MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

16.2

1:30 p.m. being the time set for public hearing on the recommendation from Transportation & Land Management Agency/ Planning regarding Public Hearing on the Approval of Board Policy B-29 Pertaining to Solar Power Plants; Adoption of Resolution 2011-273 Amending the Riverside County General Plan – Second Cycle of General Plan Amendments for 2011 General Plan Amendment No. 1080; and Adoption of Ordinance 348.4705, an Ordinance of the County of Riverside amending Ordinance 348 relating to zoning, regarding solar energy systems and solar power plants.

On motion of Supervisor Benoit, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended, and IT WAS FURTHER ORDERED that Board Policy B-29 is approved as amended to include:

1. Under Payment change $640.00 to $450.00 for each acre of land
2. Under Local Hire Incentive add San Bernardino County
3. add Permanent Job Incentive
4. add Early Construction Incentive
5. Under Sales Tax Surety add second paragraph
6. Under Exemptions change five to 20 or fewer megawatts
7. Under Definition delete "Fulltime Equivalent Worker."

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on November 8, 2011 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors
Dated: November 8, 2011
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in
(seal) and for the County of Riverside, State of California.

By: _____ Deputy

AGENDA NO.
16.2

xc: Planning, All Dept's, COB

RESOLUTION NO. 2011-273
AMENDING THE RIVERSIDE COUNTY GENERAL PLAN
(Second Cycle General Plan Amendments for 2011)

WHEREAS, pursuant to the provisions of Government Code Section 65350 et. seq., notice was given and public hearings were held before the Riverside County Board of Supervisors and before the Riverside County Planning Commission to consider a proposed amendment to the Land Use Element of the Riverside County General Plan; and,

WHEREAS, all provisions of the California Environmental Quality Act ("CEQA") and Riverside County CEQA implementing procedures have been satisfied; and,

WHEREAS, the proposed general plan amendment was discussed fully with testimony and documentation presented by the public and affected government agencies; now, therefore,

BE IT RESOLVED, FOUND, DETERMINED AND ORDERED by the Board of Supervisors of the County of Riverside in regular session assembled on November 8, 2011 that:

General Plan Amendment No. 1080 (GPA No. 1080) is a County-initiated general plan amendment to incorporate into the Land Use Element the two new policies set forth in "GPA No. 1080 Exhibit A," a copy of which is attached hereto and incorporated herein by reference. GPA No. 1080 has County-wide application and affects all properties located in the unincorporated area. GPA No. 1080, the text of Ordinance No. 348.4734 and Ordinance No. 348.4705 were considered concurrently at the public hearing before the Planning Commission on July 14, 2010. The Planning Commission recommended adoption of GPA No. 1080 on July 14, 2010. GPA No. 1080, Ordinance No. 348.4734, Ordinance No. 348.4705, and Board of Supervisors Policy B-29 were considered concurrently at the Board of Supervisors on November 8, 2011.

GPA No. 1080 adds the following policies to the Land Use Element under a new heading entitled "Solar Energy Resources:"

1. LU-15.14 - Permit and encourage solar energy systems as an accessory use to any residential, commercial, industrial, mining, agricultural or public use.

FORM APPROVED COUNTY COUNSEL
BY: [signature] DATE 11/03/11
KATHERINE A. LIND

2. LU 15.15 - Permit and encourage, in an environmentally and fiscally responsible manner, the development of renewable energy resources and related infrastructure, including but not limited to, the development of solar power plants in the County of Riverside.

Ordinance No. 348.4734 amends Ordinance No. 348 to allow "solar energy systems" as an accessory use in all zones, subject to administrative review by the Director of Building & Safety. In certain cases, as stated in the ordinance, a "solar energy system" may require a plot plan. Ordinance No. 348.4705 amends Ordinance No. 348 to add "solar power plants" as a permitted use subject to the issuance of a conditional use permit on lots ten (10) acres or larger in the following zones: General Commercial (C-1/C-P), Commercial Tourist (C-T), Scenic Highway Commercial (C-P-S), Rural Commercial (C-R), Industrial Park (I-P), Manufacturing-Service Commercial (M-SC), Medium Manufacturing (M-M), Heavy Manufacturing (M-H), Mineral Resources (M-R), Mineral Resource and Related Manufacturing (M-R-A), Light Agriculture (A-1), Light Agriculture with Poultry (A-P), Heavy Agriculture (A-2), Agriculture-Dairy (A-D), Controlled Development (W-2), Regulated Development Areas (R-D), Natural Assets (N-A), Waterways and Watercourses (W-1), and Wind Energy Resource (W-E).

Board of Supervisors Policy B-29 provides that the County will not issue certain permits or approvals unless the Board of Supervisors first approves a franchise, real property interest or development agreement with the owner of a solar power plant. The permits or approvals involve (i) use of County rights-of-way, (ii) use of other County property, or (iii) land development under the County's zoning and subdivision ordinances. As a term of such agreements, the owner of a solar power plant would annually pay a fixed amount per acre of land devoted to the power production process. The purposes of this Board policy are to implement the General Plan, to ensure that the County does not disproportionately bear the burden of solar energy production, to ensure the County is compensated in an amount it deems appropriate for the use of its real property, and to give solar power plant owners certainty as to the County's requirements.

BE IT FURTHER RESOLVED by the Board of Supervisors, based on the evidence presented on this matter, both written and oral, including the Notice of Exemption, that:

1. GPA No. 1080 does not involve a change in or conflict with the Riverside County Vision, any General Planning Principle set forth in Appendix B or any Foundation Component designation in the General Plan. "Creativity and Innovation," "Natural Environment," and "Sustainability" are fundamental values of the County expressed in the Vision of the General Plan. Encouraging solar energy systems as an accessory use and encouraging the development of renewable energy resources and related infrastructure, in an environmentally and fiscally responsible manner, reaffirms the County's commitment to these fundamental values. No changes to General Planning Principles or Foundation Component designations are proposed; no conflict with those principles or designations will result.

2. GPA No. 1080 will either contribute to the purposes of the General Plan or, at a minimum, would not be detrimental to them for the reasons specified above. In addition, GPA No. 1080 is complementary to Policy OS 13.2 in the Multipurpose Open Space Element of the General Plan which calls for the County to "support and encourage voluntary efforts to provide active and passive solar access opportunities in new development."

3. Special circumstances or conditions have emerged that were unanticipated in preparing the General Plan. After the General Plan was adopted in 2003, the Governor of the State of California issued Executive Order S-21-09 and the legislature passed SB X 1-2 establishing the California Renewables Portfolio Standard Program. Pursuant to this program, the amount of electricity required to be generated per year from renewable energy resources has been increased to an amount that equals at least 33% of the total electricity sold to retail customers by December 31, 2020. Moreover, 75% of all renewable resources are to be from in-state sources by 2017. This aggressive 33% standard was not anticipated in preparing the General Plan. GPA No. 1080 will aid in meeting the 33% standard while also ensuring that solar power plants and related infrastructure do not jeopardize the County's fundamental values set forth in the General Plan Vision Statement, the General Planning Principles set forth in Appendix B and the General Plan policies.

4. A change in policy is required to conform to changes in state or federal law or applicable findings of a court of law. GPA No. 1080 will implement Government Code section 65850.5 and Health and Safety Code section 17959.1 by reflecting the policy of the State to promote and encourage the use of solar energy systems and to limit obstacles to their use.

BE IT FURTHER RESOLVED by the Board of Supervisors that that it finds General Plan Amendment No. 1080 exempt from CEQA for the reasons set forth in the staff report and the Notice of Exemption.

BE IT FURTHER RESOLVED by the Board of Supervisors that Land Use Policy LU 15.15 is adopted as part of a comprehensive, integrated legislative program which also includes the adoption of Ordinance No. 348.4705 and Board of Supervisors Policy No. B-29. The Board of Supervisors declares that it would not have adopted Land Use Policy LU 15.15 unless Ordinance No. 348.4705 and Board of Supervisors Policy No. B-29 were also adopted and effective. In the event that any provision of Land Use Policy LU 15.15, Ordinance No. 348.4705 or Board of Supervisors Policy No. B-29 is determined to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, then Land Use Policy LU 15.15, Ordinance No. 348.4705 and Board of Supervisors Policy No. B-29 shall be deemed invalid in their entirety and shall have no further force or effect.

BE IT FURTHER RESOLVED by the Board of Supervisors that it **ADOPTS** General Plan Amendment No. 1080 as described herein and as shown on the exhibit entitled "GPA No. 1080 Exhibit A."

BE IT FURTHER RESOLVED by the Board of Supervisors that the custodians of the documents upon which this decision is based are the Clerk of the Board of Supervisors and the County Planning Department, and that such documents are located at 4080 Lemon Street, Riverside, California.

ROLL CALL:

Ayes: Buster, Tavaglione, Stone, Benoit, and Ashley
Nays: None
Absent: None

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.

KECIA HARPER-IHEM, Clerk of said Board

By: _____
Deputy

11.08.11 16.2

GPA No. 1080 Exhibit A

To be added to the Countywide Policies of the Land Use Element of the General Plan after "Wind Energy Resources" and before "Density Transfers."

"Solar Energy Resources

LU 15.14 Permit and encourage solar energy systems as an accessory use to any residential, commercial, industrial, mining, agricultural or public use.

LU 15.15 Permit and encourage, in an environmentally and fiscally responsible manner, the development of renewable energy resources and related infrastructure, including but not limited to, the development of solar power plants in the County of Riverside."

ORDINANCE NO. 348.4734

AN ORDINANCE OF THE COUNTY OF RIVERSIDE
AMENDING ORDINANCE NO. 348
RELATING TO ZONING

The Board of Supervisors of the County of Riverside ordains as follows:

Section 1. Section 18.51of Ordinance No. 348 is added to read as follows:

"SECTION 18.51. SOLAR ENERGY SYSTEMS. Notwithstanding any other provision of this ordinance, solar energy systems are permitted as an accessory use in all zones subject to the provisions of this section.

a. The intent of this section is to provide for the implementation of section 65850.5 of the Government Code and section 17959.1 of the Health and Safety Code by complying with the mandatory provisions of those state statutes and to advance the state policy of encouraging the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting such systems. This section is intended to avoid any unreasonable restrictions on the ability of homeowners, agricultural concerns and business concerns to install solar energy systems. Solar energy systems utilize a renewable and nonpolluting energy resource, enhance the reliability and power quality of the electrical grid, reduce peak power demands, and make the electricity supply market more competitive by promoting consumer choice.

b. Applications to install solar energy systems shall be administratively reviewed and approved by the Director of the Department of Building and Safety as nondiscretionary permits; provided, however, that if the Director of the Department of Building and Safety determines in good faith that a solar energy system could have a specific adverse impact on the public health or safety, the applicant shall be required to apply for a plot plan

pursuant to section 18.30 of this ordinance and all provisions of that section shall apply except as modified by this section.

c. Review of an application to install a solar energy system shall be limited to a determination of whether the application meets all health and safety requirements of county, state and federal law. The requirements of county law shall be limited to those standards and regulations necessary to avoid a specific adverse impact upon the public health or safety. Review for aesthetic purposes, including any ordinance provision requiring the screening of the solar energy system, shall not be applicable.

d. If a plot plan is required pursuant to subsection b above, the plot plan shall not be denied unless the denial is based on written findings in the record that the proposed installation would have a specific adverse impact on the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for rejection of potential feasible alternatives of preventing the adverse impact.

e. Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

f. A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

g. A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where

applicable, rules of the Public Utilities Commission regarding safety and reliability.

h. For purposes of this section, the following terms shall have the following meanings:

(1) A "specific adverse impact" means a significant, quantifiable, direct and unavoidable impact, based on objective, identified and written public health or safety standards, policies or conditions as they existed on the date the application was deemed complete.

(2) A "feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by the county on another similarly situated application in a prior successful application for a permit. The county shall use its best efforts to ensure that the selected method, condition, or mitigation does not "significantly" increase the cost of the system or "significantly" decrease its efficiency or specified performance, or allows for an alternative system of comparable cost, efficiency, and energy conservation benefits. For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent as originally specified and proposed. For photovoltaic systems that comply with state or federal law, "significantly" means an amount not to exceed $2000 over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed."

Section 2. A new section 21.62i of Article XXI of Ordinance No. 348 is added to read as follows:

"Section 21.62i. SOLAR ENERGY SYSTEM. A system which is an accessory use to any residential, commercial, industrial, mining, agricultural or public use, used primarily (i.e. more than 50 percent) to reduce onsite utility usage, and which is either of the following:

(a) Any solar collector or other solar energy device the primary purpose of which is to provide for the collection, storage and distribution of solar energy for electric generation, space heating, space cooling, or water heating.

(b) Any structural design feature of a building, the primary purpose of which is to provide for the collection, storage and distribution of solar energy for electric generation, space heating, space cooling, or water heating."

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Section 3. This ordinance shall take effect thirty (30) days after its adoption.

BOARD OF SUPERVISORS OF THE COUNTY
OF RIVERSIDE, STATE OF CALIFORNIA

By: Bob Buster
Chairman
Bob Buster

ATTEST: Kecia Harper-Ihem
CLERK OF THE BOARD

By: Karen Butler
Deputy

(SEAL)

APPROVED AS TO FORM
November 3, 2011

By: Tiffany N. North
TIFFANY N. NORTH
Deputy County Counsel

G:\Property\TNorth\RCO No 348 solar energy systems.doc

STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

I HEREBY CERTIFY that at a regular meeting of the Board of Supervisors of said county held on November 8, 2011, the foregoing ordinance consisting of 3 Sections was adopted by the following vote:

AYES: Buster, Tavaglione, Stone, Benoit and Ashley

NAYS: None

ABSENT: None

DATE: November 8, 2011

KECIA HARPER-IHEM
Clerk of the Board

BY: _____
Deputy

SEAL

ORDINANCE NO. 348.4705

AN ORDINANCE OF THE COUNTY OF RIVERSIDE

AMENDING ORDINANCE NO. 348

RELATING TO ZONING

The Board of Supervisors of the County of Riverside ordains as follows:

Section 1. A new subsection (19) is added to Section 9.1.d. of Article IX of Ordinance No. 348 to read as follows:

"(19) Solar power plant on a lot 10 acres or larger."

Section 2. A new subsection d. is added to Section 9.25 of Article IXa of Ordinance No. 348 to read as follows:

"d. The following uses are permitted provided a conditional use permit has been granted pursuant to the provisions of Section 18.28 of this ordinance:

(1) Solar power plant on a lot 10 acres or larger."

Section 3. A new subsection (25) is added to Section 9.50.b. of Article IXb of Ordinance No. 348 to read as follows:

"(25) Solar power plant on a lot 10 acres or larger."

Section 4. A new subsection (8) is added to Section 9.62.b. of Article IXc of Ordinance No. 348 to read as follows:

"(8) Solar power plant on a lot 10 acres or larger."

Section 5. A new subsection (4) is added to Section 10.1.b. of Article X of Ordinance No. 348 to read as follows:

"(4) Solar power plant on a lot 10 acres or larger."

Section 6. A new subsection (19) is added to Section 11.2.c. of Article XI of Ordinance No. 348 to read as follows:

"(19) Solar power plant on a lot 10 acres or larger."

Section 7. A new subsection (22) is added to Section 11.26.c. of Article XIa of Ordinance No. 348 to read as follows:

"(22) Solar power plant on a lot 10 acres or larger."

Section 8. A new subsection (18) is added to Section 12.2.c. of Article XII of Ordinance No. 348 to read as follows:

"(18) Solar power plant on a lot 10 acres or larger."

Section 9. A new subsection (2) is added to Section 12.50.e. of Article XIIa of Ordinance No. 348 to read as follows:

"(2) Solar power plant on a lot 10 acres or larger."

Section 10. A new subsection (2) is added to Section 12.60.e. of Article XIIb of Ordinance No. 348 to read as follows:

"(2) Solar power plant on a lot 10 acres or larger."

Section 11. A new subsection (12) is added to Section 13.1.c. of Article XIII of Ordinance No. 348 to read as follows:

"(12) Solar power plant on a lot 10 acres or larger."

Section 12. A new subsection (4) is added to Section 13.51.h. of Article XIIIa of Ordinance No. 348 to read as follows:

"(4) Solar power plant on a lot 10 acres or larger."

Section 13. A new subsection (16) is added to Section 14.1.c. of Article XIV of Ordinance No. 348 to read as follows:

"(16) Solar power plant on a lot 10 acres or larger."

Section 14. A new subsection (2) is added to Section 14.52.c. of Article XIVa of Ordinance No. 348 to read as follows:

"(2) Solar power plant on a lot 10 acres or larger."

Section 15. A new subsection (32) is added to Section 15.1.d. of Article XV of Ordinance No. 348 to read as follows:

"(32) Solar power plant on a lot 10 acres or larger."

Section 16. A new subsection (3) is added to Section 15.101.c. of Article XVa of

Ordinance No. 348 to read as follows:

"(3) Solar power plant on a lot 10 acres or larger."

Section 17. A new subsection (15) is added to Section 15.200.c. of Article XVb of Ordinance No. 348 to read as follows:

"(15) Solar power plant on a lot 10 acres or larger."

Section 18. A new subsection (10) is added to Section 16.2.b. of Article XVI of Ordinance No. 348 to read as follows:

"(10) Solar power plant on a lot 10 acres or larger."

Section 19. A new subsection (2) is added to Section 17.2.g. of Article XVII of Ordinance No. 348 to read as follows:

"(2) Solar power plant on a lot 10 acres or larger."

Section 20. A new subsection (5) is added to Section 17.3.b. of Ordinance No. 348 to read as follows:

"(5) No solar power plants shall be closer than 10 feet from any lot line."

Section 21. A new Section 21.63 of Article XXI of Ordinance No. 348 is added to read as follows:

"Section 21.63. SOLAR POWER PLANT. A facility used to generate electricity from solar energy where the power plant will be connected to the power grid and the electricity will be used primarily (i.e. more than 50 percent) at locations other than the site of the solar power plant. Solar power plants include power plants using both solar thermal systems and photovoltaic systems to convert solar energy to electricity. Solar thermal systems concentrate heat to drive a turbine which is then used to create electricity from generators and include systems using solar troughs, solar dishes, and solar power towers. Photovoltaic systems use a technology such as solar cells which generates electricity directly from sunlight."

Section 22. Existing Section 21.63 of Article XXI of Ordinance No. 348 is renumbered 21.64.

Section 23. Ordinance No. 348.4705 is adopted as part of a comprehensive,

integrated legislative program which also includes the adoption of General Plan Amendment No 1080 (Land Use Policy LU 15.15) and Board of Supervisors Policy No. B-29. The Board of Supervisors declares that it would not have adopted Ordinance No. 348.4705 unless General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Board of Supervisors Policy No. B-29 were also adopted and effective. In the event that any provision of Ordinance No. 348.4705, General Plan Amendment No. 1080 (Land Use Policy LU 15.15) or Board of Supervisors Policy No. B-29 is determined to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, then Ordinance No. 348.4705, General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Board of Supervisors Policy No. B-29 shall be deemed invalid in their entirety and shall have no further force or effect.

Section 24. This ordinance shall take effect thirty (30) days after its adoption.

BOARD OF SUPERVISORS OF THE COUNTY
OF RIVERSIDE, STATE OF CALIFORNIA

By: Bob Buster
Chairman
Bob Buster

ATTEST: Kecia Harper-Ihem
CLERK OF THE BOARD

By:
Deputy

(SEAL)

APPROVED AS TO FORM

November 3, 2011

By:
TIFFANY N. NORTH
Deputy County Counsel

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11.08.11 16.2

STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

I HEREBY CERTIFY that at a regular meeting of the Board of Supervisors of said county held on November 8, 2011, the foregoing ordinance consisting of 24 Sections was adopted by the following vote:

AYES: Buster, Tavaglione, Stone, Benoit and Ashley

NAYS: None

ABSENT: None

DATE: November 8, 2011

KECIA HARPER-IHEM
Clerk of the Board

BY: _____
Deputy

SEAL

NOTICE OF EXEMPTION

Original Negative Declaration/Notice of Determination was routed to County Clerks for posting on.
11/24/11 Date
KB Initial
Via Tiffany North CoCo.

To: _____ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

To: X Office of the County Clerk & Recorder

From: County of Riverside
4080 Lemon Street
Riverside, CA 92501

Project Title: The County of Riverside's comprehensive, integrated legislative solar power plant program, including General Plan Amendment No. 1080 (Land Use Policy LU 15.15); Ordinance No. 348.4705, an Ordinance of the County of Riverside Amending Ordinance No. 348 Relating to Zoning; and Board of Supervisors Policy No. B-29.

Project Location: The unincorporated area of Riverside County.

Project Description: General Plan Amendment No. 1080 (Land Use Policy LU 15.15) provides that the County will permit and encourage, in an environmentally and fiscally responsible manner, the development of renewable energy resources and related infrastructure, including but not limited to, the development of solar power plants. Ordinance No. 348.4705 defines solar power plants and permits solar power plants on lots ten acres or larger, subject to a conditional use permit in the following zone classifications: General Commercial (C-1/C-P), Tourist Commercial (C-T), Scenic Highway Commercial (C-P-S), Rural Commercial (C-R), Industrial Park (I-P), Manufacturing-Service Commercial (M-SC), Manufacturing-Medium (M-M), Manufacturing-Heavy (M-H), Mineral Resources (M-R), Mineral Resources and Related Manufacturing (M-R-A), Light Agriculture (A-1), Light Agriculture with Poultry (A-P), Heavy Agriculture (A-2), Agriculture-Dairy (A-D), Controlled Development Areas (W-2), Regulated Development Areas (R-D), Natural Assets (N-A), Watercourse, Watershed & Conservation Areas (W-1), and Wind Energy Resource Zone (W-E). Pursuant to Board of Supervisors Policy B-29 ("the Policy"), no encroachment permit shall be issued for a solar power plant unless the Board first grants a franchise to the solar power plant owner; no interest in the County's real property, or the real property of any special district governed by the County, shall be conveyed for a solar power plant unless the Board first approves a real property interest agreement with the solar power plant owner; and no approval required by Ordinance Nos. 348 or 460 shall be given for a solar power plant unless the Board first approves a development agreement with the solar power plant owner and the development agreement is effective. All such agreements shall include a term requiring a solar power plant owner to annually pay the County $450 for each acre of land involved in the power production process, adjusted for inflation. A solar power plant owner is also required to deliver a letter of credit to the County to secure the payment of sales and use taxes or follow an alternative sales and use tax commitment procedure. The Policy includes employment incentives, an early construction incentive, a collocation incentive, and a property tax credit, all of which may be applied to reduce the annual payment amount, as appropriate, by no more than 50 percent. The Policy also exempts solar power plants that have a rated capacity of 20 or fewer megawatts and allows a solar power plant owner to make a written request to be excepted from the Policy. The purposes of the Policy are to implement the General Plan, to ensure that the County does not disproportionately bear the burden of solar energy production, to ensure that the County is compensated in an amount it deems appropriate for the use of its real property, and to give solar power plant owners certainty as to the County's requirements.

Name of Public Agency Approving Project: County of Riverside

Project Sponsor: Transportation and Land Management Agency of the County of Riverside

Exempt Status: (check one)
☐ Ministerial
☐ Declared Emergency
☐ Emergency Project
☐ Categorical Exemption:
☐ Statutory Exemption:
X Other: (State CEQA Guidelines Sec. 15061(b)(3))

Reasons Why Project is Exempt: The project is exempt from CEQA pursuant to State CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that there is no possibility the project may have a significant effect on the environment. The project commits the County to permitting and encouraging renewable energy development, including solar power plants, in an environmentally and fiscally responsible manner. It also establishes a discretionary permitting process for solar power plants,

subject to the Policy which addresses County real property and economic issues. There is no specific development application associated with this project and it does not commit the County to any development. To perform any environmental analysis at this early stage would require the County to speculate as to what property might be involved, what type of solar technology might be used, and what impacts a future solar power plant project might have. Significantly, many solar power plant projects which are currently under review are being substantially altered to reflect rapidly evolving technology and market conditions. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d. 185, 193. Under these circumstances, environmental analysis at this time would be premature and meaningless.

It has been asserted, without presentation of substantial evidence, that imposition of the Policy will place such a high burden on solar facilities that fewer facilities will be constructed or such facilities will move out of the County or state. However, in the report entitled "Effect of Proposed Board Policy B-29 on Solar Power Plant Projects", economist Dr. David X. Kolk concluded that the Policy "will not have a significant impact on the size or number of solar projects proposed for Riverside County." Dr. Kolk also concluded that "[w]hile other areas of California are attempting to attract solar and other renewable developers, transmission constraints and the complexities of finding areas with the necessary environmental attributes and transmission access will continue to make Riverside County a preferred area for solar development even with the County's modest payment proposal." In his presentation entitled "Financial Analysis of County Solar Policy", Paul McDonnell, Managing Director of the public finance advisory firm C.M. de Crinis & Co., Inc., reached the same conclusion finding that the proposed payment described in the Policy represents a minor factor in determining the overall profitability of solar power plants. Pursuant to State CEQA Guidelines section 15064(e), "[e]conomic and social changes resulting from a project shall not be treated as significant effects on the environment". Accordingly, the County's approval of the project does not create either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

Before development occurs on any particular site, all environmental issues will be analyzed in site-specific environmental impact reports or other environmental documents. The evidence supporting the determination of exemption is set forth in full in the project record and the determination of exemption is consistent with State CEQA Guidelines section 15004(b) which provides: "Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." "Determining whether a project qualifies for the common sense exemption need not necessarily be preceded by detailed or extensive factfinding. Evidence appropriate to the CEQA stage in issue is all that is required." *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 388.

