

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

November 16, 2021

FROM

TERRI RAHHAL, Director, Land Use Services Department

SUBJECT

Resurgence Solar I & II Power Facility Appeal

RECOMMENDATION(S)

1. Conduct a public hearing to consider an appeal of a Planning Commission action to approve the Resurgence Solar I & II Facility on approximately 1,172 acres.
 - Appellant: Citizens for Responsible Solar through its attorneys Adams Broadwell Joseph & Cardozo, Attorneys at Law
 - Applicant: Resurgence Solar I & II PV, LLC
 - Community: Kramer Junction
 - Location: Highway 395, one mile north of Highway 58 at Kramer Junction
2. Deny the appeal and take the following actions for project approval:
 - a. Adopt the recommended Findings as adopted by the Planning Commission, including a finding that the Project is exempt from the California Environmental Quality Act.
 - b. Approve the Conditional Use Permits involving the decommissioning of the existing 150 megawatt concentrated solar thermal facilities, known as Solar Energy Generating System III through VII, and the redevelopment, at the same location, of new photovoltaic solar power facilities with battery energy storage system and associated infrastructure for a combined 150 megawatt of renewable electrical energy and/or energy storage capacity subject to the Conditions of Approval.
 - c. Direct the Clerk of the Board to file a Notice of Exemption.

(Presenter: Terri Rahhal, Director, 387-4431)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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 additional Discretionary Funding (Net County Cost). Sufficient appropriation and revenue to complete this action have been included in the Land Use Services Department (LUS) Planning Division 2021-22 budget. All costs of processing this application are paid by the appellant and applicant.

BACKGROUND INFORMATION

This item includes an appeal of a Planning Commission action to approve two Conditional Use Permits (collectively "CUP") for Resurgence Solar I & II PV, LLC (collectively "Applicant") to decommission five existing concentrated solar thermal power facilities (Solar Energy Generating System III through VII) and redevelop the site, at the same location, with new photovoltaic (PV)

Resurgence Solar I & II Power Facility Appeal November 16, 2021

solar facilities with Battery Energy Storage System (BESS) and associated infrastructure on 1,172 acres in the unincorporated community of Kramer Junction, one mile north of the Highway 395/Highway 58 interchange, approximately 30 miles northwest of Barstow. Power generated on the site would be transferred to the Kramer Junction substation utilizing the existing 115 kilovolts (kV) gen-tie line.

The proposed Project would decommission and demolish existing, outdated concentrated solar thermal power (CSP) facilities and replace these facilities with a state-of-the-art PV solar facility with a BESS. The existing facilities, constructed over 30 years ago, were known as Solar Energy Generating System (SEGS) III through VII, and produced a combined output of 150 megawatt (MW). The proposed PV facility and BESS with associated infrastructure would replace SEGS III through VII with equal production of 150 MW and no expansion of capacity (collectively referred to as Project). The existing CSP facilities were reviewed in accordance with the California Environmental Quality Act (CEQA) through the California Energy Commission (CEC in 1989 and 1990. The CEC is the approval authority for solar thermal power plants. All associated mitigation measures were completed at the time the site was developed.

Project Analysis

A thorough discussion analyzing the CUP from the perspective of site planning, Countywide Plan/Policy Plan consistency, code compliance, and CEQA is included in the Staff Report to the Planning Commission, dated September 9, 2021, included in the documents posted with this Report/Recommendation, as well as the Project application and studies.

California Environmental Quality Act Compliance

The Project application was submitted on March 9, 2021. LUS determined early in the application process that a Class 2 Categorical Exemption would be appropriate under CEQA Guidelines Section 15302 (c): Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

Planning Commission Action

The Project was considered in a public hearing by the Planning Commission on September 9, 2021, with a staff recommendation for approval. By a vote of 5-0 vote, the Planning Commission unanimously approved the Project.

