focused on reducing pollution exposure and promoting civil engagement in the Countywide Plan. (*See* Gov. Code, § 65302, subd. (h)(1)(A).) However, we are concerned that the Plan does not address several of SB 1000's requirements. We are also concerned that the DEIR, among other things, does not adequately address cumulative impacts on sensitive receptors in environmental justice communities. We submit this comment letter to urge the County to strengthen the Plan and revise the environmental analysis prior to submitting it to the San Bernardino County Board of Supervisors for consideration.

**I. BACKGROUND ON ENVIRONMENTAL JUSTICE AND SB 1000**

Low-income communities and communities of color often bear a disproportionate burden of pollution and associated health risks when compared to their more affluent neighbors. This inequity can be addressed through environmental justice, which is defined by California law as

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<sup>1</sup> The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (*See* Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 1415.)

“the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code, § 65040.12, subd. (e).) Environmental justice aims to correct the legacy of concentrating pollution and other hazards in or near low-income communities of color by reducing these hazards and involving the impacted communities in any decisions that affect their environment or health.

In an effort to promote environmental justice through the local land use planning process, the California Legislature passed Senate Bill 1000 in 2016. SB 1000 ensures that local governments take into account pollution burdens and other hazards experienced by communities within their jurisdiction that are disproportionately exposed to such hazards. The purpose of SB 1000 is to make environmental justice a real and vital part of the planning process by promoting transparency and public engagement in local governments’ planning and decision-making processes, reducing harmful pollutants and associated health risks in environmental justice communities, and encouraging equitable access to health-inducing benefits, such as healthy food options, housing, and recreation.

If a city or county adopts or updates two or more elements of its general plan after January 1, 2018, SB 1000 requires the local government to first identify any “disadvantaged communities” in its jurisdiction. (Gov. Code, § 65302, subd. (h)(1)-(2).) SB 1000 defines “disadvantaged communities” as: (1) “an area identified by the California Environmental Protection Agency (CalEPA) pursuant to Section 39711 of the Health and Safety Code”;<sup>2</sup> or (2) “an area that is a low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation.”<sup>3</sup> (*Id.* at (h)(4)(A).) Therefore, local governments have some discretion to choose the appropriate method or methods to identify disadvantaged communities.

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<sup>2</sup> CalEPA designates an area as a disadvantaged community if a census tract scores at or above 75 percent on the agency’s CalEnviroScreen screening tool. *See* CalEPA and Office of Health Hazard Assessment, CalEnviroScreen 3.0, *available at* <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>; *see also* CalEPA, Designation of Disadvantaged Communities (April 2017), *available at* <https://oehha.ca.gov/calenviroscreen/sb535>.

<sup>3</sup> SB 1000 defines a “low-income area” as “an area with household incomes at or below 80 percent of the statewide median income” or (2) an area with “household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s (HCD) list of state income limits adopted pursuant to Section 50093 of the Health and Safety Code.” (Gov. Code, § 65302, subd. (h)(4)(C).) After identifying low-income areas, a government must evaluate if those areas are disproportionately affected by environmental pollution or other hazards that can lead to negative health impacts. (*Id.* at (h)(4)(A).) There are various data sets that can be used for the second part of this analysis, including CalEnviroScreen, which contains specific information regarding pollution sources.

Once a local government identifies one or more disadvantaged communities in its jurisdiction, it must include either an “environmental justice element” or “related goals, policies, and objectives integrated in other elements” (collectively, “EJ policies”) in its general plan update. (Gov. Code, § 65302, subd. (h)(1).) A general plan’s EJ policies must “reduce the unique or compounded health risks in disadvantaged communities” by doing at least the following:

- 1) reduce pollution exposure;
- 2) improve air quality;
- 3) promote public facilities;<sup>4</sup>
- 4) promote food access;
- 5) promote safe and sanitary homes; and
- 6) promote physical activity.

(*Id.* at (h)(1)(A).) SB 1000 also requires EJ policies that “promote civil engagement in the public decision-making process” and “prioritize improvements and programs that address the needs of disadvantaged communities.” (*Id.* at (h)(1)(B)-(C).)

## II. COUNTYWIDE PLAN

We appreciate the County’s ongoing communication with our office regarding SB 1000 compliance, and appreciate the opportunity to comment on the draft Countywide Plan released in May 2019. As discussed below, we have concerns about the adequacy of the County’s identification of disadvantaged communities and EJ policies, and we encourage the County to consider revising the Countywide Plan to address these concerns.