County Contact Person _____ Phone Number _____

Signature: Karen Gaston Title: Board Assistant Date: 11/21/11

For County Clerk's Use Only

NOTICE OF EXEMPTION

Original Negative Declaration/Notice of Determination was routed to County Clerks for posting on.
11/21/11 Date
KB Initial
Via Tiffany North Co.Co.

To: _____ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

To: X Office of the County Clerk & Recorder

From: County of Riverside
4080 Lemon Street
Riverside, CA 92501

Project Title: General Plan Amendment No. 1080 (Land Use Policy LU 15.14) and Ordinance No. 348.4734, an Ordinance of the County of Riverside Amending Ordinance No. 348 Relating to Zoning.

Project Location: The unincorporated area of Riverside County.

Project Description: General Plan Amendment No. 1080 (Land Use Policy LU 15.14) ("the General Plan Amendment") provides that the County will permit and encourage solar energy systems as an accessory use to any residential, commercial, industrial, mining, agricultural or public use. Ordinance No. 348.4734 ("the Ordinance") will permit solar energy systems as an accessory use in all zones. The project implements the mandatory provisions of Government Code section 65850.5 and Health and Safety Code section 17959.1. The Ordinance requires that applications to install solar energy systems be administratively reviewed and approved as nondiscretionary permits by the Director of the Department of Building and Safety ("the Director"), subject to a limited exception requiring approval of a plot plan if the Director determines in good faith that a solar energy system could have a specific adverse impact on public health or safety. Plot plan review and conditions of approval are limited in accordance with state statutory requirements. A solar energy system is "[a] system which is an accessory use to any residential, commercial, industrial, mining, agricultural or public use, used primarily (i.e. more than 50 percent) to reduce onsite utility usage, and which is either of the following: (a) Any solar collector or other solar energy device the primary purpose of which is to provide for the collection, storage and distribution of solar energy for electric generation, space heating, space cooling, or water heating, or (b) Any structural design feature of a building, the primary purpose of which is to provide for the collection, storage and distribution of solar energy for electric generation, space heating, space cooling, or water heating."

Name of Public Agency Approving Project: County of Riverside

Project Sponsor: Transportation and Land Management Agency of the County of Riverside

Exempt Status: (check one)
X Ministerial: (Public Resources Code Sec. 21080(b)(1); State CEQA Guidelines Sec. 15268)
❒ Declared Emergency
❒ Emergency Project
❒ Categorical Exemption
X Statutory Exemption: (Public Resources Code Sec. 21080(b)(1); State CEQA Guidelines Sec. 15268)
X Other: (State CEQA Guidelines Sec. 15061(b)(3))

Reasons Why Project is Exempt: The project implements, on a County level, mandatory state statutes requiring that provisions be made for the approval of solar energy systems on a ministerial basis. These statutory requirements are set forth in Government Code section 65850.5 and Health and Safety Code section 17959.1 As a result, the adoption of the General Plan Amendment and the adoption of the Ordinance are exempt from CEQA as a ministerial project pursuant to Public Resources Code section 21080(b)(1) and State CEQA Guidelines section 15268. The project is also exempt from CEQA pursuant to State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility the project may have a significant effect on the environment. Almost all solar energy system applications will be subject only to nondiscretionary review and approval and therefore will themselves be exempt as a ministerial project pursuant to Public Resources Code section 21080(b)(1) and State CEQA Guidelines section 15268.

There is no specific solar energy system application associated with the project and it does not commit the County to the installation of any such system. To the extent that a solar energy system may in limited circumstances require a plot plan, the performance of any environmental analysis at this early stage would require the County to speculate as to what property might be involved, what type of solar technology might be used, and what effects a hypothetical solar energy system on a hypothetical site might have when that system is not subject to the usual ministerial approval process.. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71

Cal.App.3d. 185, 193. Under these circumstances, environmental analysis at this time would be premature and meaningless. Accordingly, the County's approval of the project does not create either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

Before a solar energy system not subject to only ministerial review is installed on any particular site, environmental issues will be analyzed in site-specific environmental documents in accordance with CEQA. The evidence supporting the determination of exemption is set forth in full in the project record and the determination of exemption is consistent with State CEQA Guidelines section 15004(b) which provides: "Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." "Determining whether a project qualifies for the common sense exemption need not necessarily be preceded by detailed or extensive factfinding. Evidence appropriate to the CEQA stage in issue is all that is required." *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 388.

County Contact Person _____ Phone Number _____

Signature: _____ Title: Board Assistant Date: 11/21/11

For County Clerk's Use Only

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FROM: Transportation and Land Management Agency

SUBMITTAL DATE:
November 3, 2011

SUBJECT: General Plan Amendment No. 1080; Resolution No. 2011-273 Amending the Riverside County General Plan - Second Cycle of General Plan Amendments for 2011; Ordinance No. 348.4734, amending Ordinance No. 348 regarding solar energy systems; Ordinance No. 348.4705, amending Ordinance No. 348 regarding solar power plants; Board of Supervisors Policy No. B-29 pertaining to solar power plants

RECOMMENDED MOTION: That the Board of Supervisors:

(1) Adopt General Plan Amendment No. 1080 amending the Land Use Element of the General Plan;
(2) Adopt Resolution No. 2011-273 amending the Riverside County General set forth in Attachment A;
(3) Adopt Ordinance No. 348.4734 amending Ordinance No. 348 regarding solar energy systems, set forth in Attachment B;
(4) Adopt Ordinance No. 348.4705, amending Ordinance No. 348 regarding solar power plants, set forth in Attachment C;
(5) Approve Board of Supervisors Policy No. B-29 pertaining to solar power plants, set forth in Attachment D;
(6) Find Ordinance No. 348.4734 exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) and 15268; and
(7) Find GPA No. 1080, Ordinance No. 348.4705 and Board of Supervisors Policy No. B-29 exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3).

(continued on page 2)

George A. Johnson

George Johnson, Director
Transportation and Land Management Agency

FORM APPROVED COUNTY COUNSEL
BY: Kat A. Lind 11/03/11
KATHERINE A. LIND DATE

Departmental Concurrence

FINANCIAL DATA				
	Current F.Y. Total Cost:	$ NA	In Current Year Budget:	NA
	Current F.Y. Net County Cost:	$ NA	Budget Adjustment:	NA
	Annual Net County Cost:	$ NA	For Fiscal Year:	

SOURCE OF FUNDS:

Positions To Be Deleted Per A-30 ☐
Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION:

APPROVE
BY: Denise C. Harden

County Executive Office Signature

Dep't Recomm.: ☐ Consent ☒ Policy
Per Exec. Ofc.: ☐ Consent ☒ Policy

Prev. Agn. Ref.: 02/08/11 #3.29
06/28/11 #3.2

District: All

Agenda Number: 16.2

BACKGROUND:

Pursuant to this agenda item, staff is asking the Board to consider two projects. The first project is Ordinance No. 348.4734, an amendment to Ordinance No. 348 regarding solar energy systems. The second project is a comprehensive, integrated legislative solar power plant program which includes General Plan Amendment No. 1080 ("GPA No. 1080"), Ordinance No. 348.4705 and Board of Supervisors Policy No. B-29 ("Board Policy No. B-29").

Solar Energy Systems

Ordinance No. 348.4734 would allow a "solar energy system" as an accessory use in all zones, subject to administrative review by the Director of Building and Safety. A "solar energy system" is a system which is an accessory use to any residential, commercial, industrial, mining, agricultural or public use, used primarily (i.e. more than 50 percent) to reduce onsite utility usage. In certain cases, as stated in the ordinance, a "solar energy system" could require a plot plan. The Planning Commission recommended adoption of the solar energy system provisions reflected in Ordinance No. 348.4734 on July 14, 2010.

Solar Power Plants

Solar companies are descending on the County to take advantage of the County's superior sunshine, easy transmission access, expansive open space and close proximity to population centers. These unique attributes, coupled with the following state mandates have put Riverside County at the epicenter of the solar rush – 33 percent of the total electricity sold to retail customers by December 31, 2020, must come from renewable energy resources and 75 percent of all such renewable energy resources must be from in-state sources by 2017. This influx is being heavily subsidized by taxpayer dollars. Solar power plants are largely exempt from property taxes paid by residents and other businesses, including other renewable energy generators. Photovoltaic plants are completely exempt from paying property taxes on all energy generation facilities and equipment. Solar thermal plants are 75 percent exempt on their dual use energy generation facilities and equipment.

While the County supports solar energy and acknowledges its benefits, it is clear a comprehensive, integrated legislative program is now necessary to ensure that:

- The County can fully implement its General Plan;
- The County does not disproportionately bear the burden of solar energy production; and
- The County is compensated in an amount it deems appropriate for the use of its real property.

The benefits of solar power plants occur primarily on a national, statewide and regional level. The County wants to contribute its fair share to meet renewable energy goals, but not at the expense of its residents. At the local level, solar power plants permanently alter the landscape. They also permanently commit vast areas of the County to energy production and preclude all other potential uses including, but not limited to, agricultural, recreational, commercial, residential and open space uses. The amount of land required to operate solar power plants is

significantly greater than the amount of land required to operate other renewable energy facilities and conventional energy facilities. Photovoltaic (PV) solar power plants consume between 5 and 7 acres per megawatt - 250 to 350 acres are required for a 50 megawatt plant. In contrast, a conventional natural gas-fired power plant needs only 37 acres to generate 800 megawatts.

Currently, more than 20 utility-scale solar power plants are proposed on 118,000 acres between Desert Center and Blythe. That equates to an area the size of the cities of Palm Springs, Cathedral City, Rancho Mirage, Palm Desert and Indio combined. Because Riverside County is one of the fastest growing counties in the state, and because it is expected to be the second most populous county in the state by 2044, the commitment of so much land to a single use has serious consequences.

The County's comprehensive, integrated solar power plant program includes GPA No. 1080, Ordinance No. 348.4705 and Board Policy No. B-29.

GPA No. 1080 is a County-initiated general plan amendment that would add two new countywide policies to the Land Use Element of the General Plan. Proposed Land Use Policy LU 15.15 provides that the County will permit and encourage, in an environmentally and fiscally responsible manner, the development of renewable energy resources and related infrastructure, including, but not limited to, the development of solar power plants. The Board of Supervisors adopted an order to initiate GPA No. 1080 on February 9, 2010. The Planning Commission recommended adoption of GPA No. 1080 on July 14, 2010.

Ordinance No. 348.4705 would amend Ordinance No. 348 to authorize solar power plants on lots ten (10) acres or larger, subject to a conditional use permit in the following zone classifications: General Commercial (C-1/C-P), Commercial Tourist (C-T), Scenic Highway Commercial (C-P-S), Rural Commercial (C-R), Industrial Park (I-P), Manufacturing Servicing Commercial (M-SC), Medium Manufacturing (M-M), Heavy Manufacturing (M-H), Mineral Resources (M-R), Mineral Resource and Related Manufacturing (M-R-A), Light Agriculture (A-1), Light Agriculture with Poultry (A-P), Heavy Agriculture (A-2), Agriculture-Dairy (A-D), Controlled Development (W-2), Regulated Development Areas (R-D), Natural Assets (N-A), Waterways and Watercourses (W-1), and Wind Energy Resource Zone (W-E). The Planning Commission recommended adoption of Ordinance No. 348.4705 on July 14, 2010.

Ordinance No. 348.4705 is necessary because solar power plants are not currently listed as permitted or conditionally permitted use in any zone classification. When a use is not specifically listed as permitted or conditionally permitted in a zone classification, the use is prohibited. The Planning Director has limited ability to make a determination that a use is substantially the same in character and intensity as those uses permitted or conditionally permitted in the zone classification.

Such a determination cannot appropriately be made with respect to solar power plants because there are no other uses substantially similar in Ordinance No. 348. Some zones permit "public utility substations and storage yards," but the generation of solar energy at a large scale solar

power plant is not the same in character and intensity as a substation and storage yard. Moreover, solar power plant owners maintain they are not public utilities.

On February 8, 2011, the Board recognized the impact the sudden influx of renewable energy plants will have on Riverside County and directed staff to prepare a board policy. On June 28, 2011, the Executive Office placed Board Policy No. B-29 on the Board's agenda for its consideration (agenda item 3.112).

Board Policy No. B-29, as proposed in June, provided that certain permits and approvals would not be issued for a solar power plant unless the Board of Supervisors first approved a franchise, real property interest, or development agreement with the solar power plant owner. As a term of such agreements, the solar power plant owner would annually pay 2 percent of gross annual receipts. Consistent with state law, the County has a long-standing practice of granting electricity franchises requiring payment of 2 percent of gross annual receipts in return for encroaching on the County's rights-of-way for the purpose of installing electrical transmission facilities. On June 28, the Board of Supervisors continued the Board policy so that staff could meet with solar industry representatives.

Staff held meetings with representatives from 12 different solar companies on August 8, 2011, August 11, 2011, August 30, 2011, September 14, 2011, September 22, 2011, October 20, 2011, and October 25, 2011. Each of these meetings lasted several hours and many ideas were discussed. The solar industry representatives strongly objected to the County's initial proposal for a payment of 2 percent of gross annual receipts, although public utilities such as Edison make such payments. They also objected to County staff's suggested megawatt-based methodology. At the solar industry's request, staff agreed to use their preferred per-acre payment methodology. Although there was consensus on many points, no agreement on a comprehensive policy was reached.

Revised Board Policy No. B-29 strikes a balance between economic development and protecting county taxpayers. It currently provides that:

- No encroachment permit shall be issued for a solar power plant unless the Board of Supervisors first grants a franchise to the solar power plant owner.

- No interest in the County's property, or the real property of any district governed by the County, shall be conveyed for a solar power plant unless the Board of Supervisors first approves a real property interest agreement with the solar power plant owner.

- No approval required by Ordinance Nos. 348 or 460 shall be given for a solar power plant unless the Board of Supervisors first approves a development agreement with the solar power plant owner and the development agreement is effective.

All such agreements shall include a term requiring a solar power plant owner to make an annual payment to the County of $640 for each acre involved in the power production process, adjusted

for inflation. A solar power plant owner is also required to deliver a letter of credit to the County to secure the payment of sales and use taxes.

The revised policy includes a local hire incentive, a collocation incentive, and a property tax credit, all of which may be applied to reduce the base payment amount, as appropriate, by no more than 50 percent. In addition, the revised policy includes a suspension of operation provision and an exemption provision for solar power plants with a rated production capacity of five or fewer megawatts. The incentives, credit and exemption provisions resulted from thoughtful deliberation during meetings with solar industry representatives and further discussions among staff.

Board Policy No. B-29 provides further benefits to solar power plant owners. Specifically:

- Cost certainty — A franchise, real property interest or development agreement would set the solar power plant payment.
- Development rights — A development agreement would secure a vested right to develop in accordance with the rules and regulations existing at the time the development agreement became effective.
- Project phasing — A development agreement would secure the right to develop the project in such order and at such rate and at such times as the owner deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in its development plan.
- Equipment upgrades — A development agreement would secure the right to make equipment upgrades or repower without additional County discretionary approvals, provided that the mode of production and original footprint remain the same, and height is not increased.
- Assignment rights — A franchise, real property interest or development agreement would secure the right to assign or transfer the benefits of the agreement to future purchasers.
- Duration — A franchise, real property interest or development agreement would secure the benefits referenced above for a term that coincides with the operation of the solar power plant.

The policy does not affect development impact fees or Fire Department capital costs, which will be handled as they have in the past.

When the Board considered Board Policy No. B-29 on June 28, numerous speakers said the proposed payment would place an onerous burden on solar power plants. As a result, they claimed, fewer plants would be constructed or, alternatively, would move out of the County or state. This displacement argument is without merit, according to the report titled "Effect of

Proposed Board Policy B-29 on Solar Power Plant Projects," prepared by Dr. David Kolk of Complete Energy Consulting, LLC, attached hereto and incorporated herein by reference as Attachment E. Dr. Kolk's analysis indicates that the proposed per-acre annual payment will have a minimal impact on solar power plants and will not affect the County's ability to attract and retain those projects. Dr. Kolk reasoned that the major driver of locating solar projects within California will continue to be transmission interconnection costs. "To the extent Riverside County offers better access to new transmission facilities it will continue to have an advantage over other parts of the state in attracting solar projects after the proposed payment is adopted." Dr. Kolk also demonstrated that the minimal impact of the payment would be reduced by the property tax credit, local hire incentive and collocation incentive proposed in the Board policy. Dr. Kolk indicated additional incentives such as an early construction incentive and a permanent jobs incentive could further reduce the impact. These additional incentives are available for the Board's consideration.

Ordinance No. 348.4734 is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty there is no possibility the amendment may have a significant effect on the environment. Ordinance No. 348.4734 implements a mandatory state program requiring that provisions be made for the approval of solar energy systems on a ministerial basis. This program is set forth in Government Code section 65850.5 and Health and Safety Code section 17959.1. As a result, the adoption of this ordinance is also exempt from CEQA as a ministerial project pursuant to CEQA Guidelines section 15268.

GPA No. 1080, Ordinance No. 348.4705 and Board Policy No. B-29 are exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3), in that it can be seen with certainty there is no possibility the project may have a significant effect on the environment. The project merely establishes a discretionary permitting process for solar power plants in the County. To perform any environmental analysis at this early stage would require the County to speculate as to which parcels might be involved, what type of solar technology might be used, and what impacts a future solar power plant project might have. As a result, such analysis would be premature and meaningless. "Determining whether a project qualifies for the common sense exemption need not necessarily be preceded by detailed or extensive factfinding. Evidence appropriate to the CEQA stage in issue is all that is required." *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 388. There is no specific development application connected with this project and it does not commit the County to any development. As noted by Dr. Kolk in his report, the project will not displace solar power plants to locations outside Riverside County. Accordingly, the County's approval of the project does not create a reasonably foreseeable physical change in the environment. Before development occurs on any particular site, all environmental issues will be analyzed in site-specific environmental impact reports or other environmental documents. The conclusions expressed herein are consistent with CEQA Guidelines section 15004 (b) which provides: "Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment."

COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Policy Subject:	Number	Page
SOLAR POWER PLANTS	B-29	1 of 6

Purpose:

The Board supports solar energy and acknowledges its benefits. The benefits of solar power plants, however, occur on a national, statewide and regional level. The County wants to contribute its fair share to meet renewable energy goals, but not at the expense of its residents. At the local level, solar power plants permanently alter the landscape. They also permanently commit vast areas of the County to energy production and preclude all other potential uses, including, but not limited to, agricultural, recreational, commercial, residential and open space uses. The amount of land required to operate these facilities is significantly greater than the amount of land required to operate other renewable energy facilities and conventional energy facilities. Because Riverside County is one of fastest growing counties in the state and because it is expected to be the second most populous county in the state by 2044, the commitment of so much land to a single use has serious consequences.

There are currently such a large number of solar power plants approved and pending in the County that the fundamental values of the County expressed in its General Plan are in jeopardy. These fundamental values include "sustainability", pursuant to which the County has an expectation that its future residents will inherit communities offering them a reasonable range of choices (General Plan pg. V-7); and the "natural environment", pursuant to which the County is committed to maintaining sufficient areas of natural open space and sustaining the permanent viability of unique landforms and ecosystems (General Plan pg. V-6).

The vision of the County expressed in its General Plan is also in jeopardy. Corridors and areas may not be preserved for distinctive purposes, including multi-purpose open space; economic development; agriculture; residences; and public facilities (General Plan pg. V-11). The rich diversity of the County's environmental resources may not be preserved and enhanced for the enjoyment of present and future generations (General Plan pg. V-11). The public may not have access to recreation opportunities (General Plan pg. V-11). There may not be expanded local employment opportunities (General Plan pg. V-12). Development may not occur where appropriate and where adequate public facilities and services are available (General Plan pg. V-15). Agricultural lands may not remain as a valuable form of development (General Plan pg. V-22).

The following General Plan Policies will be affected by the large number of approved and pending solar power plants:

- Land Use Element Policy LU 2.1.c. - the County shall provide a broad range of land uses, including a range of residential, commercial, business, industry, open space, recreation and public facility uses (General Plan pg. LU-20).

- Land Use Element Policy LU 5.1- the County shall ensure that development does not exceed the ability to adequately provide supporting infrastructure and services (General Plan LU-24).

- Land Use Element Policy LU 7.1 - the County shall accommodate the development of a balance of land uses that maintain and enhance the County's fiscal viability, economic diversity and environmental integrity (General Plan LU-26).

- Land Element Policy LU 8.1 - the County shall provide for the permanent preservation of open space lands that contain important natural resources and scenic and recreational values (General Plan LU-28).

- Land Use Element Policy LU 13.1 - the County shall preserve and protect outstanding scenic vistas and visual features for the enjoyment of the traveling public (General Plan LU-31).

- Land Use Element Policy LU 15.15 - the County shall permit and encourage, in an environmentally and fiscally responsible manner, the development of renewable energy resources and related infrastructure, including but not limited to, the development of solar power plants in the County of Riverside (General Plan LU-37).

The purposes of this Board policy are to implement these and other General Plan provisions, to ensure that the County does not disproportionately bear the burden of solar energy production, to ensure the County is compensated in an amount it deems appropriate for the use of its real property, and to give solar power plant owners certainty as to the County's requirements.

Policy:

To secure public health, safety and welfare, a solar power plant shall be subject to the requirements of this policy as well as the requirements of any applicable ordinance, state or federal law.

No encroachment permit shall be issued for a solar power plant unless the Board first grants a franchise to the solar power plant owner. No interest in the County's real property, or the real property of any special district governed by the County, shall be conveyed for a solar power plant unless the Board first approves a real property interest agreement with the solar power plant owner. No approval required by Ordinance Nos. 348 or 460 shall be given for a solar power plant unless the Board first approves a development agreement with the solar power plant owner and the development agreement is effective.

Notwithstanding the foregoing, the County may waive the requirement for multiple agreements where otherwise two or more agreements would be required.

Each such franchise, real property interest agreement or development agreement shall include provisions consistent with the following requirements:

Payment. The solar power plant owner shall annually pay the County $450 for each acre of land involved in the power production process (hereinafter "net acreage"). The initial payment shall be due within five business days of the commencement of project construction. Subsequent payments shall be due by September 30 of each year.

CPI Adjustment. The initial payment, and each subsequent payment shall be adjusted based on the Consumer Price Index, All Urban Consumers, (Los Angeles — Anaheim). In no event, however, shall the Consumer Price Index adjustment be less than one percent nor more than four percent.

Incentives and Credits. The following incentives and credits may be applied to reduce the base payment amount as appropriate, but in no event shall a combination of these incentives and credits reduce the adjusted base payment by more than 50 percent:

- **Local Hire Incentive.** For a three calendar year period from the commencement of project construction, the annual base payment may be reduced by $1,500 for each full time equivalent worker residing in Riverside County or San Bernardino County prior to the date of hire.

- **Permanent Jobs Incentive.** Following completion of project construction, the annual base payment may be reduced by $2,500 for each full time equivalent worker residing in Riverside County or San Bernardino County prior to the date of hire.

- **Collocation Incentive.** The annual base payment of each participating solar power plant owner may be reduced by five percent for collocation of transmission lines on

common poles or by three percent for collocation of transmission lines in a common corridor.

- **Property Tax Credit.** The base payment may be reduced by the amount of the County's 12.44 percent share and the Fire Department's 2.58 percent share of the 1 percent general purpose property taxes and/or possessory interest taxes paid on the net acreage in the immediately preceding fiscal year, including any supplemental assessments.

- **Early Construction Incentive.** If construction commences before January 1, 2014, and is thereafter pursued diligently to completion, the annual base payment may be reduced by 10 percent for the term of the agreement.

Suspension of Operations. If the County causes a solar power plant to stop operating for longer than 90 days for a reason not related to a violation of the terms of any applicable agreement or a violation of the project conditions of approval, the base payment may be reduced by up to 50 percent upon written request of the solar power plant owner for the period of time the solar power plant remains inoperative.

Sales Tax Surety. The solar power plant owner shall deliver a letter of credit to the County within five business days of the close of project financing in an amount equal to the sales and use taxes the County estimates will be generated by construction of the solar power plant to ensure such taxes are allocated to the County whenever possible. The solar power plant owner shall provide the information needed by the County to make this estimate. The County shall release annually a portion of the letter of credit equal to the amount of taxes received by the County, as reported by the State Board of Equalization. If, upon completion of construction, the sales and use taxes received are less than the taxes owed, the solar power plant owner shall pay the difference and, upon deposit of such payment in full, the County shall authorize release of the letter of credit.

Alternatively, the solar power plant owner may follow a negotiated sales and use tax commitment procedure that assures the sales and use taxes the County estimates will be generated by construction of the solar power plant are allocated to the County whenever possible. The solar plant owner shall provide the information needed by the County to make this estimate. If, upon completion of construction, the sales and use taxes received by the County are less than the taxes owed, the solar power plant owner shall pay the difference to the County. If the solar power plant owner fails to make such payment to the County, the County shall pursue recovery of the amount owed.

Term. The appropriate agreement shall be for a term coextensive with the operation of the solar power plant.

Exemption:

This policy shall not apply to a solar power plant that has a rated production capacity of 20 or fewer megawatts; provided, however, this exemption shall not apply if the County determines that a solar power plant owner, or an affiliated company, filed separate applications so as to obtain the exemption.

Exception:

A solar power plant owner may make a written request to be excepted from this policy at the time the solar power plant owner files an application for a permit or approval described in this ordinance or any time thereafter. The Board may grant the exception request upon a finding of special circumstances. Special circumstances shall include, but not be limited to, a determination that the solar power plant has a substantial benefit to the County above and beyond the payment of required taxes or the implementation of mitigation measures identified in any applicable environmental document. Special circumstances shall not include financial or economic hardship.

