

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

August 20, 2024

FROM

MARK WARDLAW, Director, Land Use Services Department

SUBJECT

Appeal of BMT Minneola Solar Project

RECOMMENDATION(S)

1. Conduct a public hearing to consider an appeal of a Planning Commission action approving the BMT Minneola Solar Project, consisting of a tentative parcel map to subdivide an approximately 91-acre site into two parcels, and a conditional use permit to construct and operate a community-oriented solar facility on one of the two parcels.
 - Appellant: Newberry Community Services District
 - Applicant: Merrell Johnson Engineering, Inc.
 - Community: Daggett
 - Location: Northwest of the intersection of Elkhorn Street and Minneola Road
2. Deny the appeal and take the following actions to approve the BMT Minneola Solar Project:
 - a. Adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
 - b. Adopt the findings for approval of the BMT Minneola Solar Project.
 - c. Approve Tentative Parcel Map No. 20538 to subdivide approximately 91 acres into two parcels and a Conditional Use Permit to construct and operate a 3-megawatts community-oriented solar array facility on approximately 28 acres, subject to the Conditions of Approval.
 - d. Direct the Land Use Services Department to file the Notice of Determination in accordance with the California Environmental Quality Act.

(Presenter: Mark Wardlaw, Director, 387-4431)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Promote the Countywide Vision.

Create, Maintain and Grow Jobs and Economic Value in the County.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). Sufficient funds are available as part of the application fees since this is an actual cost fee. The cost of processing the appeal application is paid for by Newberry Community Services District (Appellant) and the cost of processing the project applications is paid for by Merrell Johnson Engineering, Inc. (Applicant).

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BACKGROUND INFORMATION

This item includes an appeal of a Planning Commission (Commission) action approving a tentative parcel map (TPM) and conditional use permit (CUP). On May 9, 2024, the Commission unanimously approved the BMT Minneola Solar Project by a vote of 5-0 (Chairman Weldy and Vice Chairman Stoffel absent) consisting of a TPM to subdivide an approximate 91-acre site into two parcels, and a CUP to construct and operate a community-oriented solar facility on Parcel 2 (collectively the Project). No development is proposed on Parcel 1.

The 3-megawatt solar facility proposes approximately 15,000 solar panels on approximately 28 acres located at the northwest intersection of Minneola Road and Elkhorn Street. The subject property is currently vacant and designated Rural Living under the general plan and zoned Rural Living – 5 acres minimum. Renewable energy projects, such as solar facilities, are allowed within the Rural Living zone with an approved CUP. The site is adjacent to Barstow-Daggett Airport and within an Environmental Justice Focus Area (EJFA). In addition, the subject site is within the Daggett Community Service District area.

Due to the Project's close proximity to the airport, two Airport Commissioners (Commissioners Asmus and Bagley) attended and participated in the Planning Commission decision. As part of their deliberations, the Airport Commissioners also unanimously supported the proposed solar project.

On May 17, 2024, the Appellant filed an appeal of the Planning Commission action approving the Project. The reasons for the appeal are set forth in Appellant's appeal application and included as an attached to this item. A detailed response to the appeal was submitted by the Applicant and is also included as an attachment to this item. A summary of the Appellant's arguments on appeal and a response from the Land Use Services Department (LUS) are as follows:

Issue 1 – Incorporation of Prior Opposition

- The Appellant requests to incorporate by reference all written and oral opposition previously submitted regarding the Project, as well as all written and oral opposition submitted regarding the "Daggett Solar project application by Clearway Energy." The Appellant argues that the Daggett Solar opposition addressed the County's obligations under the California Environmental Quality Act (CEQA) and allegedly serves as "prior notice of the significant dangers associated with crystalline silica dust and the extreme hazard of permitting industrial solar developments in the Mojave Valley upwind to sensitive human receptors."
- **LUS Response:** Section 86.08.020 of the Development Code provides that an application for an appeal is required to provide a written statement of the grounds upon which the appeal is based and to identify the justification for the appeal. The Appellant's request to incorporate prior arguments without specifically identifying which documents and/or arguments are relevant to the issue(s) on appeal contain only general, unelaborated objections to the Project. The Appellant does not provide the exact issues to resolve on appeal through the incorporation of unidentified documents or how the County violated its obligations under CEQA for purposes of the Project. An objection to a project must be sufficiently specific so that the agency has the opportunity to evaluate and respond to them. LUS is unable to identify the comments that Appellant relies upon as part of this appeal. However, responses to comments to the Mitigated Negative Declaration (MND) have been prepared and are included within the record for the Board of Supervisors' (Board) consideration.

Additionally, the Appellant's request to incorporate the Daggett Solar opposition also fails to specifically identify which documents and/or arguments are relevant to the issue(s) on

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appeal. Arguments on appeal need to be fairly presented. Evidence must be presented in a manner that gives the agency the opportunity to respond with countervailing evidence. The Dagget Solar Environmental Impact Report consists of thousands of pages. It is not reasonable for any party to pore through thousands of documents to find something that arguably supports Appellant's belief the Project should not be approved based on comments submitted to an unrelated project.

General comments and comments that consist merely of speculation or unsupported criticism may be rejected or answered with only a general response under CEQA and are generally inadequate to put an agency on notice of deficiencies. Since the Appellant fails to explain how the alleged "prior notice" of significant dangers is not adequately addressed in the Project's MND, no further response is needed.