### A. Identification of Disadvantaged Communities

SB 1000 requires local governments to identify any disadvantaged communities in its jurisdiction within the general plan itself.<sup>5</sup> As discussed above, the objective of this requirement is to ensure that environmental justice is a real and vital part of local land use planning. Explicitly identifying communities facing disproportionate pollution burdens within the general plan ensures that future development near these communities is consistent with any relevant EJ

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<sup>4</sup> SB 1000 defines “public facilities” as facilities that include “public improvements, public services, and community amenities.” (Gov. Code, § 65302, subd. (h)(4)(B).)

<sup>5</sup> **“The plan shall include. . . . An environmental justice element, or related goals, policies, and objectives integrated in other elements, that identifies disadvantaged communities within the area covered by the general plan. . . .”** (Gov. Code, § 65302, subd. (h)(1) [emphasis added].)

policies and considers potential impacts, including cumulative impacts, on these sensitive receptors. It also provides the communities with more clarity around the meaning and impact of the EJ policies, which in turn will facilitate their ability to comment on and be involved with implementing the policies once adopted.

While the Countywide Plan acknowledges the presence of disadvantaged communities subject to SB 1000 (termed “Environmental Justice Focus Areas” or EJFAs), it does not identify these communities. The detailed identification of these EJFAs is instead contained in a separate document, the Environmental Justice Background Report (“EJ Background Report” or “Report”). The Plan itself does not reference the EJ Background Report, nor does it meaningfully discuss SB 1000’s requirements. The Plan’s lone reference to SB 1000 is in the Glossary of Terms for “EJFA”—where the Plan provides a definition of EJFA that does not match the definition of the same term in the EJ Background Report.<sup>6</sup> Furthermore, the EJ Background Report is not located on the main web-based portal for the Plan.<sup>7</sup> Instead, the Report is hyperlinked on a side margin within the Hazards Element subpage, difficult to find even if you know what you are looking for.<sup>8</sup> Further minimizing its importance, the EJ Background Report contains a disclaimer on its title page that its contents “should not be used as the sole reference for data or as confirmation of intended or desired policy direction.”<sup>9</sup>

Relatedly, the County should discuss the unique and compounded health risks facing EJFAs in the Countywide Plan itself. While these health risks are identified in the EJ Background Report,<sup>10</sup> they are not referenced in the Countywide Plan—making it difficult for

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<sup>6</sup> Compare Draft Countywide Plan at 80 with EJ Background Report at 2-9. The two definitions use different geographic units for identifying EJFAs—the Countywide Plan appears to identify areas by census tract, while the EJ Background Report asserts that “any portion of a census tract” can meet the definition. Note that the EJ Background Report’s approach is consistent with OPR’s recommended approach. (See OPR, Public Review Draft General Plan Guidelines Chapter 4 (11/19/18) at p. 7, [http://opr.ca.gov/docs/20181120-EJ\\_Chapter\\_Public\\_Comment.pdf](http://opr.ca.gov/docs/20181120-EJ_Chapter_Public_Comment.pdf) (“[L]ocal governments should consider whether there are disadvantaged communities in geographic units that are smaller than a census tract to ensure that all disadvantaged communities are recognized.”).) In addition, the EJ Background Report’s definition excludes areas outside “community planning areas” or “unincorporated spheres of influence” because such lands are “typically unpopulated.” (EJ Background Report at 2-10.) The Countywide Plan does not exclude these areas.

<sup>7</sup> See <http://countywideplan.com/policy-plan/beta/> (last accessed August 7, 2019).

<sup>8</sup> See <https://countywideplan.com/policy-plan/beta/hz/> (last accessed August 7, 2019).

<sup>9</sup> EJ Background Report at title page.

<sup>10</sup> EJ Background Report at 3-1, 3-12 (Lucerne Valley), 3-15 (Southwest High Desert), 3-18 (El Mirage Valley / Oro Grande), 3-21 (Central Victor Valley), 3-24 (North High Desert), 3-27 (East Desert), 3-30 (Mountain Communities), 3-33 to 3-34 (Bloomington and Muscoy), and 3-37 to 3-38 (Valley Unincorporated Islands).

the public to assess whether the included EJ policies adequately reduce such risks as required by SB 1000. (Gov. Code § 65302, subd. (h)(1)(A).)

We appreciate the County's efforts to address environmental justice through its detailed EJ Background Report. However, we are concerned that the County's approach fails to meet SB 1000's minimum requirement that disadvantaged communities be identified in the general plan itself. The County's approach also interferes with disadvantaged communities' ability to meaningfully engage in the planning and implementation processes, contrary to SB 1000's purpose. We encourage the County to address the inconsistencies between the Countywide Plan and the Background Report and to incorporate identification of disadvantaged communities and their unique and compounded health risks directly in the Countywide Plan.