Definitions:

As used in this policy, the following terms shall have the following meanings:

"Collocation." Locating transmission lines either on common poles or in a common corridor no wider than 300 feet either for a distance of at least one mile or, for 80 percent of the length of the longest transmission line, if that line is shorter than one mile.

"Net Acreage." All areas involved in the production of power including, but not limited to, the power block, solar collection equipment, areas contiguous to solar collection equipment, transformers, transmission lines and/or piping, transmission facilities (on and off-site), service roads regardless of surface type – including service roads between panels or collectors, structures, and fencing surrounding all such areas. Net acreage shall not include off-site access roads or areas specifically set aside either as environmentally sensitive or designated as open space, and shall not include the fencing of such set aside areas.

"Solar Power Plant." A facility used to generate electricity from solar energy where the power plant will be connected to the power grid and the electricity will be used primarily

(i.e. more than 50 percent) at locations other than the site of the solar power plant. Solar power plants include power plants using both solar thermal systems and photovoltaic systems to convert solar energy to electricity. Solar thermal systems concentrate heat to drive a turbine which is then used to create electricity from generators and include systems using solar troughs, solar dishes, and solar power towers. Photovoltaic systems use a technology such as solar cells which generates electricity directly from sunlight. A solar power plant does not include a solar energy system as defined in Ordinance No. 348.

"Solar Power Plant Owner." A person or entity developing, owning or operating a solar power plant.

Integration:

Board of Supervisors Policy No. B-29 is approved as part of a comprehensive, integrated legislative program which also includes the adoption of General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Ordinance No. 348.4705. The Board of Supervisors declares that it would not have adopted Board of Supervisors Policy No. B-29 unless General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Ordinance No. 348.4705 were also adopted and effective. In the event that any provision of Board of Supervisors Policy No. B-29, General Plan Amendment No. 1080 (Land Use Policy LU 15.15) or Ordinance No. 348.4705 is determined to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, then Board of Supervisors Policy No. B-29, General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Ordinance No. 348.4705 shall be deemed invalid in their entirety and shall have no further force or effect.

Harper-Ihem, Kecia

Subject: FW: Last piece
Attachments: Solar Policy Report.pdf

From: Smith, Raymond [mailto:RaySmith@rceo.org]
Sent: Friday, November 04, 2011 1:48 PM
To: Harper-Ihem, Kecia
Subject: Last piece

Kecia,

Here is the last piece. Thanks and let me know when it is online, please.

Ray

Please note: The County Administrative Center will be closed every Friday per order of the Board of Supervisors. Business hours for the County Executive Office are Monday through Thursday, 7:30 a.m. to 5:30 p.m.

Effect of Proposed Board Policy B-29 on Solar Power Plant Projects

Prepared by:

Complete Energy Consulting, LLC
David X. Kolk, Ph.D.

November, 2011

Effect of Proposed Board Policy B-29 on Solar Power Plant Projects

Introduction

The Riverside County Board of Supervisors is considering a policy that would require utility scale solar power plants to annually pay the County up to $640/acre for each acre used in the power production process. Proponents of these projects claim that the proposed payment would make the projects uneconomic and drive them out of the County.

The analysis presented here suggests that the County's proposed payment will have a minimal impact on solar power plants and will not affect the County's ability to attract and retain those projects. Moreover, the impact of the payment will be reduced by property tax credits and can be even further reduced if the projects take advantage of the incentive programs the County is proposing: a local employment incentive, property tax credit and collocation incentive.

Background

California State Senate Bill 1078[1] initially established the Renewables Portfolio Standard (RPS), requiring investor owned utilities (IOUs) to increase renewable purchases by one percent per year until the total reaches 20 percent of their retail sales by 2017. The 2003 Energy Action Plan accelerated the target date from 2017 to 2010.

Two legislative bills, SB 14 and AB 64, passed the California legislature in September 2009, both of which would have increased the RPS to 33 percent by 2020. However, the Governor vetoed these bills, criticizing their complexity and their failure to streamline the permitting process. Governor Schwarzenegger subsequently issued Executive Order S-21-09, instructing the California Air Resources Board (CARB) to use its authority under AB 32, California's Green House Gas (GHG) legislation, to adopt regulations requiring the state's load serving entities to meet a 33 percent renewable energy standard (RES) target by 2020.

CARB was originally scheduled to vote on the proposed regulation in July 2010 but Governor Schwarzenegger requested that CARB postpone the vote until its September 23, 2010 board meeting, due to the momentum surrounding Senate Bill 722 (SB 722), which would have, among other things, codified a 33 percent RPS by 2020. SB 722 did not pass the legislature before it went to permanent recess on September 1, 2010. The CARB did pass the RES at its September, 2010 meeting, although questions remained regarding the extent to which those regulations would be implemented by a new Governor, the legality of CARB's authority to implement such a regulation and the outcome of state Proposition 23 to delay the implementation of AB 32.

[1] Sher, Chapter 516, Statutes of 2002.

In the November 2010 elections, Proposition 23 was defeated and Jerry Brown was elected governor. Most key state-level stakeholders, including the California Public Utilities Commission (CPUC), the California Energy Commission, the legislature and CARB, expressed a preference for a statutory RPS goal versus an executive order.

On April 12, 2011, Governor Brown signed Senate Bill X1-2 (aka SB 2), codifying into law an increase of the RPS mandate to 33 percent by 2020.

SB 2 made major modifications to the RPS program, including the use of multi-year compliance periods with incremental targets, the specification of a minimum product content for retail sellers' RPS portfolios that changes with each compliance period and the requirement to enter into contracts with 10-year or longer duration.

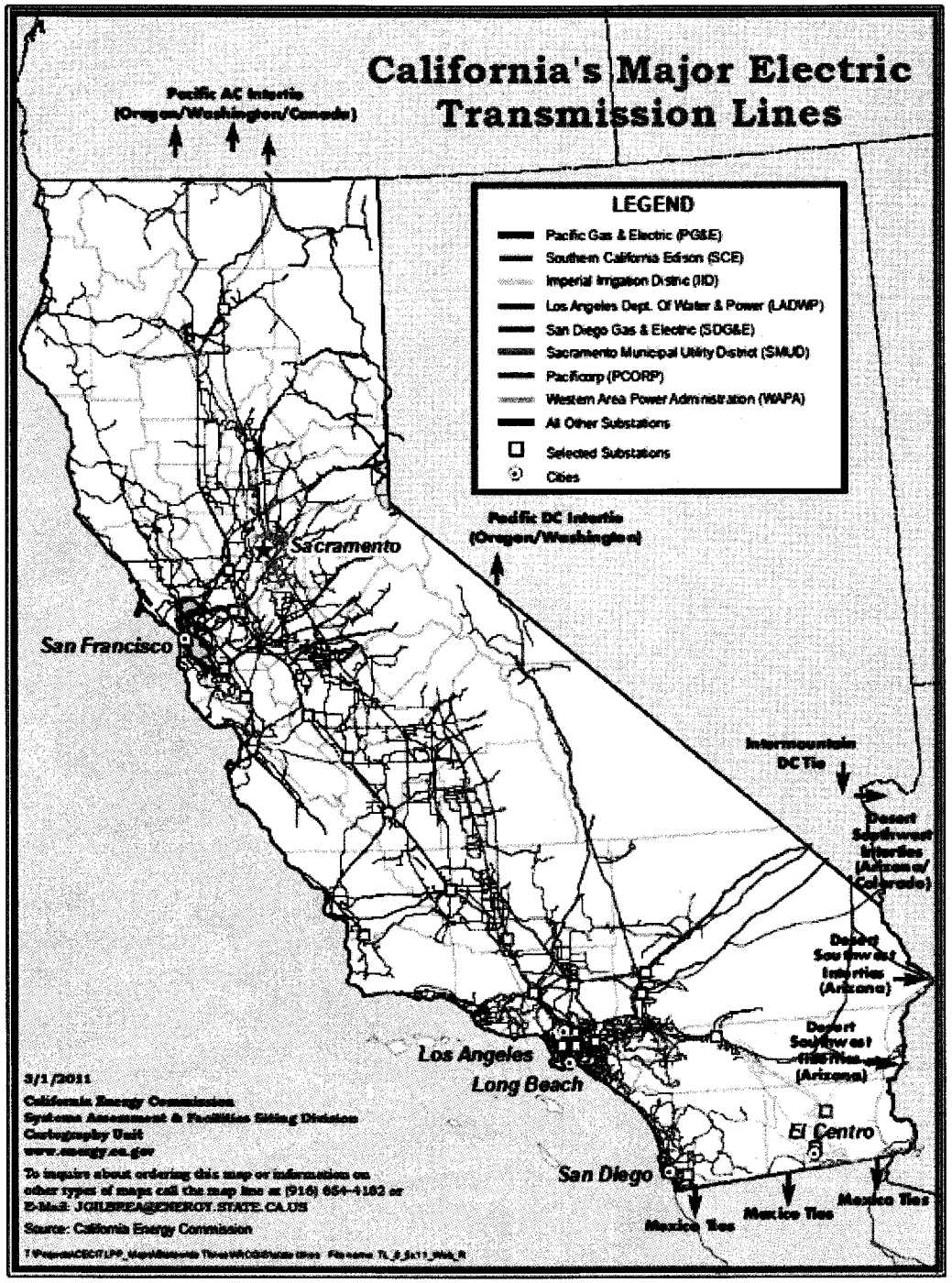
SB 2 also imposed a requirement for in-state resources, modified delivery requirements for out-of-state resources and required the CPUC to establish cost containment limits. SB 2 formally extended the RPS program to publicly owned utilities.

Requiring 75 percent of all renewable resources to be from in-state sources by 2017 has set off a land rush by solar power plant developers to identify and site facilities. Solar power plants cannot be sited just anywhere. Photovoltaic projects require between 5 and 7 acres of land per mega-watt (MW) or between 250 and 350 acres for a typical 50 MW project.

Solar power plants cannot be located near major air routes or military installations because they interfere with visibility. They cannot be located near urban areas with high pollution because the efficiency of the solar collection equipment is adversely affected. They must be sited in areas with no shade, hills or mountains that interfere with the amount of solar energy received. They must also be located near existing transmission lines or the developer has to pay the cost of building expensive interconnection facilities.

Eastern Riverside County is one of the more attractive areas for solar power plants in California. Major transmission lines from the east pass through the I-10 corridor with significant new lines proposed in the 2013-2014 time period. The area has sufficient flat, open areas with high levels of solar radiation. The County is also close to the coastal load centers of Los Angeles, Orange and San Diego counties, helping minimize the need for expensive transmission line upgrades.

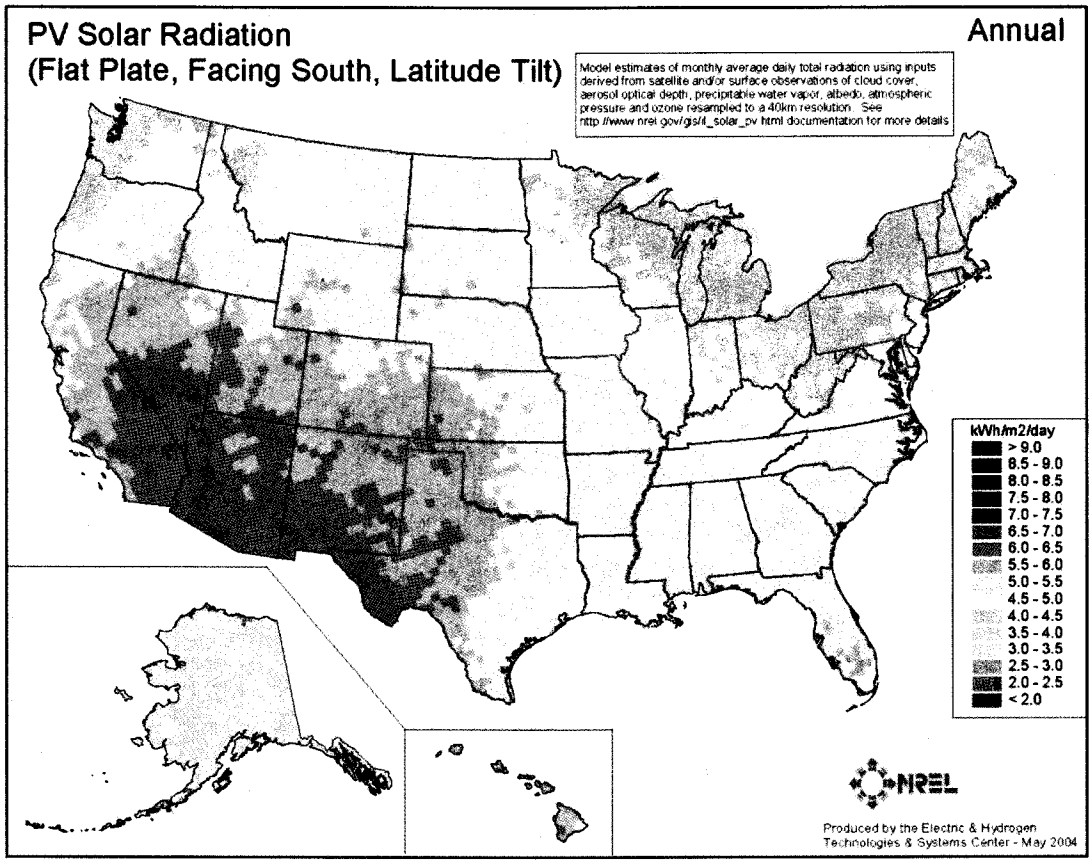
While other areas of California are attempting to attract solar and other renewable developers, transmission constraints and the complexities of finding areas with the necessary environmental attributes and transmission access will continue to make Riverside County a preferred area for solar development even with the County's modest payment proposal.



Types of Solar Power Plants

Solar power plants can be divided into two categories, photovoltaic (PV) and solar thermal. PV plants convert the sun's energy into electricity without the need for generation facilities. Solar thermal plants use solar energy to create a high temperature

liquid that is used to create steam and turn a generator. Solar thermal generation tends to be more efficient than PV, but PV is easier to construct and operate.



In the past few years, the efficiency of PV has increased and costs have declined making PV plants more competitive with solar thermal plants. A number of solar thermal plants have been re-designed as PV plants to take advantage of the declining costs of PV. The price decline of PV has been due to reduced PV demand in Spain and Germany as well as increased PV production capacity in China.

Solar thermal plants use land more intensively and have much higher initial capital costs than PV plants. However, solar thermal plants produce more energy than PV plants and tend to match the needs of utilities better than PV plants.

Capacity versus Energy

In California, wholesale electricity is priced and sold based upon energy or on a dollar per MWh basis. To understand what this means, it is helpful to see the relationship between land use, capacity and energy.

A generating facility's capacity is the maximum amount of electricity that a generator can produce. A 50 mega-watt (MW) plant can then produce 50 MW at maximum output. Energy is the amount of electricity that it produces during a period, measured in MWh. A 50 MW plant generating 50 MW for 1 hour produces 50 MWh. A 50 MW plant producing 50 MW for 24 hours produces 1,200 MWh.

Most thermal plants can produce during all hours of the day, so they produce more energy than a PV plant. A PV plant can only produce during the day-light hours and even then only reaches full capacity for a few hours during the summer months.

Over a year, a PV plant will only produce energy at around a 23 – 25 percent capacity[2]. A 50 MW PV plant might produce 100,700 MWh over the entire year (as compared to a traditional gas-fired plant that would produce around 394,000 MWh when accounting for maintenance and unplanned outages).

As already noted, PV plants require between 5 and 7 acres of land per MW. So a 50 MW PV plant would need 250 – 350 acres. Solar thermal plants generally require much less land although the amount of land depends upon the technology.

Acreage Based Payment

The County has proposed an annual acreage-based payment of $640/acre escalating at the CPI. For a typical 50 MW PV project, this equates to an annual payment of approximately $160,000 (5 acres per MW times 50 MW [250 acres] times $640/acre). This size and type of project is used throughout this report as the basis for analysis.

Impact of Payment on Solar Power Plant Projects

Electricity in California is priced and sold on a dollar per MWh basis ($/MWh). Currently, major utilities are purchasing solar energy at a cost of around $105 - $115/MWh with an annual escalation of around 2 percent. This price is substantially lower than even 5 years ago when solar developers were able to enter into long-term power purchase agreements (PPAs) for $135 - $145 MWh or more.

Obviously, there are many ways to structure payments, financing costs and other cost associated with a project. Some entities may choose a higher $/MWh cost with lower escalation rates or a flat payment over time. Others may choose a lower initial $/MWh rate with higher escalation.

[2] A single axis, fixed PV project. Dual axis PV projects with tracking capability have higher capacity factors

Regardless, from the developer's viewpoint, the key is minimizing the cost of land and transmission interconnection and maximizing generation for the particular technology being employed. Of these factors, the cost paid for transmission interconnection is the most significant.

At $105/MWh, revenues from a 50 MW PV project will be around $10,600,000 per year.

The County's proposed payment for a 50 MW PV plant will be around $160,000 per year.

This base payment translates into a cost per MWh of $1.59 to the solar developer. Or, at current market levels of $105-$115.MWh, the payment is approximately 1.4 to 1.5 percent of total sales revenues.

Incentives to Reduce the Base Payment

The County has identified incentives to solar generator developers that could reduce the base payment. These incentives, which have been discussed with developers during negotiations, provide a credit for property taxes and reward developers that employ Riverside County residents or that are willing to minimize the construction of interconnection facilities by sharing (or collocating) transmission facilities.

Property Tax Payment Credit

To avoid double-charging solar developers for County services, a credit of the County's 12.44 percent and the Fire Departments 2.58 percent of the 1.00 percent general purpose property tax (or possessory interest taxes) paid in the prior year would be credited to the developer. These credits would be site specific and cannot be valued precisely.[3]

Local Hire Incentive

During the construction phase each developer may receive a credit of up to $1,500 against the base payment for each full time employee (equivalent). The value of this credit will depend upon the number of employees hired by the developer. For a 250 acre project that required 50 workers for two years to construct a new project the value of the incentive would be $75,000 per year.

Collocation Incentive

One of the major problems with multiple generation facilities located in a region is the visual blight caused by multiple transmission lines used to interconnect the projects. To minimize the number of interconnection facilities, a collocation incentive of up to 5

[3] For a 250 acre facility with a land cost of $5,000/acre, property taxes will be around $12,500 per year of which the County will credit its 1`2.44 percent share and the Fire Departments 2.58 percent share, resulting in an annual credit of around $1,880.

percent of the base pay is proposed. This incentive, which would be up to $8,000 per year for a 250 acre project, would be given to projects that share transmission facilities and would be applied to each generator that collocates transmission lines and jointly uses transmission right-of-ways.

Impact of the Proposed Incentives

The three proposed incentives have the potential to reduce the base payment to approximately $80,000 during the construction phase $150,120 during the operations phase of the project, as shown in the following table.

	Number of Employees	Credit per Employee ($)	Construction Phase	Operations Phase
Annual Base Payment			$ 160,000	$ 160,000
Less Annual Incentives for:				
Local Hire During Construction	50	$ 1,500	$ (75,000)	
Property Tax Payment Credit			$ (1,880)	$ (1,880)
Collocation Credit			$ (8,000)	$ (8,000)
Total Value of Incentives			$ (84,880)	$ (9,880)
Recommended Limit on Incentives			$ 80,000	$ 80,000
(Based upon 250 acres)				
Estimated Annual Payment			**$ 80,000**	**$ 150,120**
Figures based upon a 50 MW PV Facility with 250 acres				

Additional Incentives

Other incentives could be offered to the solar developers to further reduce the base payment. These incentives include an early construction incentive and a permanent employee incentive during the operations phase.

Early Construction Incentive

A possible incentive to encourage solar developers to aggressively build their projects is an early construction incentive. This incentive would be provided to a solar developer who began construction prior to a specific date and then worked continuously on their project.

The proposed incentive could be a percentage of the base payment for projects that begin construction within a designated time frame of the County policy being implemented.

The purpose of this incentive would be to encourage solar projects to begin construction as soon as possible to provide needed construction jobs during the current stagnant economic conditions.

Permanent Employment Incentive

Permanent jobs offer a substantial benefit to the County's economy. An incentive for creating permanent positions at the solar generation project could be offered at a specific amount a year per job, perhaps a higher amount than the incentive offered for short-term jobs created during the construction phase.

The purpose of this incentive would be to recognize the benefits to the County of creating permanent employment opportunities to County residents with the secondary income effects on the County economy.

Total Impact of All Incentives

The following table illustrates the potential annual value of all identified incentives to solar developers for a typical 50 MW PV facility with the following assumptions: an early construction incentive that reduces the base payment by 10 percent, a $2,500 reduction for each permanent job created and 15 permanent jobs created. The values presented below are illustrative and will vary from project to project depending upon a variety of factors. They would likely be greater for a solar thermal facility.

The Table shows that the proposed base payment could be reduced by 50 percent during the construction phase and 30 percent (or more) during the operations phase as a result of the additional incentives.

	Number of Employees	Credit per Employee ($)	Construction Phase	Operations Phase
Annual Base Payment			$ 160,000	$ 160,000
Less Annual Incentives for:				
Local Hire During Construction	50	$ 1,500	$ (75,000)	
Property Tax Payment Credit			$ (1,880)	$ (1,880)
Collocation Credit			$ (8,000)	$ (8,000)
Early Construction Incentive (10 percent of base payment)			$ (16,000)	
Permanent Employee	15	$ 2,500		$ (37,500)
Total Value of Incentives			$ (100,880)	$ (47,380)
Recommended Limit on Incentives			$ 80,000	$ 80,000
(Based upon 250 acres)				
Estimated Annual Payment			**$ 80,000**	**$ 112,620**
Figures based upon a 50 MW PV Facility with 250 acres				

As noted, solar thermal plants will benefit more from these credits and incentives than PV plants. Depending upon the technology, thermal storage plants may use anywhere from 65 – 80 percent of the land required by PV facilities on a kW basis. In addition, solar thermal plants generally employee more people than PV plants. Finally, the

advantage of solar thermal plants is that they produce more energy per MW than PV plants.

Limitation on Incentive Payments

Even if a developer takes advantage of all the different incentives offered, it has been recommended that the base payment not be reduced by more than 50 percent. This is appropriate to ensure that the County is properly compensated for the use of its property and does not disproportionately bear the burden of solar energy production.

Summary

The County is attempting to work with solar developers to identify incentives that could be implemented. These incentives can substantially reduce the base payment over time if the developer chooses to make use of them.

The major driver of locating solar projects within California will continue to be transmission interconnection costs. To the extent Riverside County offers better access to new transmission facilities it will continue to have an advantage over other parts of the state in attracting solar projects after the proposed payment is adopted.

There are currently two new transmission lines being planned for eastern Riverside County, the Desert Southwest Project and SCE's Colorado River – Devers Transmission Project. The Desert Southwest Project hopes to be constructed by 2013 although at this time this appears to be optimistic and a 2014 or 2015 time frame appears more likely. The Colorado River – Devers Transmission Project also had a 2013 in-service date and also appears to be delayed by 18 to 24 months. Both of these projects anticipate providing wheeling services to the solar projects in the Blythe to Eagle Mountain area. Either of these projects will provide necessary transmission access for 1,200 – 1,400 MW of solar energy.

Accordingly, the solar power plant payment will not have a significant impact on the size or number of solar projects proposed for Riverside County. It may have a greater impact on the types of projects proposed, with the payment providing a slight advantage for solar thermal plants, given the higher number of jobs created, in comparison to PV facilities.

The County's proposed solar power plant payment is a reasonable way for the County to ensure that it is properly compensated for the use of its property and does not disproportionately bear the burden of solar energy production.

OFFICE OF
CLERK OF THE BOARD OF SUPERVISORS
1st FLOOR, COUNTY ADMINISTRATIVE CENTER
P.O. BOX 1147, 4080 LEMON STREET
RIVERSIDE, CA 92502-1147
PHONE: (951) 955-1060
FAX: (951) 955-1071

KECIA HARPER-IHEM
Clerk of the Board of Supervisors

KIMBERLY A. RECTOR
Assistant Clerk of the Board

October 26, 2011

PRESS ENTERPRISE
ATTN: LEGALS
P.O. BOX 792
RIVERSIDE, CA 92501

E-MAIL: legals@pe.com
FAX: (951) 368-9018

RE: NOTICE OF PUBLIC HEARING: GPA 1080; ADOPTION OF ORDINANCE NO. 348.4705

To Whom It May Concern:

Attached is a copy for publication in your newspaper for **ONE (1) TIME on Friday, October 28, 2011.**

We require your affidavit of publication immediately upon completion of the last publication.

Your invoice must be submitted to this office in duplicate, WITH TWO CLIPPINGS OF THE PUBLICATION.

NOTE: PLEASE FORMAT INTO A 1/8TH PAGE DISPLAY AD

Thank you in advance for your assistance and expertise.

Sincerely,

Cecilia Gil, Board Assistant to
KECIA HARPER-IHEM, CLERK OF THE BOARD

Gil, Cecilia

From: PE Legals <legals@pe.com>
Sent: Wednesday, October 26, 2011 3:36 PM
To: Gil, Cecilia
Subject: RE: FOR PUBLICATION: GPA 1080 & ORD. NO. 348.4705

Received revised notice for publication on Oct. 28

Thank You!