Issue 2 – Project's Leading Concerns

- The Appellant asserts that that the Project proposes soil disturbance that exposes downwind residents to additional hazardous silica dust. The Appellant claims that the soil disturbance and emissions of carcinogenic silica dust directly violates California Environmental Justice laws. The Appellant also asserts that other concerns include, but are not limited to, the negative impacts on the landscape, wildlife, economics, viewsheds, local lifestyle, and tourism, which are addressed in the Project opposition letters.
- LUS Response: The Project's MND analyzed potential risks related to air quality and health. The Project is expected to generate minor particulate and ozone precursors during the construction period (approximately three-months) and mitigation measures are required to incorporate Best Management Practices to minimize the potential impact. This includes the use of water trucks as needed, determined by construction activity, humidity, and wind speed to reduce particulate emissions during construction and grading activities. In addition, a Dust Control Plan is required to be developed and submitted to the County and the Mohave Desert Air Quality Management District for review and approval prior to issuance of a grading permit and/or land disturbance. The air quality analysis concludes that operation of the solar facility will not result in any tangible effects to air quality in the area.

As it pertains to Environmental Justice, CEQA requires an analysis of physical impacts to the environment; it does not require analysis of social and economic impacts. Under CEQA, an economic or social change by itself shall not be considered a significant effect on the environment. Effects analyzed under CEQA must be related to a physical change. The issues alleged on appeal do not raise any environmental concerns about the Project specifically nor address the adequacy of the MND. Environmental Justice concerns are incorporated into the County's review of the Project pursuant to Government Code section 65302(h)(1). That statute, which is not part of CEQA, mandates the County to identify objectives and policies to reduce health risks, promote civic engagement, and prioritize improvements and programs to address the needs of disadvantaged communities associated with EJFAs. The County is compliant with these mandates, and has implemented these provisions in goals, policies, and objectives in the adopted Countywide Plan under the Hazards Element. Not only are these policies applied to the EJFA in the Newberry Springs area, but these are uniformly applied to all EJFA throughout the county.

Regarding other categories identified (i.e. landscape, wildlife, economics, viewsheds, local lifestyle, and tourism), the appeal again fails to clearly identify the grounds for the appeal and the response above is incorporated herein. However, as a general response, the MND analyzed potential project impacts to several categories, such as Aesthetics, Biological

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Resources, Population and Housing, that relate to the topics addressed in the appeal and concluded that:

- For the subject site, Parcel 1 will not be developed and will retain the existing natural open desert setting. A portion of Parcel 2 will contain the solar arrays and will also not include any added landscape. Chain link fencing is proposed along the property perimeter.
- The MND indicates there were no sensitive plant species or sensitive wildlife species observed during biological surveys. The MND also recognizes that creosote scrub is a potential habitat for common desert wildlife and sensitive wildlife. Therefore, mitigation measures to avoid and minimize potential impacts are included for the Project. These mitigation measures require a certified biologist onsite two weeks prior to any construction to conduct surveys, that the biologist attend pre-construction meetings to inform the construction crews of any biological and wildlife concerns, and other measures specific to trees, birds, desert tortoise, and other desert wildlife (see MND BIO-1 through BIO-5).
- The MND concludes that the Project will have a less than significant impact on viewsheds, as the solar arrays are relatively low (eight feet tall solar panels and 10 feet for the switchgear) compared to other structures. The Rural Living zoning district allows structures up to 35 in height. In addition, the subject site does not about any scenic highways or corridors.
- Local lifestyle is not an environmental issue. However, under the Population and Housing analysis, it is acknowledged that the unmanned photovoltaic solar facility is not expected to induce population growth or the development of new homes or roads. On May 9, 2024, when the Airport Commissioners considered the Project, they stated that dust was not a concern to local aviators using the Barstow-Daggett Airport and that the proposed solar facility was compatible with airport operations.
- Economics and Tourism are generally not topics analyzed under the MND environmental review process.

Issue 3 – Fiduciary Duty of the Board:

- Lastly, the Appellant asserts that the Board’s approval of the “Daggett Solar Project” has caused significant health hazards and property damage and has resulted in a breach of the Board’s fiduciary duty to county residents.
- LUS Response: This allegation again fails to address the Project at issue. The Project has been processed and reviewed in compliance with the County’s adopted Countywide Plan and Development Code. The entitlement process is transparent and allows several opportunities for community members, stakeholders, and the public to participate throughout the process. For this Project, a minimum of 30 notifications were sent that include all property owners within 700 feet of the subject property and interested parties. Project notices were sent after application submittal on May 26, 2023, CEQA-related notices (specifically the Notice of Availability/Notice of Intent) were sent on November 11, 2023, and the Notice of Completion was prepared and sent to the State Clearinghouse to notice the MND public comment period (from November 17, 2023, to December 18, 2023). Two additional parties were interested in CEQA notifications, so there were 32 notices sent in November 2023. In advance of the Planning Commission meeting on May 9, 2024, public notices were sent on April 26, 2024, to all property owners within 700 feet of the subject property, and two interested parties. Pursuant to EJFA policies, a bilingual notice was distributed for the Planning Commission meeting. The Project, as approved by the Planning Commission, found the Project to be compliant with County policies and development standards. The recommendation to the Board is similarly based on the same compliance.

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PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jason Searles, Supervising Deputy County Counsel, 387-5455) on July 8, 2024; Finance (Garrett Baker, Administrative Analyst, 387-3077) on July 19, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on July 21, 2024.

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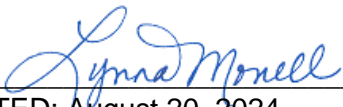
Record of Action of the Board of Supervisors
San Bernardino County

Hearing Opened
Public Comment: Paul Deel, Mike Matson, Ted Stimpfel
Hearing Closed

APPROVED AS AMENDED

Moved: Curt Hagman Seconded: Jesse Armendarez
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: August 20, 2024



cc: File - LUSD/Planning Appeals w/ attachments
JLL 08/22/2024