#### B. Environmental Justice Policies

As described above, local governments that identify disadvantaged communities in their jurisdiction must include EJ policies in their general plan that address specific issues. (Gov. Code, § 65302, subd. (h)(1).) SB 1000 requires these policies to be either incorporated into General Plans as a separate EJ element or integrated into other elements throughout the Plan. (Gov. Code § 65302, subd. (h)(1).) The County has chosen the latter alternative, and in email correspondence regarding the first draft Countywide Plan, the County indicated that five policies in the Health and Wellness Element address environmental justice for purposes of SB 1000, in addition to the fourteen policies in the EJ Goal within the Hazards Element.<sup>11</sup> We appreciate the County's efforts to address environmental justice in its General Plan through inclusion of EJ policies. However, we are concerned that the EJ policies are not sufficient to reduce the unique and compounded health risks to EJ communities as required by SB 1000, nor do they adequately address the specific requirements of SB 1000.

SB 1000 requires the County to identify policies that actually reduce the unique or compounded health risks experienced by disadvantaged communities. (Gov. Code § 65302, subd. (h)(1)(A).) Certain of the County's proposed EJ policies are designed to meet this requirement. For example, draft Policy HZ-3.5 will ban new hazardous waste facilities from being developed in EJFAs.<sup>12</sup> This policy is clear, enforceable, and prevents future pollution exposure on already over-burdened EJFAs. However, many of the County's other EJ policies do not appear designed to affirmatively reduce the unique and compounded health risks and pollution burdens facing EJFAs as required by SB 1000. For example, Policy HZ-3.2 indicates the County will "monitor pollution exposure and identify solutions" in EJFAs, but it does not

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<sup>11</sup> Email from Jerry Blum, Countywide Plan Coordinator, to Tatiana Gaur, Deputy Attorney General (Nov. 21, 2018, 3:26 PM) (on file with Department of Justice) (noting that policies HW-1.12, 1.13, 3.1, 3.2 and 3.7 in the Health and Wellness Element of the Countywide Plan were designed to address EJ).

<sup>12</sup> Countywide Plan at 50.

require implementation of identified solutions to reduce pollution exposure, nor does it define the type of pollution, how it is to be monitored, and the timeframe on which it should be monitored.

The County has conducted a detailed assessment of each EJFA, identifying existing health risks within each SB 1000 policy area in the EJ Background Report.<sup>13</sup> The Countywide Plan should include policies designed to reduce these identified health risks. For example, the EJ Background Report identifies Lucerne Valley as an EJFA that suffers from pollution exposure in the form of high levels of nitrates and total dissolved solids in its groundwater.<sup>14</sup> The Countywide Plan contains two policies that address groundwater contamination, but neither Policy HZ-3.6 and HZ-3.7 actually “*reduce* the unique or compounded health risks.” (*Id.* [emphasis added].) Instead, these policies indicate the County will “advocate for and coordinate with local and regional agencies” and will “seek funding” for well testing.<sup>15</sup> Generally speaking, policies that assert the County will seek funding, absent clear and enforceable conditions or benchmarks, may not meet SB 1000’s requirement that the general plan reduce pollution exposure.<sup>16</sup> Lucerne Valley also struggles with absentee landlords and substandard housing, and would benefit from policies designed to promote safe and sanitary homes as required by SB 1000. (*Id.*) However, Countywide Plan Policy HZ-3.4 simply states the County will “pursue grant funding and other assistance” for rehabilitation and other home improvements. Lucerne Valley also does not have a wastewater treatment plant, has high food insecurity, lacks local health infrastructure, has high rates of obesity, and lacks sidewalks and other pedestrian and cycling infrastructure.<sup>17</sup> Many of the other EJFAs likewise suffer from health risks in most SB 1000 policy focus areas,<sup>18</sup> but the Countywide Plan does not include policies to reduce these health risks.

In particular, community organizations have identified impacts from truck traffic and the logistics industry as a primary concern in San Bernardino County.<sup>19</sup> The EJ Background Report

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<sup>13</sup> See EJ Background Report at 3-13 (Lucerne Valley); 3-16 (Southwest High Desert); 3-19 (El Mirage Valley and Oro Grande); 3-22 (Central Victor Valley); 3-25 (North High Desert); 3-28 (East Desert); 3-31 (Mountain Communities); 3-35 (Bloomington and Muscoy); 3-38 to 3-40 (Valley Unincorporated Islands).

<sup>14</sup> EJ Background Report at 3-13.

<sup>15</sup> Countywide Plan at 51.

<sup>16</sup> See, also, Countywide Plan at 51 (HZ-3.9, 3.10)

<sup>17</sup> EJ Background Report at 3-13.

<sup>18</sup> See note 13, *supra*.