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Additional days required for larger ad sizes

From: Gil, Cecilia [mailto:CCGIL@rcbos.org]
Sent: Wednesday, October 26, 2011 2:42 PM
To: PE Legals
Subject: FOR PUBLICATION: GPA 1080 & ORD. NO. 348.4705

Hello! Here's the final version of the Notice of Public Hearing for above-mentioned item, for publication on Friday, Oct. 28, 2011. It will be a 1/8 page Ad. Please replace the earlier version Notice I sent you with this final version and please confirm. Thank you very much for your patience and cooperation.

Cecilia Gil
Board Assistant to the
Clerk of the Board of Supervisors
951-955-8464

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RIVERSIDE, CA 92502-1147
PHONE: (951) 955-1060
FAX: (951) 955-1071

KECIA HARPER-IHEM
Clerk of the Board of Supervisors

KIMBERLY A. RECTOR
Assistant Clerk of the Board

October 26, 2011

THE DESERT SUN
ATTN: LEGALS
P.O. BOX 2734
PALM SPRINGS, CA 92263

E-MAIL: legals@thedesertsun.com
FAX: (760) 778-4731

RE: NOTICE OF PUBLIC HEARING: GPA 1080; ADOPTION OF ORDINANCE NO. 348.4705

To Whom It May Concern:

Attached is a copy for publication in your newspaper for **ONE (1) TIME on Friday, October 28, 2011.**

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NOTE: PLEASE FORMAT INTO A 1/8TH PAGE DISPLAY AD

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Sincerely,

Cecilia Gil, Board Assistant to
KECIA HARPER-IHEM, CLERK OF THE BOARD

Gil, Cecilia

From: Moeller, Charlene <CMOELLER@palmspri.gannett.com>
Sent: Wednesday, October 26, 2011 2:54 PM
To: Gil, Cecilia
Subject: RE: FOR PUBLICATION: GPA 1080 & ORD. NO. 348.4705

Thank you ☺

Revise received and will publish on date(s) requested.

Charlene Moeller | Media Sales Legal Notice Coordinator

The Desert Sun Media Group
750 N. Gene Autry Trail, Palm Springs, CA 92262
t 760.778.4578 | f 760.778.4731
legals@thedesertsun.com | dpwlegals@thedesertsun.com

From: Gil, Cecilia [mailto:CCGIL@rcbos.org]
Sent: Wednesday, October 26, 2011 2:42 PM
To: tds-legals
Subject: FOR PUBLICATION: GPA 1080 & ORD. NO. 348.4705

Hello! Here's the final version of the Notice of Public Hearing for above-mentioned item, for publication on Friday, Oct. 28, 2011. It will be a 1/8 page Ad. Please replace the earlier version Notice I sent you with this final version and please confirm. Thank you very much for your patience and cooperation.

Cecilia Gil

Board Assistant to the
Clerk of the Board of Supervisors
951-955-8464

THE COUNTY ADMINISTRATIVE CENTER IS CLOSED EVERY FRIDAY UNTIL FURTHER NOTICE.
PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING.

NOTICE OF PUBLIC HEARING

A PUBLIC HEARING has been scheduled, pursuant to Riverside County Land Use Ordinance No. 348, before the **RIVERSIDE COUNTY BOARD OF SUPERVISORS** to consider the General Plan Amendment and Ordinance shown below:

GENERAL PLAN AMENDMENT NO. 1080 - CEQA Exempt per CEQA Guidelines Section 15061(b)(3) – **REQUEST:** Proposes to add two new countywide policies to the Land Use Element of the Riverside County General Plan regarding solar energy systems and solar power plants. One policy provides that the County will permit and encourage solar energy systems as an accessory use to any residential, commercial, industrial, mining, agricultural or public use. The other policy provides that the County will permit and encourage, in an environmentally and fiscally responsible manner, the development of renewable energy resources and related infrastructure, including but not limited to, the development of solar power plants. This is a County Initiated General Plan Amendment.

ORDINANCE NO. 348.4705 - CEQA Exempt per CEQA Guidelines Section 15061(b)(3) – **REQUEST:** Proposes to amend Ordinance No. 348 to allow alternative energy facilities under two new classifications, "solar energy systems" and "solar power plants." Under the proposed ordinance amendment, a "solar energy system" is an allowed accessory use in all zones and is administratively reviewed by the Director of Building & Safety. A "solar energy system" is a system which is an accessory use to any residential, commercial, industrial, mining, agricultural or public use, used primarily (i.e. more than 50 percent) to reduce onsite utility usage. In certain cases, as stated in the ordinance, a "solar energy system" could require a plot plan. Under the proposed amendment, a "solar power plant" is a facility used to generate electricity from solar energy where the power plant will be connected to the power grid and the electricity will be used primarily (i.e. more than 50 percent) at locations other than the site of the solar power plant. Solar power plants include power plants using both solar thermal systems and photovoltaic systems to convert solar energy to electricity. The proposed amendment will modify the following zoning classifications to permit a solar power plant on lots ten (10) acres or larger pursuant to a conditional use permit: General Commercial (C-1/C-P), Commercial Tourist (C-T), Scenic Highway Commercial (C-P-S), Rural Commercial (C-R), Industrial Park (I-P), Manufacturing Servicing Commercial (M-SC), Medium Manufacturing (M-M), Heavy Manufacturing (M-H), Mineral Resources (M-R), Mineral Resource and Related Manufacturing (M-R-A), Light Agriculture (A-1), Light Agriculture with Poultry (A-P), Heavy Agriculture (A-2), Agriculture-Dairy (A-D), Controlled Development (W-2), Regulated Development Areas (R-D), Natural Assets (N-A), Waterways and Watercourses (W-1), and Wind Energy Resource Zone (W-E).

TIME OF HEARING:	1:30 p.m. or as soon as possible thereafter.
DATE OF HEARING:	November 8, 2011
PLACE OF HEARING:	***RIVERSIDE COUNTY BOARD OF SUPERVISORS*** 4080 LEMON STREET, 1ST FLOOR RIVERSIDE, CA 92501

For further information regarding General Plan Amendment No. 1080 and Ordinance No. 348.4705, please contact Adam Rush, Principal Planner at 951-955-6646 or e-mail arush@rctlma.org, or go to the Board of Supervisors Agenda web page at http://rivcocob.com/agendas-and-minutes/.

The Riverside County Planning Department has determined that the above-described General Plan Amendment No. 1080 and Ordinance No. 348.4705 are exempt from the provisions of the California Environmental Quality Act (CEQA).

The case file for General Plan Amendment No. 1080 and Ordinance No. 348.4705 may be viewed Monday through Thursday, from 8:30 A.M. to 5:30 P.M. at the Planning Department office, located at 4080 Lemon St. 9th Floor, Riverside, CA 92501.

Any person wishing to comment on proposed General Plan Amendment No. 1080 and Ordinance No. 348.4705 may do so in writing between the date of this notice and the public hearing; or, may appear and be heard at the time and place noted above. All comments received prior to the public hearing will be submitted to the Board of Supervisors, and the Board of Supervisors will consider such comments, in addition to any oral testimony, before making a decision on the proposed General Plan Amendment No. 1080 and Ordinance No. 348.4705.

If General Plan Amendment No. 1080 and Ordinance No. 348.4705 are challenged in court, the issues may be limited to those raised at the public hearing, described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing. Be advised that as a result of public hearings and comment, the Board of Supervisors may amend, in whole or in part, proposed General Plan Amendment No. 1080 and Ordinance No. 348.4705.

Please send all written correspondence to: Clerk of the Board, 4080 Lemon Street, 1st Floor, Post Office Box 1147, Riverside, CA 92502-1147

Dated: October 26, 2011

Kecia Harper-Ihem
Clerk of the Board
By: Cecilia Gil, Board Assistant

CERTIFICATE OF POSTING

(Original copy, duly executed, must be attached to
the original document at the time of filing)

I, Cecilia Gil, Board Assistant to Kecia Harper-Ihem, Clerk of the Board of Supervisors, for the County of Riverside, do hereby certify that I am not a party to the within action or proceeding; that on October 26, 2011, I forwarded to Riverside County Clerk & Recorder's Office a copy of the following document:

NOTICE OF PUBLIC HEARING

GPA 1080 and ORD. NO. 348.4705

to be posted, pursuant to Government Code Section 21092 et seq, in the office of the County Clerk at 2724 Gateway Drive, Riverside, California 92507. Upon completion of posting, the County Clerk will provide the required certification of posting.

Board Agenda Date: November 8, 2011 @ 1:30 PM

SIGNATURE: Mcgil DATE: October 26, 2011

Cecilia Gil

Gil, Cecilia

From: Meyer, Mary Ann <MaMeyer@asrclkrec.com>
Sent: Thursday, October 27, 2011 1:16 PM
To: Gil, Cecilia
Subject: RE: FOR POSTING GPA 1080 & ORD. NO. 348.4705

POSTED

From: Gil, Cecilia
Sent: Thursday, October 27, 2011 12:32 PM
To: Meyer, Mary Ann
Subject: FW: FOR POSTING GPA 1080 & ORD. NO. 348.4705

Did you get this revised Notice for Posting?

Cecilia Gil

Board Assistant to the
Clerk of the Board of Supervisors
951-955-8464

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From: Gil, Cecilia
Sent: Wednesday, October 26, 2011 2:43 PM
To: Meyer, Mary Ann
Subject: FOR POSTING GPA 1080 & ORD. NO. 348.4705

Hello! Here's the final version of the Notice of Public Hearing for above-mentioned item, for POSTING. Please replace the earlier version Notice I sent you with this final version and please confirm. Thank you very much for your patience and cooperation.

Cecilia Gil

Board Assistant to the
Clerk of the Board of Supervisors
951-955-8464

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COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Policy Subject:	Number	Page
SOLAR POWER PLANTS	B-29	1 of 6

Purpose:

The Board supports solar energy and acknowledges its benefits. The benefits of solar power plants, however, occur on a national, statewide and regional level. The County wants to contribute its fair share to meet renewable energy goals, but not at the expense of its residents. At the local level, solar power plants permanently alter the landscape. They also permanently commit vast areas of the County to energy production and preclude all other potential uses, including, but not limited to, agricultural, recreational, commercial, residential and open space uses. The amount of land required to operate these facilities is significantly greater than the amount of land required to operate other renewable energy facilities and conventional energy facilities. Because Riverside County is one of fastest growing counties in the state and because it is expected to be the second most populous county in the state by 2044, the commitment of so much land to a single use has serious consequences.

There are currently such a large number of solar power plants approved and pending in the County that the fundamental values of the County expressed in its General Plan are in jeopardy. These fundamental values include "sustainability", pursuant to which the County has an expectation that its future residents will inherit communities offering them a reasonable range of choices (General Plan pg. V-7); and the "natural environment", pursuant to which the County is committed to maintaining sufficient areas of natural open space and sustaining the permanent viability of unique landforms and ecosystems (General Plan pg. V-6).

The vision of the County expressed in its General Plan is also in jeopardy. Corridors and areas may not be preserved for distinctive purposes, including multi-purpose open space; economic development; agriculture; residences; and public facilities (General Plan pg. V-11). The rich diversity of the County's environmental resources may not be preserved and enhanced for the enjoyment of present and future generations (General Plan pg. V-11). The public may not have access to recreation opportunities (General Plan pg. V-11). There may not be expanded local employment opportunities (General Plan pg. V-12). Development may not occur where appropriate and where adequate public facilities and services are available (General Plan pg. V-15). Agricultural lands may not remain as a valuable form of development (General Plan pg. V-22).

The following General Plan Policies will be affected by the large number of approved and pending solar power plants:

- Land Use Element Policy LU 2.1.c. - the County shall provide a broad range of land uses, including a range of residential, commercial, business, industry, open space, recreation and public facility uses (General Plan pg. LU-20).

- Land Use Element Policy LU 5.1- the County shall ensure that development does not exceed the ability to adequately provide supporting infrastructure and services (General Plan LU-24).

- Land Use Element Policy LU 7.1 - the County shall accommodate the development of a balance of land uses that maintain and enhance the County's fiscal viability, economic diversity and environmental integrity (General Plan LU-26).

- Land Element Policy LU 8.1 - the County shall provide for the permanent preservation of open space lands that contain important natural resources and scenic and recreational values (General Plan LU-28).

- Land Use Element Policy LU 13.1 - the County shall preserve and protect outstanding scenic vistas and visual features for the enjoyment of the traveling public (General Plan LU-31).

- Land Use Element Policy LU 15.15 - the County shall permit and encourage, in an environmentally and fiscally responsible manner, the development of renewable energy resources and related infrastructure, including but not limited to, the development of solar power plants in the County of Riverside (General Plan LU-37).

The purposes of this Board policy are to implement these and other General Plan provisions, to ensure that the County does not disproportionately bear the burden of solar energy production, to ensure the County is compensated in an amount it deems appropriate for the use of its real property, and to give solar power plant owners certainty as to the County's requirements.

Policy:

To secure public health, safety and welfare, a solar power plant shall be subject to the requirements of this policy as well as the requirements of any applicable ordinance, state or federal law.

No encroachment permit shall be issued for a solar power plant unless the Board first grants a franchise to the solar power plant owner. No interest in the County's real property, or the real property of any special district governed by the County, shall be conveyed for a solar power plant unless the Board first approves a real property interest agreement with the solar power plant owner. No approval required by Ordinance Nos. 348 or 460 shall be given for a solar power plant unless the Board first approves a development agreement with the solar power plant owner and the development agreement is effective.

Notwithstanding the foregoing, the County may waive the requirement for multiple agreements where otherwise two or more agreements would be required.

Each such franchise, real property interest agreement or development agreement shall include provisions consistent with the following requirements:

Payment. The solar power plant owner shall annually pay the County $~~640.00~~450 for each acre of land involved in the power production process (hereinafter "net acreage"). The initial payment shall be due within five business days of the commencement of project construction. Subsequent payments shall be due by September 30 of each year.

CPI Adjustment. The initial payment, and each subsequent payment shall be adjusted based on the Consumer Price Index, All Urban Consumers, (Los Angeles — Anaheim). In no event, however, shall the Consumer Price Index adjustment be less than one percent nor more than four percent.

Incentives and Credits. The following incentives and credits may be applied to reduce the base payment amount as appropriate, but in no event shall a combination of these incentives and credits reduce the adjusted base payment by more than 50 percent:

- **Local Hire Incentive.** For a three calendar year period from the commencement of project construction, the annual base payment may be reduced by $1,500 for each full time equivalent worker residing in Riverside County or San Bernardino County prior to the date of hire.

- **Permanent Jobs Incentive.** Following completion of project construction, the annual base payment may be reduced by $2,500 for each full time equivalent worker residing in Riverside County or San Bernardino County prior to the date of hire.

- **Collocation Incentive.** The annual base payment of each participating solar power plant owner may be reduced by five percent for collocation of transmission lines on

common poles or by three percent for collocation of transmission lines in a common corridor.

- **Property Tax Credit.** The base payment may be reduced by the amount of the County's 12.44 percent share and the Fire Department's 2.58 percent share of the 1 percent general purpose property taxes and/or possessory interest taxes paid on the net acreage in the immediately preceding fiscal year, including any supplemental assessments.

- **Early Construction Incentive.** If construction commences before January 1, 2014, and is thereafter pursued diligently to completion, the annual base payment may be reduced by 10 percent for the term of the agreement.

Suspension of Operations. If the County causes a solar power plant to stop operating for longer than 90 days for a reason not related to a violation of the terms of any applicable agreement or a violation of the project conditions of approval, the base payment may be reduced by up to 50 percent upon written request of the solar power plant owner for the period of time the solar power plant remains inoperative.

Sales Tax Surety. The solar power plant owner shall deliver a letter of credit to the County within five business days of the close of project financing in an amount equal to the sales and use taxes the County estimates will be generated by construction of the solar power plant to ensure such taxes are allocated to the County whenever possible. The solar power plant owner shall provide the information needed by the County to make this estimate. The County shall release annually a portion of the letter of credit equal to the amount of taxes received by the County, as reported by the State Board of Equalization. If, upon completion of construction, the sales and use taxes received are less than the taxes owed, the solar power plant owner shall pay the difference and, upon deposit of such payment in full, the County shall authorize release of the letter of credit.

Alternatively, the solar power plant owner may follow a negotiated sales and use tax commitment procedure that assures the sales and use taxes the County estimates will be generated by construction of the solar power plant are allocated to the County whenever possible. The solar plant owner shall provide the information needed by the County to make this estimate. If, upon completion of construction, the sales and use taxes received by the County are less than the taxes owed, the solar power plant owner shall pay the difference to the County. If the solar power plant owner fails to make such payment to the County, the County shall pursue recovery of the amount owed.

Term. The appropriate agreement shall be for a term coextensive with the operation of the solar power plant.

Exemption:

This policy shall not apply to a solar power plant that has a rated production capacity of ~~five~~ 20 or fewer megawatts; provided, however, this exemption shall not apply if the County determines that a solar power plant owner, or an affiliated company, filed separate applications so as to obtain the exemption.

Exception:

A solar power plant owner may make a written request to be excepted from this policy at the time the solar power plant owner files an application for a permit or approval described in this ordinance or any time thereafter. The Board may grant the exception request upon a finding of special circumstances. Special circumstances shall include, but not be limited to, a determination that the solar power plant has a substantial benefit to the County above and beyond the payment of required taxes or the implementation of mitigation measures identified in any applicable environmental document. Special circumstances shall not include financial or economic hardship.

Definitions:

As used in this policy, the following terms shall have the following meanings:

"Collocation." Locating transmission lines either on common poles or in a common corridor no wider than 300 feet either for a distance of at least one mile or, for 80 percent of the length of the longest transmission line, if that line is shorter than one mile.

~~"Full-time Equivalent Worker." A worker employed for at least 2,080 hours in a calendar year.~~

"Net Acreage." All areas involved in the production of power including, but not limited to, the power block, solar collection equipment, areas contiguous to solar collection equipment, transformers, transmission lines and/or piping, transmission facilities (on and off-site), service roads regardless of surface type – including service roads between panels or collectors, structures, and fencing surrounding all such areas. Net acreage shall not include off-site access roads or areas specifically set aside either as environmentally sensitive or designated as open space, and shall not include the fencing of such set aside areas.

"Solar Power Plant." A facility used to generate electricity from solar energy where the power plant will be connected to the power grid and the electricity will be used primarily (i.e. more than 50 percent) at locations other than the site of the solar power plant. Solar power plants include power plants using both solar thermal systems and photovoltaic systems to convert solar energy to electricity. Solar thermal systems concentrate heat to drive a turbine which is then used to create electricity from generators and include systems using solar troughs, solar dishes, and solar power towers. Photovoltaic systems use a technology such as solar cells which generates electricity directly from sunlight. A solar power plant does not include a solar energy system as defined in Ordinance No. 348.

"Solar Power Plant Owner." A person or entity developing, owning or operating a solar power plant.

Integration:

Board of Supervisors Policy No. B-29 is approved as part of a comprehensive, integrated legislative program which also includes the adoption of General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Ordinance No. 348.4705. The Board of Supervisors declares that it would not have adopted Board of Supervisors Policy No. B-29 unless General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Ordinance No. 348.4705 were also adopted and effective. In the event that any provision of Board of Supervisors Policy No. B-29, General Plan Amendment No. 1080 (Land Use Policy LU 15.15) or Ordinance No. 348.4705 is determined to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, then Board of Supervisors Policy No. B-29, General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Ordinance No. 348.4705 shall be deemed invalid in their entirety and shall have no further force or effect.

STAPLES copy&printcenter

Kacia Harper - IHEM
Riverside County Clerk of

To: The Board of Supervisors

From: Ricki Brodine

Fax#: 951-955-1071

Phone#: (760) 834-9139

Date: 11/7/11

Urgent ☐ Confidential ☐ Confirm Receipt ☐

Number of Pages: (Including Cover) 2

Reply Fax #:

LETTER TO THE BOARD OF SUPERVISORS

November 6, 2011

Ms. Ricki Brodie
40591 Pebble Beach Circle
Palm Desert, CA 92211

Riverside County Board of Supervisors
4080 Lemon Street, 1st Floor
Riverside, CA 92501

Dear Sirs,

Congratulations on coming up with a solar policy that is clear, precise, and fair to all parties concerned. I have been concerned that the solar industry was taking advantage of the residents of Riverside County for some time. It is apparent they will use the services of Riverside County (sheriff, water, etc.) and that they should pay their fair share.

With the implied threat of taking their business elsewhere, the solar industry was asking for far more freebies, benefits, and tax credits than I felt they were entitled too. Frankly, I doubt they will be moving their business elsewhere – we have what they are looking for – sun, capable employees, and a nice place to live for the company executives. It seems unlikely they will move to Tombstone, AZ.

It has become apparent to me that the solar industry has over-hyped that number of jobs that will be created with solar in the desert. And yet, the solar industry gives us a big edge in terms of Riverside County being seen as a progressive, future-looking county. We want them here – but on terms that are fair to all.

Thanks for a fair policy.

Sincerely yours,

Ricki Brodie

Ricki Brodie

G. DANA HOBART
36989 PALMDALE ROAD
RANCHO MIRAGE, CA 92270
TEL: (760) 324-1013 FAX: (760) 328-2214

November 3, 2010

TO: Ms. Kecia Harper
Clerk of the Board of Supervisors
FAX Number: (951-955-1071)

FROM: G. Dana Hobart

SUBJECT: Letter of Support re Solar Fee

Dear Ms. Harper:

Faxed herewith is a letter I would like to have read or submitted to the Riverside County Board of Supervisors at or near the time the Board considers the establishment of a policy respecting solar energy companies and potential fees attendant thereto.

Thank you.

Dana Hobart

Dear Supervisors: November 3, 2011

I am Mayor of the City of Rancho Mirage, but my comments below are intended only to express my personal views regarding this issue. I am not speaking on behalf of the city council or as mayor of the city.

Securing a period of short term jobs in Riverside County is both beneficial and desirable. But it cannot stand alone as justification to ignore the broader public need for there to be a meaningful and continuing economic partnership between the public and private sectors.

What is the intrinsic value of Riverside County becoming, as some say, "the solar Mecca" or the "vortex of renewable energy" if there is no meaningful *long term* partnership benefiting both public and private interests? Their projected profitability is surely sufficient to support a fair solar policy of a per-acre fee without significant infringement on their business plan/ profits.

Municipal government is frequently dissuaded from protecting residents' interests by claims that a proposed project will be abandoned or moved elsewhere. But sound public policy still requires that local government establish fiscal policies that provide private enterprise with opportunities to flourish while *simultaneously doing the same for the general public.*

With the federal government's virtual guarantee of profits without financial risk to many international solar companies it is unreasonable to expect the *county* to shoulder the burdens of the long term costs and impacts these projects will create. A per-acre fee is a fair and balanced approach for the major companies (including oil companies) who will soon control much of America's green energy sources and many square miles of county land.

If we do not protect the county's interests *now*, there will be no tomorrow where a timid policy decision can be reversed. It just doesn't happen.

With virtual certainty, it is now or never *to protect the public's interests regarding fees and solar energy.*

Thank you for your consideration.

Dana Hobart

Dana Hobart

November 8, 2011

Chairman Bob Buster
Riverside County Board of Supervisors
C/O Kecia Harper-Ihem
Riverside County Clerk of the Board
4080 Lemon Street, 1st Floor
Riverside, CA 92501

I write today to offer my thoughts as a longtime Riverside County resident, former Palm Desert mayor and supporter of both green energy and smart government. I also am a member of the Friends of the Desert Mountains and a director of the Mojave Desert Land Trust.

I believe it is crucial that Riverside County develop a policy that will get something back for giving up so much land for solar plant projects. This pristine desert of ours will be changed forever once the bulldozers do their work. There is no turning back.

As a good steward of public lands, Riverside County has a moral and legal obligation to residents and generations to come to set in place a policy that responsibly governs solar plant development over the next several decades. The solar companies need to fairly compensate the county for giving up the use of land for other purposes.

I think Riverside County and the solar companies can work together to make the county the showplace for solar energy to meet the renewable energy demands set down by Gov. Brown. Our children will thank us for doing the right thing today.

I want to thank the honorable Board of Supervisors for taking courageous action today by enacting a comprehensive solar policy.

Buford Crites,

Former Mayor, City of Palm Desert

County of Riverside

RIVERSIDE OFFICE:
4080 Lemon Street, 14th Floor
Riverside, CA 92502-1647
(951) 955-1040
Fax (951) 955-2194

DISTRICT OFFICE/MAILING OFFICE:
73-710 Fred Waring Drive Suite 222
Palm Desert, CA 92260
(760) 863-8211
Fax (760) 863-8905

SUPERVISOR John J. Benoit
FOURTH DISTRICT

Facsimile Transmittal

TO: Kecia Harper-Ihem

COMPANY/ORG/DEPT.: Clerk of the Board

FROM: Darin Schemmer, Communications Director, Supervisor John J. Benoit

RE: Support of Solar Power Plant Policy

DATE: November 7, 2011

No. of Pages (including cover page): 2 **Fax No:** 951-955-1071

Ms. Harper-Ihem,

Please include this correspondence from Buford Crites with the comments on the solar power plant policy.

Darin

RECEIVED RIVERSIDE COUNTY CLERK/BOARD OF SUPERVISORS
2011 NOV -8 AM 8:19

INTERNET: www.rivco4.org

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November 8, 2011

Chairman Bob Buster
Riverside County Board of Supervisors
C/O Kecia Harper-Ihem
Riverside County Clerk of the Board
4080 Lemon Street, 1st Floor
Riverside, CA 92501

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I think Riverside County and the solar companies can work together to make the county the showplace for solar energy to meet the renewable energy demands set down by Gov. Brown. Our children will thank us for doing the right thing today.