Appeal of the Planning Commission Action

On September 17, 2021, the law firm of Adams Broadwell Joseph & Cardozo (Appellant) appealed the Planning Commission approval of the Project on behalf of Citizens for Responsible Solar (CRS). The reasons for the appeal are set forth in Appellant's comment letter submitted to the Planning Commission dated September 9, 2021, which is included in the documents posted with this Report/Recommendation. The primary contention in the appeal is that the Planning Commission improperly approved the Project relying on the Class 2 categorical exemption from CEQA. A summary of the Appellant's arguments and LUS staff responses are as follows:

1. **Appellant Argument:** The Staff Report and supporting Project documents do not adequately describe the Project or address potential environmental impacts. The County lacks substantial evidence that a categorical exemption from CEQA review applies.

LUS Response: The Staff Report explains that the Project entails replacing a solar thermal power facility with a PV solar facility, which will involve "redevelop[ing] the site with a new PV solar facility, with up to a total maximum 150 MW of PV/BESS, including associated

infrastructure on the existing footprint with no future expansion of capacity.” Extensive details are included in the application for the Project’s CUP as well as the various Project studies. Thus, the Staff Report and Project documents adequately describe the Project under review and are substantial evidence supporting the County’s determination that the Project meets the requirements for the CEQA Class 2 exemption.

2. Appellant Argument: The Staff Report fails to discuss or analyze the impacts of decommissioning as part of the Project. The actions of decommissioning the SEGS facility and reconstruction of the solar PV Project have a potential to result in impacts to the environment. Therefore, the County must withdraw the exemption determination and require the preparation of an Environment Impact Report.

LUS Response: CRS incorrectly asserts that the County did not consider decommissioning the SEGS III-VII facilities in its evaluation of the Project. However, the Staff Report specifically provides that the Applicant proposes to decommission an existing solar thermal facility and redevelop the site with a new PV solar facility, including associated infrastructure on the existing footprint with no future expansion of capacity.

The construction, operation, and decommissioning of the solar thermal facilities, SEGS III-VII, are under the jurisdiction of the CEC. On behalf of the Applicant, NextEra Energy Resources filed a Facility Decommissioning Plan with the CEC for the facility. On June 9, 2021, the CEC found that “the activities proposed in the Facility Decommissioning Plan would not have a significant effect on the environment or on an environmental justice population and would be consistent with applicable laws, ordinances, regulations and standards.” Decommissioning was an integral part of LUS’ determination on whether the Project qualified for the Class 2 categorical exemption. The Staff Report and Decommissioning Plan and related documents are substantial evidence in support of the determination that the Project is exempt from CEQA.

3. Appellant Argument: The Staff Report lacks any details about the BESS and omits any discussion of potential risk of fire caused by lithium-ion batteries. There is substantial evidence supporting a fair argument that the addition of the BESS is likely to result in significant environmental effects that would cause GHG emissions from the BESS energy storage and operation.

LUS Response: The BESS is described in detail in the materials the Applicant submitted in support of its application for a CUP. The BESS is designed to meet and/or exceed the requirements defined in National Fire Protection Association (NFPA) 855 Standard for the Installation of Stationary Energy Storage Systems Scope. Features to minimize fire danger and ensure safe operations must follow the California Fire Code and will be reviewed and approved by the San Bernardino County Fire Marshal. The Project will not generate any additional GHG emissions from outside sources, but rather provide a means of storage for energy that will already be generated regardless of the Project. Given these requirements there is no substantial evidence that the BESS component of the Project would result in significant environmental effects.

4. Appellant Argument: The Air Quality Technical Report’s calculations of air quality impacts from Project construction and operation contain numerous errors and inaccuracies. Substantial evidence clearly demonstrates that the Project will almost certainly result in potentially significant GHG impacts. Evidence showing that a project will have a significant environmental impact can serve to establish the presence of an unusual circumstance for the purposes of determining if an exception applies to the Categorical Exemption.

LUS Response: CRS' comment presumes the County must find the Project will not cause significant impacts before it may consider whether a categorical exemption applies. There is substantial evidence in the record supporting the County's conclusion that the Project is categorically exempt. CRS has not submitted substantial evidence that the Project presents unusual circumstances, the threshold issue for establishing whether the unusual circumstances exception applies.