<sup>19</sup> See, e.g., Letter from Center for Community Action and Environmental Justice (CCA EJ) to San Bernardino Planning Department (Nov. 5, 2018) at 3 (“We find it imperative that the logistics industry be addressed as a pollution burden as it encompasses the freeways, railyards and truck routes that expose DACs [disadvantaged communities] to harmful toxins and

acknowledges that these impacts are a primary contributor to air pollution exposure in EJFAs leading to the “unique and compounded health risks” in these communities.<sup>20</sup> Impacts from neighborhood truck traffic was also identified as a community priority for Muscoy, one of the EJFAs in San Bernardino County, through a parallel planning process under another law, AB 617.<sup>21</sup> However, the Goods Movement Goal within the Transportation & Mobility Element of the Countywide Plan does not include any policies designed to address these concerns or reduce these impacts on EJFAs. Instead, the Goods Movement goal indicates the County “supports” the establishment of regional truck routes and “may” establish local truck routes—without any mention of EJFAs.<sup>22</sup> Policy HZ-3.1 indicates that the County will require a cumulative health risk assessment for any project that “potentially effects [sic] sensitive receptors” in EJFAs, including an evaluation of “impacts of truck traffic from the project to freeways.”<sup>23</sup> We commend the County for requiring an evaluation of truck traffic impacts, however, this policy fails to define which projects would trigger the health risk assessment. Furthermore, the preparation of an assessment alone will not reduce the impacts of a future project. We encourage the County to adopt policies to reduce the unique and compounded health risks caused by truck traffic in EJFAs as required by SB 1000.

We also encourage the County to coordinate with the South Coast Air Quality Management District (“SCAQMD”), which is currently developing a Community Emission Reduction Plan and Community Air Monitoring Plan for Muscoy in accordance with AB 617. AB 617 requires local air districts, through community steering committees, to develop emission reduction plans in specific areas of the state selected by the California Air Resources Board (“CARB”) based on the area’s exposure to air pollution and cumulative burdens. Muscoy and parts of the City of San Bernardino were selected in 2018 for the development of an emissions reduction plan. As part of the AB 617 process, SCAQMD has worked closely with community members to identify priority areas and develop policy recommendations in line with community concerns. A number of the policies identified in the current draft Community Emission Reduction Plan recommend actions for the County to reduce cumulative health risks on community members from truck traffic, including working with local law enforcement to enforce truck routes, developing an Automated License Plate Reader system for targeted outreach to

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contribute to negative regional air quality. We also view the goods movement as a leading source of impact for DAC’s.”).

<sup>20</sup> See, e.g., EJ Background Report at 3-35 (noting high diesel particulate matter concentrations in Bloomington and Muscoy as a result of trucking routes in and around both communities).

<sup>21</sup> See South Coast Air Quality Management District, Draft Community Emission Reduction Plan Chapter 3a (07.25.19 version) at 3a-6, <http://www.aqmd.gov/docs/default-source/ab-617-ab-134/steering-committees/san-bernardino/cecp/chapter-3-draft-commprofile-july-2019.pdf>.

<sup>22</sup> Countywide Plan at 29 (Policies TM-5.5 and 5.6).

<sup>23</sup> Countywide Plan at 50.

truck drivers, requiring buffer zones between warehouses and residential development, enforcing warehouse design requirements to minimize air quality impacts, and implementing designated truck routes and parking zones.<sup>24</sup> We encourage the County to look to the current draft AB 617 Community Emission Reduction Plan developed for the San Bernardino County community of Muscoy as a model for incorporating community input to develop targeted policies to address health risks. Ultimately, at a minimum, the Countywide Plan must be consistent with the AB 617 Community Emissions Reduction Plan and its emission reduction goals.

We also note reservations with respect to Policy HZ-3.3, which indicates the County intends to “pursue grant funding and other assistance to relocate residents living in residential units that are nonconforming uses in environmental justice focus areas and to eliminate those nonconforming residential units.”<sup>25</sup> We understand this policy may be intended to reduce pollution exposure for residents of EJFAs, but we are concerned this approach may result in the displacement of low-income and disadvantaged EJFA residents to areas that may be unaffordable and/or further from their places of employment. We also share the communities’ expressed concern that this policy may result in the creation of new non-conforming residential units through the future rezoning of residential areas to allow for industrial development, exacerbating the potential risk of displacement.<sup>26</sup> This policy appears to be contrary to the spirit of SB 1000, which is intended to reduce impacts on disadvantaged communities. Rather than reducing the pollution exposure for these communities, this policy places the burden on residents of EJFAs to relocate. We encourage the County to consider potential unintended consequences of this policy and include additional safeguards to protect residents of EJFAs from displacement and industrial encroachment.