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Buford Crites,

Former Mayor, City of Palm Desert

Barton, Karen

From: Yung, Jill <jillyung@paulhastings.com>
Sent: Monday, November 07, 2011 3:31 PM
To: Counsel, County
Cc: District1; District2; District3; District4 Supervisor John J Benoit; District4 Supervisor John J Benoit; Executive CEO; Lind, Katherine; COB
Subject: RE: Comment Letter re: BOS Nov. 8 Agenda Item No. 16-2
Attachments: RivCo Nov 8 Bd Mtg Ltr.PDF

I am resending a lower quality resolution copy of the comment letter in hopes of reaching the accounts that bounced my earlier email for exceeding size limitations.

From: Yung, Jill
Sent: Monday, November 07, 2011 3:13 PM
To: COUNTYCOUNSEL@CO.RIVERSIDE.CA.US
Cc: District1@rcbos.org; District2@rcbos.org; District3@rcbos.org; District4@rcbos.org; District4@rcbos.org; ceo@rceo.org; klind@co.riverside.ca.us; cob@rcbos.org
Subject: Comment Letter re: BOS Nov. 8 Agenda Item No. 16-2

Dear Ms. Walls,
Please find attached to this email comments submitted by the Large-scale Solar Association regarding Item No. 16-2 of the November 8, 2011 Riverside County Board of Supervisors Meeting Agenda.

Kind regards,
Jill Yung

cc: Chairman Bob Buster, Vice-Chairman John F. Tavaglione, Supervisor Jeff Stone, Supervisor John J. Benoit, Supervisor Marion Ashley, Riverside County Executive Officer Larry Parrish, Assistant County Counsel Katherine Lind, Clerk of the Board of Supervisors

---

Jill E.C. Yung | Attorney, Real Estate Department
Paul Hastings LLP | 55 Second Street, Twenty-Fourth Floor, San Francisco, CA 94105 | Direct: +1.415.856.7230 | Main: +1.415.856.7000 | Fax: +1.415.856.7330 | jillyung@paulhastings.com | www.paulhastings.com

PAUL
HASTINGS

1(415) 856-7017 gordonhart@paulhastings.com
1(415) 856-7230 jillyung@paulhastings.com

November 7, 2011

VIA FACSIMILE (951) 358-3407 AND E-MAIL: COUNTYCOUNSEL@CO.RIVERSIDE.CA.US

Pamela J. Walls, Esq.
Riverside County Counsel
3960 Orange Street, Suite 500
Riverside, CA 92501

Re: Legal Analysis of Proposed Riverside County Board Policy B-29, General Plan Amendment No. 1080, and Ordinance No. 348.4705 Pertaining to Solar Energy Projects (Agenda Item 16.2, November 8, 2011 Riverside County Board of Supervisors Meeting)

Dear Ms. Walls:

On behalf of the Large-Scale Solar Association ("LSA"), we are writing to express our serious concerns with the legislative actions to be considered as part of item number 16.2 of the November 8, 2011 Riverside County Board of Supervisors meeting agenda. In particular, we have identified several legal issues with Policy B-29, which would require the owners of solar power plants to pay Riverside County ("County") $640 per acre per year based on the net acreage of a project, and also to provide a letter of credit as a surety for sales and use taxes expected to be owed to the County in the future. The assessment would be imposed in addition to one-time fees required: by the County developer impact fee ("DIF") ordinance (No. 659); for mitigation measures required as a result of a project-specific environmental review under California Environmental Quality Act ("CEQA"); and for fire capital costs.

LSA represents 15 of the nation's largest developers and providers of utility-scale solar generating resources. Collectively, LSA's members have contracted with utilities in California and the West to provide more than 7 gigawatts ("GW") of clean, sustainable solar power. LSA and its individual member companies are leaders in the renewable energy industry, advancing solar generation technologies and advocating for policies that ensure environmentally appropriate solar generation facilities to meet the state's renewable and greenhouse gas goals. LSA is therefore well qualified to comment on the problematic and unlawful aspects of Policy B-29.

The current version of Policy B-29 ("November Policy" or "Policy") revises certain terms and conditions contained in an earlier version of the policy considered by the Board of Supervisors ("Board") at its regular business meeting on June 28, 2011 ("June Policy"). As noted by an overwhelming number of concerned citizens, business and civic leaders, labor representatives and solar developers, before and at the hearing on June 28, the June Policy, if it had been adopted, would have had a significant chilling effect on solar development in Riverside County. Among other things, many speakers indicated that the June Policy would have placed Riverside County in an uncompetitive posture compared to other jurisdictions that are courting solar development. Furthermore, as demonstrated in letters to the Board and also during the hearing itself, the June Policy suffered from multiple legal infirmities. As a result, the Board declined to adopt the June Policy, and directed staff to conduct further analysis, including a competitive economic analysis, to address concerns that the policy would render Riverside County uncompetitive.

Starting on August 8, 2011, County staff convened a series of meetings with 12 solar development companies that are active in Riverside County. This effort included eight face-to-face meetings with County staff in Riverside as well as the exchange of multiple versions of a policy document. Unfortunately, these efforts failed to yield a mutually agreeable policy outcome. Board Policy B-29 represents the County staff's last offer to the solar industry in response to an offer by the solar industry to pay $140/acre/year.[1]

The industry is of course disappointed with the November Policy, especially given that, notwithstanding the express direction of the Board on June 28 that County staff conduct a competitive economic analysis, County staff stated, in response to repeated industry requests regarding the status of this analysis (and offers to fund and participate in the same), that no competitive economic study would be performed, and, further, that staff had received express direction from the Board to abandon any such analysis. We were therefore very surprised and disappointed when we read in the staff report released on November 4 that an economic study had indeed been conducted by a Mr. David Kolk without informing the industry and without asking the industry for input. Neither the industry nor the general public have been given a reasonable amount of time to review and comment on the Kolk study because it was not released until the Friday afternoon before the Tuesday, November 8 Board meeting. In any event, the Kolk study is flawed in numerous respects, and does not provide a reasoned basis for adopting Board Policy B-29.

The Board should reject the November Policy for several reasons. Like the June Policy, it will, if adopted, result in the destruction of tremendous economic value in the form of employment, sales and use tax benefits, property (and/or possessory interest tax) benefits, direct wages benefits, and secondary economic benefits promised by solar development in Riverside County. Furthermore, the November Policy, like its predecessor, suffers from multiple legal deficiencies. Among other things:

- The County does not have legal authority to require that solar developers enter into certain agreements described in the Policy and it further cannot impose extraordinary fees as a condition of the County's approval of such agreements.

- As plainly evidenced by the history of its development, the proposed "fee" is still a *tax* that will violate Propositions 26 and 218 unless approved by a vote of the people.

- The Policy cannot be adopted until the County conducts a review of its potential effect on the environment under CEQA (California Public Resources Code Sections 21000 *et seq.*).

- Based on additional fact finding and changes in the Policy, it is now evident that the Policy proposes an unlawful development impact fee that is further preempted by state law.

The materials presented by the County Transportation and Land Management Agency ("TLMA") in support of the November Policy ("Staff Report") imply that the revisions have addressed the financial and legal problems with the June Policy. Specifically, the materials suggest that the November Policy

[1] As previously explained to the Board in a letter dated September 27, 2011, the solar industry would have agreed to pay the offered amount on a purely voluntary basis; this assessment could not have been mandated by the County. Rather, the industry's ultimate offer of $140/acre/year reflected the amount the industry was able to pay to resolve the issues raised by the June Policy going forward on a voluntary, consensual basis.

embodies "many points" on which the industry and staff reached consensus and further incorporates the industry's "preferred per-acre payment methodology." However, the November Policy fails to address *any* of the concerns raised in oral and written comments presented to the Board in opposition to the June Policy.

In light of these issues, we strongly urge the Board to reject the Policy.

Background

The Evolution of the Content of Policy B-29

At its November 8, 2011 meeting, the Board will once again consider approval of Board Policy B-29 pertaining to Solar Power Plants. Similar to the version considered on June 28, the Policy would impose a fee on solar plants greater than five megawatts through (1) a franchise agreement, which the County would *require* as a prerequisite to any encroachment permit; (2) a real property interest agreement; or (3) a development agreement, which the County would *require* as a pre-condition to the grant of an approval required by the County land use ordinance (No. 348) or the County subdivision ordinance (No. 460). The fee, set at $640 per acre, may be reduced by the portion of any property or possessory interest taxes paid by the developer and received by the County or its Fire Department and by additional amounts depending on the number of Riverside County residents hired during the construction phase[2] and the extent to which the developer co-locates transmission lines with other projects. At a minimum, however, the fee will be $320 per acre, unless the Board finds that "special circumstances" justify an exemption from the policy. Special circumstances include, but are not limited to "a determination that the solar power plant has a substantial benefit to the County above and beyond the payment of required taxes or the implementation of [environmental] mitigation measures . . . ." They do not include financial or economic hardship. Finally, the Policy requires a letter of credit, due at "the close of project financing in an amount equal to the sales and use taxes the County estimates will be generated by construction of the solar power plant . . . ." The policy further appears to entitle the County to collect, at a minimum, the County's estimated sales and use tax.

This revised version of Policy B-29 was supposed to address the numerous legal infirmities and practical issues associated with the June Policy. At the June 28 Board hearing, the Board explicitly instructed staff to perform a comparative study of fees imposed on solar projects in other counties to determine if the proposed policy would make the County uncompetitive for solar projects, which developer companies alleged it would. Consistent with the comments made to the Board, at least one supervisor separately suggested at the hearing that the Staff commission a study of the nexus between the revenues sought under the policy and expected project impacts.

As indicated above, beginning August 8, County staff convened a solar working group with one representative from each of 12 solar development companies and attempted to negotiate the terms of a new policy. As evidenced by the similarities between the June and November Policies, those discussions had little effect on the County's proposal, which would still attach a multi-million dollar fee to several types of agreements and make those agreements preconditions to a variety of approvals that most large-scale

[2] This credit is only available for a period of three years that starts to run with the commencement of construction and is only awarded for each worker that is on the payroll for all 12 calendar months and performs at least 2,080 hours of work.

solar projects must obtain. Although the Staff Report asserts that a per-acre fee is the industry's preferred payment methodology, suggesting that the methodology and its outcome are endorsed by the solar industry, this representation is misleading. As discussed below, the only defensible fee is one based on project impacts, not acres. The industry, however, would not challenge an assessment of $140 per acre per year. Unlike a fee based on a percentage of gross receipts, the per-acre fee has at least some relationship to the land use impacts the Policy aims to mitigate and it was in the *County's* best interest to move the policy in this direction.

The Evolution of the Rationale for Policy B-29

Unlike the content of the Policy, the rationales offered to justify it have strategically evolved over time. On February 8, 2011, the Board directed the TLMA to prepare a policy pursuant to which Staff would negotiate "revenue generating agreements" with renewable energy project developers, to "ensure that the County does not disproportionately bear the burden of renewable energy production . . . ." (Feb. 8, 2011 Board Agenda No. 3.29.) As evidenced by the County's 2011 State Legislative Platform, also considered on February 8, the County believes that the property tax exemption for new construction of solar energy systems (California Revenue & Tax Code Section 73) impairs the County's ability to mitigate its disproportionate burdens. Thus from the February meeting materials, it is apparent that the purpose of the requested revenue generating agreement policy was to make up the perceived loss of property tax revenue.

The County attempted to justify the resulting June Policy on the basis that it provided rightful compensation "for the use of County assets, and for the unavoidable, adverse impacts of solar power plants," or, as the County has alternatively identified them, "unmitigatable impacts." (June 28, 2011 Board Agenda No. 3.112.) More specifically, the County intended for the June Policy to provide compensation for: (1) lost economic development potential (including lost employment opportunities and lost property tax revenue); (2) lost recreation potential; (3) lost historical resources (alternatively described as impacts on historic landscapes); (4) costs of additional transportation facilities, public safety facilities, and related services (alternatively described as additional wear and tear on county roads, bridges and flood control facilities and increased demand on emergency services, property assessment services, and law enforcement services—potentially inclusive of prisons); (5) lost agriculture potential; (6) lost biological diversity; (7) impacts of a short term construction influx; and (8) cumulative impacts—all impacts that have never been substantiated by any kind of study or even just a reasoned explanation. In addition, the staff represented that the policy would "give[ ] solar power plant developers certainty regarding the County's requirements." (*Id.*)

In contrast, the November Policy strategically de-emphasizes compensation for burdens on the County and instead focuses on addressing the many ways that the development of multiple solar power plants might compromise the values of the County's General Plan, which includes policies to support a balanced and diverse set of land uses in the County, to preserve open space, and to preserve and protect outstanding visual resources. (Nov. 8, 2011 Board Agenda No. 16.2.) However, the materials made available to the public on this matter fail to explain how imposing extraordinary charges on solar developments will help achieve the goals of the General Plan—unless the intent of these exactions is to discourage solar development in the County. There is nothing in the Policy or any of the supporting materials prepared by staff to suggest that the moneys raised by the fee will be used to help ameliorate the purported adverse effects on the policies and vision of the County General Plan.

Legal Issues with Policy B-29

When it comes to intent and purpose, the County cannot rewrite history. As evidenced by the historical accounts presented above, the purpose of this Policy has always been to recoup property taxes that the County believes it has wrongly been denied as a result of changes in state law. Indeed, the County has rather openly admitted this. The Policy accordingly imposes a local tax, to replace a forbidden state tax in contravention of state statute. The law does not permit this. For this reason, and others explained in more detail below, we urge the Board to reject Policy B-29 to avoid legal challenges.

The County has No Legal Basis for Imposing Franchise Agreements on Solar Power Plants

Solar power plants are not public utilities potentially subject to franchise fee agreements. However, the November Policy would require a franchise agreement as a condition of receiving an encroachment permit. The solar energy projects targeted by the County's Policy are wholesale generating facilities that do not sell electricity directly to end-users. Wholesale generating facilities transmitting power to a utility are exempted from the definition of a "public utility." (California Public Utilities Code Sections 216(g), 218(b)(3), 218.5.)

Furthermore, the statutory authorities that permit the granting of franchises clearly do not apply here. Both the Broughton Act (California Public Utilities Code Sections 6001-6092) and the Franchise Act of 1937 (California Public Utilities Code Sections 6201-6302) authorize the grant of franchises to utilities *providing electricity directly to the public*. The Broughton Act allows franchises only for purposes "involving the furnishing of any service or commodity to the public or any portion thereof." (California Public Utilities Code Section 6101.) The Franchise Act of 1937 states that the franchise fee is to be calculated based on receipts derived from the "utility service" and only on franchises for "transmitting *and distributing* electricity." (California Public Utilities Code Sections 6231(c), 6202 (emphasis added).) "Distributing" or "distribution" of electricity is a term of art defined by the Federal Energy Regulatory Commission as providing electricity *to retail customers*. (*Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 118 FERC ¶ 61,218 n. 20 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).) The solar generating facilities are not public utilities, are not providing electricity to the public, and are not "distributing" electricity; therefore, the County cannot impose a franchise fee as a condition of an encroachment permit under these Acts. In addition, the Broughton Act exclusively authorizes a 2% franchise fee and the Franchise Act of 1937 only applies to franchises issued by municipalities, so the November Policy is plainly not authorized by either of these authorities. (California Public Utilities Code Sections 6006, 6204.)

Government Code Section 26001 also fails to provide authority for the County to impose franchises on electricity generation systems. That statute also refers to the franchise being granted "for purposes involving the furnishing of any service or commodity to the public or any portion thereof." Courts have described such general local government franchises as services and functions that government itself is obligated to furnish to its citizens. They usually concern such matters of vital public interest as water, gas, electricity or telephone services, and the right to use the public streets and ways to bring them *to the general public*." (*Copt-Air v. City of San Diego* (1971) 15 Cal.App.3d 984, 987-989; *see also Santa Barbara County Taxpayer Ass'n v. Bd. of Supervisors* (1989) 209 Cal.App.3d 940, 950 ("In sum, franchise fees are paid for the governmental grant of a relatively long possessory right to use land, similar to an easement or a leasehold, to provide essential services to the general public.").) Based on these

interpretations, Government Code Section 26001 does not authorize franchises for wholesale electrical generating facilities not being used to *deliver* power to the general public.

Furthermore, contrary to past representations by County Counsel, Ordinance 499 does not require a franchise agreement for solar power projects as a condition of an encroachment permit. Ordinance 499 requires only that "public utility companies" hold a franchise agreement as a prerequisite to obtaining an encroachment permit. Given the limitations on the County's authority to impose franchise agreements discussed above, the County's definition of "public utility" cannot be (and is not) broader than the definition found in state law. Solar generation developers are thus not public utility companies under Ordinance 499. Accordingly, they come under the catch-all provision of the encroachment permits ordinance, which provides that "[s]uch permit shall be issued . . . if the Transportation Director is satisfied that the use proposed is in the public interest and that there will be no substantial injury to the highway or impairment of its use as the result thereof, and that the use is reasonably necessary for the performance of the functions of the applicant." This class of applicants does not require franchise agreements for encroachment permits.

The County has No Legal Basis for Requiring a Development Agreement

The proposed Policy would condition certain required land use approvals for solar power plants on the applicant's consent to enter into a development agreement. Such agreements serve developers' interests by protecting a project with a grant of vested development rights. Accordingly, while project proponents may request development agreements, they cannot be mandated by law. To the extent the County intends to argue that developers will enter into such agreements as part of a fair negotiation, this argument is not well taken. If payment and the signing of a development agreement are *required* before the necessary land use approvals will issue, then the County is *imposing* both the fee and the agreement on developers. (*Williams Commc'ns, Inc. v. City of Riverside* (2003) 114 Cal.App.4th 642, 659.)

The Fee Imposed by the Policy Is A Tax that would Violate Propositions 26 and 218 Unless Approved by a Vote of the People

Whether imposed on a per acre basis (as in the November Policy) or as a percentage of revenues or gross receipts (as in the June Policy), the proposed assessment is an attempt to impose a tax through unlawful means. As explained in prior correspondence with the County, pursuant to the recently enacted Proposition 26 (Cal. Const. art. XIIIC sec. 1(e)), taxes in this state include all levies, charges or other exactions unless "the amount is no more than necessary to cover the reasonable costs of the governmental activity, and . . . the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." *Taxes* can only be approved by a vote of the people.

Proposition 26 includes several exempt levies and charges, however none of these exceptions apply to the assessment proposed in the November Policy. The solar utility plant assessment quite plainly exceeds the costs of any specific benefit or service provided, or regulatory cost incurred, by the County. (*See* California Constitution Article XIIIC, Section 1(e)(1)-(3).) It is likewise not a "charge imposed as a condition of property development", (*id.* Section 1(e)(6)), for such fees can only be imposed following a demonstration of a reasonable relationship between the amount of the fee and the likely impacts of a proposed project. (California Government Code Section 66001(a); *see also San Remo Hotel v. City & County of San Francisco* (2002) 27 Cal.4th 643, 671 (observing that "arbitrary and extortionate use of

purported mitigation fees, even where legislatively mandated, will not pass constitutional muster").) As explained in more detail below, the County has not taken the necessary steps to demonstrate *any* nexus between the development of solar power plants and impacts on the County. More pointedly, the County has not demonstrated, or even asserted, that the development of 118,000 acres, the vast majority of which is federal land, into solar power plant facilities will result in impacts on the County that require *$75,520,000 annually* in mitigation fees.

To the extent that the County believes the proposed assessment qualifies for the exemption created for charges imposed for the "use of local government property, or the purchase, rental or lease of local government property", (California Constitution Article XIIIC, Section 1(e)(4)), this exemption is likewise unavailing under the present circumstances. Both the June and the November Policies would apply to land use approvals under ordinance numbers 348 and 460—even when no county property is involved. The law in this area is well established: the County cannot hold land use approvals hostage and demand payment for their release.

Even if the County were to limit the policy to instances where the fee would cover only the use, purchase, rental or lease of County property, Proposition 26 requires that even these fees must be reasonably related to the value of property rights provided. (*See id.* sec. 1(e) (requiring a fair and reasonable relationship between government-imposed charges and "the payor's burdens on, or benefits received from, the government activity"); *see also County of Tulare v. City of Dinuba* (1922) 188 Cal. 664 (holding that a county cannot impose a franchise fee based on gross receipts generated by a property beyond that which is the subject of the franchise).) On its face, $640 per acre for undeveloped land in Riverside County would be extraordinary. But when the overall costs are adjusted for the very small amount of *county* property actually used by projects that are primarily on federal or private land, the numbers are truly outrageous. This is not a reasonable charge exempt from the restrictions of Proposition 26, a conclusion that is especially true in this instance, where the record of the Policy's development is replete with statements that the County is not acting in a purely commercial role, but is simultaneously attempting to use its land use authority to shape and control the impacts of development.

If not a Tax, the Policy Illegally Imposes a Development Impact Fee

One of the stated justifications for the Policy is to relieve the Riverside County community burdens from the large solar projects. The County has previously represented that these burdens include, but are not limited to, impacts on cultural, visual, recreation and other resources within the County. The fee would therefore presumably be used to offset these impacts. The Policy, however, does not commit the funds to address any of these issues.

The assessment is nevertheless arguably a development impact fee in disguise. Under the Mitigation Fee Act (California Government Code Sections 66000 *et seq.*), local governments may impose fees to defray the costs of development or regulation. In the case of solar power plants in Riverside County, it appears that the assessment, while excluding fire *infrastructure* costs, is intended, among other things, to cover the necessary provision of fire *services*. It therefore may be viewed as a development impact fee. Although the definition of "fee" in the Mitigation Fee Act excludes fees collected pursuant to development agreements adopted pursuant to state law, as indicated above, the County may not lawfully require applicants to enter into development agreements as a precondition of obtaining a land use approval.

Development impact fees must bear a reasonable relationship to the impacts of development and must comply with the requirements of California Government Code Section 66001. Here, the County has not implemented any of the procedures for imposing a development impact fee on solar power plants (e.g., analysis, proportionality, nexus, measureable reduction to the impacts, and dedication of the fees to the purpose for which they are collected). If the County is confident that solar power plants will truly have the catastrophic impacts it now predicts, then it should conduct the necessary studies and impose the appropriate impact fee.[3] During the pendency of the nexus study, the industry would be willing to agree to a fee consistent with the industry's prior proposals delivered to County staff. This is the most legally defensible way for the County to ensure that its burdens are addressed.

The Policy is Preempted by State Law

The attempt by the County to impose a local tax to replace a forbidden state tax is preempted by state law. According to Article XI, Section 7 of the California Constitution, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations *not in conflict with general [state] laws*." (*Id.* (emphasis added).) A conflict exists if the local legislation "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 (2007) (internal quotation omitted).) Relevant to an analysis of the Policy, an area can be deemed to be "fully occupied by general law" when "the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action." (*Id.* at 1068.).

Enacted by the Legislature pursuant to its constitutional authority to adopt such legislation, California Revenue and Tax Code Section 73 excludes from property tax assessments the new construction of certain types of solar energy systems installed between January 1, 1999 and December 31, 2016. (Cal. Const. Article XIIIA, Section 2). It was expressly designed by the Legislature to incentivize the development of new solar energy systems by decreasing the property tax burden attached to such projects. (California Stats. 2008 ch. 538 § 1 (AB 1451).) The Legislature's decisions to repeatedly broaden and extend the law's protections and benefits over the years additionally imply that the state has a paramount interest and concern regarding this program. (*Id.*)

If this were not enough, the Legislature has quite explicitly established in other state statutes that "[t]he implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, . . . but is instead a matter of statewide concern." (California Government Code Section 65850.5(a).)[4] The Legislature has furthermore articulated an

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[3] Note that just over a year ago, when the TLMA proposed a Notice of Exemption in support of General Plan Amendment 1080 and Ordinance No. 348.4705, it concluded that "It can be seen with certainty that this project will not result in a significant effect on the environment due to the low impact resulting from particular projects implementing this general plan amendment . . . ."

[4] The term "solar energy system," as used in Government Code Section 6850.5 does not contain the limiting language the County proposes in new section 21.62i of Ordinance 348 providing that a solar energy systems must be "an accessory use" and be "used primarily (i.e. more than 50 percent) to reduce onsite utility usage." The County's proposed inclusion of this limiting language not in the state statute appears to conflict with, and therefore be preempted by, state law. Under state law, a "solar energy system" includes "any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, *electric*

"intent to encourage the installation of solar energy systems by removing obstacles to, *and minimizing costs of*, permitting for such systems." (*Id.*) The Policy, which significantly increases the costs of permitting solar power plants, conflicts with these principles and is consequently preempted.

The Letter of Credit Required to Guarantee the Payment of Taxes Violates Multiple Provisions of the Federal and State Constitutions

The Sales Tax Surety provision of the policy also suffers from unique constitutional problems. This aspect of the Policy would require solar power plant owners to deliver a letter of credit "within five business days of the close of project financing in an amount equal to the sales and use taxes the County estimates will be generated by construction of the solar power plant to ensure such taxes are allocated to the County whenever possible." Any taxes "owed", but unpaid upon completion of construction, would be paid by the owner prior to the release of the letter of credit. The industry previously advised the staff that "close of project financing" means different things to different companies, and the staff's failure to provide a clear definition for this concept could render the levy void for vagueness under Section 1 of the Fourteenth Amendment of the U.S. Constitution and Article I, Section 7 of the California Constitution. In addition, the provision is unconstitutionally vague with regard to how the final amount owed will be calculated, given that the letter of credit will be required in an amount simply determine by the County's estimates.