The Applicant submitted the Air Quality and Greenhouse Gas (AQGHG) Technical Report to provide additional substantiation and substantial evidence that there are no unusual circumstances associated with the Project. The AQGHG report is substantial evidence that Project emissions will fall below Mojave Desert Air Quality Management District (AQMD) thresholds and will not create cumulatively considerable air quality impacts. As discussed in the Staff Report, the proposed facility will reduce environmental effects compared to the existing use, including but not limited to GHG emissions, because the Project will decommission and replace gas-fired equipment with a PV solar array.

5. Appellant Argument: There is evidence supporting a conclusion that the significant risk to avian mortality posed by solar PV facilities is substantial. In addition, the Biological Report incorrectly states that no Joshua trees were observed in the Project site during the survey, suggesting that any conclusions drawn by the Biological Report regarding the absence of special-status species at the site were unsubstantiated and questionable.

LUS Response: The Applicant submitted the Biological Report to provide additional substantiation and substantial evidence that there are no unusual circumstances associated with the Project. CRS asserts the report incorrectly describes risks to birds based on its speculation that the Project "could influence avian mortality risk" due to the "lake effect". CRS' comment regarding the Project and lake effect is speculative and does not qualify as substantial evidence of an environmental impact.

The Biological Report also identifies three Joshua trees that were located during surveys of the Project and a 500-foot buffer area around the Project site. Each Joshua tree that was identified is located outside of the fenced areas where the Project will operate. No Joshua trees occur on the Project site or will be affected by the Project.

6. Appellant Argument: Substantial evidence has been submitted demonstrating that the Project will not meet the required findings for approval of a Commercial Solar Energy Facility regarding impacts to biological resources.

LUS Response: The Planning Commission adopted extensive findings that the Project is consistent with the San Bernardino County Development Code. Substantial evidence supports the County's finding that the Project will be sited to avoid or minimize impacts to special-status species because it is replacing an existing facility on already disturbed land. Substantial evidence also supports the Planning Commission's finding that adequate provisions have been made to maintain and promote native vegetation and avoid the proliferation of invasive weeds because the Project includes measures for this purpose. These findings are supported by the Staff Report, Biological Report and related project information the Applicant submitted substantiating that the Project is categorically exempt.

7. Appellant Argument: San Bernardino County currently has a significant number of solar projects planned and under construction, many of which are also planning to add battery storage capacity along with the solar arrays. The County failed to consider the impacts of these cumulative projects in reaching its determination that the Project is categorically exempt and that no exceptions apply.

**Resurgence Solar I & II Power Facility Appeal
November 16, 2021**

LUS Response: The cumulative impacts exception applies to "successive projects of the same type in the same place." CRS has not met the burden of proof that the Project will cause significant cumulative impacts. The Project is the repowering of an existing solar generation project. CRS' appeal refers to "cumulative impacts from the numerous solar projects planned in San Bernardino County." This generic statement is not substantial evidence that successive solar repower projects in the same place will have a significant effect.

Approximately 50 percent of the planned projects referenced by CRS have been placed on hold, are under appeal, have not received permits, were issued permits that have expired, or have been refiled. Speculation that significant cumulative impacts will occur simply because there are or will be other solar projects in various parts and locations of the County is insufficient to trigger the cumulative impact exception to the Class 2 exemption.

A detailed response document for each of Appellant's arguments is provided as an attachment (Responses to Citizens for Responsible Solar Appeal of Planning Commission Decision).

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jason Searles, Deputy County Counsel, 387-5455) on October 21, 2021; Finance (Kathleen Gonzalez, Administrative Analyst III, 387-5412) on October 25, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on October 28, 2021.

**Resurgence Solar I & II Power Facility Appeal
November 16, 2021**

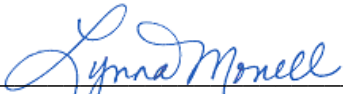
Record of Action of the Board of Supervisors
San Bernardino County

Hearing Opened
Public Comment: None
Hearing Closed

APPROVED

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: November 16, 2021



cc: LUSD-Rahhal w/ NOE & Rec.
File - LUSD/Planning Appeals w/ attachments
JLL 11/18/2021