In sum, we encourage the County to strengthen the Countywide Plan’s EJ policies and supplement with new policies designed to reduce the risks already identified in the EJ Background Report. We recommend the County review resources prepared by the Governor’s Office of Planning and Research and the California Air Resources Board.<sup>27</sup> We also encourage the County to consider identifying in some way all EJ policies in the Countywide Plan, for example by color coding or copying them into an appendix. We believe such identification is a best practice for ensuring the County’s EJ policies are clear and accessible.

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<sup>24</sup> South Coast AQMD, San Bernardino/Muscoy Community Emission Reduction Plan (July 2019), <http://www.aqmd.gov/nav/about/initiatives/community-efforts/environmental-justice/ab617-134/san-b/community-emissions-reduction-plan> at 5b-7, 5b-9, 5c-3 to 5c-4.

<sup>25</sup> Countywide Plan at 50.

<sup>26</sup> See Letter from CCAEJ, *supra* note 19, at 3.

<sup>27</sup> OPR, Public Review Draft General Plan Guidelines Chapter 4 (11/19/18), [http://opr.ca.gov/docs/20181120-EJ\\_Chapter\\_Public\\_Comment.pdf](http://opr.ca.gov/docs/20181120-EJ_Chapter_Public_Comment.pdf); CARB, Options for Cities to Mitigate Heavy-duty Vehicle Idling (May 5, 2016), [https://ww3.arb.ca.gov/enf/arb\\_options\\_cities\\_mitigate\\_idling.pdf](https://ww3.arb.ca.gov/enf/arb_options_cities_mitigate_idling.pdf).

### C. Community Engagement

SB 1000 requires governments to “[i]dentify objectives and policies to promote civil engagement in the public decisionmaking process.” (Gov. Code, § 65302, subd. (h)(1)(B).) We applaud the County for including clear and enforceable policies requiring targeted outreach in EJFAs in Policies HZ-3.12, 3.13, and 3.14. We also appreciate the County’s efforts in scheduling numerous public meetings in the lead up to issuing the Countywide Plan in 2017 and again after the first draft of the Countywide Plan was released in 2018. However, we encourage the County to more directly engage with residents in EJFAs to ensure the EJ policies being adopted directly address their concerns. At its core, SB 1000 requires that EJ policies promote public engagement in the decisions that affect environmental justice communities. Yet it does not appear that the County conducted outreach specifically to EJFAs or specifically about its EJ policies.<sup>28</sup> Furthermore, it does not appear that translation services were offered during the meetings, nor were archived videos made available for those unable to attend in-person. While not a requirement of SB 1000, these kinds of services are best practices to ensure meaningful engagement with EJ communities.<sup>29</sup>

### **III. DRAFT ENVIRONMENTAL IMPACT REPORT**

We appreciate the opportunity to review the Countywide Plan DEIR released on June 17, 2019. As noted below, we have concerns regarding the DEIR’s analysis of air quality impacts, greenhouse gas impacts, mitigation measures, and alternatives—especially as these issues intersect with environmental justice. Given that the County has prepared a detailed EJ Background Report identifying substantial health risks already burdening EJ communities in the County, we are troubled by the DEIR’s failure to analyze cumulative impacts on sensitive receptors in these communities as a result of the growth permitted under the Countywide Plan. We encourage the County to revise its environmental analysis before submitting the Countywide Plan to the Board of Supervisors for review.

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<sup>28</sup> An identical presentation given at the nine regional meetings held in September 2018 (in Yucipa, Pinon Hills, Rialto, Ontario, Big Bear City, Running Springs, Lucerne Valley, Newberry Springs, and Joshua Tree) only contained one, non-substantive slide referencing environmental justice. (San Bernardino Countywide Plan Regional Open Houses (September 2018), [http://countywideplan.com/wp-content/uploads/2018/09/CWP\\_323\\_OH\\_Presentation\\_Sept2018web.pdf](http://countywideplan.com/wp-content/uploads/2018/09/CWP_323_OH_Presentation_Sept2018web.pdf).)

<sup>29</sup> We appreciate the County’s efforts to engage with EJ communities during the development of its “Community Action Guides.” However, community engagement through these voluntary community plans, which the County does not plan to enforce or oversee, are not a substitute for SB 1000’s requirements for community engagement for the general plan itself.

A. Air Quality Impacts

We appreciate the County's acknowledgement that the Countywide Plan's air quality impacts will be potentially significant.<sup>30</sup> However, we are concerned by the summary discussion of these significant impacts, particularly the inadequate analysis of cumulative impacts on sensitive receptors in already over-burdened EJFAs. In addition, we are concerned with the generally inadequate mitigation measures offered to reduce these impacts.