The surety requirement further violates the equal protection clause of the U.S. Constitution and Section 16, Article IV of the California Constitution. These provisions prohibit "special legislation," meaning legislation designed to "impose[] peculiar disabilities or burdensome conditions in the exercise of a common right on a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law." (*Sawyer v. Barbour* (1960) 142 Cal.App.2d 827, 838; *see also Werner v. Southern Cal. etc. Newspapers* (1950) 35 Cal.2d 121, 131 (establishing that the test for identifying the validity of an allegedly unlawful statute is the same the equal protection clause of the federal Constitution).) Legislative bodies are free to classify people, entities, or things and impose burdens based on those classifications. (Sawyer,142 Cal.App.2d at 838.) But the rationale for the grouping must be reasonable. (*Id.*)

Here, the County has not provided any reason, let alone a rational reason, for creating a class of one—solar plant developers—and imposing the odd requirement that they pre-pay the County estimated sales and use tax for three years. There is no sound reason for targeting solar power plant developers alone to bear this burden.[5] Accordingly, the surety requirement is unconstitutional under the equal protection clause.

The Policy Is Not Exempt from CEQA Review under the "Common Sense" Exemption

Unlike the June Policy, which was a stand-alone document, the November Policy is part of a larger project of legislative changes purportedly designed to facilitate the development of solar power plants in

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generation, or water heating". (California Civil Code Section 801.5 (a)(1), *cross-referenced in* California Government Code Section 65850.5 (emphasis added).)

[5] The fact that construction contractors and subcontractors would be required to enter into agreements with the developers to ensure compliance with this provision when working on solar projects (but not on any other construction contracts) further illustrates the unequal treatment that will result.

Riverside County. Specifically, the November Policy has now been packaged with General Plan Amendment ("GPA") 1080[6] and Ordinance No. 348.4705. The GPA would add a new land use policy to the General Plan to encourage the development of solar power plants and the Ordinance would authorize the development of solar power plants, subject to a conditional use permit, in 19 new zones. Together, the adoption of these provisions constitutes a "project" under CEQA, which the Staff Report asserts is "exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3), in that it can be seen with certainty there is no possibility the [Policy] may have a significant effect on the environment." (Nov. 8, 2011 Agenda Item No. 16.2 (asserting the "common sense" exemption from CEQA).) In other words, the staff is asserting that the approval of a GPA and new Ordinance that are "necessary" to facilitate the development of solar power plants in 19 zone classifications where the law reportedly would otherwise prohibit such development will not significantly affect the environment. However, the staff's discussion of the futility of performing "any environmental analysis at this early stage", when "[t]here is no specific development application connected with [the] project" and the County has not committed to any development, undermines their position. (*Id.*) This is not a case in which the project certainly will not have a significant effect on the environment. Rather, the County seeks to defer CEQA review of a project that will potentially have significant environmental impacts, reasoning that "[b]efore development occurs on any particular site, all environmental issues will be analyzed in site-specific environmental impact reports or other environmental documents." (*Id.*)

While it may be true that many of the developments that may be enabled by the GPA and the Ordinance will be reviewed independently under CEQA, this fact is true of all development-enabling general plan amendments. Yet as a general rule, such amendments *are* subject to CEQA.

A general plan "embod[ies] fundamental land use decisions that guide the future growth and development of cities and counties." "The amendment of a general plan . . . is [therefore] an act of formulating basic land use policy" that creates a "constitution for future development." Amendments to the general plan "have a potential for resulting in ultimate physical changes in the environment" and must be subject to CEQA. *108 Holdings, Ltd. v. City of Rohnert Park* (2006) 136 Cal.App.4th 186, 197-98 (citations and quotations omitted; citing *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773; *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532). The County furthermore cannot hide behind related CEQA reviews in the future to avoid its obligations today.

With regard specifically to the Policy component of the project, the Staff Report additionally fails to acknowledge that the imposition of the Policy will place such a high burden on solar facilities that fewer facilities will be constructed. The State of California has counted on these facilities to ensure compliance with the Renewable Portfolio Standard and plans for decreasing greenhouse gases under the AB 32 Program. Conflicts with these efforts alone are enough to trigger the requirement that the Board prepare an Environmental Impact Report (EIR) to understand the negative effects on the environment from the policy.

Even if the common sense exemption might cover the GPA-Ordinance-Policy project, the County has not provided a sufficient basis for its application.

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[6] The Board initially considered the GPA and the Ordinance during the summer of 2010. However, it has been over a year since the Board has considered these proposals and the current version, with its numerous references to the subsequently drafted Policy B-29, is not the same as what the Board considered previously.

> An "agency's exemption determination must [rely on] evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision." "The question whether alleged physical changes are reasonably foreseeable requires an examination of the evidence presented in the administrative record." An agency obviously cannot declare "with certainty that there is no possibility that the activity in question may have a significant effect on the environment if it has not considered the facts of the matter."

Muzzy Ranch Co. v. Solano County Airport Land Use Comm. (2007) 41 Cal.4th 372, 386-87 (quoting *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 117; *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 291; CEQA Guidelines Section 15061(b)(3)).) The Staff Report does nothing more than recite the language of the CEQA Guidelines and it consequently does not provide a basis for a notice of exemption.

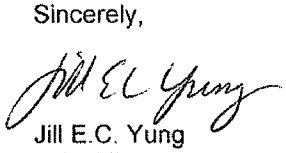
Conclusion

Although this letter is largely a legal critique of the Policy, it also offers a path forward for the County that is fairly clear, despite how complicated this effort to pass a simple policy has become. If the County intends to extract an arbitrary amount of money from solar power plant developers building projects within its jurisdiction, it must impose this obligation through a tax approved by the voters. Such a policy would, however, still be vulnerable to the preemption and equal protection challenges described above.

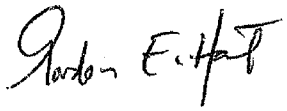
Alternatively, the County can study the actual impacts of the projects and set an appropriate impact fee. The industry has previously offered to sponsor a joint study with the County, which could build on the Solar Costs and Benefits Study it has recently commissioned Dr. John Husing, a regional economist, to conduct. As evidenced by its commissioning of the study, the industry is committed to being a good neighbor in Riverside County. Assessing its actual impacts on the County is the first step in that process—a step that the industry is moving forward with regardless of the outcome of the Board's vote on the Policy.

A third option would be to accept the industry's offer to pay $140 per acre per year, without any obligation on the part of the County to justify this amount. Although this approach is not any more legally defensible than the proposed Policy, a more modest fee—one that the industry can actually afford—would obviously impact the incentives companies might have to challenge the Policy.

Sincerely,



Jill E.C. Yung
of PAUL HASTINGS LLP



Gordon E. Hart

Cc: Chairman Bob Buster, District1@rcbos.org
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Supervisor Jeff Stone, District3@rcbos.org
Supervisor John J. Benoit, District4@rcbos.org

Supervisor Marion Ashley, District4@rcbos.org
Riverside County Executive Officer Larry Parrish, ceo@rceo.org
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Barton, Karen

From: Paul Gough <pgough@bmhlaw.com>
Sent: Monday, November 07, 2011 1:50 PM
To: Lind, Katherine; District1; District2; District3; District4 Supervisor John J Benoit; District5; COB
Subject: Item 16.2 for November 8, 2011 Board of Supervisors meeting.
Attachments: Riverside BOS lt from IEPA (11-7-2011).pdf

Chairman Buster and Members of the Riveside County Board of Supervisors:
Attached is a letter submitted on behalf of the Independent Energy Producers Association in connection with Item 16.2 on the agenda for tomorrow's Board of Supervisors meeting. Please make it part of the record in this matter.
Thank you.

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November 7, 2011

Riverside County Board of Supervisors
4080 Lemon Street
5th Floor
Riverside, CA 92501

Re: Agenda Item 16.2 – Board of Supervisors Meeting November 8, 2011

Dear Chairman Buster and Members of the Board of Supervisors:

This letter is submitted on behalf of our client the *Independent Energy Producers Association* which is California's oldest and leading trade association representing both the interests of developers and operators of independent energy facilities and independent power markets.

INTRODUCTION

On June 28, 2011 The Board considered Policy B-29 which sought to impose a 2% gross receipts tax on solar developments in Riverside County. At that time, the solar industry, organized labor, and the public in general raised a number of issues related to Policy B-29 resulting in the matter being continued to allow for negotiations between industry representatives and the County. Now, in an effort to justify the Sun Tax, Board Policy B-29 has been repackaged by the County with amendments to the General Plan.. But notwithstanding the abandonment of the gross receipts tax approach, the new proposal runs afoul of Proposition 26 because (a) it is a tax by definition, and (b) it does not fall within any of the exceptions found in Proposition 26. While the Independent Energy Producers Association is sympathetic to the financial problems facing all levels of government, Proposition 26 clearly provides that any attempt to extract fees and revenue must go before the voters of the jurisdiction for approval in order to be properly enacted.

BACKGROUND ON BOARD POLICY B-29

Agenda Item 16.2 for the Board of Supervisors Meeting of November 8, 2011 asks the Board to consider two projects and this letter is directed towards the second project which involves a comprehensive, integrated legislative solar power plant program including adoption of General Plan Amendment No. 1080, Ordinance No. 348.4705 and Board of Supervisors Policy No. B-29. One of the stated purposes of this comprehensive, integrated legislative policy is found in Board Policy B-29: [t]o ensure the County is compensated in an amount it deems appropriate for the use of its real property."

The plan to compensate the County is set forth in Board Policy B-29 and provides that: (1) no encroachment permit shall be issued for a solar power plant unless the Board of Supervisors first grants a franchise to the solar plant owner; (2) No interest in the County's property, or the real property of any district governed by the County shall be conveyed for a solar power plant unless the Board of Supervisors first approves a real property agreement with the solar plant owner; and (3) No approval required by Ordinance Nos. 348 or 460 shall be given for a solar power plant unless the Board of Supervisors first approves a development agreement with the solar power plant owner and the development agreement is effective. Thus under proposed Board Policy B-29, the payment by the solar plant owner to the County may be premised on a franchise agreement, a real property interest or a development agreement.

But regardless of the operative document used, Board Policy B-29 proposes to raise revenue for the County by requiring that all of the aforementioned agreements shall include a term requiring a solar power plant owner to make an annual payment to the County of $640 for *each acre involved in the power production process* with certain adjustments, incentives and credits applied annually to the amount due provided the base payment is never reduced by greater than 50%. Board Policy B-29 also allows for an exemption from the imposition of the $640 per acre fee meaning the implementation of this tax is arbitrarily left to the discretion of the Board of Supervisors. The intended use of the proceeds that would be received by the County under Board Policy B-29 is not disclosed in Agenda Item 16.2 nor is there an explanation as to why this revenue generating proposal is not presented as an ordinance instead of a Board Policy.

While the proposed implementation of General Plan Amendment No. 1080, Ordinance No. 348.4705 and Board of Supervisors Policy No. B-29 appears to violate a host of other laws, this letter will focus solely on the applicability of Proposition 26 to this revenue generating proposal.

PROPOSITON 26

Proposition 26 was passed by the voters of the state of California in the November 2010 statewide general election and it amended the California Constitution. Proposition 26 was enacted because local governments often disguised new taxes as fees in order to extract more revenue from California taxpayers without having to abide by Constitutional voting requirements. Proposition 26 broadened the definition of a tax to include "*Any levy, charge, or exaction of any kind imposed by a local government*" except for seven distinct categories of exceptions set forth in Proposition 26. Significantly, Proposition 26 also shifted the burden of

proof to local government to prove why the levy, charge or exaction is not a tax. Specifically, Proposition 26 provides:

> *The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which these costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.*

While it clear that the fee of $640 for each acre involved in the solar production process fits the definition of a tax found in Proposition 26, Agenda Item 16.2 does not address which of the Proposition 26 exception(s), if any, might apply to this tax. Because the California Constitution imposes the burden of proving the applicability of the exception on the County, the County should certainly identify which exception(s) it believes apply in this situation.

The County cannot, however, meet this burden. None of the seven exceptions found in Proposition 26 apply to Board Policy B-29. Two of the exceptions -- fines or assessments or property related fees imposed in accordance with Proposition 218 (Cal. Const. art. XIIIC sec. 1(e)(5) and (7)) – are inapplicable here. Three other categories of exceptions -- special benefit conferred, specific government service or product; and regulatory costs (Cal. Const. art. XIIIC sec. 1(e) (1)(2) and (3)) – specifically provide that the charge not be more than necessary to cover the government's costs and/or bear a fair or reasonable relationship to the burden imposed or benefit conferred. These exceptions do not apply and there has been no attempt to justify the government's costs for the $640 per acre fee.

An exception is permitted in Proposition 26 for the "rental or lease of local government property" (Cal. Const. art. XIIIC sec. 1(e)(4)) but that exception only applies to charges for the rental or lease of property *where the County has an ownership interest in the property which it could rent or lease to a third party*. In Board Policy B-29, the County is proposing to impose a charge of $640 per acre on real property which it neither owns nor leases. In fact, most of the property where the solar projects are being built is on federal land, not land owned by the County.

An exception is also permitted in Proposition 26 for "A charge imposed as a condition of property development." (Cal. Const. art. XIIIC sec. 1(e) 6.) But the imposition of development fees triggers a state statute requiring the County to show a "reasonable relationship" between the amount of the development impact fee and the impact imposed by the project and identify the use to which the fee is to be put. (Gov. Code § 66001(a). The County has not met either of these requirements. Indeed, Board Policy B-29 adopts a "one-size fits all" approach to the developer fee when each solar project is different.

Finally, to the extent the County seeks to rely on the developer exception to justify Board Policy B-29 and its mandate that the base payment may never reduced by more than 50%, it conflicts with three provisions of existing Board Policy B-4 which provides:

(3) All development-related rates should be submitted to a full cost study not less than every three years and appropriate adjustments made.
(4) All development related rates should be adjusted yearly, in the years between full costs studies, to take into consideration anticipated or negotiated salary and benefit increments and the Consumer Price Index as related to non-salary costs.
(5) All development related rates should be routed through Transportation and Land Management for review and comment prior to being presented to the Board of Supervisors.

CONCLUSION

The revenue generating provisions of Board Policy B-29 fit squarely within the definition of a tax in Proposition 26. But the County has offered no evidence that Board Policy B-29 fits within any of the exceptions found in Proposition 26. The imposition of this solar tax must be submitted to the voters of the County of Riverside for approval in order to comply with the Constitution of the state of California.

Respectfully submitted,

Paul T. Gough

CC: Chairman Bob Buster, District1@rcbos.org
Vice Chairman John F. Tavaglione, District2@rcbos.org
Supervisor Jeff Stone, District3@rcbos.org
Supervisor John J. Benoit, District4@rcbos.org
Supervisor Marion Ashley, District5@rcbos.org

Katherine Lind – klind@co.riverside.ca.us
Clerk of the Board – cob@rcbos.org

Lake Tamarisk Desert Resort

P.O. Box 255
26250 Parkview Drive
Desert Center, CA 92239

Phone: 760 227-3138
Fax: 760 227-3087
Email: info@laketamariskdesertresort.com

Fax Transmittal Form

To

Name: Kecia Harper-Ihem
Company: Riverside Co Clerk
Phone:
Fax: 951-955-1071

From

Name: Susan Fleming
Phone: 425-346-6669
Date sent:
Time sent:
Number of pages including cover page: 3

Message:

November 6, 2011

Riverside County Clerk of the Board
Kecia Harper-Ihem

Riverside Board of Directors:

We are concerned citizens residing at Lake Tamarisk Desert Resort in Desert Center. The impact of the Solar projects in our area is disturbing.
I cannot speak for all of the residents of our resort but I know that the majority of the people who live here are not happy about the impact from the Solar that is already being built and are frightened by what may happen if and when other Solar projects are approved in our backyard.

We are not opposed to Solar development. We feel there is plenty of land with lots of sunshine to be used for this that is not in an existing communities backyard. From all we can find there has never been a study done as to the effects of these Solar Projects, Transmission Lines and Humans. There are numerous studies on turtles, snakes, other animals, plants, birds and much more, but no one can answer any studies on how Humans are affected.

If this tax is passed and more Solar comes, we feel it only fair that a good portion of the funds are put back into the Desert Center Community to offset the impact and improve our infrastructure.

If this Community has to be inuated with Solar and what it brings it seems only right that the Solar Companies should assist in improving our infrastructure.

We do not feel that there is any real benefit to having these Solar Plants in our backyard. We are here for the peace and quiet, solitude life style, which has been greatly impacted by the First Solar project. We have large, noisy, polluting trucks traveling our roads all day long. Where we once were able to ride our bicycles and or walk for miles is no longer safe. It is like dodging a gauntlet with all of the traffic. The peacefulness of our golf course has been greatly disturbed by constant trucks. The First Solar project is not even fully underway. When the 440 to 640 employees are shuttled in, the traffic will be even worse. This is projected to go on for approximately 24 months or more. Then following this project could be another. Our life style, as we knew it, is over. We try to look at the positive, but for us in the resort, the retires, we have a difficult time finding the benefit. Desert Center has a population of around 300. Over half of that population are Lake Tamarisk Desert Resort Residents.

We do not want our life style changed. We want to look around us and see the peacefulness and beauty of the desert. We are here because we chose this area for what it is. We do not want to be chased out because of surrounding Solar plants and transmission lines.

There is not enough money that can buy what we have. The Solar Plants that do get to build are going to profit greatly. They should pay a fee to offset the loss and destruction of the land and the impact these have on Communities.

We greatly support the idea of a fee to offset the negative impacts that these projects have on our community. There is concern that this fee will go to the general fund and the community that is actually impacted would have no assurance that any of the fee would be used to offset or mitigate these local impacts. If there is a fee for this purpose it would seem that most of this fee should go directly to the impacted community of CSA 51 and surrounding area, not to other parts of Riverside County that are not directly impacted.

This area's infrastructure cannot handle the impact that First Solar has already caused much less any other Solar projects yet to come.

We urge the Board of Directors to realize that this is a small community that is directly impacted by the Solar projects and after the decision has been made to allocate the funds you all can go back to your constituents and justify the allocations of the money, but please realize that we are the affected area and we have to live with the destruction of the desert and disturbance of our quiet, peaceful community forever.

Please consider this fee to the Solar Plants and the potential that some of those funds would go directly to the Communities affected.

Sincerely,

Gary & Susan Fleming

Gary and Susan Fleming
Lake Tamarisk Desert Resort
Desert Center, CA
mrsfungus53@gmail.com
425-346-6669

Barton, Karen

From: Greg Blue <Gregory.Blue@sunpowercorp.com>
Sent: Monday, November 07, 2011 4:30 PM
To: COB; Executive CEO; District1; District2; District3; District4 Supervisor John J Benoit; District5
Cc: Tom Starrs
Subject: SunPower Opposition to Board Solar Policy B-29 - Agenda item 16.2
Attachments: 111107 SunPower - Opposition to Riverside County Solar Policy B-29 Final.pdf

All,

Please find attached a letter from SunPower opposing the staff proposal on fees for solar projects located in Riverside County.

Respetfully,

Greg Blue
Director, Government Affairs
Utility and Power Plants, North America

SunPower Corporation
1414 Harbour Way South
Richmond, CA 94804 USA
Direct 510.260.8430
Cell 925.323.3612
greg.blue@sunpowercorp.com

SUNPOWER

November 7, 2011

Riverside County Board of Supervisors
4080 Lemon Street - 4th Floor
Riverside, California 92501

RE: Opposition to Agenda Item 16.2 - Approval of Board Policy B-29 Pertaining to Solar Energy Projects

Dear Sirs:

SunPower Corporation is a publicly traded, California-based solar photovoltaic (PV) technology company that has been in business for over 25 years. We are active in the residential, commercial/industrial, and utility-scale markets. We recently opened a solar panel manufacturing facility in Milpitas, California to support our business within the state and around the country.

SunPower appeared at the June 28th Board meeting in strong protest to the Franchise Fee approach which would have taxed the solar projects at 2% of gross receipts. It is important to note that one of the results of the June 28th meeting was the directive to negotiate a fee with the First Solar Desert Sunlight project as they had a DOE Loan Guarantee deadline. The results of that negotiation resulted in about 0.35 % gross receipts tax, or the equivalent of $160 acre. In SunPower's opinion this should have been the ceiling for any negotiations. The staff proposal of $640 acre or 1.5 % of gross revenues and will add a burden on developers in a highly competitive market resulting in far fewer projects in Riverside County than anticipated.

The solar developers have always stated we wanted a mutually agreeable solution and are willing to voluntarily pay our fair share to offset project impacts but the numbers being put forth by staff are not supported by any impact analysis.

SunPower's California Valley Solar Ranch project commissioned an economic impact study on San Luis Obispo County. The conclusions of the report was that the project would bring over $300 million in economic activity to the County over the life of the project due to the 350 direct construction jobs and 230 indirect project support jobs, with a majority of those benefits coming during the three year construction of the project. SunPower is now mobilizing workers for this project at a time when unemployment in SLO County construction trades is near 30%.

These types of economic benefits are being overlooked by staff and would be in jeopardy if the staff proposed Solar Fee is established, causing developers to re-look at locating future solar projects in Riverside County. While SunPower agrees that impacts to the County should be mitigated to the

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extent feasible by each project, the proposed fee for the life of the project will increase the cost of renewable power to all Californians.

In conclusion **SunPower opposes the staff proposal for fees for Solar Projects** located in Riverside County. Any fee at that level will effectively become a Solar Disincentive Fee for Riverside County and will put the County at a competitive disadvantage and developers such as SunPower will look to other Counties or States that do not have such fees to locate future projects.

Respectfully,

Greg Blue

Greg Blue
Director, Government Affairs
Utility & Power Plants

Cc: Larry Parrish, Acting County Executive Officer
Tom Starrs, Managing Director, Utility & Power Plants, SunPower

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Barton, Karen

From: Greg Blue <Gregory.Blue@sunpowercorp.com>
Sent: Monday, November 07, 2011 6:08 PM
To: District1; District2; District3; District4 Supervisor John J Benoit; District5; Executive CEO; COB
Subject: Solar Indusrty Working Group Proposal
Attachments: Solar Industry WG Proposal.pdf

Dear Sirs,

For the record please find attached the current proposal submitted to by the Solar Developer Working Group who participated in negotiations with County Staff. As you can see in the attachments the Solar Industry has been negotiating in good faith and has sent three proposals to the County staff with each one bringing increased revenues to the County. We have informed staff that our most recent proposal with the $140 per acre fee is the most we can voluntarily agree to. It has been very difficult for the solar companies to agree on a standard proposal even though the actual impacts to the County vary widely with the different solar technologies. If, however, one assumes that only 50% of all planned Riverside County projects have construction started in 4-5 years due to a 50% "failure rate" (transmission constraints, marketability, financing, permit problems, etc) the Industry Proposal will get close (on an annual basis) to the $5 Million in 3 years. A number that Supervisor Benoit stated in a weekend news article would "pleasantly surprise him".

We have stated from the first meeting with Staff that we want to reach a mutually agreeable solution and that we were willing to pay our fair share.

Thank you for your consideration of the Industry Proposal.