In general, the DEIR suffers from the same structural failings as the Countywide Plan: as the Plan fails to adequately identify the unique and compounded health risks facing EJFAs, so too does the DEIR fail to adequately identify the adverse effects of its significant air quality impacts. As the Plan's EJ policies fail to adequately reduce these health risks, so too do the DEIR's mitigation measures fail to adequately reduce these adverse effects. By failing to properly identify the problems intended to be solved in the first place, the County's analysis in both the Countywide Plan and the DEIR make it difficult for the public to determine if the solutions put forward are adequate.

Simply designating an environmental impact as "significant" does not excuse a lead agency from "reasonably describ[ing] the nature and magnitude of the adverse effect." (*Cleveland Nat'l Forest Found. v. SANDAG* (2017) 3 Cal.5th 497, 514.) The DEIR provides a description of possible adverse effects from exposure to criteria air pollutants and toxic air contaminants in general,<sup>31</sup> and provides an emissions forecast for expected criteria pollutant emissions,<sup>32</sup> but fails to adequately analyze potential adverse effects from these increased emissions and neglects to model potential increases of toxic air contaminants at all.<sup>33</sup> Description of the nature and magnitude of these adverse effects is "necessary to inform the critical discussion of mitigation measures and project alternatives." (*Id.* at p. 515; CEQA Guidelines § 15151.)

The DEIR's failure to properly document and analyze these adverse effects is particularly concerning given the detailed analysis contained in the EJ Background Report identifying the existing burden faced by residents of EJFAs from exposure to both criteria air pollutants and

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<sup>30</sup> DEIR at 5.3-42 to 5.3-43.

<sup>31</sup> DEIR at 5.3-9 to 5.3-12.

<sup>32</sup> DEIR at 5.3-35 to 5.3-36.

<sup>33</sup> DEIR at 5.3-40 ("For this programmatic general plan-level assessment, it is not feasible to conduct dispersion modeling to determine the contribution of health risks associated with individual land use types since site-specific information on emissions and emissions quantities is not known. This is because a general plan does not directly result in development without additional approvals."). We encourage the County to review other recent programmatic EIRs which include such modeling. (*See, e.g., SANDAG, Final Environmental Impact Report: 2050 Regional Transportation Plan and Sustainable Communities Strategy at 4.3-67 to 4.3-84* (October 2011), [http://www.sandag.org/uploads/2050RTP/F2050RTPEIR\\_all.pdf](http://www.sandag.org/uploads/2050RTP/F2050RTPEIR_all.pdf)).

toxic air contaminants, especially diesel particulate matter.<sup>34</sup> The minimal cumulative impacts analysis included in the DEIR addresses only criteria air pollutants, and fails to analyze cumulative impacts of toxic air contaminant increases.<sup>35</sup> In addition, the DEIR does not mention SB 1000's requirement to incorporate EJ policies that improve air quality even once in its analysis of air quality impacts despite the state law being a part of the regulatory setting in which the Countywide Plan operates.<sup>36</sup> By neglecting this analysis of EJFAs, the DEIR does not inform the public of the potential cumulative impacts on these vulnerable communities, and makes it challenging to assess the adequacy of the included mitigation measures.

We are also concerned with the adequacy of the included mitigation measures, particularly to the extent that these measures fail to reduce significant impacts on sensitive receptors in EJFAs. Adequate mitigation measures must:

- (a) Avoid[] the impact altogether by not taking a certain action or parts of an action.
- (b) Minimiz[e] impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectify[] the impact by repairing, rehabilitating, or restoring the impacted environment. [or]
- (d) Reduc[e] or eliminat[e] the impact over time by preservation and maintenance operations during the life of the action.

(CEQA Guidelines § 15370.)

The DEIR's air quality mitigation measures do not appear to meet this requirement. Like the EJ policies in the Countywide Plan discussed above, the DEIR's mitigation measures fail to create enforceable obligations that could actually reduce the identified impacts. For example, mitigation measure AQ-1 lists "possible" mitigation measures that should be included in approving permits for future projects, but only those projects that exceed the local air district's thresholds of significance on a project-by-project basis.<sup>37</sup> While intended to minimize potentially significant impacts on regional air quality, AQ-1 does not contain any mandatory emission reduction measures, nor does it address the potential cumulative impacts of a project. In addition, AQ-1 fails to include the County's own suggestions in the EJ Background Report,

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<sup>34</sup> EJ Background Report at 3-1, 3-12 (Lucerne Valley), 3-15 (Southwest High Desert), 3-18 (El Mirage Valley / Oro Grande), 3-21 (Central Victor Valley), 3-24 (North High Desert), 3-27 (East Desert), 3-30 (Mountain Communities), 3-33 to 3-34 (Bloomington and Muscoy), and 3-37 to 3-38 (Valley Unincorporated Islands).

<sup>35</sup> DEIR at 5.3-41 to 5.3-42.

<sup>36</sup> As SB 1000's requirements extend beyond air quality into other environmental impacts analyzed in the DEIR—such as hazardous waste, water quality, public services, recreation, transportation, and utilities—we encourage the County to evaluate SB 1000 as part of the regulatory setting for those sections of the DEIR as well.

<sup>37</sup> DEIR at 5.3-43.

including that the County establish truck routes to reduce pollution in residential neighborhoods and limit development that would contribute to pollution in EJFAs.<sup>38</sup> Nor does it include the suggestions provided in the AB 617 Community Emissions Reduction Plan for Muscoy in San Bernardino County, such as working with local law enforcement and implementing a license plate reader system to enhance enforcement of truck routes and illegal idling.<sup>39</sup> We encourage the County to work together with local communities to strengthen its mitigation measures in order to ensure the significant air quality impacts expected from the Countywide Plan are minimized.<sup>40</sup>

Mitigation measure AQ-3's requirement that health risk assessments be prepared for projects that generate "substantial diesel truck travel" (which the County defines as 100 or more diesel trucks per day) is a step in the right direction. However, we are concerned that including this threshold may encourage segmented warehouse development that intentionally avoids triggering a cumulative impacts assessment without any actual reduction in pollution exposure. We encourage the County to consider using distance to sensitive receptors or concentration of nearby warehouse development as triggering thresholds for a cumulative impact assessment. We also encourage the County to strengthen AQ-3 through the addition of conditions requiring buffering or other protections to minimize impacts on already over-burdened sensitive receptors in EJFAs.<sup>41</sup>

## B. Greenhouse Gas Impacts

While the DEIR analyzes overall greenhouse gas (GHG) emissions for consistency with state climate goals and evaluates the significance of GHG emissions on both a quantitative and qualitative basis, we are concerned by the summary discussion of these significant impacts and by the generally insufficient mitigation measures offered to reduce these impacts. We encourage the County to revise its analysis in two primary respects.

First, in concluding that the Countywide Plan would result in significant GHG impacts on a quantitative, per capita basis, the County claims that it "cannot achieve the long-term efficiency targets without additional federal and state reductions" and that "[t]he state's climate stabilization goals are contingent on decarbonization of the state's transportation and energy

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<sup>38</sup> EJ Background Report at 1-14.

<sup>39</sup> South Coast AQMD, San Bernardino/Muscoy Community Emission Reduction Plan, Chapters 5a through 5g, [http://www.aqmd.gov/nav/about/initiatives/community\\_efforts/environmental\\_justice/ab617-134/san-b/community-emissions-reduction-plan](http://www.aqmd.gov/nav/about/initiatives/community_efforts/environmental_justice/ab617-134/san-b/community-emissions-reduction-plan); *see, e.g., id.* at 5b-7 & 5b-9.

<sup>40</sup> *See, e.g.,* Letter from CCAEJ, *supra* note 19, at 4 (listing eleven region-specific EJ policies, many of which could be adopted as mitigation measures).

<sup>41</sup> *See, e.g.,* SANDAG RTP FEIR, *supra* note 33, at 4.3-84 to 4.3-89.

sectors.”<sup>42</sup> In evaluating the significance after mitigation, the County claims it has “reduce[d] GHG emissions to the extent feasible” but cannot meet long-term GHG efficiency goals without additional state and federal measures and “major advancements in technology.”<sup>43</sup> However, the County’s own description of alternatives contradicts these assertions. The Concentrated Suburban Growth alternative presented in the Alternatives section says that the County could reduce GHG emissions by increasing density in the Valley region.<sup>44</sup> And the County concludes the Concentrated Suburban Growth alternative would “substantially reduce VMT-generated GHG emissions” by reducing commute length.<sup>45</sup> This suggests that further reduction of GHG emissions *is* within the County’s power to encourage future development into areas that will reduce vehicle miles traveled—irrespective of any technological advancements or regulatory action at the state or federal level. Thus, the County cannot claim to have mitigated GHG emissions to the maximum extent feasible if it has not evaluated the feasibility of encouraging high density development to reduce vehicle miles traveled as a mitigation measure. Instead, the County’s GHG emissions analysis actually shows that the Countywide Plan will *increase* vehicle miles traveled from the current baseline.<sup>46</sup> We encourage the County to revise the DEIR to account for all feasible measures to reduce GHGs, and ensure that proposed mitigation measures minimize GHG emissions to the extent feasible.