Greg Blue
Director, Government Affairs
Utility and Power Plants, North America

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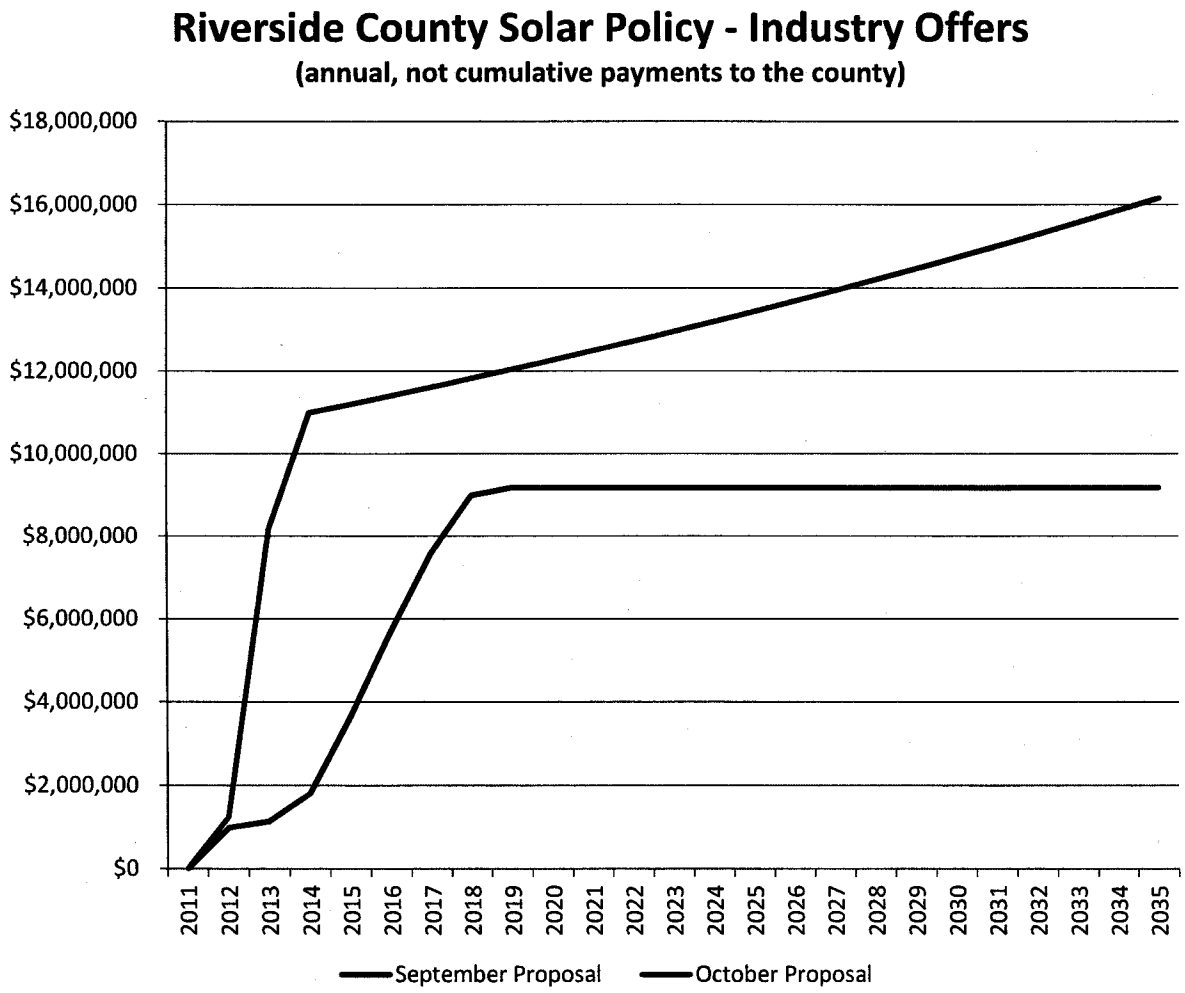
Large Scale Solar Working Group, Comparison of Proposals

	Aug 30 Proposal	**Sept 27 Proposal**	**Oct 20 Proposal**
Type of Fee	DIF and Per Acre	Per acre	Per acre
Amount of Fee per acre	$20 to $43 per acre	PV $100, Thermal $160 per acre	All solar projects pay $140 per net acre initially, subject to an increase as a result of a study
Annual Escalator, Application	0 to 2%, fixed once agreement signed	0 to 2%, fixed once agreement signed	1 to 4%, annually for life of agreement
Credits	Sales Tax, Mitigation Fee, Property Tax	Property Tax	Property Tax
Fee Initiation	Commercial Operation Date	COD	Start of Construction
Phase in	25 to 100% over 4 yrs	25 to 100% over 4 yrs	100% 1st year
Sales Tax Provision	Best Efforts	Sales Tax Look Back, payment for shortfall	Sales Tax Look Back, payment for shortfall

SOLAR INDUSTRY OFFERING SUBSTANTIAL COMPENSATION FOR IMPACTS TO RIVERSIDE COUNTY



October Proposal offers:

✓ **More cumulative payments from 2011-2035:**
– Sept proposal: $185 million total fee to county
– Oct proposal: $305 million total fee to county

✓ **Not just more money over the life of the projects, but earlier payments**

Notes regarding estimates:
- Calculations based upon existing solar projects greater than 10 MW in size that are already in the applications process . 31 projects totaling approximately 7,400 MW and 79,000 acres across both major solar technologies (PV and CSP) were used for these estimates.
- 2% annual escalation rate included for inflation in October proposal
- DIF fees still apply per Ordinance 659 but not shown in calculations
- Credits not accounted for (e.g. property tax credits; transmission line co-location)
- Fee is base on net acreage
- COD and Construction Start Dates are current estimates only.

Large Scale Solar Development Policy, October 25, 2011

- **Solar power payment** Pursuant to Board Policy, provide that no County encroachment permits, Land Use permits required by Ord. 348 or 460, nor any interest in real property for a large scale solar power plant shall be issued, approved, granted nor given until the Board of Supervisors first (or concurrently) approves a development agreement with the solar power plant developer and the development agreement is effective. Such agreement shall include a term requiring the developer to make annual solar power payments to the County. As required by law, such agreement will be adopted by ordinance.

- **Payment purpose** To ensure that the County is compensated for the use of its real property and to ensure that the solar energy developers mitigate impacts to County Services including emergency fire and medical response services, police response services, impacts to public infrastructure such as roadways and other County managed infrastructure, administrative services for management resulting from large scale solar power plants. The County deems payment of the fee as full mitigation for impacts to County services. Additionally, the fee allows the County to mitigate, in its sole discretion for those unavoidable adverse impacts of solar energy production it deems to be impacting resources in the County such as aesthetics and cultural resource areas.

- **Payment basis** Per acre based on net acreage, which has been disturbed and/or occupied, per the definition in the next section.

- **Payment calculation** Multiply the cost factor by the net acreage of a solar power plant to produce the base payment due. Adjust this base payment annually by collocation incentive – if applicable, payment escalator, and phase-in factor, then reduce by credit. Projects which reduce or increase the size of their net acreage, due to modernizing or decommissioning a portion of the project, shall have the net area recalculated, and payments made going forward will be based on the new net area.

  Net acreage shall include all areas involved in the production of power including; the power block and solar collection equipment, areas within the solar collection area, transformers, transmission lines and/or piping within the project boundaries, service roads regardless of surface type – including service roads between panels or collectors, structures, and fencing surrounding all such areas. Net acreage shall not include off site access roads, transmission facilities nor areas specifically set aside either as environmentally sensitive or designated as open space, nor shall it include the fencing of such set aside areas.

- **Cost Factor Calculation** Solar projects shall pay $140 per net acre per year. The fee amount may be increased based on the results of a study which examines the impacts, benefits and competitive setting of solar projects in Riverside County. This study would be subject to public input and comment prior to adoption by the BOS.

- **Collocation incentive** Collocation of transmission lines related to solar energy generation is encouraged. Collocation shall be defined as the locating of transmission lines either in a common corridor or on common poles for either a distance of over a mile <u>or</u> for over 80% of the distance of one of the lines. The incentive amount shall be a 10% reduction of base payment for collocation on common poles as defined above, and a 5% reduction of base payment for collocation within a common corridor. This credit shall apply to both projects participating in the collocation. A third collocater shall be subject to the 5 or 10% reduction, and the originator of the transmission line shall receive an additional 3% credit. Hosting collocaters from thereon shall result in an additional 2% credit for each additional transmission line collocated within the corridor or on the same set of poles.

- **Payment escalator** Annual adjustment to base payment based on Consumer Price Index – All Urban Consumers (LA-Anaheim), with floor of 1% and cap of 4%.

- **Payment credit** Reduction of adjusted base payment by the amount of the County's 12.44% share and Fire Department's 2.58% share of the approximately 1% general purpose property taxes and/or possessory interest taxes paid on the project acreage in the immediately preceding fiscal year, including any supplemental assessments. In no event shall a combination of these credits reduce the net acreage factor below $50 per acre. To the extent that a project's lead agency (e.g. CEC, BLM, County) has put forth conditions of certification that duplicate the requirements of this Solar Power Payment, the amount of the Solar Power Payment shall be reduced dollar for dollar, with no limit to how low the fee may result.

- **Payment date** Initial Payment due within 30 days following the Start of Construction, and annually on that same date. Start of Construction shall be defined as a project having construction financing, a project being granted a permit (grading, clearing, or other for the placement of roads, panels, heliostats, etc) and physically beginning work. Start of Construction is not triggered by fencing the project or property boundary, nor by beginning mitigation activities on site. .

- **Cooperation** Applicants shall enter into a Development Agreement consistent with the terms of this Policy and the County shall cooperate with the Bureau of Land Management, California Department of Fish and Game, United States Fish and Wildlife Service, the California Energy Commission and other agencies, Counties or Cities with concurrent jurisdiction to help facilitate processing of the County's Conditional or Public Use Permits or permits issued by other agencies. To the extent practicable, the County shall expedite its Conditional and Use Permit processes for Applicants subject to this Policy.

- **Payment suspension** If interruption of service occurs for longer than one year, or has occurred due to the actions of the State or County, the policy fee will be reduced 50% upon the written request of the developer, operator or owner of the project. The fee will be reduced for the first, and subsequent payments, after the determination. If commercial operation begins again, the full fee will once

again be due.

- **Payment exemption** Projects which have obtained discretionary land use approval from the project's lead agency (CEC, County or BLM) prior to the adoption of this policy shall be exempt from this policy. Projects with production capacity of 10 MW or less are also exempt. Projects between 10 MW and 20 MW (above 10 MW and including 20 MW) which have fewer impacts to county services, infrastructure, and the community than other uses allowed by the existing zoning of the property may be considered for exemption upon the request of the project proponent. This shall be discussed in a pre-application meeting where the applicant shall provide staff with analysis of the reduced impacts, ultimately being decided by the board of supervisors. Subjective issues, such as visual impacts, may be weighed against project benefits, such as the redevelopment of blighted areas and the re-use of brownfield areas. Projects may have fewer impacts, but still have open issues related to visual impacts, which may be mitigated by setbacks, screening or other measures. Ownership interests in adjacent properties shall be disclosed upon initial application of the land use approval. Piecemealing of projects so as to artificially create exemption is prohibited.

- **Sales tax policy** Solar projects do not warrant any particular amount of sales and use tax to the County and estimates provided during entitlements are for information only, based on expert's current best estimates. However, the developer will use reasonable efforts to assure that sales and use taxes paid in California are designated to unincorporated Riverside County. The development agreement shall contain language which specifies the correct schedules to be filed to maximize the county's share of taxes for the quarterly filing of sales and use taxes as well as the county's right to consult prior to filings and to audit after filings. If the audit finds that the solar project did not file the schedules that had been agreed to, the solar project shall pay County the amount of funds the county would have received if the specified schedule had been filed as specified in the DA, less any actual taxes it receives.

- **DIF (Ord. No. 659)** Development impact fees continue as currently calculated. (Either the commercial or industrial rate is applied depending on the underlying zoning. Access roads, permanent structures and switch gears are included in the calculation. Solar collection equipment, solar field drive zones, biological mitigation structures such as tortoise pens, and site fencing are not included.) This payment is due within 30 days following the Financial Close of the project, or a date mutually agreed to by the County and project owner(s), and such fee shall be pro-rated by the project phasing.

- **Fire capital costs** Capital contributions continue as negotiated case by case. These capital contributions for fire, if applicable, would be due within 30 days following the Financial Close of the project or a date mutually agreed to by the County and project owner(s).

- **Policy sunset** Projects which do not qualify, or no longer qualify, for the State of California Property Tax Exclusion for Solar Power Projects as authorized by Section 73 of

the California Revenue and Taxation Code shall not be required to comply with the fee portion of this policy.

- **Pending projects** — Processing will continue while the Board Policy is being developed and implemented; however, the County will not issue further approvals until the policy is adopted by the Board.

- **Counterproposal benefits:**

- **Cost certainty** — The development agreement ordinance would fix the Solar Development Fee. Ordinance No. 659 fixes the DIF payment.

- **Development rights** — The development agreement would secure a vested right to develop in accordance with the rules and regulations existing at the time the development agreement becomes effective.

- **Project phasing** — The development agreement would secure the right to develop the project in such order and at such rate and at such times as the owner deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in its development plan. The Solar Development Fee will be pro-rated consistent with the project owner's phasing plan, after the Start of Construction, of each phase.

- **Equipment upgrades** — The development agreement would secure the right to make equipment upgrades or repower without additional County discretionary approvals, provided that the means of production are similar, the mode of production and original footprint is not substantially expanded, and height of key structures are not substantially increased. For the purposes of this provision, Substantial shall be defined as increasing more than 15% of the previous factor. Reductions of any factor are acceptable.

- **Consolidation** — The development agreement would obviate the need to separately negotiate a franchise agreement to encroach on County roads and rights-of-way, and a real property interest agreement when a County conveyance, easement, or license is required.

- **Assignment rights** — The development agreement would secure the right to assign or transfer the benefits of the development agreement to future purchasers.

- **Duration** — The development agreement would secure the benefits and obligations referenced above for a term to coincide with the power purchase agreement, with the developer's sole option to extend the agreement upon request.

- **Overriding findings** — When the County is acting as a CEQA lead agency or a CEQA responsible agency, the development agreement and its provisions would provide the County with a basis to make any required overriding findings.

Additional terms for the Development Agreement :

- Notwithstanding county concerns for specific impacts, the county shall not actively oppose projects which appear before the CEC and/or the BLM, and will communicate and coordinate as requested.
- Solar projects shall receive fastrack processing

Barton, Karen

From: Stacey Firestone <sfirestone@brightsourceenergy.com> on behalf of Stephen Wiley <swiley@brightsourceenergy.com>
Sent: Tuesday, November 08, 2011 10:52 AM
To: COB
Cc: District1; District2; District3; District4 Supervisor John J Benoit; District5; Executive CEO; Lind, Katherine; Counsel, County
Attachments: Opposition Letter to Board Policy B-29_08Nov2011.pdf

BrightSource

Stephen Wiley
SVP, US Development
BrightSource Energy, Inc.

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swiley@BrightSourceEnergy.com

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BrightSource

November 8, 2011

By Email (cob@rcbos.org)

Honorable Supervisors of Riverside County
4080 Lemon St., 5th Floor
Riverside, CA 92502

RE: Opposition to Board Policy B-29 Pertaining to Solar Power Plants
(November 8, 2011 Agenda Item 16.2)

Dear Chairman Buster and Members of the Board of Supervisors of Riverside County,

BrightSource Energy, Inc. opposes the proposal before the Board to adopt Policy B-29, which we view as an excessive and unjustified fee on solar generating facilities. Policy B-29 would impose a $640 per acre assessment (subject to certain adjustments) on solar projects that bears no relation to their actual impacts, as well as an extremely burdensome and unprecedented obligation on solar developers to provide a Letter of Credit surety on the assessment. We are committed to being a good neighbor and corporate citizen of Riverside County, and to compensating the county for our actual impacts—even though the substantial economic value and jobs that we and other solar developers bring to the communities in which we locate our projects far outweigh any negative impacts. The fee and the letter of credit requirements, if adopted, would establish a very strong incentive for solar projects to locate in the many other areas that possess great solar development potential and lower development costs. We respectfully request that you decline to adopt this harmful policy.

As a practical matter, the assessment would discourage future utility-scale solar energy generation projects from locating in Riverside County. We believe that rather than generate net positive revenues for the County, it would far more likely have a net negative impact, as it would deprive the County of many direct and indirect economic benefits, including thousands of good jobs for County residents.

Solar projects provide substantial revenue to counties, and particularly solar thermal projects—like those developed by BrightSource—will provide millions of dollars in property tax value alone to the counties in which they are located. BrightSource is currently planning a new project in eastern Riverside County, south of the City of Blythe, which we have named the Rio Mesa Solar Electric Generating Facility. This project will produce twice

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BrightSource

as much energy as our Ivanpah facility, which is currently under construction in San Bernardino County. Ivanpah is already employing over 800 workers, and will reach a peak of approximately 1400 workers. We estimate that our Riverside project will pay approximately $7,000,000 per year in property taxes, and of the more than $100,000,000 in sales and use taxes it will also pay, approximately $8,000,000 will be generated within eastern Riverside County.

The proposed fee raises serious legal concerns,[1] is disproportionately expensive and unjustified. California requires government agencies to perform detailed environmental review of each project and to impose measures to mitigate their impacts (including, where appropriate, reimbursement to the County for additional costs of County services). The proposed policy does not cite any project impacts on the County that would not be mitigated through the normal permitting process, resting instead on a broad, unsubstantiated conclusion that solar power plants, regardless of size or technology, will have unavoidable, adverse impacts on agriculture, recreation, biological diversity, historic and cultural resources, and county infrastructure and services. We do not agree with this conclusion, and ask that you insist that actual impacts, and not unsubstantiated claims, form the basis of any fee that you may assess.

Instead of true impact studies, the County has instead looked to a study that claims to assess the solar developer's ability to pay the fee and whether, in the author's opinion, the fee would drive solar development from Riverside County. We believe the study is of very limited value, as it does not reflect the current development environment. Given the tremendous economic value at issue for the County, the potential loss of that value to other areas, and the legal questions surrounding the fee proposal, the County should not rely solely on this study, and again must look to a study of actual impacts of development, not estimations of anticipated developer willingness or ability to pay.

Conclusion.

BrightSource's Rio Mesa project will be part of the Riverside County community for decades to come, providing good jobs and many other economic benefits during construction and in operation. At our Ivanpah project, we have worked closely with the local county and have ensured the county will receive substantial benefits from the project. We want to have an equally good relationship with Riverside County, and to help encourage additional development in this area. Our ability to succeed and to provide benefits to the

[1] For an explanation of the legal issues associated with the assessment, please see the attached letter from Paul Hastings LLP on behalf of the Large-Scale Solar Association, dated November 7, 2011.

BrightSource

County is directly dependent on the policies that the County adopts, and to the financial impact of those policies on our project.

We strongly believe the goals of Policy 8-29 would be better served by a more reasonable and better justified approach that attracts solar development and allows it to become a true engine for economic development in the County. The imposition of a $640 per acre fee is neither an appropriate or effective tool for accomplishing the County's worthy objectives, and could well prove counterproductive. We urge you to reject this proposal.

Sincerely,

Stephen Wiley
Senior Vice President, Development

Attachment: Letter from Jill E.C. Yung and Gordon E. Hart of Paul Hastings LLP, to Pamela J. Walls, Esq., dated November 7, 2011.
cc: Co-Chairman, Bob Buster (District1@rcbos.org)
Vice-Chairman John F. Tavaglione (District 2@rcbos.org)
Supervisor Jeff Stone (District 3@rcbos.org)
Supervisor John J. Benoit (District 4@rcbos.org)
Supervisor Marion Ashley (District 5@rcbos.org)
Riverside County Executive Officer Larry Parrish (ceo@rceo.org)
County Counsel Pamela J. Walls (countycounsel@co.riverside.ca.us)
Assistant County Counsel Katherine Lind (klind@co.riverside.ca.us)

PAUL
HASTINGS

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1(415) 856-7230 jillyung@paulhastings.com

November 7, 2011

VIA FACSIMILE (951) 358-3407 AND E-MAIL: COUNTYCOUNSEL@CO.RIVERSIDE.CA.US

Pamela J. Walls, Esq.
Riverside County Counsel
3960 Orange Street, Suite 500
Riverside, CA 92501

Re: Legal Analysis of Proposed Riverside County Board Policy B-29, General Plan Amendment No. 1080, and Ordinance No. 348.4705 Pertaining to Solar Energy Projects (Agenda Item 16.2, November 8, 2011 Riverside County Board of Supervisors Meeting)

Dear Ms. Walls:

On behalf of the Large-Scale Solar Association ("LSA"), we are writing to express our serious concerns with the legislative actions to be considered as part of item number 16.2 of the November 8, 2011 Riverside County Board of Supervisors meeting agenda. In particular, we have identified several legal issues with Policy B-29, which would require the owners of solar power plants to pay Riverside County ("County") $640 per acre per year based on the net acreage of a project, and also to provide a letter of credit as a surety for sales and use taxes expected to be owed to the County in the future. The assessment would be imposed in addition to one-time fees required: by the County developer impact fee ("DIF") ordinance (No. 659); for mitigation measures required as a result of a project-specific environmental review under California Environmental Quality Act ("CEQA"); and for fire capital costs.

LSA represents 15 of the nation's largest developers and providers of utility-scale solar generating resources. Collectively, LSA's members have contracted with utilities in California and the West to provide more than 7 gigawatts ("GW") of clean, sustainable solar power. LSA and its individual member companies are leaders in the renewable energy industry, advancing solar generation technologies and advocating for policies that ensure environmentally appropriate solar generation facilities to meet the state's renewable and greenhouse gas goals. LSA is therefore well qualified to comment on the problematic and unlawful aspects of Policy B-29.

The current version of Policy B-29 ("November Policy" or "Policy") revises certain terms and conditions contained in an earlier version of the policy considered by the Board of Supervisors ("Board") at its regular business meeting on June 28, 2011 ("June Policy"). As noted by an overwhelming number of concerned citizens, business and civic leaders, labor representatives and solar developers, before and at the hearing on June 28, the June Policy, if it had been adopted, would have had a significant chilling effect on solar development in Riverside County. Among other things, many speakers indicated that the June Policy would have placed Riverside County in an uncompetitive posture compared to other jurisdictions that are courting solar development. Furthermore, as demonstrated in letters to the Board and also during the hearing itself, the June Policy suffered from multiple legal infirmities. As a result, the Board declined to adopt the June Policy, and directed staff to conduct further analysis, including a competitive economic analysis, to address concerns that the policy would render Riverside County uncompetitive.

Starting on August 8, 2011, County staff convened a series of meetings with 12 solar development companies that are active in Riverside County. This effort included eight face-to-face meetings with County staff in Riverside as well as the exchange of multiple versions of a policy document. Unfortunately, these efforts failed to yield a mutually agreeable policy outcome. Board Policy B-29 represents the County staff's last offer to the solar industry in response to an offer by the solar industry to pay $140/acre/year.[1]

The industry is of course disappointed with the November Policy, especially given that, notwithstanding the express direction of the Board on June 28 that County staff conduct a competitive economic analysis, County staff stated, in response to repeated industry requests regarding the status of this analysis (and offers to fund and participate in the same), that no competitive economic study would be performed, and, further, that staff had received express direction from the Board to abandon any such analysis. We were therefore very surprised and disappointed when we read in the staff report released on November 4 that an economic study had indeed been conducted by a Mr. David Kolk without informing the industry and without asking the industry for input. Neither the industry nor the general public have been given a reasonable amount of time to review and comment on the Kolk study because it was not released until the Friday afternoon before the Tuesday, November 8 Board meeting. In any event, the Kolk study is flawed in numerous respects, and does not provide a reasoned basis for adopting Board Policy B-29.

The Board should reject the November Policy for several reasons. Like the June Policy, it will, if adopted, result in the destruction of tremendous economic value in the form of employment, sales and use tax benefits, property (and/or possessory interest tax) benefits, direct wages benefits, and secondary economic benefits promised by solar development in Riverside County. Furthermore, the November Policy, like its predecessor, suffers from multiple legal deficiencies. Among other things:

- The County does not have legal authority to require that solar developers enter into certain agreements described in the Policy and it further cannot impose extraordinary fees as a condition of the County's approval of such agreements.
- As plainly evidenced by the history of its development, the proposed "fee" is still a *tax* that will violate Propositions 26 and 218 unless approved by a vote of the people.
- The Policy cannot be adopted until the County conducts a review of its potential effect on the environment under CEQA (California Public Resources Code Sections 21000 *et seq.*).
- Based on additional fact finding and changes in the Policy, it is now evident that the Policy proposes an unlawful development impact fee that is further preempted by state law.

The materials presented by the County Transportation and Land Management Agency ("TLMA") in support of the November Policy ("Staff Report") imply that the revisions have addressed the financial and legal problems with the June Policy. Specifically, the materials suggest that the November Policy

[1] As previously explained to the Board in a letter dated September 27, 2011, the solar industry would have agreed to pay the offered amount on a purely voluntary basis; this assessment could not have been mandated by the County. Rather, the industry's ultimate offer of $140/acre/year reflected the amount the industry was able to pay to resolve the issues raised by the June Policy going forward on a voluntary, consensual basis.

embodies "many points" on which the industry and staff reached consensus and further incorporates the industry's "preferred per-acre payment methodology." However, the November Policy fails to address *any* of the concerns raised in oral and written comments presented to the Board in opposition to the June Policy.

In light of these issues, we strongly urge the Board to reject the Policy.

Background

The Evolution of the Content of Policy B-29

At its November 8, 2011 meeting, the Board will once again consider approval of Board Policy B-29 pertaining to Solar Power Plants. Similar to the version considered on June 28, the Policy would impose a fee on solar plants greater than five megawatts through (1) a franchise agreement, which the County would *require* as a prerequisite to any encroachment permit; (2) a real property interest agreement; or (3) a development agreement, which the County would *require* as a pre-condition to the grant of an approval required by the County land use ordinance (No. 348) or the County subdivision ordinance (No. 460). The fee, set at $640 per acre, may be reduced by the portion of any property or possessory interest taxes paid by the developer and received by the County or its Fire Department and by additional amounts depending on the number of Riverside County residents hired during the construction phase[2] and the extent to which the developer co-locates transmission lines with other projects. At a minimum, however, the fee will be $320 per acre, unless the Board finds that "special circumstances" justify an exemption from the policy. Special circumstances include, but are not limited to "a determination that the solar power plant has a substantial benefit to the County above and beyond the payment of required taxes or the implementation of [environmental] mitigation measures . . . ." They do not include financial or economic hardship. Finally, the Policy requires a letter of credit, due at "the close of project financing in an amount equal to the sales and use taxes the County estimates will be generated by construction of the solar power plant . . . ." The policy further appears to entitle the County to collect, at a minimum, the County's estimated sales and use tax.

This revised version of Policy B-29 was supposed to address the numerous legal infirmities and practical issues associated with the June Policy. At the June 28 Board hearing, the Board explicitly instructed staff to perform a comparative study of fees imposed on solar projects in other counties to determine if the proposed policy would make the County uncompetitive for solar projects, which developer companies alleged it would. Consistent with the comments made to the Board, at least one supervisor separately suggested at the hearing that the Staff commission a study of the nexus between the revenues sought under the policy and expected project impacts.

As indicated above, beginning August 8, County staff convened a solar working group with one representative from each of 12 solar development companies and attempted to negotiate the terms of a new policy. As evidenced by the similarities between the June and November Policies, those discussions had little effect on the County's proposal, which would still attach a multi-million dollar fee to several types of agreements and make those agreements preconditions to a variety of approvals that most large-scale

[2] This credit is only available for a period of three years that starts to run with the commencement of construction and is only awarded for each worker that is on the payroll for all 12 calendar months and performs at least 2,080 hours of work.

solar projects must obtain. Although the Staff Report asserts that a per-acre fee is the industry's preferred payment methodology, suggesting that the methodology and its outcome are endorsed by the solar industry, this representation is misleading. As discussed below, the only defensible fee is one based on project impacts, not acres. The industry, however, would not challenge an assessment of $140 per acre per year. Unlike a fee based on a percentage of gross receipts, the per-acre fee has at least some relationship to the land use impacts the Policy aims to mitigate and it was in the *County's* best interest to move the policy in this direction.