Second, we are concerned the County overstates its consistency with the CARB Scoping Plan’s Recommended Local Actions. For example, the DEIR claims the Countywide Plan contains a numeric VMT per-capita reduction goal, and cites this goal to support its consistency with the Scoping Plan’s recommended local actions to reduce VMT by adopting numeric VMT reduction targets.<sup>47</sup> However, the current draft of the Countywide Plan does not contain a per capita reduction goal. Rather, it has a general policy to promote development that reduces VMT.<sup>48</sup> In addition, many other County policies cited for consistency with CARB recommended actions are voluntary or policies that the County “supports” or “considers,” while CARB’s Scoping Plan recommends mandatory actions.<sup>49</sup> This overstated consistency with

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<sup>42</sup> DEIR at 5.7-34.

<sup>43</sup> DEIR at 5.7-60.

<sup>44</sup> DEIR at 7-10.

<sup>45</sup> DEIR at 7-14.

<sup>46</sup> DEIR at Appendix B-16 (showing total VMT per service population would increase from the existing baseline of 21.7 to 22.3 under the proposed Countywide Plan).

<sup>47</sup> DEIR at 5.7-39 to 5.7-40.

<sup>48</sup> Countywide Plan at 27. The tracked changes version of the Countywide Plan shows a fifteen percent per capita VMT reduction goal for each region in the County was deleted from the prior draft.

<sup>49</sup> *See, e.g.*, DEIR. at 5.7-43 (CARB recommended action: “Require clean vehicles be purchased as part of municipal vehicle fleet procurement” versus County policy deemed consistent: “The County considers fuel efficiency when purchasing new public vehicles.”); *id.* at

CARB's Scoping Plan misleads the public on the extent to which its policies reduce GHG emissions. We encourage the County to more carefully evaluate its consistency with the Scoping Plan's recommended local actions, and include mitigation measures to minimize any inconsistencies identified.

### C. Alternatives Analysis

Finally, we are concerned the DEIR does not adequately analyze the alternatives presented. "The core of an EIR is the mitigation and alternative sections." (*Cleveland Nat'l Forest Found. v. SANDAG* (2017) 17 Cal.App.5th 413, 432 [quoting *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564].) The alternatives analysis must "evaluate the comparative merits of the alternatives" and "include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." (CEQA Guidelines § 15126.6, subd. (a); subd. (d).) The DEIR fails in both of these respects.

In evaluating the Concentrated Suburban Growth Alternative, the County acknowledges this alternative would "reduce three of the proposed Project's significant, unavoidable impacts to less than significant" and would mitigate to less than significant the four impacts that would increase as compared to the proposed Project.<sup>50</sup> But the County fails to adequately compare the merits of the alternative with the Project to allow the public to understand why the environmentally superior alternative was not chosen. Instead, the County simply notes that while the Concentrated Suburban Growth alternative "could achieve the Project objectives," "[e]xtra effort would be required. . . to ensure that higher densities in the Valley region would not jeopardize the existing character and heritage goal for this region."<sup>51</sup> This bare statement of opinion, with no evidence or evaluation, does not satisfy CEQA's requirement to allow "meaningful evaluation, analysis, and comparison with the proposed project." (CEQA Guidelines § 15126.6, subd. (d).) Furthermore, the Alternatives section provides only two sentences to describe the Concentrated Suburban Growth alternative: "This alternative focuses on intensifying residential development in the already urban areas in the Valley region and preserving the relatively undeveloped Desert and Mountain regions. Higher density housing types are projected. Employment growth would also be limited to the Valley region."<sup>52</sup> The DEIR does not provide data or analysis demonstrating how this alternative reduces air quality, transportation, and greenhouse gas impacts. Instead, the DEIR provides only narrative

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5.7-40 (CARB recommended action: "Update code of ordinances to reduce parking requirements and eliminate parking minimums" versus County policy deemed consistent: "Policy TM-4.10 identifies that the County supports the use of shared parking.").

<sup>50</sup> DEIR at 7-22.

<sup>51</sup> DEIR at 7-22.

<sup>52</sup> DEIR at 7-5.

description.<sup>53</sup> We encourage the County to revise its alternatives analysis to thoroughly evaluate each alternative and provide sufficient information to allow meaningful comparison.

#### **IV. CONCLUSION**

Thank you for considering our comments on the County of San Bernardino's Countywide Plan and Draft Environmental Impact Report. Please do not hesitate to reach out to me if you have any questions throughout the remainder of your planning process. We look forward to continuing our conversation about the Countywide Plan.

Sincerely,

MEREDITH HANKINS  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

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<sup>53</sup> DEIR at 7-12, 7-14, 7-16.