The Evolution of the Rationale for Policy B-29

Unlike the content of the Policy, the rationales offered to justify it have strategically evolved over time. On February 8, 2011, the Board directed the TLMA to prepare a policy pursuant to which Staff would negotiate "revenue generating agreements" with renewable energy project developers, to "ensure that the County does not disproportionately bear the burden of renewable energy production . . . ." (Feb. 8, 2011 Board Agenda No. 3.29.) As evidenced by the County's 2011 State Legislative Platform, also considered on February 8, the County believes that the property tax exemption for new construction of solar energy systems (California Revenue & Tax Code Section 73) impairs the County's ability to mitigate its disproportionate burdens. Thus from the February meeting materials, it is apparent that the purpose of the requested revenue generating agreement policy was to make up the perceived loss of property tax revenue.

The County attempted to justify the resulting June Policy on the basis that it provided rightful compensation "for the use of County assets, and for the unavoidable, adverse impacts of solar power plants," or, as the County has alternatively identified them, "unmitigatable impacts." (June 28, 2011 Board Agenda No. 3.112.) More specifically, the County intended for the June Policy to provide compensation for: (1) lost economic development potential (including lost employment opportunities and lost property tax revenue); (2) lost recreation potential; (3) lost historical resources (alternatively described as impacts on historic landscapes); (4) costs of additional transportation facilities, public safety facilities, and related services (alternatively described as additional wear and tear on county roads, bridges and flood control facilities and increased demand on emergency services, property assessment services, and law enforcement services—potentially inclusive of prisons); (5) lost agriculture potential; (6) lost biological diversity; (7) impacts of a short term construction influx; and (8) cumulative impacts—all impacts that have never been substantiated by any kind of study or even just a reasoned explanation. In addition, the staff represented that the policy would "give[ ] solar power plant developers certainty regarding the County's requirements." (*Id.*)

In contrast, the November Policy strategically de-emphasizes compensation for burdens on the County and instead focuses on addressing the many ways that the development of multiple solar power plants might compromise the values of the County's General Plan, which includes policies to support a balanced and diverse set of land uses in the County, to preserve open space, and to preserve and protect outstanding visual resources. (Nov. 8, 2011 Board Agenda No. 16.2.) However, the materials made available to the public on this matter fail to explain how imposing extraordinary charges on solar developments will help achieve the goals of the General Plan—unless the intent of these exactions is to discourage solar development in the County. There is nothing in the Policy or any of the supporting materials prepared by staff to suggest that the moneys raised by the fee will be used to help ameliorate the purported adverse effects on the policies and vision of the County General Plan.

Legal Issues with Policy B-29

When it comes to intent and purpose, the County cannot rewrite history. As evidenced by the historical accounts presented above, the purpose of this Policy has always been to recoup property taxes that the County believes it has wrongly been denied as a result of changes in state law. Indeed, the County has rather openly admitted this. The Policy accordingly imposes a local tax, to replace a forbidden state tax in contravention of state statute. The law does not permit this. For this reason, and others explained in more detail below, we urge the Board to reject Policy B-29 to avoid legal challenges.

The County has No Legal Basis for Imposing Franchise Agreements on Solar Power Plants

Solar power plants are not public utilities potentially subject to franchise fee agreements. However, the November Policy would require a franchise agreement as a condition of receiving an encroachment permit. The solar energy projects targeted by the County's Policy are wholesale generating facilities that do not sell electricity directly to end-users. Wholesale generating facilities transmitting power to a utility are exempted from the definition of a "public utility." (California Public Utilities Code Sections 216(g), 218(b)(3), 218.5.)

Furthermore, the statutory authorities that permit the granting of franchises clearly do not apply here. Both the Broughton Act (California Public Utilities Code Sections 6001-6092) and the Franchise Act of 1937 (California Public Utilities Code Sections 6201-6302) authorize the grant of franchises to utilities *providing electricity directly to the public*. The Broughton Act allows franchises only for purposes "involving the furnishing of any service or commodity to the public or any portion thereof." (California Public Utilities Code Section 6101.) The Franchise Act of 1937 states that the franchise fee is to be calculated based on receipts derived from the "utility service" and only on franchises for "transmitting *and distributing* electricity." (California Public Utilities Code Sections 6231(c), 6202 (emphasis added).) "Distributing" or "distribution" of electricity is a term of art defined by the Federal Energy Regulatory Commission as providing electricity *to retail customers*. (*Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 118 FERC ¶ 61,218 n. 20 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).) The solar generating facilities are not public utilities, are not providing electricity to the public, and are not "distributing" electricity; therefore, the County cannot impose a franchise fee as a condition of an encroachment permit under these Acts. In addition, the Broughton Act exclusively authorizes a 2% franchise fee and the Franchise Act of 1937 only applies to franchises issued by municipalities, so the November Policy is plainly not authorized by either of these authorities. (California Public Utilities Code Sections 6006, 6204.)

Government Code Section 26001 also fails to provide authority for the County to impose franchises on electricity generation systems. That statute also refers to the franchise being granted "for purposes involving the furnishing of any service or commodity to the public or any portion thereof." Courts have described such general local government franchises as services and functions that government itself is obligated to furnish to its citizens. They usually concern such matters of vital public interest as water, gas, electricity or telephone services, and the right to use the public streets and ways to bring them *to the general public*." (*Copt-Air v. City of San Diego* (1971) 15 Cal.App.3d 984, 987-989; *see also Santa Barbara County Taxpayer Ass'n v. Bd. of Supervisors* (1989) 209 Cal.App.3d 940, 950 ("In sum, franchise fees are paid for the governmental grant of a relatively long possessory right to use land, similar to an easement or a leasehold, to provide essential services to the general public.").) Based on these

interpretations, Government Code Section 26001 does not authorize franchises for wholesale electrical generating facilities not being used to *deliver* power to the general public.

Furthermore, contrary to past representations by County Counsel, Ordinance 499 does not require a franchise agreement for solar power projects as a condition of an encroachment permit. Ordinance 499 requires only that "public utility companies" hold a franchise agreement as a prerequisite to obtaining an encroachment permit. Given the limitations on the County's authority to impose franchise agreements discussed above, the County's definition of "public utility" cannot be (and is not) broader than the definition found in state law. Solar generation developers are thus not public utility companies under Ordinance 499. Accordingly, they come under the catch-all provision of the encroachment permits ordinance, which provides that "[s]uch permit shall be issued . . . if the Transportation Director is satisfied that the use proposed is in the public interest and that there will be no substantial injury to the highway or impairment of its use as the result thereof, and that the use is reasonably necessary for the performance of the functions of the applicant." This class of applicants does not require franchise agreements for encroachment permits.

The County has No Legal Basis for Requiring a Development Agreement

The proposed Policy would condition certain required land use approvals for solar power plants on the applicant's consent to enter into a development agreement. Such agreements serve developers' interests by protecting a project with a grant of vested development rights. Accordingly, while project proponents may request development agreements, they cannot be mandated by law. To the extent the County intends to argue that developers will enter into such agreements as part of a fair negotiation, this argument is not well taken. If payment and the signing of a development agreement are *required* before the necessary land use approvals will issue, then the County is *imposing* both the fee and the agreement on developers. (*Williams Commc'ns, Inc. v. City of Riverside* (2003) 114 Cal.App.4th 642, 659.)

The Fee Imposed by the Policy Is A Tax that would Violate Propositions 26 and 218 Unless Approved by a Vote of the People

Whether imposed on a per acre basis (as in the November Policy) or as a percentage of revenues or gross receipts (as in the June Policy), the proposed assessment is an attempt to impose a tax through unlawful means. As explained in prior correspondence with the County, pursuant to the recently enacted Proposition 26 (Cal. Const. art. XIIIC sec. 1(e)), taxes in this state include all levies, charges or other exactions unless "the amount is no more than necessary to cover the reasonable costs of the governmental activity, and . . . the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." *Taxes* can only be approved by a vote of the people.

Proposition 26 includes several exempt levies and charges, however none of these exceptions apply to the assessment proposed in the November Policy. The solar utility plant assessment quite plainly exceeds the costs of any specific benefit or service provided, or regulatory cost incurred, by the County. (*See* California Constitution Article XIIIC, Section 1(e)(1)-(3).) It is likewise not a "charge imposed as a condition of property development", (*id.* Section 1(e)(6)), for such fees can only be imposed following a demonstration of a reasonable relationship between the amount of the fee and the likely impacts of a proposed project. (California Government Code Section 66001(a); *see also San Remo Hotel v. City & County of San Francisco* (2002) 27 Cal.4th 643, 671 (observing that "arbitrary and extortionate use of

purported mitigation fees, even where legislatively mandated, will not pass constitutional muster").) As explained in more detail below, the County has not taken the necessary steps to demonstrate *any* nexus between the development of solar power plants and impacts on the County. More pointedly, the County has not demonstrated, or even asserted, that the development of 118,000 acres, the vast majority of which is federal land, into solar power plant facilities will result in impacts on the County that require *$75,520,000 annually* in mitigation fees.

To the extent that the County believes the proposed assessment qualifies for the exemption created for charges imposed for the "use of local government property, or the purchase, rental or lease of local government property", (California Constitution Article XIIIC, Section 1(e)(4)), this exemption is likewise unavailing under the present circumstances. Both the June and the November Policies would apply to land use approvals under ordinance numbers 348 and 460—even when no county property is involved. The law in this area is well established: the County cannot hold land use approvals hostage and demand payment for their release.

Even if the County were to limit the policy to instances where the fee would cover only the use, purchase, rental or lease of County property, Proposition 26 requires that even these fees must be reasonably related to the value of property rights provided. (*See id.* sec. 1(e) (requiring a fair and reasonable relationship between government-imposed charges and "the payor's burdens on, or benefits received from, the government activity"); *see also County of Tulare v. City of Dinuba* (1922) 188 Cal. 664 (holding that a county cannot impose a franchise fee based on gross receipts generated by a property beyond that which is the subject of the franchise).) On its face, $640 per acre for undeveloped land in Riverside County would be extraordinary. But when the overall costs are adjusted for the very small amount of *county* property actually used by projects that are primarily on federal or private land, the numbers are truly outrageous. This is not a reasonable charge exempt from the restrictions of Proposition 26, a conclusion that is especially true in this instance, where the record of the Policy's development is replete with statements that the County is not acting in a purely commercial role, but is simultaneously attempting to use its land use authority to shape and control the impacts of development.

If not a Tax, the Policy Illegally Imposes a Development Impact Fee

One of the stated justifications for the Policy is to relieve the Riverside County community burdens from the large solar projects. The County has previously represented that these burdens include, but are not limited to, impacts on cultural, visual, recreation and other resources within the County. The fee would therefore presumably be used to offset these impacts. The Policy, however, does not commit the funds to address any of these issues.

The assessment is nevertheless arguably a development impact fee in disguise. Under the Mitigation Fee Act (California Government Code Sections 66000 *et seq.*), local governments may impose fees to defray the costs of development or regulation. In the case of solar power plants in Riverside County, it appears that the assessment, while excluding fire *infrastructure* costs, is intended, among other things, to cover the necessary provision of fire *services*. It therefore may be viewed as a development impact fee. Although the definition of "fee" in the Mitigation Fee Act excludes fees collected pursuant to development agreements adopted pursuant to state law, as indicated above, the County may not lawfully require applicants to enter into development agreements as a precondition of obtaining a land use approval.

Development impact fees must bear a reasonable relationship to the impacts of development and must comply with the requirements of California Government Code Section 66001. Here, the County has not implemented any of the procedures for imposing a development impact fee on solar power plants (e.g., analysis, proportionality, nexus, measureable reduction to the impacts, and dedication of the fees to the purpose for which they are collected). If the County is confident that solar power plants will truly have the catastrophic impacts it now predicts, then it should conduct the necessary studies and impose the appropriate impact fee.[3] During the pendency of the nexus study, the industry would be willing to agree to a fee consistent with the industry's prior proposals delivered to County staff. This is the most legally defensible way for the County to ensure that its burdens are addressed.

The Policy is Preempted by State Law

The attempt by the County to impose a local tax to replace a forbidden state tax is preempted by state law. According to Article XI, Section 7 of the California Constitution, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations *not in conflict with general [state] laws*." (*Id.* (emphasis added).) A conflict exists if the local legislation "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 (2007) (internal quotation omitted).) Relevant to an analysis of the Policy, an area can be deemed to be "fully occupied by general law" when "the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action." (*Id.* at 1068.).

Enacted by the Legislature pursuant to its constitutional authority to adopt such legislation, California Revenue and Tax Code Section 73 excludes from property tax assessments the new construction of certain types of solar energy systems installed between January 1, 1999 and December 31, 2016. (Cal. Const. Article XIIIA, Section 2). It was expressly designed by the Legislature to incentivize the development of new solar energy systems by decreasing the property tax burden attached to such projects. (California Stats. 2008 ch. 538 § 1 (AB 1451).) The Legislature's decisions to repeatedly broaden and extend the law's protections and benefits over the years additionally imply that the state has a paramount interest and concern regarding this program. (*Id.*)

If this were not enough, the Legislature has quite explicitly established in other state statutes that "[t]he implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, . . . but is instead a matter of statewide concern." (California Government Code Section 65850.5(a).)[4] The Legislature has furthermore articulated an

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[3] Note that just over a year ago, when the TLMA proposed a Notice of Exemption in support of General Plan Amendment 1080 and Ordinance No. 348.4705, it concluded that "It can be seen with certainty that this project will not result in a significant effect on the environment due to the low impact resulting from particular projects implementing this general plan amendment . . . ."

[4] The term "solar energy system," as used in Government Code Section 6850.5 does not contain the limiting language the County proposes in new section 21.62i of Ordinance 348 providing that a solar energy systems must be "an accessory use" and be "used primarily (i.e. more than 50 percent) to reduce onsite utility usage." The County's proposed inclusion of this limiting language not in the state statute appears to conflict with, and therefore be preempted by, state law. Under state law, a "solar energy system" includes "any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, *electric*

"intent to encourage the installation of solar energy systems by removing obstacles to, *and minimizing costs* of, permitting for such systems." (*Id.*) The Policy, which significantly increases the costs of permitting solar power plants, conflicts with these principles and is consequently preempted.

The Letter of Credit Required to Guarantee the Payment of Taxes Violates Multiple Provisions of the Federal and State Constitutions

The Sales Tax Surety provision of the policy also suffers from unique constitutional problems. This aspect of the Policy would require solar power plant owners to deliver a letter of credit "within five business days of the close of project financing in an amount equal to the sales and use taxes the County estimates will be generated by construction of the solar power plant to ensure such taxes are allocated to the County whenever possible." Any taxes "owed", but unpaid upon completion of construction, would be paid by the owner prior to the release of the letter of credit. The industry previously advised the staff that "close of project financing" means different things to different companies, and the staff's failure to provide a clear definition for this concept could render the levy void for vagueness under Section 1 of the Fourteenth Amendment of the U.S. Constitution and Article I, Section 7 of the California Constitution. In addition, the provision is unconstitutionally vague with regard to how the final amount owed will be calculated, given that the letter of credit will be required in an amount simply determine by the County's estimates.

The surety requirement further violates the equal protection clause of the U.S. Constitution and Section 16, Article IV of the California Constitution. These provisions prohibit "special legislation," meaning legislation designed to "impose[] peculiar disabilities or burdensome conditions in the exercise of a common right on a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law." (*Sawyer v. Barbour* (1960) 142 Cal.App.2d 827, 838; *see also Werner v. Southern Cal. etc. Newspapers* (1950) 35 Cal.2d 121, 131 (establishing that the test for identifying the validity of an allegedly unlawful statute is the same the equal protection clause of the federal Constitution).) Legislative bodies are free to classify people, entities, or things and impose burdens based on those classifications. (Sawyer,142 Cal.App.2d at 838.) But the rationale for the grouping must be reasonable. (*Id.*)

Here, the County has not provided any reason, let alone a rational reason, for creating a class of one—solar plant developers—and imposing the odd requirement that they pre-pay the County estimated sales and use tax for three years. There is no sound reason for targeting solar power plant developers alone to bear this burden.[5] Accordingly, the surety requirement is unconstitutional under the equal protection clause.

The Policy Is Not Exempt from CEQA Review under the "Common Sense" Exemption

Unlike the June Policy, which was a stand-alone document, the November Policy is part of a larger project of legislative changes purportedly designed to facilitate the development of solar power plants in

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generation, or water heating". (California Civil Code Section 801.5 (a)(1), *cross-referenced in* California Government Code Section 65850.5 (emphasis added).)

[5] The fact that construction contractors and subcontractors would be required to enter into agreements with the developers to ensure compliance with this provision when working on solar projects (but not on any other construction contracts) further illustrates the unequal treatment that will result.

Riverside County. Specifically, the November Policy has now been packaged with General Plan Amendment ("GPA") 1080[6] and Ordinance No. 348.4705. The GPA would add a new land use policy to the General Plan to encourage the development of solar power plants and the Ordinance would authorize the development of solar power plants, subject to a conditional use permit, in 19 new zones. Together, the adoption of these provisions constitutes a "project" under CEQA, which the Staff Report asserts is "exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3), in that it can be seen with certainty there is no possibility the [Policy] may have a significant effect on the environment." (Nov. 8, 2011 Agenda Item No. 16.2 (asserting the "common sense" exemption from CEQA).) In other words, the staff is asserting that the approval of a GPA and new Ordinance that are "necessary" to facilitate the development of solar power plants in 19 zone classifications where the law reportedly would otherwise prohibit such development will not significantly affect the environment. However, the staff's discussion of the futility of performing "any environmental analysis at this early stage", when "[t]here is no specific development application connected with [the] project" and the County has not committed to any development, undermines their position. (*Id.*) This is not a case in which the project certainly will not have a significant effect on the environment. Rather, the County seeks to defer CEQA review of a project that will potentially have significant environmental impacts, reasoning that "[b]efore development occurs on any particular site, all environmental issues will be analyzed in site-specific environmental impact reports or other environmental documents." (*Id.*)

While it may be true that many of the developments that may be enabled by the GPA and the Ordinance will be reviewed independently under CEQA, this fact is true of all development-enabling general plan amendments. Yet as a general rule, such amendments *are* subject to CEQA.

A general plan "embod[ies] fundamental land use decisions that guide the future growth and development of cities and counties." "The amendment of a general plan . . . is [therefore] an act of formulating basic land use policy" that creates a "constitution for future development." Amendments to the general plan "have a potential for resulting in ultimate physical changes in the environment" and must be subject to CEQA. *108 Holdings, Ltd. v. City of Rohnert Park* (2006) 136 Cal.App.4th 186, 197-98 (citations and quotations omitted; citing *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773; *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532). The County furthermore cannot hide behind related CEQA reviews in the future to avoid its obligations today.

With regard specifically to the Policy component of the project, the Staff Report additionally fails to acknowledge that the imposition of the Policy will place such a high burden on solar facilities that fewer facilities will be constructed. The State of California has counted on these facilities to ensure compliance with the Renewable Portfolio Standard and plans for decreasing greenhouse gases under the AB 32 Program. Conflicts with these efforts alone are enough to trigger the requirement that the Board prepare an Environmental Impact Report (EIR) to understand the negative effects on the environment from the policy.

Even if the common sense exemption might cover the GPA-Ordinance-Policy project, the County has not provided a sufficient basis for its application.

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[6] The Board initially considered the GPA and the Ordinance during the summer of 2010. However, it has been over a year since the Board has considered these proposals and the current version, with its numerous references to the subsequently drafted Policy B-29, is not the same as what the Board considered previously.

> An "agency's exemption determination must [rely on] evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision." "The question whether alleged physical changes are reasonably foreseeable requires an examination of the evidence presented in the administrative record." An agency obviously cannot declare "with certainty that there is no possibility that the activity in question may have a significant effect on the environment if it has not considered the facts of the matter."

Muzzy Ranch Co. v. Solano County Airport Land Use Comm. (2007) 41 Cal.4th 372, 386-87 (quoting *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 117; *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 291; CEQA Guidelines Section 15061(b)(3)).) The Staff Report does nothing more than recite the language of the CEQA Guidelines and it consequently does not provide a basis for a notice of exemption.

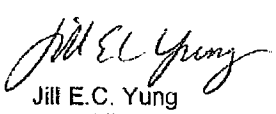
Conclusion

Although this letter is largely a legal critique of the Policy, it also offers a path forward for the County that is fairly clear, despite how complicated this effort to pass a simple policy has become. If the County intends to extract an arbitrary amount of money from solar power plant developers building projects within its jurisdiction, it must impose this obligation through a tax approved by the voters. Such a policy would, however, still be vulnerable to the preemption and equal protection challenges described above.

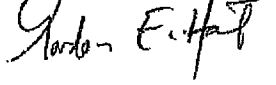
Alternatively, the County can study the actual impacts of the projects and set an appropriate impact fee. The industry has previously offered to sponsor a joint study with the County, which could build on the Solar Costs and Benefits Study it has recently commissioned Dr. John Husing, a regional economist, to conduct. As evidenced by its commissioning of the study, the industry is committed to being a good neighbor in Riverside County. Assessing its actual impacts on the County is the first step in that process—a step that the industry is moving forward with regardless of the outcome of the Board's vote on the Policy.

A third option would be to accept the industry's offer to pay $140 per acre per year, without any obligation on the part of the County to justify this amount. Although this approach is not any more legally defensible than the proposed Policy, a more modest fee—one that the industry can actually afford—would obviously impact the incentives companies might have to challenge the Policy.

Sincerely,



Jill E.C. Yung
of PAUL HASTINGS LLP



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Riverside County Executive Officer Larry Parrish, ceo@rceo.org
Assistant County Counsel Katherine Lind, klind@co.riverside.ca.us
Clerk of the Board of Supervisors, cob@rcbos.org

Barton, Karen

From: Pamela G. Spring <PGS@pacificlegal.org>
Sent: Monday, November 07, 2011 1:32 PM
To: Lind, Katherine; COB; District2; District3; District4 Supervisor John J Benoit; District5; Executive CEO
Cc: Meriem Hubbard
Subject: Agenda Item 16.2
Attachments: Letter to Riverside County Board of Supervisors.pdf

Dear Chairman Buster and Members of the Board of Supervisors:

Please find attached a letter of today's date from Ms. Meriem L. Hubbard, Principal Attorney at Pacific Legal Foundation, for your review and consideration.

Should you have any problems opening the attachment, please feel free to contact me at the number listed below.

Pamela Spring
Secretary to Meriem L. Hubbard
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
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PACIFIC LEGAL FOUNDATION

November 7, 2011

Via Email Only

Riverside County Board of Supervisors
4080 Lemon Street
Riverside, CA 92501

Re: Agenda Item 16.2

Dear Chairman Buster and Members of the Board of Supervisors:

The nature of the $640 per acre annual payment the Board of Supervisors proposes to require as a term of a development agreement with solar power plant owners is not entirely clear. But whether the "payment" is characterized as a condition on development, a fee, or a tax, it is subject to constitutional scrutiny. If this payment is a condition on development, it is subject to the nexus and rough proportionality tests of *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard.* If it is a tax, as it appears to be (County notes that solar power plants are largely exempt from property taxes), the matter must be submitted to a vote of the electorate.

Pacific Legal Foundation (PLF) recently won a constitutional challenge to a special tax adopted by the City of Santa Rosa to remedy a funding deficit for additional public services necessitated by new development. The City required that, with limited exceptions, applicants for residential building permits annex their property to a Special Tax District, pay special taxes assessed by the District, and waive their constitutional right to vote on those issues. Property owners who did not agree to these conditions, did not receive permits. PLF argued that the payment violated Article XIIIA of the California Constitution (requiring a 2/3 vote of the electorate to impose special taxes) and the federal right to equal protection of the laws. California Superior Court Judge Mark Tansil's comments speak for themselves:

- "It is beyond cavil that voting is of the most fundamental significance under our constitutional structure." *Burdick v. Takushi,* 504 U.S. 428, 433 (1992) .

- [T]he express conditioning of the receipt of land-use permits upon the surrender of voting rights amounts to an unconstitutional enactment under *Robbins v. Superior Court* 38 Cal. 3d 199, 213 (1985).

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- [I]t is crystal clear that Californians cannot be subjected to an annexation into a special taxation district without an election where at least two-thirds of the impacted voters approve of the annexation. California Constitution Article XIIIA.

- Nothing in the Mello-Roos Act remotely suggests that constitutional rights can be bypassed in times of trouble.

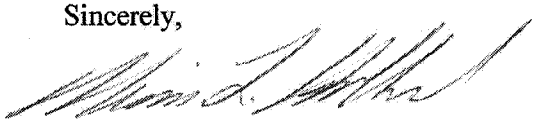
- There is no election provided by Ordinance 3902, there is just a coerced waiver. No where in the Mello-Roos Act is this process condoned.

- Ordinance 3902 is not a municipal law that merely streamlines or improves the voting procedure there, rather it is a government measure that by design thwarts any semblance of a real election. And it is undeniable that the issuance of desirable building permits is directly linked to an induced consent to taxation.

- [T]he land-owner-voters here are effectively being denied equal protection of law in regard to the right to vote against annexation into a special tax district. Their right to vote is being severely interfered with . . . The voter choice under Ordinance 3920 is dramatically warped.

PLF urges the Board to clarify the nature of the proposed "payment" before voting on the proposed Policy. PLF also urges the Board to include language stating the County's intent to meet the legal standards for imposing the "payment."

Sincerely,



MERIEM L. HUBBARD
Principal Attorney

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